

OVERVIEW

The year 2002 was an eventful year for the Office of the Ombudsman both in terms of the number of complaints received and handled during the year and with respect to the activities in which the Office and its staff either participated or were involved.

The Office recorded the second highest number of complaints recorded since its inception twenty-five (25) years ago, a total of one thousand five hundred and two (1502) complaints. This figure represents an increase of 27% over the previous year (2001), when a total of one thousand one hundred and eighty-two (1182) complaints were received.

The increase can be attributed to a number of factors including the establishment of a permanent Office in Tobago during the early part of 2002 which is serviced by a full-time Investigator and supporting staff. The Tobago Office recorded a total of one hundred and thirty-seven (137) complaints for the year 2002. For the year 2001, forty-four (44) complaints were received.

The increase can also be attributed to the fact that the outreach programme was extended to the Borough of Point Fortin and its environs in August 2002.

Another factor which is noteworthy of attention was the greater awareness by the population of the services offered by the Ombudsman's Office. This was facilitated by a promotional exercise undertaken by our communications expert who assumed duties on May 16, 2002. Promotion took the form of media presentation and the issue of newsletters which appeared in the daily newspapers.

The number of persons who accessed the outreach programmes in 2002 numbered seven hundred and fifteen (715) comprised as follows:

Chaguanas	104
Point Fortin (September to December)	59
Rio Claro	77
San Fernando	219
Sangre Grande	156
Siparia	100

Ten (10) complaints were received during the year 2002 under the Freedom of Information Act which came into effect on 4th December, 1999.

Details of these matters are contained in the Statistical Review published at page 14.

Included in this Report are reports on The Criminal Injuries Compensation Act, 1999, Old Age pensions and Land and Land Use Management at pages 4, 5 and 6 respectively.

The Second Regional Conference of the Caribbean Ombudsman Association (CAROA) of which I was then the Vice-President, was held at the Hilton International Hotel in Port of Spain from 7th to 10th May, 2002. It was organized by my Office in collaboration with CAROA. Details are at page 9.

I also have to report on our participation in the following seminars/conferences as a result of our attendance and participation at the European-Latin American/Caribbean Conference held in Copenhagen, Denmark, 24-25 September, 2001 (reported in the 24th Annual Report). The first was a meeting of the General Assembly of the Network of National Institutions for the protection of Human Rights of the Americas held in Kingston, Jamaica from 7th -9th March, 2002 and attended by myself and Mrs Leonie Bernier, Investigator. The second was a Technical Seminar hosted by the Inter-American Institute of Human Rights held in San Jose, Costa Rica and attended by Mrs Yvette Hall, Senior Investigator. The details are at page 11.

The Office of the Ombudsman commemorated the twenty-fifth anniversary of its founding in Trinidad and Tobago with a number of activities including an Open House, Identity Launch and a Staff Appreciation Ceremony and Dinner at which past and present staff members were presented with commemorative awards. The details are at page 13.

For the year 2002, as indicated above, I received a total of one thousand five hundred and two (1502) complaints. The Ministries/Departments which recorded a substantial number of complaints are as follows:

Local Government Bodies	162
Tobago House of Assembly	137
Prison Services	69
Water & Sewerage Authority	48
National Insurance Board	46
Social Welfare Department	49
Trinidad and Tobago Electricity Commission	43
Agriculture, Land and Marine Resources	43

The local government bodies which comprise five (5) City and Borough Corporations and nine (9) Regional Corporations recorded a total of one hundred and sixty-two (162) complaints for the year 2002. These consisted chiefly of complaints relating to infrastructural deficiencies in respect of roads, drains and water courses which impacted on the daily lives of citizens. There were also complaints regarding the increase in property taxes and complaints by employees regarding seniority in status and conditions of service.

One hundred and thirty-seven (137) complaints were received on the Tobago House of Assembly in respect of services provided by departments which fell under their jurisdiction. Complaints related mainly to questions by employees with respect to their seniority and other matters related to old age pension and social assistance.

Complaints against the Prison Services came from prisoners who complained '*inter alia*' about their accommodation, food and medical attention. Complaints concerned also the listing of their matters before the Courts and pending appeals.

Complaints against the Water & Sewerage Authority related mainly to lack of water supply and wrongful billing.

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 against the Social Welfare Department related mainly to the provision of old age pensions and social assistance.

Complaints against the Trinidad and Tobago Electricity Commission related to 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 Agriculture, Land and Marine Resources departments were concerned with squatters' regularization rights and leases of state lands for building and agricultural purposes.

On the whole, as in previous years, our success depended on the assistance and co-operation of the various departments and authorities with which we dealt. The problem continues to be systemic. There continues to be delays in the payment of compensation for admitted wrongs and of money due to complainants, in respect of other causes. There continues to be delays in the handling of correspondence and laxity in taking action with respect to the Ombudsman's recommendations.

THE CRIMINAL INJURIES COMPENSATION ACT, 1999

The Criminal Injuries Compensation Act, 1999 (No.11) was made law by assent on 29th September, 1999. The President by proclamation dated 30th October, 2000 brought the Act into operation with effect from 1st November, 2000.

The Act provides for the establishment of a Board (Criminal Injuries Compensation Board) and for the payment of compensation to victims of criminal injuries sustained as a result of crimes listed in the First Schedule viz. Murder, Manslaughter, Wounding with Intent, Inflicting injury with or without a weapon; using a drug to commit an Offence, Administering poison or other destructive or noxious substance and Offences under the Sexual Offences Act.

The Act also provides for the establishment of a fund comprising sums to be appropriated by Parliament from the Consolidated Fund for the payment of compensation to victims or dependents and to meet the operating expenses of the Board.

Since the enactment of this legislation there have been many enquiries and in some instances complaints to this Office regarding compensation by the victims of the crimes listed above.

The latest complaint was by a Complainant seeking compensation for injuries he received to his right leg when he was shot by a bandit. He had spent some time in Hospital recovering from the injury.

Enquiries revealed that no Board has been established in accordance with the Act. A Criminal Injuries Compensation Unit was established under the Ministry then responsible for Social and Community Development (now the Ministry of Social Development) which has prepared a booklet containing guidelines in accordance with the Act for the grant of compensation to the victims of crime. No fund has ever been created and no monies have been appropriated to the Fund.

Meanwhile enquiries from victims of crime are constantly being made to this Office.

OLD AGE PENSIONS

One of the main causes of complaint to the Ombudsman's Office is that of persons who believe that they are entitled to old age pension and whose claims are rejected by the Old Age Pensions Boards.

The Old Age Pensions Act Chapter 32:02 was passed in 1939 for the specific purpose of providing pensions to persons who fulfill the statutory requirements.

Section 4(1) of the Act provides that the person:

- “(a) must have attained the age of sixty-five years.
- (b) must have been ordinarily resident in Trinidad and Tobago for the twenty years immediately preceding the claim for pension. (A period not exceeding two years in the aggregate of temporary absences abroad is not taken into account in computing the period of twenty years prescribed by the Act).
- (c) must satisfy the Local Board that his or her total annual income does not exceed four thousand five hundred dollars (\$4,500.00) a year.

In recent times the provision in Section 4(1)(b) gave rise to a great measure of difficulty both to the Applicant and to the Social Welfare Department. Persons who qualified under the Act and who went abroad for various reasons e.g. seeking medical attention abroad and spending vacations with children and relatives exceeded the aggregate period of two years stipulated by the Act in many instances and were caught by the Section 4 provision.

As a result, Section 4 of the Act was repealed in 1996 (Act 24 of 1996) and replaced by a new Section 4 which retained the age of qualification of sixty-five years and the period of twenty years preceding the claim but added a provision that the person must have been ordinarily resident for a period of sixty years in the aggregate. The period of temporary absence abroad was changed from two years to five years in the aggregate.

It is this period of sixty years in the aggregate that is causing concern to the applicants for old age pension. They contend that it is a condition which they find impossible to fulfill.

Complaints have also been received with respect to the amount of pension to which a person is entitled.

When the Act was first proclaimed, a person whose total income did not exceed \$4,500.00 a year was entitled to a pension of \$125.00 per month. By subsequent Orders of the Minister these amounts were changed from time to time. Today the grant stands at \$1,000.00 per month for persons whose income is less than \$100.00 and for persons whose income exceeds \$100.00 per month, the grant is \$900.00 per month.

Many complaints are received from pensioners who are not aware of the above and expect the full grant of \$1,000.00 per month.

Many complaints are received by persons who exceed the income limit of \$12,000.00 per year and who do not qualify for the receipt of any pension whatever.

A complaint filed in 2001, when the ceiling was \$700.00 per month deprived the Complainant of any pension whatsoever as her income exceeded the ceiling by thirteen (13) cents. This is an anomaly which requires urgent attention.

STATE LANDS

Since the inception of the Office of the Ombudsman, there have been complaints regarding land use, management of State lands and acquisition of private lands for public purposes. The primary focus has been the delays in the payment of compensation to land owners for land compulsorily acquired by the State; the grant of leases of State lands and the resolution of boundary disputes between State tenants and squatters. These areas were and continue to be the main focus for complaints received at this Office.

Successive Governments have sought to address the issue of efficient land use management but with apparent limited effect since I continue to receive complaints of this nature.

In 1991 the Government under the Basic Agricultural Sector programme and with the support of the Inter American Development Bank undertook a comprehensive review of land policy in order to promote agricultural development, achieve greater equity in land distribution and improve environmental management. It was envisaged that this review would assist in the formulation of a new land policy with improved cohesiveness and coordination between attendant agencies hopefully resulting in efficient and speedy delivery of service to the citizenry.

The Report of the Basic Agricultural Sector Studies identified that while the Ministry of Agriculture, Land and Marine Resources has since 1988 carried out the management of tenanted State agricultural lands on behalf of the Commissioner of State Lands there was not any single coordinating unit within the Ministry which was responsible for the supervision and implementation of land policies, setting of targets and assessment of how the land management functions of the Ministry performed. The procedures for allocating and enforcing leases were found to be lengthy and bureaucratic, often involving numerous steps within the Ministry as well as between the many various agencies, with responsibilities for land management. There were also areas where no clear responsibility or authority resided.

The recommendations of the Basic Agriculture Sector Studies with regard to the creation of a Land Administration Division within the Ministry of Agriculture, Land and Marine Resources were accepted in principle vide Cabinet Minute No. 3287 dated December 30, 1993. This led to the creation of the Division by Minute No. 2192 dated August 25, 1994. The Division was created to (i) assist in the definition of agricultural lands available for distribution and the development of programmes for such lands to be

distributed (ii) to ensure that the Ministry of Agriculture, Land and Marine Resources' estate management operations were carried out in accordance with the New Administration and Distribution Policy for land.

In the years since its creation the Land Administration Division has sought to assist in the definition of lands available for distribution and the development of programmes for lands to be distributed for agricultural purposes; provide a cohesive set of goals, policies, systems and procedures for land management by the Ministry's Regional land units; create a more efficient monitoring and regulation of leases and reduce delays in the completion of land transactions; assist the Director of Surveys in the control of illegal occupation of State lands, and State agricultural lands; develop and continuously improve on the Agricultural Land Information System and liaise with other land management agencies of the State as well as with members of the public.

Although the illegal occupation of State lands (squatting) was identified as a major problem in land use management, no immediate action was taken to effectively deal with residential and agricultural squatters. The result was the loss of valuable State land and resources, in particular good agricultural land to housing, industrial and commercial activity in areas which are neither suitable nor zoned for such use. It was not until 1999 that Cabinet vide Minute No. 436 dated February 25, 1999 gave approval for the regularization of agricultural squatters under specific conditions as detailed in the Minute.

The State Land/Regularization Act 25 of 1998 created the Land Settlement Agency, a statutory authority mandated to deal with the regularization of 7,200 residential squatters on State lands. The main aim of the Agency has been to firstly grant certificates of comfort to persons who have been in occupation of dwelling houses on State land before January 1, 1998. Thereafter the Agency would grant statutory leases and deeds of lease to suitably qualified persons. The Land Settlement Agency in conjunction with all other Agencies charged with land use management had identified the incidence of squatting the containment of incidences of new squatting, and the impact of squatting on the environment as one of the major issues that would continue to have a deleterious effect on proper land administration in Trinidad and Tobago.

Although the Government had, in an effort to resolve the problems of land use management, sought to devolve some of the powers and duties from within the Lands and Surveys Division to other Agencies such as the Land Administration Division, the Land Settlement Agency and the Tobago House of Assembly, the reality is that the resolution of all land matters rested inevitably with the Lands and Surveys Division.

The Division is required to interface in each case with approximately 8 to 10 other Government Agencies in the delivery of land use services. The legislative framework is extensive with over 40 pieces of relevant legislation in existence.

Unfortunately, the Lands and Surveys Division has historically been plagued by financial, human resource and structural deficiencies.

The Transfer of Functions (Director of Surveys Order, 1980) directed that all functions vested by any written law in the Commissioner of State lands which were exercisable by the Sub-Intendant of State lands immediately prior to December 31, 1979 be transferred to the Director of Surveys. The Director of Surveys has been responsible for the duties of both the Offices of Chief Land Surveyor and Commissioner of State Lands (formerly Sub-Intendant of State Lands). This official is therefore responsible for survey related functions such as all cadastral surveys, resolution of boundary disputes on State lands and responsibility for the maintenance of the land register on behalf of the Registrar General under the Real Property Ordinance. He is also responsible for topographic and hydrographic mapping and cartographic services. In his role as the Commissioner of State Lands, the Director of Surveys is also responsible for the granting of leases, state grants, land acquisition, collection of revenues for rental of State lands and prevention of squatting. This fusing of the two portfolios has placed considerable strain on the Director of Surveys and on the Lands and Surveys Department as a whole and has contributed to delay and restriction in the speedy and efficient delivery of services.

Studies have identified that with respect to the problems of the Lands and Surveys Department the major areas of concern are as follows :

- (a) *information concerning leases, grants, acquisitions and supervision of State lands is generally not up to date and in some instances, inaccurate;*
- (b) *the Division is the only authority charged with the verification of the status of State land. The inadequacy of information and deficiencies in the system result in too much time being taken to respond to matters which may or may not be accurate;*
- (c) *there is inadequate land administration staff. Particularly lacking are estate managers required to provide overall surveillance of leases, and the prevention of squatting;*
- (d) *the lack of in-house legal expertise and the inability to obtain orders of the High Court severely hamper the Division's ability to successfully take enforcement action.*

The Ministry of Agriculture, Land and Marine Resources which is the line Ministry responsible for the monitoring and coordination of the Divisions charged with land use management, has increased its efforts in order to provide an effective administration system which would successfully implement Government's new policy for land. Its major thrust would be the development of the proposed Agricultural Land Information System which would ensure that the tenure and status of **all** lands including lands already distributed be immediately available.

However, the Ministry's ability to implement this system is hampered by delays in the Lands and Surveys Division with respect to plot surveys, lease regularization, repossession of delinquent leases and containment of squatting. The unwillingness of the Ministry's own regional offices to provide reports upon request is also a major area of concern. It has been my experience that the Ministry has been unable to effectively deal with complaints referred by my office simply because they have had to wait for periods of over three (3) years to receive a report requested from a regional office.

The Chief State Solicitor's Department which is charged with lease preparation is also a major contributor to the delays in the area of land management.

In order to address the problems of land and land use management it is required as a matter of urgency that the financial, human resource, structural and legislative framework of all the agencies charged with the delivery of effective land management services be strengthened.

**SECOND REGIONAL CONFERENCE OF THE
CARIBBEAN OMBUDSMAN ASSOCIATION (CAROA)
PORT OF SPAIN, TRINIDAD
7TH – 10TH MAY, 2002**

The Second Regional Conference of the Caribbean Ombudsman Association (CAROA) was held in the capital city of Port-of-Spain, Trinidad from 7th – 10th May, 2002. It was organized by my Office in collaboration with the Caribbean Ombudsman Association of which I formerly held the position of Vice President.

The forty-two (42) delegates who attended the forum comprised Ombudsmen from Antigua & Barbuda, Belize, Barbados, Guyana, St Lucia, and Jamaica, as well as Ontario, Canada and Sierra Leone. Other participants included representatives from the following regional and international organizations: the Commonwealth Secretariat; the University of the West Indies, International Ombudsman Institute; the United Nations High Commission for Human Rights; The Organization of American States, International Labour Organization, The Danish Centre for Human Rights, the Centre for Ombudsman Studies, University of Reading and Peay State University, Tennessee, USA.

The conference had as its main objective, the strengthening of Ombudsman and National Human Rights Institutions in the Caribbean through an exchange of experiences and the promotion of best practices. The forum provided the opportunity for the discussion of the challenges which the Caribbean Ombudsman faces in his quest to provide solutions for administrative injustice.

The theme of the conference was 'The Role of the Ombudsman Institution in Achieving Accountability, Transparency, Good Governance and the Observance of Human Rights.'

A one-day seminar for investigators employed in Caribbean Ombudsman offices preceded the conference proceedings and was held on 6th May, 2002.

Her Excellency Dr Linda Baboolal, the Acting President of the Republic of Trinidad and Tobago opened the Conference. The keynote address at the opening was delivered by Dr Bhoendradatt Tewarie, Pro Vice Chancellor and Principal of the University of the West Indies, St Augustine Campus. In his address Dr Tewarie sought to provide discussion on issues which face Caribbean Governments. He commented “If the purpose of the Ombudsman is to place a check on dysfunctional government in the interest of justice for the citizens, then the Ombudsman’s Office cannot be effective if the government system itself by its own dysfunctional nature, makes the Office of the Ombudsman ultimately dysfunctional because it is unable in the end to deliver the justice the citizens seek.”

The Conference programme addressed the following topics:

- Ombudsmanship experience in the Commonwealth Caribbean and other parts of the developing world; problems, concerns and suggestions.
- Promoting good governance – The role of the Ombudsman
- The development and future of the Ombudsman concept in the Caribbean.
- Need and prospect of establishing an Ombudsman Office in Dominica.
- The Ombudsman Review – the tool of management.
- Institutionalising the Ombudsman Public Relations function.
- The relationship between poverty, good governance and democracy in the Caribbean’.
- The role of the Ombudsman in the development of public protection legislation.
- Networking regionally and internationally.
- The promotion and protection of human rights in the Caribbean. The Paris principle.
- Human rights issues – The need for an institutional response.

I presented a paper entitled ‘The Institution of Ombudsman, An Effective Accountability Mechanism’ which is included in this Report as an appendix at page 36.

The Honourable Attorney General of Trinidad & Tobago Ms Glenda Morean-Phillips S.C in her address at the closing ceremony of the Conference pledged the support of her

Office and by extension that of the Government of Trinidad and Tobago in strengthening the role of the Ombudsman Institution in Trinidad and Tobago and throughout the region. She further stated that given the complexity of our plural society the achievement of good governance was crucial to the maintenance of political, social and economic stability.

Among the conclusions arrived at, the following are of relevance to our own circumstances:

- (1) *The importance of the independence of the Office of the Ombudsman.*
- (2) *Parliament should discuss and debate the Ombudsman's Annual and Special Reports and ensure that his recommendations are accorded the respect they deserve.*
- (3) *It was recognized that violations of human rights and fundamental freedoms constitute maladministration and are of concern to the Office of the Ombudsman.*

INTERNATIONAL CONFERENCES/MEETINGS

Under the auspices of the Danish Government and the European Commission, an European-Latin American/Caribbean Conference on the work and co-operation of Ombudsman and National Human Rights Institutions was held in Copenhagen, Denmark which was attended by myself and Mrs. Yvette Hall, Senior Investigator. At the conclusion of the conference, the State Secretary, Mr. Caster Steur of the Danish Ministry of Foreign Affairs proposed two specific follow-up activities to the assembly:

- i. The establishment of a special website which could further a more regular exchange of practices and experiences between the institutions.
- ii. The establishment of a special fund for financing capacity building and further co-operation between the institutions.

This was reported in the 24th Annual Report. As a result, two follow-up activities took place during the year under review (2002).

Network of National Institutions

The first was the meeting of the General Assembly of the Network of National Institutions for the protection of Human Rights of the Americas which took place in Kingston, Jamaica, 7 – 9 March, 2002 and attended by myself and Ms. Leonie Bernier, Investigator. The meeting was attended by representatives of National Human Rights

Institutions of Argentina, Bolivia, Canada, Ecuador, Honduras, Mexico and Peru and also by representatives of Ombudsman Offices in the Caribbean.

The objectives of the Network are:

- 1) To establish, maintain and promote a culture of respect for Human Rights in the region.
- 2) To strengthen regional governments' recognition and application of international commitments and standards relating to Human Rights recognition and application of international commitments and standards relating to Human Rights.
- 3) To contribute to the democratic development of the countries in the region aiding in the consolidation of State policies regarding human rights.
- 4) To work together to strengthen, individually and collectively, the National Institutions of the Americas that are currently established in accordance with the Paris Principles and to support the development of emerging national institutions from all the other countries in the region.

There was unanimous support for the Caribbean to become members of the National Institutions of the Americas but it was necessary for them to conform to the Paris Principles as stated in the Constitution of the Organisation. It was agreed that they would have observer status for about a period of two years pending changes in their Constitutions to include the statute of the Paris Principles.

Inter American Institute of Human Rights

The second was a technical seminar hosted by the Inter-American Institute of Human Rights in San Jose, Costa Rica – 2nd - 4th April, 2003, which was attended by Mrs. Yvette Hall, Senior Investigator.

The seminar formed part of the implementation process of the project entitled “Ombudsnet” an integrated electronic information and communication system which was developed under a cooperation agreement with the Canadian International Development Agency (CIDA). The objective of the project is to strengthen the technological capabilities of Ombudsman's offices in Latin America and the Caribbean for the effective protection and promotion of human rights.

Participants of the seminar which included representatives from Ombudsman offices in Antigua & Barbuda, Belize, Jamaica, Haiti, Saint Lucia and Guyana, were presented with

information on the technological systems which could be used to access information through the operation of “O mbudsnet”.

TWENTY-FIFTH ANNIVERSARY COMMEMORATION

The week of December 9-13, 2002 was observed as Ombudsman Week in Trinidad and Tobago in commemoration of the founding of the Office of the Ombudsman twenty-five years previously in December 1977 when the first Ombudsman, Mr Justice Evan Rees was appointed.

Highlights of the observances included an Open House and Identity Launch at the Office of the Ombudsman, 132 Henry Street, Port of Spain and a staff appreciation ceremony and dinner at which past and present staff members were presented with commemorative awards.

Invitations were issued to senior public officers to attend the Opening Ceremony at the Office of the Ombudsman on 10th December, 2002 at which there was a public launch of the official website, a mass distribution newsheet and logo.

The meeting was addressed by Mrs Yvette Hall, Acting Executive Officer and myself. Mrs Hall made the following observation *“the experience of 25 years has shown that the Office is not a luxury to society. It has emerged as an unavoidable present day necessity. The citizens of Trinidad and Tobago know that when they are confronted with an administrative irregularity they can come to the Ombudsman.”* I presented an address to the audience on the occasion, the contents of which appear as an appendix at page 43.

STATISTICAL REVIEW

During the year 2002 a total of 1502 written complaints were made to my Office. This is the second highest number of complaints recorded in the 25-year history of the institution. The highest number received was 1,538 complaints received in the year 1986. When compared to the total of 1182 complaints in the previous year this figure represents an increase of 27% in the number of complaints received in that year.

In the main the increase is attributed to the fact of the establishment of a full time branch office in Tobago in June, 2002 where a total of 249 complaints were received during the year under review. The Office's outreach service in Trinidad was also expanded to include the Borough of Point Fortin. Citizens who live in Point Fortin and its environs are now able to attend once per month at the Point Fortin Civic Centre in order to access the services provided by the Ombudsman's Office. A total number of 59 persons accessed this service during the months September – November, 2002.

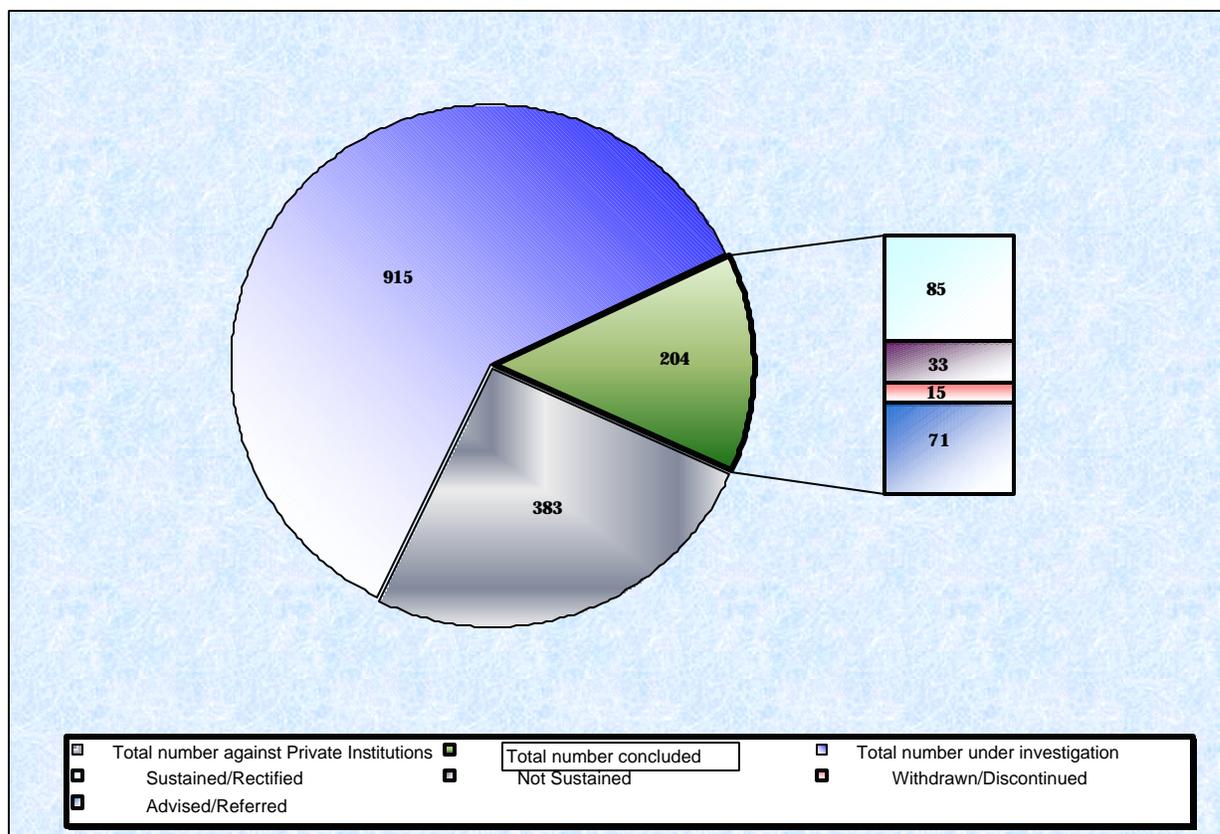
383 of the new complaints received in 2002 were in relation to private matters which fell outside my jurisdiction. As customary where a matter cannot be dealt with by my Office every effort is made to direct the Complainant to the competent authority which can provide assistance or information.

I commenced investigations on 1119 complaints which represented 75% of the new complaints recorded. At the close of the year investigation was concluded on 204 or 18% of these complaints. A total of 915 or 82% remained under investigation. Table 1 and Figure I 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 2002**

	NUMBERS	PERCENTAGE
Total number of complaints received	1502	100
Total number against Private Institutions	383	26
Total number proceeded with	1119	75
Total number concluded	204	18
Sustained/Rectified	85	8
Not Sustained	33	3
Withdrawn/Discontinued	15	1
Advised/Referred	71	6
Total number under investigation	915	82

FIGURE 1**STATISTICS ON NEW COMPLAINTS RECEIVED DURING THE PERIOD
JANUARY – DECEMBER 2002****TABLE 1V****STATISTICS ON COMPLAINTS BROUGHT FORWARD FROM PRECEDING YEARS**

Total number of complaints brought forward from previous years		1792
Total number of complaints concluded		294
Sustained /Rectified	128	
Not Sustained	37	
Withdrawn/Discontinued	24	
Advised/Referred	105	
Number of complaints still under investigation		1498

TABLE 11**DISTRIBUTION OF NEW COMPLAINTS IN RESPECT OF MINISTRIES/DEPARTMENTS**

Ministry/Authority/Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
Agricultural Development Bank	2	0	0	0	1	1
Agriculture, Land, and Marine Resources	43	1	0	0	2	40
Airport Authority	1	0	0	0	0	1
Attorney General	3	0	0	0	1	2
Central Administrative Services Tobago (CAST)	5	2	1	0	0	2
Caroni (1975) Limited	7	0	0	0	0	7
Community Development and Gender Affairs	6	0	0	0	0	6
Consumer Affairs	1	0	0	0	0	1
Culture and Tourism	4	0	0	0	1	3
Disciplinary Committee of the Law Association	3	0	0	0	0	3
Education	30	2	2	1	3	22
Elections and Boundaries Commission	3	0	0	0	0	3
Energy and Energy Industries	2	0	0	0	0	2
Environmental Management Authority	7	0	0	1	0	6
Finance	41	5	2	0	2	32
Foreign Affairs	1	0	0	0	0	1
Health	43	1	1	0	2	39
Housing	41	2	0	0	0	39
Judiciary	39	1	0	1	3	34
Labour and Small and Micro Enterprise Development	15	1	0	1	2	11
Legal Affairs	10	0	0	0	0	10
Legal Aid and Advisory Authority	10	0	0	0	2	8
Local Government	4	0	0	0	0	4
Borough Corporations	22	0	1	0	0	21
City Corporations	25	0	0	0	2	23
Regional Corporations	106	2	5	0	2	97
Unemployment Relief Programme	4	0	0	0	0	4
Magistracy	27	1	2	0	4	20
National Insurance Board	46	7	4	2	3	30
National Security	9	0	0	0	0	9
Coast Guard	2	0	0	0	0	2
Defence Force	14	0	0	0	0	14
Fire Services	8	0	0	0	2	6
Immigration	1	0	0	0	0	1
Police	45	2	0	0	9	34
Prisons	69	3	1	1	7	57
Office of the Prime Minister						
Social Welfare	49	2	2	0	1	44
Half-way Houses and Geriatric Homes	1	0	0	0	0	1
Petrotrin	2	0	0	0	0	2
Public Administration and Information	6	0	1	0	1	4
Public Transport Service Corporation	8	0	0	0	0	8
Public Utilities and Environment	3	1	0	0	0	2
T&TEC	43	7	1	2	7	26
TTPost	7	1	0	0	0	6
WASA	48	9	1	1	2	35
Science, Technology and Tertiary Education	1	0	0	0	0	1
TSTT	10	3	0	1	4	2
Service Commissions Department	32	2	0	0	3	27
Sub Total	922	56	24	11	66	765

Ministry/Authority/Agency	Total No. of Complaints	Sustained/Rectified	Not Sustained	Withdrawn/Discontinued	Advised/Referred	Under Investigation
Total Brought Forward	922	56	24	11	66	765
Sport and Youth Affairs	3	0	0	0	0	3
Statutory Authority	1	0	0	1	0	0
Teaching Service Commission	1	0	0	0	1	0
Tobago House of Assembly	137	27	4	2	0	104
Trade and Industry	1	0	0	0	0	1
Works and Transport	44	0	5	0	1	38
Freedom of Information Act	10	2	0	1	3	4
TOTAL	1119	85	33	15	71	915
Private	383	0	0	0	0	0
GRAND TOTAL	1502	85	33	15	71	915

Table 11 shows in detail the number of complaints received by this Office with respect to Ministries and Agencies and the manner of their disposal during the same period. The Ministries/Agencies which recorded the highest number of complaints were:

Regional Corporations	106
The Tobago House of Assembly	137
Prison Service	69
Water and Sewerage Authority	48
National Insurance Board	46
Social Welfare Department	49

The Freedom of Information Act which came into force in November 1999 provides individuals with a legal right to access information held by public bodies subject to certain exceptions e.g. Cabinet documents, defence and security documents, internal working documents and documents relating to trade secrets.

In cases where access to information is refused, delayed or curtailed, the legislation provides recourse to my Office by the person aggrieved. In 2002 a total of 10 complaints were filed. Table 11 shows the manner of their disposal.

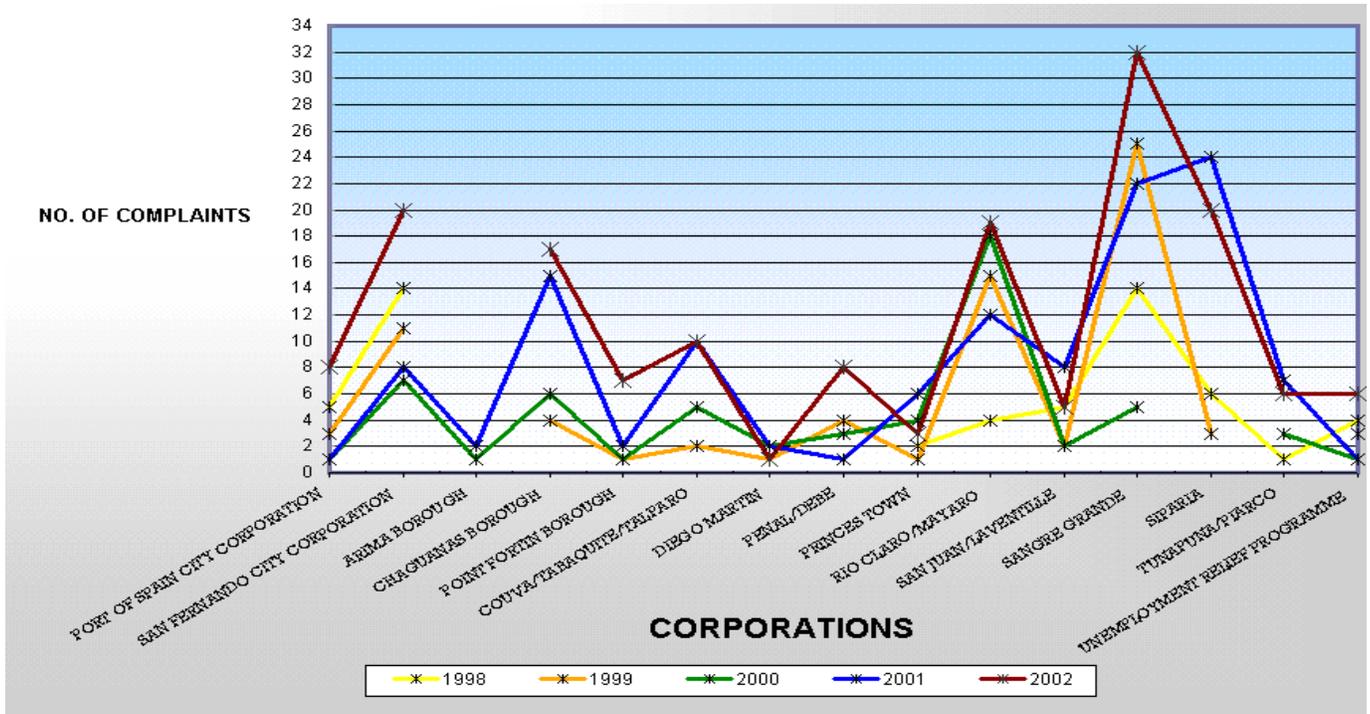
Table 111 and Figure 11 show the distribution of complaints lodged against the Regional and Borough Corporations over the years 1998-2002. A total of 162 complaints were received in 2002 which represents a 34% increase in the number for 2001.

The Sangre Grande Regional Corporation showed the highest number of 32 complaints.

TABLE III**LOCAL GOVERNMENT – CITY, BOROUGH AND REGIONAL CORPORATION**

CORPORATION	TOTAL NUMBER OF COMPLAINT RECEIVED				
	1998	1999	2000	2001	2002
PORT OF SPAIN CITY CORPORATION	5	3	1	1	8
SAN FERNANDO CITY CORPORATION	14	11	7	8	20
ARIMA BOROUGH			1	2	
CHAGUANAS BOROUGH		4	6	15	17
POINT FORTIN BOROUGH		1	1	2	7
COUVA/TABAQUITE/TALPARO	10	2	5	10	10
DIEGO MARTIN	2	1	2	2	1
PENAL/DEBE		4	3	1	8
PRINCES TOWN	2	1	4	6	3
RIO CLARO/MAYARO	4	15	18	12	19
SAN JUAN/LAVENTILLE	5	2	2	8	5
SANGRE GRANDE	14	25	5	22	32
SIPARIA	6	3		24	20
TUNAPUNA/PIARCO	1		3	7	6
UNEMPLOYMENT RELIEF PROGRAMME	4	3	1	1	6
TOTAL	67	75	23	121	162

FIGURE 11
COMPLAINTS AGAINST LOCAL GOVERNMENT BODIES FROM 1998-2002



In addition to the new complaints received in the year 2002, investigations were continued on 1792 complaints which were brought forward from the preceding years. Of these a total of 294 matters were concluded during the year. Table 1V shows the manner of their disposal.

TABLE 1V

STATISTICS ON COMPLAINTS BROUGHT FORWARD FROM PRECEDING YEARS

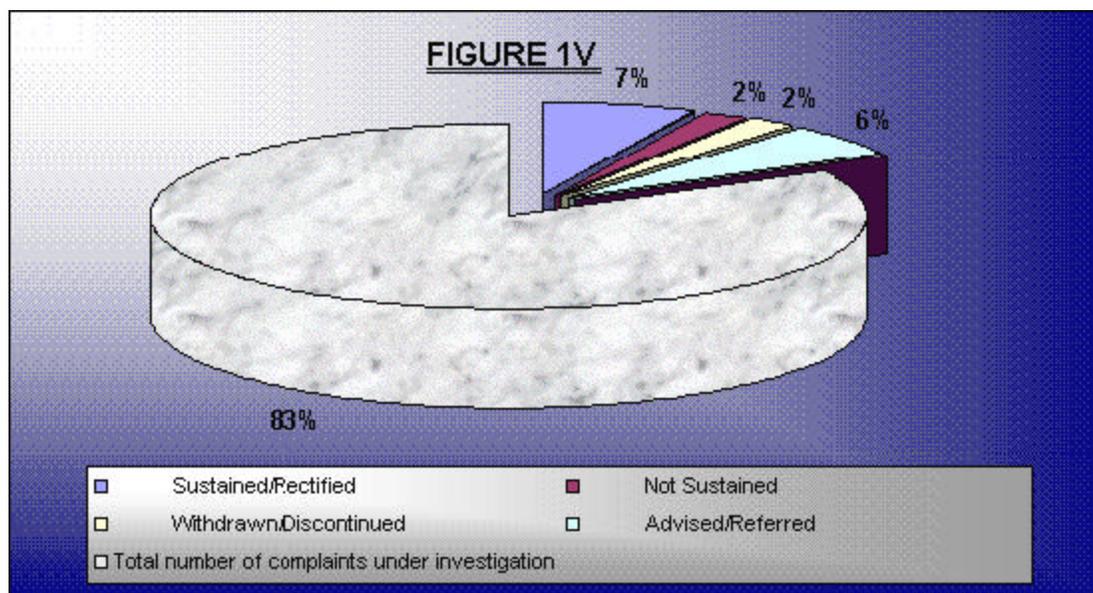
Total number of complaints brought forward from previous years		1792
Total number of complaints concluded		294
Sustained /Rectified	128	
Not Sustained	37	
Withdrawn/Discontinued	24	
Advised/Referred	105	
Number of complaints still under investigation		1498

Investigations were undertaken into 2911 complaints during the year 2002. This figure represents the total of 1119 new complaints in addition to those brought forward from the preceding year. 498 complaints were closed during the year compared with 669 complaints in 2001 and 737 in 2002.

A total of 2413 complaints remained unresolved at the end of 2002. This represents a 35% increase from the previous year and is attributed to the increased workload and the tardiness of responses from government ministries and agencies. Delay on the part of a public authority not only creates frustration and uncertainty but can also result in hardships for citizens who depend on them for essential services. Such delays are often compounded by further delay on the part of these departments in responding to my Office when matters are taken up on behalf of Complainants. As I have stated in successive Annual Reports, matters which could be resolved within a short period of time are needlessly dragged on for years. The situation continues to be a source of concern in terms of the effectiveness of the Office in meeting its statutory obligation to the citizens of the Country.

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

	NUMBERS	PERCENTAGE
Total number of complaints brought forward from previous years	1792	
Total number of complaints received in 2002	1502	
TOTAL	3294	
Total number of complaints without jurisdiction	383	12
Total number of complaints preceded with	2911	88
Total number of complaints concluded	498	17
Sustained/Rectified	213	7
Not Sustained	70	2
Withdrawn/Discontinued	39	2
Advised/Referred	176	6
Total number of complaints under investigation	2413	83



OMB:0572/1998**MINISTRY OF FINANCE**
(National Insurance Board)

The Complainant's wife who had been employed by a municipal corporation died in 1995. She was a contributor to the National Insurance Scheme since its inception. On her death, the Complainant applied for a survivor's pension. His application was refused on the ground that Section 46(2)(b) of the National Insurance Act Ch.32:01 stipulated that a widower's benefit was only payable, if at the date of her death; the deceased was wholly or mainly responsible for the maintenance of her husband because of his incapacity to work by reason of his mental or physical disability.

The Board informed the Complainant that his claim had been referred to their medical advisor who deemed that he was not disabled.

The Complainant appealed against this decision to the Medical Appeals Tribunal set up under the National Insurance Act. His appeal was dismissed.

Thereafter, the Complainant brought an application for judicial review of the decision of the Medical Appeals Tribunal before the High Court and obtained a decision that the matter be re-instated before the Medical Appeals Tribunal, which proceeded to hear the matter and allowed the appeal against the Board's decision. The Board is now in the process of determining the amount due to the Complainant with a view to making payment to him.

OMB:0574/2000**MINISTRY OF FINANCE**
(National Insurance Board)

The Complainant was employed as a female labourer by the Works Department of the Tobago House of Assembly from 1979 to 1998 when she retired.

On her retirement, she applied to the National Insurance Board for retirement benefits and was paid the sum of \$8,077.50 representing benefits for the years 1972 to 1990. She immediately queried the period for which she had been paid, claiming that she had worked up to the year 1998.

She was told that contributions in respect of her employment only covered the years 1972 to 1990.

On referral of the complaint to the National Insurance Board, the Board investigated the complaint and reported as follows:

- 1) The Claimant was a casual worker and the total contribution to the Board was less than 750 contributions thus qualifying her for a Retirement Grant as opposed to a Retirement Pension.
- 2) That at the time of processing the claim, the Board was in receipt of 198 contribution payments which allowed for a retirement grant in the sum of \$8,077.50 (the sum which she had been paid).
- 3) As a result of the complaint, an investigation was launched and it was discovered that contributions were outstanding.
- 4) The Board had retrieved the contributions and was in the process of making a retroactive payment to the Complainant.

OMB:0522/2000

MINISTRY OF HEALTH
(North West Regional Health Authority)

The Complainant was employed on contract as a Registrar in Medicine by the North West Regional Health Authority. The contract which was embodied in his letter of appointment stated that he was entitled to the same terms and conditions as existing in a similar post in the Public Service. He complained that contrary to the terms of his contract, no provision had been made for him to receive a non-contributory benefit or gratuity and that he had been denied the following facilities enjoyed by his counterparts in the Public Service:

- 1) Low interest loan for purchase of a motor vehicle and computer.
- 2) Exemption from motor vehicle taxes and registration fees.
- 3) Payment of a monthly upkeep allowance in respect of his motor vehicle.

Because of the delay, I convened a meeting on the 28th May, 2001 which was attended by a representative of the Chief Personnel Officer and the Acting Vice-President, Human Resources and Senior Human Resource Officer of the Authority.

The Acting Vice President agreed that these matters were outstanding mainly as a result of low funding to the Authority by the Central Government and that the matters of complaint would be addressed and attended to shortly.

On the 10th June, 2002, more than a year after the meeting, I was advised that the matter of the complaint and similar matters regarding equity in compensation and related

benefits would be addressed within the following two months. However, almost a year has passed and the complaint is still outstanding and being pursued by this Office.

OMB:1079/1997

MINISTRY OF HOUSING
(National Housing Authority)

The Complainant who lives in London, England brought his complaint to my attention by letter dated 20th October, 1997. His complaint related to the transfer of property left to him by his mother in a will which was probated in his favour more than ten years previously. The property was situated at Marigold Crescent, Morvant in a National Housing estate. He had engaged solicitors in England and in Trinidad previous to bringing his complaint to my attention. He had also enlisted the aid of the Trinidad and Tobago High Commissioner in London who had been in contact with the legal division of the National Housing Authority (NHA).

On investigating the matter, I was advised by the NHA that the policies and administrative structures and procedures in the preparation of titles to beneficiaries of NHA housing estates had resulted in inordinate delays in the preparation and issue of titles. As a result, Cabinet had agreed to certain policy changes which were in the process of implementation. It was necessary also to conduct perimeter surveys for the Director of Surveys to commence the preparation of State Grants. The NHA was in the process of identifying funds in order to carry out the surveys. This was the reason given for the delay.

Finally, in the early part of the year 2002, I was advised by the Lands and Surveys Division of the Ministry that the documents were being prepared and that the Complainant should appoint someone with a power of attorney to act on his behalf. The Complainant indicated, however, that he would be in Trinidad early in the year 2003 in order to execute any necessary document vesting title in him. The Lands and Surveys Division was so informed.

OMB: 0568/2001

MINISTRY OF HOUSING
(Land Settlement Agency)

The Complainant was granted a certificate of comfort for a lot in Carlsen Field under the specific terms and conditions of the State Land (Regularization of Tenure) Act No. 25 of 1998. He signed the relevant agreement to occupy and was visited thereafter by a surveyor from the Land Settlement Agency who showed him the boundaries of the Lot which had been assigned to him.

The Complainant began laying down foundation trenches and casted concrete within the measurement specified in the Agreement to occupy. However he was subsequently visited by other surveyors from the Land Settlement Agency who changed the boundaries. This affected the structures that the Complainant had already put in place and he was directed to remove them.

I referred the matter to the Chairman, Land Settlement Agency who provided a report which stated inter alia that the block which contains lot #138, was never fully surveyed due to the lack of infrastructure (road). The frontages only (northern boundaries) of Lots 137, 138 and 139 were staked out, with the southern boundary marks not positioned. These said lots were only partially staked out to indicate the general area of the lot. The Engineering Surveyor subsequently set out the road running east to west and north of the said lot #138 and found that the Complainant's foundation trenches, including steel in tie beams were closer than the required 4.5m from the front property boundary (road side).

It was also reported that the Complainant had originally agreed to shift his foundation trench (southwards) by one bay but had apparently reconsidered his decision.

The Complainant however, disputed the claims of the Engineering Surveyor and claimed that he was never told that the lands had not been fully surveyed and requested that he be compensated for the labour and material which he had already expended.

The Land Settlement Agency has since met with the Complainant and further meetings have been scheduled with a view to having this matter resolved to the satisfaction of all concerned parties.

OMB:0174/2002

MINISTRY OF PUBLIC UTILITIES

(Telecommunication Services of Trinidad and Tobago)

The Complainant complained that his Internet Account had been billed in the sum of \$4,122.58 representing an accumulation of charges as a result of another person (name given) having tapped into his computer system and gained access to the Internet. The complaint stated that there were other persons similarly affected.

On investigating the complaint, the Telecommunication Services of Trinidad and Tobago (TSTT) referred to the TSTT Dial-up Service Agreement to which the Complainant was a party, Section 4:1 of the Agreement stated as follows:

“TSTT shall not be responsible or liable for the unauthorized access by customers or users to information held by other persons or organizations participating in the Internet (known as “Hacking”) or for any virus or harmful programme which may be introduced by a

customer or user. Or for any unlawful or unauthorized or fraudulent access to or use of the customer Internet service by any person.”

However, TSTT, in the interest of good public relations, advised that a credit of \$1,022.00 plus VAT had been applied to the Complainant's account.

OMB:0441/2002

MINISTRY OF PUBLIC UTILITIES
(Trinidad and Tobago Electricity Commission)

The Complainant had resided on State Lands at Arima for a continuous period of twenty-eight (28) years and had been supplied with electricity by the Commission since that time. He held a certificate of comfort from the Land Settlement Agency. His premises consisted of a dwelling house to which was attached a garage from which he carried on a small business. He had been charged the Commercial B rate by the Commission.

In the course of repairing his house, he removed the meter from the house and placed it in the garage and installed a splitter box so that both the house and garage would be supplied with electricity.

After completion of the repairs he was told by the Commission that Government had given a directive that splitter boxes should not be connected to State lands. He felt that he was being discriminated against since there were other persons in the area with splitter boxes.

When the matter was raised with the Commission, it was stated that the policy of Government with respect to squatters who held certificates of comfort was that they would be entitled to an electricity supply for domestic use only. However, since the area where the Complainant lived was considered to be both residential and approved for business use, it was decided that he would be reconnected with an electricity supply, which he received in December, 2002.

OMB:0608/2002

MINISTRY OF PUBLIC UTILITIES
(Trinidad and Tobago Electricity Commission)

The Complainant sought my assistance when she failed in her efforts to have the Commission provide her home with a supply of electricity. She had been granted a Certificate by the Electrical Inspectorate Department of the Ministry of Public Utilities

since May, 2001. The Certificate was normally valid for a period of three (3) months and was required to be renewed if electricity was not supplied within that period. An inspection fee ranging between \$100.00 and \$140.00 depending upon the type and number of outlets is required to be paid before the inspection certificate is issued. Prior to bringing her complaint to my attention she had to obtain the renewal of her certificate on two occasions.

When the matter was raised with the Commission, I was informed that it would have been necessary for the Commission to install a new pole with wiring installations but that electricity would be supplied to the Complainant before Christmas 2002. However, this did not come to pass with the result that the Complainant had to obtain a conditional certificate for which she was required to pay \$100.00.

She received a supply of electricity on the presentation of the conditional certificate, a period of almost two (2) years having elapsed since obtaining the initial certificate.

OMB:0555/2002

MINISTRY OF TRANSPORT
(Licensing Authority)

The Complainant was the owner of a motor vehicle in the PAE series which he wished to have transferred to a buyer. The Licensing Authority refused to give approval for a change of ownership although the vehicle had been examined by licensing officers during the annual inspection of vehicles on five separate occasions and there was no query with respect to the change of engine and/or body parts.

In his reply to my letter of enquiry, the Transport Commissioner indicated that a decision had been made to have the transfer effected on the merits having regard to the decision of the High Court in a matter which had been previously decided in favour of an applicant who had brought an application for judicial review in which similar issues were involved.

OMB:0046/1997

MINISTRY OF WORKS AND TRANSPORT

The Complainant served as a Platelayer with the defunct Trinidad Government Railway over the period 18th October, 1957 to 18th July, 1966, when he was laid off due to curtailment of service.

In September 1981, a cheque was preferred in his favour in the sum of \$144.08 which, it appears, he refused to accept, claiming a much larger sum.

On the 27th November, 2001, he obtained a judgment of the High Court stating that he “*is entitled to receive the benefits including all accrued and continuing pension benefits payable to persons appearing on the said list.*” The list referred to, is contained in the First Schedule to the Public Transport Service (Compensation for Loss of Office) Regulations 1968 at page 123. Efforts by the Public Transport Service Corporation (which took over the functions of the defunct Railway) to trace the relevant personnel records relating to the claim had not been successful. Efforts were made at the Pensions Division, Ministry of Finance and the Ministry of Public Utilities for the same purpose but these also proved to be unsuccessful.

The Complainant produced a Certificate of Service dated 10th May, 1967 which set out his period of service from 10th October 1957 to 17th July, 1966. This document, however, was of little assistance in computing his retirement benefits. In these circumstances, I convened a meeting of representatives of the Chief Personnel Officer, the Director of Pensions, the Public Transport Service Corporation and the Ministry of Works and Transportation in order to resolve the issue.

It was decided that the Ministry of Works would undertake the responsibility of contacting a previous platelayer in order to determine the amount of the pension to which the Complainant would be entitled. The matter is being pursued.

OMB:0102/1999

MINISTRY OF WORKS AND TRANSPORT
(Drainage Division)

A number of peasant proprietors who occupied plots of land on a private estate at Guaico in the ward of St George East complained that a ravine which cut across their respective holdings caused flooding and consequent destruction of their crops.

The matter was referred to the then Ministry of Food Production and Marine Resources for a report. The Ministry replied as follows:

- (1) That the ravine was a natural channel in relationship to the topography of the surrounding land.
- (2) That the water course drained run-off from all the surrounding land which was prone to flooding at times during the rainy season.
- (3) That it was normal for fruit trees to die as a result of water-logging as in this case.

- (4) The Ministry of Works (Drainage Division) had undertaken to straighten the water course and this had hindered the outflow of surface water with the result that there was water-logging and a consequent destruction of trees.
- (5) The drainage works were part of the whole drainage programme by the Ministry of Works.

The Ministry claimed that flooding occurred as a result of the natural run off and not due to the negligence of any landowner nor the Ministry of Works and Transport which was in the process of directing the water course in order to ease the plight of the landowner and consequently the Complainants.

Remedial work on the site began in November 2001 and was subsequently completed towards the end of 2002. The Ministry stated that progress was impeded by adverse weather conditions hence the reason for the delay in completion.

OMB:0635/1998

TOBAGO HOUSE OF ASSEMBLY

The Complainant was the widow of a deceased Teacher II who was employed at Scarborough Secondary School, Tobago. He died in February, 1997. Her queries were with respect to:

- 1) Whether her deceased husband was entitled to increments of salary up to the time of his death.
- 2) Whether she was entitled to the receipt of Widows' and Orphans pensions benefits.

In a reply from the Chief Administrator of the Assembly, it was noted that the deceased was employed as Assistant Teacher I with effect from 1st January, 1965 and that he had left the Teaching Service on 19th September, 1968.

He was subsequently appointed to act as Teacher II with effect from 12th October, 1981. Increments with effect from 12th October, 1982 were not effected as a result of an alleged disciplinary matter which had not, up to the time of his death, been determined. However, it was decided that this matter would be re-visited.

By letter of 31st October 2001 I was informed by the Administrator, Division of Education Tobago House of Assembly, that the deceased was eligible for 1st, 2nd, 3rd, 4th and 5th increments due on the anniversary date 12th October for the years 1982, 1983, 1984, 1985, 1986 respectively and that the Complainant should produce documentary

evidence of her appointment as legal personal representative of her deceased husband's estate in order to facilitate payment to her.

With respect to her application for Widows' and Orphans' pension, she was advised by the Comptroller of Accounts that the deceased was not a contributor to the Widow's and Orphan's Pension Scheme and therefore her application could not be entertained.

However, in view of the fact that the deceased was a bachelor at the time he left the Teaching Service on 12th October, 1981 (the Complainant was subsequently married to him), no contributions had been accepted from him during his tenure as acting Teacher II when he was re-employed. He was, however, entitled to a refund of his contributions made prior to his first appointment which was inadvertently not made to him after his resignation. The Complainant as legal person representative would be entitled to this refund. She was requested to submit documentary evidence that she was the legal personal representative of the deceased in order to facilitate payment to her.

I was advised that the Complainant had received benefits due to the deceased as a Teacher II including the increments for which he was eligible. She was also paid a refund of the deceased's contributions to the Widow's and Orphans' Pension Scheme.

OMB:0086/1999

TOBAGO HOUSE OF ASSEMBLY
(Division of Infrastructure and Public Utilities)

The Complainant is the owner of a parcel of land at Golden Lane, Tobago. The Works Department, Tobago House of Assembly, encroached on the property while doing improvement work on the Providence/Culloden Road in 1998. The Complainant employed a private surveyor who came to the conclusion that the Department had encroached on 1000.32 square meters of the Complainant's land and as a result, the Complainant was having difficulty in accessing the remaining portion of his land.

The Complainant sought the assistance of the Ombudsman with a view to being compensated for the 1000.32 square meters of land acquired by the State.

The matter was referred to the Chief Administrator, Tobago House of Assembly.

The Chief Administrator has advised that a request was made to the Acting Director, Town and Country Planning, Division of the Ministry of Planning and Development to have the land formally acquired under the provisions of the Land Acquisition Act.

During the course of investigations, it was revealed that the Director of Lands and Surveys had great difficulty in accessing surveyors who are familiar with the various boundary lines in the Tobago District and as a consequence there was a delay in the acquisition procedure.

OMB:T075/2002

TOBAGO HOUSE OF ASSEMBLY
(Division of Infrastructure and Public Utilities)

The Complainant had been employed by the Division of Infrastructure and Public Utilities, Works Department as a Labourer since 1981. Over the years employment had been on a rotation basis, ten (10) days on ten (10) days off, earning him more than three (3) effective years service. However, the Complainant observed that persons junior to him in respect of his initial employment were working continuously thus earning more effective years of service, and were placed on the permanent list.

The Complainant sought the assistance of the Ombudsman complaining of the unfair employment practice by the Division.

The matter was referred to the Administrator of the Division and a request was made for a review of the Record of Service of the employees involved.

Upon investigation it was discovered that the Complainant was overlooked for employment on several occasions.

The Administrator has since advised that the Complainant would be given regular employment and that the permanent list would be reviewed in an effort to reflect the correct seniority of workers, including that of the Complainant.

The matter is being pursued.

SUMMARY OF OTHER COMPLAINTS RECEIVED IN 2002

1. **Board of Inland Revenue**
 - Delay in the processing of Income Tax refund for 1997.
 - Assessed annual taxable values for property are higher than market values of residential areas.
 - Income Tax refund outstanding
2. **Ministry of Education**
 - Failure of the department to remit monthly salary owed to teacher employed on contract for over four (4) months
3. **Environmental Management Authority**
 - Dust and fumes from the operations of a Brick Factory in a residential area is the cause of respiratory illnesses experienced by residents.
4. **Lands and Surveys Department**
 - Inordinate delay in the processing of an application for the lease of state land.
5. **Magistracy**
 - Unable to obtain good character certificate from Police due to missing extract book at Magistrate's Court which contains the record of the dismissal of charges against her for an alleged offence.
6. **Ministry of Legal Affairs**
 - Delay in the payment of compensation for and which has been compulsory acquired.
7. **National Housing Authority**
 - Purchase agreement for sale of Duplex Housing Unit breached by the Authority.
 - Denied permission to undertake repair work at her leased apartment.
8. **National Insurance Board**
 - Inordinate delay in the processing of benefit claims.
9. **North West Regional Health Authority**
 - Unable to obtain medical report because of misplaced records at the Port of Spain General Hospital.
 - Failure of the Hospital to provide report of examinations carried out by the Medical Board on two (2) occasions.

10. **Police Service**

- Inordinate delay in the execution of warrant for the payment of child maintenance.

11. **Regional Corporations**

- Failure of the Corporation to take appropriate action to alleviate health nuisances caused by the dumping of refuse and rubbish by the neighbour at the back of his premises.
- Failure of the Corporation to take the required steps under the Public Health Ordinance to address health nuisances emanating from the operations of a commercial chicken farm in the district.
- Denied allocation of Market Stall.
- Failure of the Corporation to take corrective action to abate health nuisances arising from poor drainage and sewerage facilities on neighbouring premises.
- Reports of health hazards and noise pollution relating to the operation of equipment and storage of hazardous materials by businessman, ignored.
- Compensation sought for damage of an apartment caused by a clogged drain which the Corporation is responsible for cleaning.

12. **Town and Country Planning Division**

- Planning permission denied for development works at the back of property.
- Failure of the Department to take necessary action against neighbour who has extended his building onto the boundary line between the properties creating drainage problems.

13. **Trinidad and Tobago Electricity Commission**

- Failure of the Commission to take appropriate action with respect to neighbour's use of compression which causes frequent fluctuations in the supply of electricity to the area.
- Failure to provide compensation for electronic household appliances which were damaged as a result of surges in the electricity supply.
- Inordinate delay on the part of the Commission to repair malfunctioning street lights.
- Unfair and unwarranted disconnection of electricity services.

14. **Ministry of Works and Transport**

- Failure of Department to repair and maintain public drains which run along the side of her property.

- Diverted river creating unsanitary conditions on property.

15. **Water and Sewerage Authority**

- Premises incorrectly classified for billing purposes.
- Application for the supply of water to residence denied.
- Being billed for non-existent service.
- Property being eroded as a result of water seepage from leaking mains.

[This list is not exhaustive of the complaints received during the year 2002]

THE INSTITUTION OF OMBUDSMAN - AN EFFECTIVE ACCOUNTABILITY MECHANISM

By
Justice G. A. Edo,
Ombudsman of Trinidad and Tobago

When the countries of the Commonwealth Caribbean established the institution of Ombudsman or Parliamentary Commissioner in the latter half of the twentieth century it was with the view to promoting and delivering democracy and good governance and to make themselves accountable to the citizens of their respective countries. The bureaucracies of these countries as were those of the rest of the world had grown in size and complexity and the demand for public services made it necessary for the adoption of additional control mechanisms. One such mechanism was the institution of Ombudsman or Parliamentary Commissioner.

The Ombudsman or Parliamentary Commissioner (hereafter referred to as the “Ombudsman”) plays an important complementary role with similar bodies such as Courts, tribunals and human rights bodies in providing such a mechanism.

The point was made in a communiqué issued at the conclusion of the conference of the International Ombudsman Institute held in Durban, South Africa in October, 2000. The communiqué states:

“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.”

This paper confines the subject matter of the discourse to countries of the Commonwealth Caribbean which have provided for the Ombudsman institution either in their Constitutions or by legislation.

In order to determine the extent or capacity of the Ombudsman institution in the Commonwealth Caribbean to provide such an accountability mechanism, it is necessary to examine the scope and jurisdiction of the institution.

They have all adopted the New Zealand model which has been popularly described as the classical model of Ombudsmanship. The jurisdiction which is common to all of these

countries relates principally to the investigation and report of faults in administration although the legislative language of the individual countries varies in certain respects. Thus the jurisdiction of the Trinidad and Tobago Ombudsman is confined principally to the investigation of decisions or recommendations made, including advice given or recommendation made to a Minister, that of the Barbados Ombudsman is to ascertain whether injustice has been caused by improper, unreasonable or inadequate conduct on the part of a government Ministry or department or other authority.

Article 190 of the Guyana Constitution empowers the Ombudsman to investigate any action taken by any department of Government or by any other authority in the exercise of administrative functions.

The scope and functions of the Antigua and Barbuda Ombudsman and those of the Parliamentary Commissioner for St Lucia are similar to those of the Trinidad and Tobago Ombudsman.

As a mechanism for effective accountability, the success of the Ombudsman in the Commonwealth Caribbean is dependent upon a number of factors which can be detailed as follows:

Flexibility

The Ombudsman is not deterred by rules and regulations in the performance of his duties.

There is no formal method for bringing complaints to his attention such as are applicable to Courts of law and other formal tribunals: Complaints can be made to him by correspondence, by telephone or by fax.

Cost

There is no cost to the complainant. In some cases where the complainant has to travel over long distances to make his complaint his costs of travel are defrayed by some jurisdictions. The cost factor is also mitigated in some jurisdictions by an outreach programme e.g. by setting up Office on particular days in various parts of the country to receive complaints and render advice. In Trinidad and Tobago investigators and officials of the Ombudsman's office are in attendance on certain days at venues in the main towns in various parts of the country to receive complaints and render advice.

Access to Books and Records

For the purpose of obtaining evidence, the Ombudsman is empowered by law to access the books and records of any Government department or authority in the process of investigation. This may be compared to the formal methods of discovery used by the Courts in seeking to obtain access to such evidence.

Publicity

While there may be certain restrictions by law on the publication of complaints and confidential information in order to protect the identity of complainants and whistle blowers, published particulars of complaints in the media and in Reports to Parliament conduce to accountability.

Systemic Reform

By analyzing methods and procedures used in the Public Service in the process of investigating and dealing with complaints, the Ombudsman has been able to bring about reforms in systems and methods in current use.

Pro-Active Role

By adopting a pro-active role, the Ombudsman acts in the public interest. He goes to the aid of members of the society who for various reasons either fail or refuse to complain against maladministration or injustice which affects them.

This initiative on his part can be compared with the procedure for bringing matters before Courts or other formal tribunals which have to be invoked by formal procedures before they can act.

Mediation or Conciliation

By eschewing formal methods of procedure and by adopting a common sense approach, the Ombudsman is able to bring resolution to complaints within a much shorter period of time than it takes more formal institutions to accomplish.

FACTORS WHICH AFFECT ACCOUNTABILITY

Delay

Delay appears to be the single most important factor which affects the work of the Ombudsman. It has been the experience of the Trinidad and Tobago Ombudsman that failure on the part of public officers to reply to correspondence and their inability to come to decisions on simple issues of fact hamper his work and consequently his ability to deal with complaints.

Acceptance of Recommendations

Since the Ombudsman cannot enforce his recommendations his success lies in the acceptance of such recommendations by the department or authority against which complaints are directed. There have been but few instances where his recommendations

have not been accepted. His success is dependent in the main upon his reasoning and conciliation efforts and in maintaining a good relationship with Public Service departments and authorities.

Reports to Parliament

The Ombudsman is required by law to submit Annual Reports to Parliament and such special reports on matters of public importance as he considers necessary. Where Reports are simply tabled and there is no debate on them or where no action is taken by Parliament to remedy complaints or to enforce his recommendations, his success is impaired.

RESTRICTIONS ON INVESTIGATION

The Ombudsman is restricted by law from investigating certain matters. Although he has power to investigate complaints of administrative injustice, he is restricted from investigating actions in respect of matters for which the Complainant has or had a remedy by way of proceedings in a court or where he has a right of appeal, reference or review before an impartial tribunal.

The Ombudsman is also restricted from investigating matters relating to Government policy and matters required to be kept confidential for security purposes. Included in such matters are matters certified by the Attorney General to affect relations or dealings between the Government and any other Government or International Organization; actions in relation to extradition of fugitive offenders; action taken in matters relating to contractual or other commercial transactions involving a Government department or authority; actions taken with respect to personnel matters and matters relating to the armed forces.

It may be argued that in these cases the Ombudsman is restricted in his performance and unable to provide an accountable mechanism. The counter-argument to this view, however, is that restriction of investigation into these matters is required in the public interest and in the interests of the security of the State.

CORRUPTION

One of the causes for complaint to Ombudsman's Offices relates to allegations of corruption. The Trinidad and Tobago Constitution provides that where it appears in the course of investigation that there is evidence of any corrupt act by any public officer, the matter shall be reported to the appropriate authority with a recommendation as to any further investigation he may consider necessary. Similar provisions are made for other Commonwealth Caribbean countries. The appropriate authority in all of these cases are the Police who are better equipped to investigate and take action with respect to such matters.

HUMAN RIGHTS

Doubts have been expressed as to whether the jurisdiction of the Caribbean Ombudsman extends to the investigation of violations of human rights and fundamental freedoms and whether Ombudsmen have in fact been carrying out investigations with respect to such complaints.

The classical Ombudsman is concerned mainly with the investigation of administrative injustice while human rights organizations are concerned with the investigation of violation of civil and political rights.

However, in some of the Caribbean Commonwealth territories; the Constitution or the legislation makes specific provision for the investigation of the violation of civil and political rights.

Chapter 1 of the Constitution of Trinidad and Tobago which is based on the Canadian Charter of Rights and Freedoms provides for the recognition and protection of fundamental rights and freedoms. Included in these rights are rights to life, liberty and security of the person; to equality before the law; to respect for the individual's private and family life; and the right to join political parties and to express political views. For the protection of these rights there are prohibitions against, arbitrary detention, imprisonment or exile and the imposition of cruel and unusual treatment or punishment.

The rights which are protected comprise not only civil and political rights but also social, economic and cultural rights as well.

The Constitution provides that the Ombudsman is not to be precluded from investigating these matters by reason only that the complainant can apply to the High Court for redress.

In fact the Ombudsman of Trinidad and Tobago, has since the establishment of the Office, investigated allegations of the violation of civil and political rights. These arise mainly as a result of complaints against the Police, the Prisons and the Mental Health Institutions. For the year 2000, forty-eight (48) complaints were brought against the Police and One hundred and two (102) against the Prison Authorities. None were brought against the Mental Health Institutions although complaints had been brought in previous years.

The majority of complaints against the Prisons Authorities were mainly by prisoners with respect '*inter alia*' to their accommodation, and provision of food and medical attention. A few complaints of physical abuse by prisons officers formed part of the total number.

Complaints against the Police related mainly to matters of harassment, wrongful arrest and detention and physical violence. These were investigated by the Ombudsman until 1993 when the Police Complaints Commission was established as a result of an increase in complaints against the conduct of police officers.

The main function of the Police Complaints Commission is to receive and investigate complaints on the conduct of police officers.

The Public Defender (Interim) Act 1999 of Jamaica makes provision not only for the investigation of faults in administration but also for infringement of citizens' constitutional rights. In addition, the Public Defender is empowered to investigate actions by a political party or its members which constitute '*inter alia*' a breach of any agreement or action likely to prejudice good relations between supporters of various political parties.

In Trinidad and Tobago many complaints alleging abuse of civil and political rights are not brought to the attention of the Ombudsman, but are taken before the High Court. The reason for this is that whereas the Ombudsman can only recommend and report after investigation, the High Court can, by summary procedure, in the form of applications for judicial review and applications under the Constitution, provide more effective remedies by way of damages and injunctions. Litigants can also invoke the writ of habeas corpus in order to free persons who are wrongfully detained and poor litigants have access to an official legal aid scheme. However, in many cases where such complaints are brought to the attention of the Ombudsman, he has been able to secure some relief for the complainant.

Except for Trinidad and Tobago and Jamaica which have jurisdiction to investigate civil and political rights violations in addition to violations of economic, social and cultural rights, the other Caribbean Commonwealth countries are mandated by legislation only to investigate and protect economic, social and cultural rights. It may be mentioned, however, that allegations of violation of economic, social and cultural rights often have some element of the violation of civil and political rights.

All of the Commonwealth Caribbean countries are parties to the international conventions on Civil and Political Rights and Social, Economic and Cultural Rights respectively and to other conventions which protect human rights generally.

The Commonwealth Caribbean countries were formerly British colonies which gained their independence during the latter half of the twentieth century. They have inherited systems of law and administration which are geared towards promotion and maintenance of democracy and the rule of law. Inherent in the system are principles which have been developed and handed down over the ages e.g. the rules of natural justice. Many of these principles are incorporated in the domestic law.

Many of the principles set out in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are incorporated in the domestic law of these countries.

Departments of Government are structured along lines similar to those which exist in other Commonwealth countries. Thus there are ministries which deal with health,

education, social welfare, labour, housing and social security among others. The bulk of complaints to the Ombudsman offices in the Commonwealth Caribbean are concerned with the deprivation of economic, social and cultural rights. Out of a total number of nine hundred and ninety (990) complaints received during the year 2000 by the Trinidad and Tobago Ombudsman, the numbers recorded against departments entrusted with the administration of such matters are as follows:

Prisons	102
Local Government	60
Social & Community Development	52
Police	48
National Insurance Board	47
Housing & Settlements	43

Although I do not have particulars for other Commonwealth Caribbean countries, I am aware that the bulk of complaints received are with respect to such matters.

The Commonwealth Caribbean Ombudsman is singularly placed when it comes to the investigation of the violation of economic, social and cultural rights than with the investigation of civil and political rights as the former are stated in such broad and vague terms in the international covenants and in domestic legislation so as not to make them easily justiciable by courts of law. The Ombudsman is more concerned with administrative fairness in the processing of such rights than with the issue of legality. He is able to make findings and recommendations which are acceptable to official authority on matters which are not easily justiciable and so performs a function which usefully contributes to the issue of accountability.

CONCLUSION

As a mechanism for effective accountability, I have sought to show that the Caribbean Ombudsman is concerned not only with the investigation of faults in administration or with administrative injustice but that he is given a mandate to investigate, recommend and report on injustices arising in the sphere of economic, social and cultural rights.

In two instances, those of the Jamaican Public Defender and the Trinidad and Tobago Ombudsman, the mandate extends to the investigation of the violation of civil and political rights, as well.

[Presented at the Second Regional Conference of the Caribbean Ombudsman Association held in Trinidad, 7th to 10th May, 2002]

**TEXT OF AN ADDRESS DELIVERED
TO AN AUDIENCE OF SENIOR PUBLIC OFFICERS
ON THE OCCASION OF THE
25TH ANNIVERSARY OF THE ESTABLISHMENT OF THE
OMBUDSMAN OFFICE IN TRINIDAD AND TOBAGO**

When it was decided that we would host this function to commemorate the 25th Anniversary of the founding of the Office of the Ombudsman, we thought it fitting that we should invite representatives of Government departments and authorities with whom we interface from day to day in the performance of our duties.

The Office of the Ombudsman was established under the Republican Constitution of 1976 with the appointment of Mr. Justice Evan Rees who was my immediate predecessor.

The creation of the Office followed the recommendation of the Wooding Constitution Commission of 1976. The Commission's rationale for the creation of the Office was expressed in these words:

“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 mal-administration causing hardships to many. There are problems arising from the unintended or deliberate misuse of executive power.”

Ombudsmanship is a concept that originated in Sweden in 1809. It was a new concept that was intended to contribute to effective governance. It was introduced into a Commonwealth country for the first time in 1962, when New Zealand accepted the concept and modified it to suit its own purposes. Our legislation providing for the Institution is based on the New Zealand model and is entrenched in the Constitution. Commonwealth countries throughout the world, including countries in the Caribbean Commonwealth, also followed this model. Features of the Office, *inter alia*, are its independence, its flexibility and its cost effectiveness.

The New Zealand model contemplated the secondment of public officers from the establishment for a fixed period following which it was hoped that they would have gained experience in the handling of complaints from members of the public and carry back to their respective departments, at the end of their tenure, such experiences as they had gained.

However, this was not implemented, with the result that the Office became, for all intents and purposes, another department of Government and is regarded as such by the Establishment and the public alike.

The jurisdiction of the Ombudsman is limited to the investigation of faults in administration arising from decisions or recommendations made or acts done or omitted by Government departments and authorities. Commenting on the limited jurisdiction of the Ombudsman, a Canadian federal report made the following observation:

“Ombudsmen speak for that elusive entity, the average citizen. They do not deal with broad affairs of state or policy. Rather they deal with a host of administrative complaints and injustices, many of which seem comparatively unimportant except to the affected individual.”

The Report might have added that the resolution of such problems would be of concern to members of Parliament who undertake to provide good governance to their constituents: Indeed this was one of the concerns which led to the creation of the Office.

Although the jurisdiction of the Ombudsman is limited, we have adopted the pro-active approach of investigating complaints where mal-administration is not the main criterion but where we suspect that an injustice has occurred. We have also adopted the practice of investigating complaints against state-owned companies and organizations over which we have no direct jurisdiction. Companies such as *Petrotrin* and *Caroni Limited* welcome our intervention, as they themselves are desirous of settling disputes with members of the public and their own employees.

This was not the case when the Office was first established. It was viewed in some quarters as a threat to the department's autonomy. Indeed, on more than one occasion public officers expressed fears of victimization if they were to bring their complaints to the attention of the Ombudsman.

Happily in recent times we have gained the respect and deference of Government departments and authorities for our initiative in settling disputes that affect them.

In recent times questions have arisen with respect to the enforcement of Ombudsman's recommendations with the observation that the Ombudsman has 'no teeth'. The very nature of the Ombudsman's concept precludes the existence of enforcement powers. It would be contrary to public policy and the rule of law if an Ombudsman were to be

invested with such powers, for he would become a judge, jury and executioner in his own cause.

Not to say that the Ombudsman has no recourse to ensuring that his recommendations are carried out. Section 96 (4) of the Constitution provides that where no sufficient action has been taken to remedy an injustice, then it is open to the Ombudsman to lay a special report before Parliament.

This action is only taken in extreme circumstances and only where a thorough investigation of the matter has been undertaken and every effort has been made to persuade the department or authority to comply with his recommendations. For the past ten years recourse to such procedure was taken only on three occasions.

In attempting to resolve complaints the Ombudsman eschews adversarial procedure. In the tradition of Ombudsmen the world over, his methods of resolving disputes consist of conciliation, persuasion and the application of reason.

Under Section 97(1) of the Constitution, the Ombudsman has the power of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him. During the past ten years. I had recourse to this procedure only on one occasion.

I wish to acknowledge the cooperation and assistance that I receive from public officers in the resolution of disputes. Without their cooperation and assistance the task of the Ombudsman would be rendered futile. However, there are still problems with respect to the delay in replying to correspondence and taking action with respect to recommendations.

In the 23rd Annual Report, 2002, I commented as follows:

“On the whole, during the past year as in previous years, I received the assistance and cooperation 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.”

The number of complaints filed over the past 10 years amounted to 10,586 of which 8,484 were sustainable. Up to the end of 2001, there were still 859 complaints under investigation. This represents complaints for the year 2001 and complaints brought over from previous years.

We hope that the symbiotic relationship that has existed between the Establishment and the Office of the Ombudsman will continue to our respective credit in the years to come. We are not the enemy. We both serve the public, though in different roles. One of the planks of our Mission Statement is to promote an effective and efficient public service that is responsive to the needs of the citizenry. With your assistance and cooperation we intend to pursue this objective in the years to come.

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 have 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

**Protection of
rights and
freedoms**

- (k) freedom of the press.
- 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 ensure 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.
- (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;

**Third
Schedule**

- (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 of the High Court to summon witnesses to appear before him and to compel them to 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, 1977)

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:
Short Title	1. This Act may be cited as the Ombudsman Act.
Mode of Complaint	<p>2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.</p> <p>(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.</p>
Procedure in respect of investigation	<p>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.</p> <p>(2) Every such investigation shall be conducted in private.</p> <p>(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.</p> <p>(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.</p> <p>(5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.</p>

- (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 sub-section, 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);

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

(d) 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.

