

PART I

GENERAL

OVERVIEW

One thousand, three hundred and forty-four (**1,344**) written complaints were received in the year 2005. Additionally, there were **183** enquiries made at the office. This figure represents a **34%** increase in the average number of complaints received in previous years. Important factors contributing to the increased inflow of complaints included a greater awareness of the services provided and a growing demand by citizens for state agencies to provide better services. A total of **2,600** complaints were brought forward from previous years. So that the workload for the year 2005 comprised **3,944** complaints of which **699** were resolved or concluded representing **21%** of the total workload.

Another factor which contributed to the increase in 2005 was the promotional exercise undertaken by the Office in bringing to the attention of citizens the services which we had to offer. This consisted chiefly of collaboration with the postal services.

The previous year's workload consisted of **3,676** complaints representing **2664** complaints brought forward from previous years and **1,012** complaints received in the year 2004 of which **954** were resolved or concluded, representing **27%** of that year's workload. These figures which are shown to be in backlog, do not represent a true picture since they include complaints brought over from towards the end of a year, and include complaints about land, environmental and infrastructural deficiencies which cannot be resolved in the short term but remain pending over a span of months.

The Table hereunder reflects the position for the previous five (5 years):

Year	Complaints	Complaints b/f	Total	No. of Complaints Proceeded With	No. of Complaints Concluded	%
2001	1182	1470	2652	2461	669	27
2002	1302	1792	3094	2911	498	17
2003	1304	2413	3717	3324	660	19
2004	1012	2664	3676	3545	954	27
2005	1344	2600	3944	3399	699	21

The Tobago Office which was established in the year 2002 recorded a total of **198** written complaints as compared with **187** in the previous year.

The number of persons who accessed the outreach programme for the year 2005, totaled **660**, an increase of **71** over the previous year. Five hundred and eighty-nine (**589**) persons accessed the outreach programme in the year 2004. The details for the year 2005 are as follows:

San Fernando	179
Rio Claro	137
Siparia	122
Sangre Grande	97
Chaguanas	50
Point Fortin	36
Roxborough (Tobago)	6

Details of these matters appear in the Statistical Review published at page 20.

Eight (8) complaints were received in 2005 under the Freedom of Information Act as compared with eleven (11) in the previous year. The Act is designed to give to members of the public a general right (with exceptions) of access to official documents from public authorities. The Ombudsman has a statutory role to play in cases where a person is aggrieved by the refusal of the public authority to grant access to such documents.

Included in this Report at page 5 is a report on matters relating to access to retirement benefits available to employees of the State. At page 10 is a report on environmental issues affecting the quality of life of the citizens. There have been complaints and enquiries with respect to these matters during the past five years. Also on page 13 is an article relating to Vision 2020 and the role of the Ombudsman in contributing to this objective.

During the past ten years, I have been reporting on matters of concern which affected not only specific complainants but the general public as well. Under Areas of Concern Revisited at page 17 I have sought to report on the developments which have taken place with respect to some of these matters.

Of the one thousand, three hundred and forty-four (1344) complaints received in the year 2005, a substantial number were recorded against the following Ministries/Departments:

Local Government Bodies	127
Tobago House of Assembly	99
Ministry of Health	65
Prisons Services	52
Trinidad & Tobago Electricity Commission	45
Ministry of Social Development	38
Ministry of Works & Transport	35
Water & Sewerage Authority	31

The local government bodies comprise five (5) City and Borough Corporations and nine (9) Regional Corporations. One hundred and twenty-seven (127) complaints were

recorded against them for the year 2005 as compared with the previous year's total of one hundred and four (**104**) complaints.

Complaints related primarily to the condition of roads, drainage and other infrastructural deficiencies which impacted on the daily lives of citizens. Complaints were also received from daily rated employees of these bodies with respect to their employment alleging discrimination in employment practices.

Complaints against the Tobago House of Assembly which numbered **99** for the year under review were concerned with the provision of services by departments and authorities which fall within their jurisdiction. These complaints were mainly concerned with employment practices, social services delivery such as old age pensions and social assistance and infrastructural deficiencies such as roads, water and electricity which impacted on the daily lives of citizens.

Complaints against the Ministry of Health related primarily to the provision of proper health care and the delivery of health services. Complaints were also received from employees relating to monetary benefits (increments, acting allowances, arrears of salary and retirement grants). Complaints were also concerned about nuisances which affected complainants' health and other matters which were of concern to Public Health Departments.

Complaints against the Ministry of Social Services were concerned mainly with the provision of old age pension and social assistance.

Complaints against the Ministry of Housing and Settlements were concerned mainly with assistance in obtaining housing accommodation, the renovation of housing accommodation provided to complainants and failure to access deeds of title after satisfaction of mortgage payments.

Complaints against the Ministry of Works and Transport were chiefly concerned about infrastructural deficiencies such as water, electricity, roads, drains and watercourses.

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

Complaints against the Trinidad and Tobago Electricity Commission were concerned with the provision of electricity after obtaining certificates from the Electrical Inspectorate, the replacement of defective and rotted electricity poles and failure to pay compensation for damage to electrical appliances.

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

Our assistance as in previous years, depended on the assistance and co-operation of the various ministries and departments with whom we interface from day to day in resolving the complaints of citizens. There has been some improvement in the delivery of services

but there continues to be delay in handling of correspondence. The problem appears to be systemic in nature and is a prevailing source of injustice and hardship to complainants.

TRAINING AND DEVELOPMENT

Members of staff of the Office of the Ombudsman are constantly encouraged to undertake appropriate training and attend relevant seminars and conferences to enhance their skills and professional knowledge.

Additionally steps are taken each year by my Office to ensure that each individual member of staff undergoes skills training in the appropriate areas as a means of optimizing work performance and the standard of service delivered to the general public.

In 2005 members of staff took advantage of training opportunities in topics as diverse as Project Management Skills, Developing Presentations Skills and Interviewing Techniques – Dale Carnegie Leadership Training, Principles and Practices of Supervision, Effective Business Writing, Telephone Etiquette, Assertiveness Skills for New Managers, Critical Skills for Today's Managers and Management for Administrative Professionals.

In house training in operational topics such as investigative techniques and records management are also provided regularly by the respective supervisors. Ongoing training in the various computer application programmes are conducted to ensure that the office's electronic data base management system is effectively maintained.

In May, 2005, Mrs. Donna Mollineau-Hyndman, Investigator attended a study programme entitled '*When Citizens Complain: The Role of the Ombudsman in Providing Public Services*'. It was held in London, England under the auspices of the Commonwealth Secretariat. This study programme is available every year to Ombudsmen and their staff. The programme entailed a study of Ombudsman systems and areas for developing and improving such systems.

RETIREMENT BENEFITS OF STATE EMPLOYEES

From time to time, the Office of the Ombudsman has received complaints from monthly-paid and daily-rated employees of Government departments, state agencies and statutory authorities who had been denied retirement benefits on various grounds.

Persons who are paid on a monthly basis are employed in the Public Service which comprises the Civil Service, the Teaching Service and the Police, Prisons and Fire Services together with certain Statutory Authorities. For the purpose of the provision of superannuation benefits, officers in these Services and the Statutory Authorities are pensionable under the following pension laws:-

1. The Pensions Act, Chap. 23:52
2. The Pensions Extensions Act, Chap. 23:53

3. The Police Service Act, Chap. 15:01 (Sixth Schedule)
4. The Fire Service Act, Chap. 35:50
5. The Prison Service (Amendment) Act, No. 17 of 2000
6. The Teacher's Pensions Act, Chap. 39:02
7. The Assisted Secondary School Teacher's Pension Act, Chap. 39:03

It should also be noted that provision for superannuation benefits is made under the Municipal Corporations (Pensions) Act Chap. 25:05 for monthly paid persons who are appointed to a permanent office in the Municipal Corporations of Trinidad and Tobago.

Daily rated employees of Government are not eligible for pension benefits at present, although agreement has been reached with the National Union of Government and Federated Workers (NUGFW) for the introduction of a pension plan for such employees. This pension plan is in the process of being implemented. The collective agreements, between the respective trade unions and the Chief Personnel Officer, who by Section 2(4) of the Industrial Relations Act, Chap.88:01 is deemed to be the employer of all Government daily rated employees, contain provisions for the payment of lump-sum retirement benefits.

Daily Rated Employees of Government

Where a daily rated employee with one or more effective years of service retires at the prescribed age, he receives a payment in accordance with the severance formula set out in the collective agreement. Where part of such an employee's service consists of non-effective years he may qualify for a benefit under regulation 14 (1) of the Pensions Regulations, Chap. 23:52. Regulation 14(1) which states:

“An officer holding a non-pensionable office may, in the circumstances contemplated by this regulation as hereinafter set forth, be granted, unless the President otherwise directs, a compassionate gratuity not exceeding twelve days pay for each year of his service under the Government.”

The circumstances contemplated by the regulation are that the employee's service is terminated due to the abolition of his office, where his services through no fault of his own are no longer required, where he becomes medically unfit; on the restructuring of his department or where he has attained the age of retirement. This provision has been relevant in the cases of auxiliary fire officers and special reserve policemen who do not fall within the Pensions laws.

With regard to daily rated employees who are incarcerated, there is no established policy for the payment of pension benefit. Each situation has to be dealt with on a case by case basis and based on the provisions set out in the collective agreement which relates to them.

In this connection, some of the collective agreements contain a general clause which states that a break in the employment of a worker of three (3) consecutive non-effective years shall cancel all previous service. The clause does not specify the reasons for the

break in service and as such, a worker who does not present himself for work for any reason for a period of three consecutive years immediately prior to his retirement would have broken his service and would not be eligible for retirement benefits.

It should also be noted that the common practice with regard to daily rated employees is that where a worker is incarcerated and is therefore unjustifiably absent from work, his service is usually terminated and he has to reapply for employment on his release. If he is re-employed the service on which his retirement benefits are based would be calculated from the date of his re-employment.

Unjustifiable absence from work has been ruled to be grounds for termination of the employment contract. In the Industrial Court Judgment **No. 42 of 1969 Public Transport Service Corporation vs. Transport and Industrial Workers' Union** it was held that the worker was properly dismissed, since he could not claim the lawful consequences of his own criminal act as a justifiable reason for his absence from work. He was incarcerated and was absent from work for three consecutive days without justifiable reason.

This practice has been extended to cases of retirement benefits. A complaint brought to the attention of the Ombudsman concerned a daily-rated employee employed by the Ministry of Infrastructure who was convicted of an offence unrelated to any crime committed in the course of his employment. The crime was not committed on any premises of the Ministry nor within working hours. At the time of his conviction, he was fifty-nine (59) years of age and had served for a period of twenty-six (26) years prior to his conviction. After his discharge, he reported for duty and was deemed to have abandoned his job. He then applied for his retirement benefits, the qualifying age of which was sixty (60) years under the current collective agreement but was denied same for the reasons stated above.

Monthly Paid Employees

The Pensions Act, Chap. 23:52 makes provision for the payment of superannuation benefits to officers in the Civil Service while the Pensions Extension Act, Chap. 23:52 caters for monthly paid personnel in Statutory Authorities subject to the Statutory Authorities Act, Chap. 24:01 and certain other specified statutory bodies. The grant of a pension under these laws is not an entitlement or an inherent right of an employee. In fact, Section 9 of the Pensions Act states:

- (1) *“No officer shall have an absolute right to compensation for past services or to pension gratuity or other allowance under this Act, nor shall anything herein or in the regulations contained limit the right of the State to dismiss any officer without compensation.*
- (2) *Where it is established to the satisfaction of the President that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld.”*

There are similar sections in the Prison Service [Pension and Gratuity] Act [Fifth Schedule, Rule 2] the Assisted Secondary School Teacher's Pension Act [Section 12], the Teacher's Pensions Act [Section 13], the Police Service Act [Sixth Schedule, Rule 11], the Fire Service Act [Fifth Schedule, Section 2 (11)], and the Municipal Corporations Pensions Act [Section 4].

The Pensions Regulations set out the criteria that must be met for a person to qualify for pension. Specifically, they must be appointed to a pensionable office and should have attained the retirement age as designated in the Act. Section 15 of the Act provides *that no pension, gratuity or other allowance shall be granted to any officer who has not attained the age of fifty-five years (in special cases, fifty years)*. The service for pension purposes must also be unbroken service save in specific circumstances which are spelt out in the Act. However, these circumstances do not include situations where the service of an officer is broken as a result of disciplinary proceedings. The provisions of this regulation are mirrored in the other Acts and regulations. This point is borne out by the Law Reform (Pensions) Act No. 20 of 1997 which is an Act designed to provide for the preservation and linking of service in situations where service has been broken but it clearly states that it does not apply to situations where a person's service is broken by *"suspension, dismissal, or removal in consequence of disciplinary proceedings"*.

Where an officer's service is terminated for misconduct or reasons relating to discipline and he has been properly dismissed, he would not be eligible for pension. The Constitution (Amendment) Act, 2000, No. 43 of 2000 allows for summary termination of an officer's service where he has been convicted of a criminal offence. By virtue of this act, the Public Service Commission and other Service Commissions may dismiss or otherwise punish the officer on the basis of a certificate of conviction from the Court without the institution of disciplinary proceedings.

By virtue of Sections 133 and 134 of the Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, a person who has been granted or is eligible for any benefit (including pension) in respect of his office cannot be deprived of it without just cause and due process. Where, however, the particular Service Commission has removed the person from Office under appropriate rules and regulations, he would not be eligible for retirement benefits.

It is necessary to draw a distinction between the persons discussed above i.e, the ones who are eligible for retirement benefits and those who have retired and who have already been granted their retirement benefits.

A person who has been granted a pension is liable to have the pension cease in certain circumstances such as bankruptcy, conviction and the acceptance of a certain appointment. This is clearly set out in the Pensions Act Sections 25, 26 and 27 respectively. The other pieces of legislation referred to at paragraph 3 have variations as to the circumstances that would cause an officer's pension to cease.

Further, the Pension Act gives the President the power to withhold or direct how a person's pension is to be applied when the person has been incarcerated. Section 26 states:

“If an officer to whom a pension or other allowance has been granted under this Act is sentenced to a term of imprisonment by any competent Court whether within or without Trinidad and Tobago for any crime or offence, then in every such case, the President may direct that the pension or allowance shall forthwith cease but-

- a) Where a person after conviction at any time receives a free pardon the pension or allowance shall be restored with restrospective effect;*
- b) Where a pension or allowance ceases for the reason mentioned above the President may cause all or any part of the moneys to which the pensioner would have been entitled by way of pension or allowance to be paid to or applied for the benefit of any wife, child or children of the pensioner, or, after the expiration of his sentence, also for the benefit of the pensioner himself, in the same manner precisely and subject to the same qualifications and restrictions as in the case of bankruptcy provided in Section 25.”*

No person’s pension can be arbitrarily taken away. Under Section 26, the President has the power to apply a person’s pension for the benefit of that person’s wife and children.

The Municipal Corporations (Pensions Act has a similar section to Section 26 except that the power to withhold the pension lies with the Corporation (Section 26).

It is pertinent to note the following:

- 1) The Pensions Act which was passed in 1934 followed similar English legislation. The practice in the British jurisdiction has been mitigated to some extent by the Superannuation Act 1972, under the provisions of which the Civil Service Department has power to withhold benefits where a civil servant is convicted of gross misconduct against the State. However, before benefits are forfeited, the person concerned is entitled to appeal against the forfeiture to an independent tribunal.
- 2) Under the Pensions Act, an employee became eligible for retirement benefits after he had completed ten (10) years of service under certain circumstances i.e. by being medically boarded or called upon to retire in the exigencies of the Service.

In this context, it is pertinent to note the case of a teacher who was seconded to the National Council for Technology in Development (NCTD) and who was deprived of her retirement benefits mainly as a result of the fault of the Ministry of Education and the Comptroller

of Accounts Department in failing to preserve her pension rights and in guiding her when her job became redundant at NCTD. She had completed twenty-five (25) years of service both in the Teaching Service and as an employee of NCTD. By that time she was short of fifty (50) years by a few months and could have applied for permission to retire on attaining that age. Refusal of retirement benefits was based on the ground that she should have returned to the Teaching Service and completed her qualifying period for pension purposes. Her retirement had taken effect before the passing of the Law Reform (Pensions) Act, 1977 which would have preserved her service and her entitlement to retirement benefits.

It is desirable in the public interest that a fresh look be directed to the existing pensions legislation and its application in practice so that retired employees of the State can be treated with some measure of justice when it comes to the payment of benefits to them as retirement.

ENVIRONMENTAL ISSUES THAT AFFECT THE STANDARD AND QUALITY OF LIFE.

The Environmental Management Act No.3 of 2000 (hereinafter referred to as “the Act”) makes provision for the management of air, water and noise pollution by the Environmental Management Authority (hereinafter referred to as “the Authority”). Section 26 of the Act empowers the Minister responsible for the Environment to make rules which relate specifically to the management of pollutants which may be released into the environment.

Section 26 of the Act stipulates that the Minister may make rules, subject to the negative resolution of Parliament, for procedures for the registration of sources from which pollutants may be released into the environment and the characterization of such sources. This section operates together with sections 49, 50, 51 and 52 of the Act which provides for the management of air, noise and water pollution.

Over the years the Office of the Ombudsman has continuously received complaints from members of the public relating to environmental issues, whether it be instances of air, noise or water pollution, but of greater importance is the impact of such occurrences on their quality and standard of living.

The complaints received by the Office relate to the unauthorized commercial operations in residential areas which include nuisance dust and smoke from steel fabrication; nuisance smoke and fumes from pottery operations; fumes and noise from autobody garage businesses and improper disposal of wastewater from pig rearing and poultry rearing operations. The dust, fumes, noise, smoke and wastewater emitted into the atmosphere and our waterways create not only environmental concerns, but also greatly affect the physical well-being and comfort of the population at large.

The following table indicates the number of complaints received by the Office relating to the various forms of pollution for the period 2000-2005:

CATEGORY	TOTAL
Wastewater	50
Noise Pollution	13
Fumes	5
Dust	2
Smoke	1
TOTAL	71

“Every citizen is entitled to the comfortable and healthful enjoyment of premises owned or occupied by him whether for pleasure or business.” See the case of **A-G v Hastings Corpn.** (1950) 94 Sol Jo 225, CA. which was mentioned in Halsbury’s Laws of England 4th Ed. Para. 323.

The **Constitution of the Republic of Trinidad and Tobago**, Chapter 1:01, guarantees under Section 4 (a) that-

“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;.....”

To ensure the protection of these rights the law provides that an individual may commence civil proceedings against other individuals, whether they be private citizens or state agencies, in order to safeguard one’s rights and also to make other individuals accountable for their action. With respect to the law as it relates to nuisance, it is also possible for individuals to commence legal proceedings in order to restrain the commission or continuation of a nuisance. However, it should be noted that these legal proceedings amount to further expense on individuals through litigation costs, and add to an already overburdened judicial system.

In this regard all segments of the society would be better served by the enactment and implementation of legislation that prevent the nuisance from arising. To this end therefore, steps should be taken to ensure that the relevant pieces of legislation be enacted in a timely manner which in turn will offer a resolution to this long, outstanding issue.

Three very important pieces of legislation in this regard are as follows:

- The Air Pollution Rules;

- The Noise Pollution Control Rules; and
- The Water Pollution Rules.

The Environmental Management Authority has prepared both the Water Pollution Rules, 2001 and the Noise Pollution Control Rules, 2001 and is currently receiving public comments on the Air Pollution Rules, 2001. However, while the Noise Pollution Control Rules has been proclaimed since 2001, there is to date no stipulated time frame when the Air Pollution and the Water Pollution Rules may be enacted. Until these pieces of legislation have been enacted members of the public would continue to experience distress and inconvenience without any definitive resolution of these issues.

Both the Air Pollution and the Water Pollution Rules provide the procedures for the registration of sources of pollutants which include details relating to the acquisition of permits to operate; the form and manner for making an application for a permit and the monitoring of releases of pollutants into the atmosphere.

As prescribed under the Proposed Air Pollution Rules any owner or operator of a facility who releases any substance listed in the Schedules provided would be required under law to apply for an air pollution permit in accordance with Rule 11 of the proposed Rules. A similar provision is stipulated under the proposed Water Pollution Rules as can be seen in Rule 10 of those proposed Rules. It is important to note that before the granting of a permit under the respective Rules, the Authority has the jurisdiction to solicit any further information before making a determination of the applicant's application. Under the Air Pollution Rules this can be found in Rule 13 and under the Water Pollution Rules a related provision exists under Rule 11.

Further, the respective Rules provide the Authority not only with the jurisdiction to grant permits but also empowers it with the ability to attach conditions upon the issuance of each permit which conditions must be followed by the respective permittee. Under the Air Pollution Rules the provision can be found in Rule 19 and in the Water Pollution Rules a related provision may be found in Rule 15. Further, failure by the permittee to follow the conditions outlined may result in the revocation or suspension of the permit.

By enacting both pieces of legislation the benefits to be gained would be two fold. Firstly, the population at large would be protected against these indiscriminate and unchecked acts of pollution and those directly affected may now be able to enjoy a better quality and standard of living. And secondly, the Authority which has been vested with the power of protecting the environment would now have the legislative jurisdiction to do so.

Having regard to the rise of industrial activities the importance of preserving and safeguarding the environment becomes more apparent. It is in this vein therefore that the enactment of the Air Pollution and Water Pollution Rules becomes very critical at this juncture. Delay in implementing the Rules would not only continue to cause distress and inconvenience already experienced by members of the public, but additionally it is only a matter of time when these pollutants would also begin to take a toll on the environment since the safeguard mechanisms do not have any legal force until they become enacted.

**VISION 2020 AND THE ROLE OF
THE OFFICE OF THE OMBUDSMAN:**

To Build a public sector that has accountability, transparency and participation

A Draft National Strategic Plan referred to as Vision 2020 has been developed by a multi-sectoral group, and will be executed by government to guide this country in becoming a developed nation by the year 2020. The ultimate goal of this plan is geared towards successful national development resulting in a high quality of life for all citizens.

The plan articulates a vision of developed nation's status where: -

“Every member of our society will experience a standard of living that is comparable to the highest in the world. Our citizens will enjoy the best education and health care available regardless of socio-economic standing, race, religion and gender. This will result in higher levels of intellectual achievement and lower incidences of life style diseases. Poverty will be minimized and we will enjoy benefits that go beyond our basic needs of food, clothing and shelter so that all have opportunities to lead fulfilling lives.”

Developed nation status will be built around five development priorities:

- Developing innovative people;
- Nurturing a caring society;
- Governing Effectively;
- Enabling competitive business;
- Investing in Sound Infrastructure and Environment.

The plan envisages that for Vision 2020 to become a reality, our model of an effective government must become known for transparent, participatory, high quality, reliable and predictable service.

In order to accomplish this goal, priority will be given to the development of the following institutional frameworks:

- National security and public safety
- Law administration and legal affairs
- Governance and institutional structures for development
- Administration of justice

One of the strategic goals contained in the framework for action in achieving the model of effective government is:

- ***to build a public sector that has accountability, transparency and participation.***

Accountability is a check on the indiscriminate use of power. What accountability requires however is that these powers are exercised in accordance with principles of good administration. These principles dictate that public administration must be:

- honest and not corrupt;
- conducted to serve the public at large and not the private interest of those exercising power; and
- be efficient and responsive to the needs of the public and conducted without undue delay or inconvenience to citizens.

For accountability to be achieved, a public agency must be accountable to other public bodies which are able to scrutinize that agency's work from an independent position.

Transparency is about openness and honesty. The operations of a public authority are considered transparent when:

- Citizens are informed of the decisions that concern them and the reasons for the decision are explained in terms that are readily understood;
- Citizens are given all the information they need promptly;
- Citizens are informed of their rights and the availability of appeals from decisions;
- Citizen groups are consulted about government development or projects that affect them.

The Office of the Ombudsman was established in 1978 under the Republican Constitution of Trinidad and Tobago. It is an Office of national character which has as its basic purpose the protection of the economic, social and cultural rights of the individual as well as civil rights. The Ombudsman is an officer of Parliament who enjoys a considerable degree of independence. His independence is an essential quality which is closely linked to his credibility and to the trust which members of the public should have in him.

Section 93(1) of the Constitution prescribes that the principal function of the Ombudsman shall be to investigate any decision made, or any act done or omitted by any department of government being action taken in the exercise of the administrative functions of that department or authority.

It is further prescribed in the Constitution that the Ombudsman can investigate in circumstances where the Complainant alleges that he has sustained an injustice as a result of a fault in administration. His task therefore in the course of investigating the complaint is to ascertain the facts of the case and reach an independent and impartial conclusion on its merits. The Ombudsman is neither an advocate for the Complainant nor for the government agency concerned. The facts of the complaint are simply assessed to determine whether the particular public body has acted in accordance with the law, governing regulations or where in the exercise of discretionary power that it is done in a fair and reasonable manner. The action of the government department is also reviewed to ensure that the principles of Natural Justice and the individual's rights enshrined in the Constitution are observed.

In dealing with complaints lodged by citizens, the Ombudsman is empowered under the provisions of the Constitution to demand access to all the information he needs to establish in a authoritative way the facts of the particular matter. He is authorized to:

- demand an official reply from the government agency in regard to the complaint and the submission of the relevant documents;
- invite government officials and witnesses to appear before him to give evidence and produce documents which are relevant to the existing complaint;
- to gain access to the premises of government agencies to inspect such premises or to call for, examine and where necessary retain any document which is pertinent to his investigation.

The Role of the Ombudsman is thus to provide citizens of Trinidad and Tobago with an independent and impartial review of public sector administration. The Ombudsman investigates complaints of maladministration on the complaint of citizens who feel unjustly treated by the action or omission of public sector agencies. Redress for citizens is recommended where the complaint is justified.

In remedying the grievances of citizens who are confronted by the armoury of state power or who suffer as a result of inaction, the Office of the Ombudsman seeks to uphold the rule of law, to promote equity, efficiency and transparency in public administration and in the final analysis, to affirm the legitimacy of administrative action. The Office provides an effective accountability mechanism against bureaucratic injustice.

As an oversight agency, the Ombudsman fulfils two (2) basic purposes. The Office helps to redress grievances of the public by giving individual citizens a remedy for an injustice to which they are subjected and by its actions ensures improvements in the quality of the administration.

Justice and fair-play lead to changes in administration which result in a better standard of service. In this sense it could be said that the work of the Ombudsman is aligned to the strategic goals of Vision 2020 by contributing to high standards of public administration and concomitantly to a better quality of life for citizens of Trinidad and Tobago.

It is to be noted that one of the policy initiatives recommended in the strategic plan calls for legislative reform to empower oversight institutions to reduce corruption and improve the government services thus ensuring predictability, accountability and transparency. It is evident that as an oversight institution the Office of the Ombudsman is recognized as a positive element for developing the society. The Office is not to be viewed as a luxury for a modern developed society but as a clear necessity to an advanced democracy.

PART II

AREAS OF CONCERN

AREA OF CONCERN

For the past ten years, I have been reporting on a number of matters which were of concern not only to specific Complainants but to the general public as well. This report seeks to update the results of my investigations and recommendations and to refer to developments which have taken place since these matters were reported.

Prison Detention – Illegal Immigrants

Complaints from illegal immigrants who have been arrested by the Immigration Authorities and lodged in the country's prisons pending their deportation are made from time to time. In the Twenty-second Annual Report (January 1st 1999 to December 31, 1999) I referred to the cases of illegal immigrants who languish in prison pending their deportation.

My predecessor in his Fifth Annual Report (December 6, 1981 to December 5, 1982) had commented on the issue of detention of illegal immigrants as follows:

“Illegal immigrants are being housed in the golden Grove Remand Prison pending deportation against them. Such a situation is contributing to the serious over-crowding situations at that prison and putting a further strain on human resources of the Prison authorities.

I am opposed to the detention of illegal immigrants in the prison environment where they are needlessly and unreasonably brought into contact with hardened criminals. I will be recommending to the Ministry of National Security that illegal immigrants be detained apart from the prison population and provided with proper facilities.”

In most cases the accredited representatives of their respective countries have facilitated their deportation by providing air or sea passages for their return. In a few cases, however, illegal immigrants languish in prison since the accredited representatives of their home countries refuse to take steps to facilitate their return.

The situation has not changed. The plight of these persons have worsened, given the overcrowded prison population. These persons who are not prisoners deserve better treatment pending their deportation.

HANSEN DISEASE PATIENTS

In the 23rd Annual Report (January 1, 2000 to December 31, 2000), I reported the case of the Hansen disease patients, who by a Cabinet decision were transferred from Chacachacare to the mainland on the ground that it was no longer necessary to isolate them from the rest of the population. This action was taken as a result of medical advances in the treatment of the disease.

Cabinet made the following decisions:

- *Cured patients would be provided with housing through the National Housing Authority*
- *Financial aid would be provided to the former patients through the Trinidad and Tobago Hansen's Disease Relief Association until they were self sufficient. The annual subvention to the Association, a non-governmental charitable organization, was consequently increased.*
- *Patients requiring hospital care would be transferred to other institutions on the mainland where adequate medical and nursing care were available.*
- *The Ministry of Agriculture, Lands and Fisheries would provide small holdings for those capable of and willing to engage in agriculture.*

Seventeen years after the closure, a group representing fifty-one (51) surviving patients visited my office to complain that the promises which had been made to them by the State had not been fulfilled. Among their complaints were that several of them had not been provided with adequate housing and long term leases to agricultural lands. The majority of them had no means of livelihood and survived on public assistance. They also made a claim for severance benefit as they alleged that they were employed at Chaachacare at the time of their relocation.

Given the nature of their complaint, I convened a meeting with several state agencies involved in order to determine the reasons for delay in the implementation of the measures approved by Cabinet. Letters were issued to the surviving patients requesting that they indicate on an individual basis as to what matters they wished to have this Office address.

Complaints were received from sixteen (16) patients. Since the submission of those complaints, three (3) persons have died.

The following developments have taken place since the publication of the matter in the 24th Annual Report:

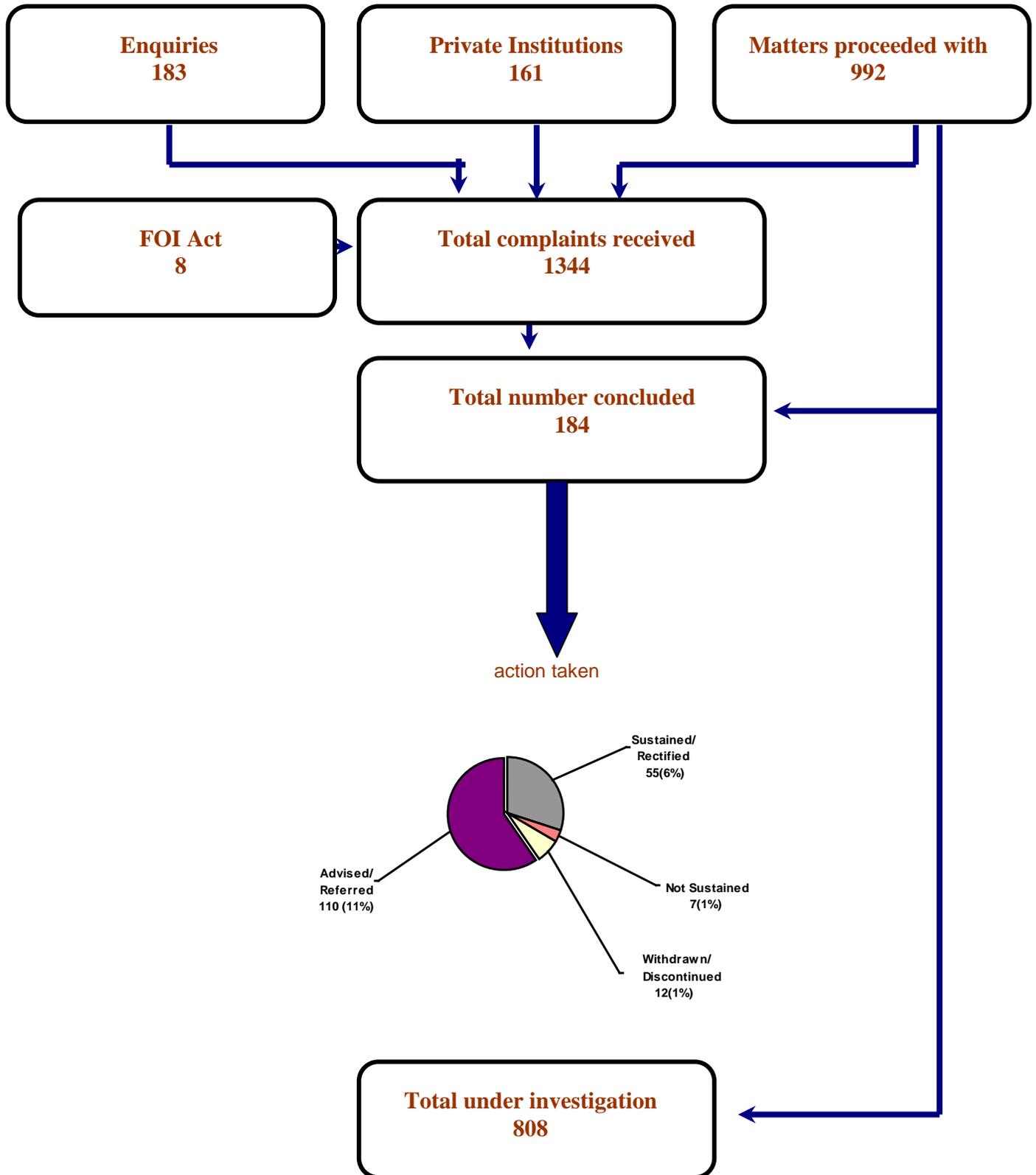
1. The claim for severance benefit was denied. The Chief Personnel Officer advised that the patients performed small chores for which they were paid a stipend, amounting to approximately 75% of the rate of pay of either a male or female labourer in the Government Service. They could not be considered as workers under a collective agreement for whom terms and conditions would be applicable.
2. Several patients who occupied houses of the National Housing Authority were not successful in obtaining deeds for the properties as this matter remains unresolved. The problem apparently seems to be that the obligation was only to provide housing accommodation.

Several other complaints were resolved during the period, e.g. requests for electricity and water; for standard agricultural leases; assistance to repair houses and to obtain tools and equipment. These were provided by the Hansen's Disease Relief Association which has been provided with a yearly subvention for the purpose.

STATISTICAL REVIEW 2005

FIGURE 1

STATISTICS ON NEW COMPLAINTS RECEIVED DURING THE PERIOD JANUARY – DECEMBER 2005



As I had indicated earlier in the Overview at page 2, I received a total number of **1344** new complaints. This figure represents a **34%** increase in the average number of complaints.

12% of the new complaints were private matters which fell outside my jurisdiction. As customary, where appropriate the complainants in these matters were referred to the relevant agencies or advised on the proper course of action to be followed in having their matters addressed.

I commenced investigations on **992** complaints which represent **73%** of new complaints received. At the close of the year investigation was concluded on **184** or **19%** of the complaints. A total of **808** or **81%** remained under investigation.

Figure I shows the number of new complaints received in 2005 and the manner of their disposal.

Table I shows the number of complaints brought forward from previous years on which investigation were continued in 2005. Of these matters a total of 515 were concluded during the year.

TABLE 1
STATISTICS ON COMPLAINTS BROUGHT FORWARD
FROM PRECEDING YEARS

		TOTAL
Total number of complaints brought forward from previous years		2600
Total number of complaints concluded		515
Sustained /Rectified	186	
Not Sustained	37	
Withdrawn/Discontinued	108	
Advised/Referred	184	
Number of complaints still under investigation		2085

It is to be noted that the workload for the period under review comprised of **3944** complaints. This figure represents the total of **1344** new complaints in addition to **2600** complaints which were brought forward from the preceding year. Table II and Figure II show the manner of their disposal. At the end of 2005, **2893** complaints remain under investigation.

TABLE 11

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	2600	
Total number of complaints received in 2005	1344	
TOTAL	3944	
Total number of complaints without jurisdiction	161	4.1
Total Enquiries	183	4.6
Freedom of Information Act	8	0.2
Total number of complaints proceeded with	3592	91.1
Total number of complaints concluded	699	19.4
Sustained/Rectified	241	6.7
Not Sustained	44	1.2
Withdrawn/Discontinued	120	3.3
Advised/Referred	294	8.2
Under Investigation	2893	80.5

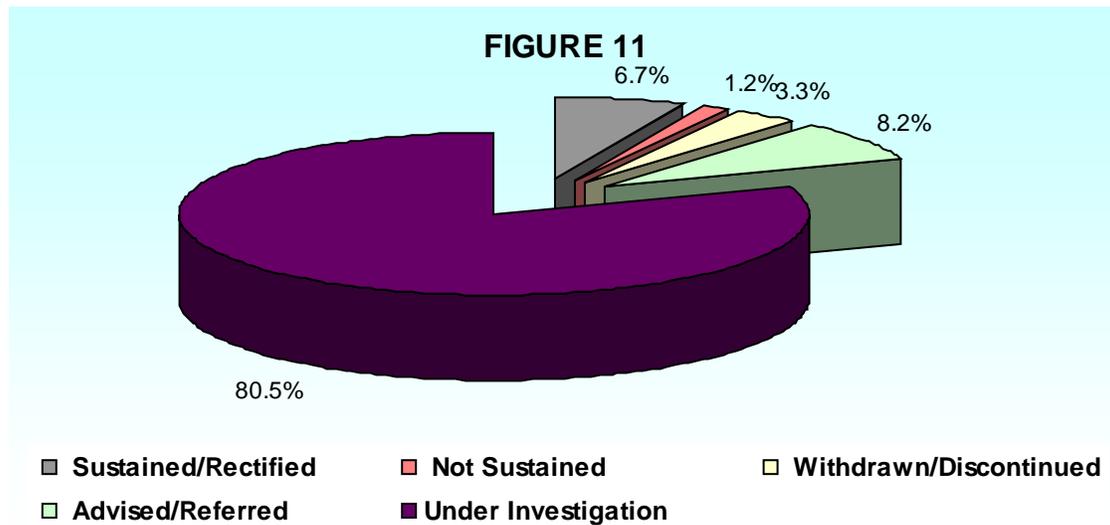


Table III shows in detail the distribution of new complaints received in 2005 against the various ministries and other state agencies and the manner of their disposal within the said reporting period.

TABLE 111
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
Agriculture, Land, and Marine Resources	35	2	0	1	3	29
Attorney General	5	0	0	0	0	5
BWIA	1	0	0	0	0	1
Central Administrative Services Tobago (CAST)	3	0	0	0	0	3
Chief Personnel Officer (CPO)	1	0	0	0	0	1
Community Development, Culture and Gender Affairs	5	0	0	0	0	5
Disciplinary Committee	1	0	0	0	0	1
Education	30	6	0	0	5	19
Elections and Boundaries Commission	3	0	0	0	1	2
Energy and Energy Industries	3	0	0	0	1	2
Environmental Management Authority	3	0	0	0	0	3
Finance	37	4	0	0	5	28
Foreign Affairs	2	0	0	0	0	2
Health	65	8	1	4	5	47
Housing	44	0	0	0	4	40
Judiciary	28	1	0	0	11	16
Labour and Small and Micro Enterprise Development	11	0	0	0	4	7
Legal Affairs	15	0	0	0	4	11
Legal Aid and Advisory Authority	7	1	0	0	1	5
Local Government	3	0	0	1	0	2
Borough Corporations	14	0	0	0	0	14
City Corporations	14	0	0	0	0	14
Regional Corporations	94	3	1	1	10	79
Unemployment Relief Programme	3	0	0	0	0	3
Magistracy	11	1	0	0	2	8
National Maintenance Training & Security Company (MTS)	1	0	0	0	0	1
National Emergency Management Agency	1	0	0	0	0	1
National Insurance Board	30	4	0	0	5	21
National Security	6	0	0	0	1	5
Civilian Conservation Corps	1	0	0	0	0	1
Defence Force	5	0	0	0	0	5
Fire Services	6	0	0	0	0	6
Forensic Centre	1		0	0	0	1
Police	30	1	1	1	12	15
Prisons	52	9	1	1	10	31

Ministry/Authority/Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
Office of the Prime Minister	1	0	0	0	0	1
Petrotrin	1	0	0	0	0	1
Planning and Development	10	0	0	0	0	10
Port Authority	10	1	0	0	2	7
Public Administration and Information	2	0	0	0	0	2
TSTT	31	3	0	1	1	26
Public Transport Service Corporation	2	0	0	0	0	2
Public Utilities and Environment	8	1	0	0	1	6
Forestry, National Parks and Wild Life	3	0	0	0	0	3
Solid Waste and Hazardous Substances	1	0	0	0	0	1
T&TEC	47	1	0	0	1	45
TTPost	7	0	0	0	2	5
WASA	51	0	0	2	0	49
Science, Technology and Tertiary Education	5	0	1	0	0	4
Service Commissions Department	15	0	0	0	5	10
Social Development	59	4	0	0	8	47
Sport and Youth Affairs	4	0	0	0	0	4
Statutory Authority	3	0	0	0	0	3
Teaching Service Commission	4	0	0	0	0	4
Tobago House of Assembly	0	0	0	0	0	0
Agriculture, Marine and the Environment	15	0	0	0	0	15
Assembly Legislative	1	0	0	0	0	1
Community Development	2	0	0	0	0	2
Education, Youth Affairs and Sports	9	0	0	0	0	9
General Administration	2	1	0	0	0	1
Health and Social Services	29	1	0	0	0	28
Infrastructure and Public Utilities	34	0	0	0	0	34
Inland Revenue	5	0	0	0	0	5
Licensing	1	0	0	0	0	1
Tourism, Transportation, Enterprise Development and Settlements	1	0	0	0	0	1
Trade and Industry	2	0	0	0	0	2
Works and Transport	56	3	2	0	6	45
TOTAL	992	55	7	12	110	808
Freedom of Information Act	8					
Private	161					
Enquires	183					
GRAND TOTAL	1344	55	7	12	110	808

The ministries/departments which recorded the highest number of complaints were:

The Regional Corporations	93
Ministry of Health	65
Ministry of Social Development	58
Ministry of Works and Transport	55
Prison Service	52
WASA	51
T&TEC	45
Ministry of Housing	44

Complaints against the Regional Corporations are increasing. The complaints relate mainly to the failure of the Corporations to take action against offending parties for unauthorized building construction/renovations which create drainage problems and health nuisances on neighbouring properties. Other recurring complaints concern lack of maintenance with reference to drains, the paving of roadways and the provision of street lighting facilities.

Complaints against the Ministry of Health are centred on public health issues. There is an obvious need for updated legislation in this area which will empower the departments to take immediate and effective action in eradicating health hazards and nuisances when they arise in residential communities.

A significant number of complaints are still received against the public utility companies namely: WASA and T&TEC. These matters are taken up by my Office with the respective agencies and also referred to the Regulated Industries Commission.

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 persons aggrieved. Eight (8) complaints were filed with my Office in 2005.

At the sub office in Tobago a total of **198** written complaints were received.

Table IV and Figure III show the distribution of complaints lodged against the Regional, City and Borough Corporations over the years 2001-2005. A total of **128** complaints were received in 2005. The Siparia Regional Corporation showed the highest number of **28** complaints.

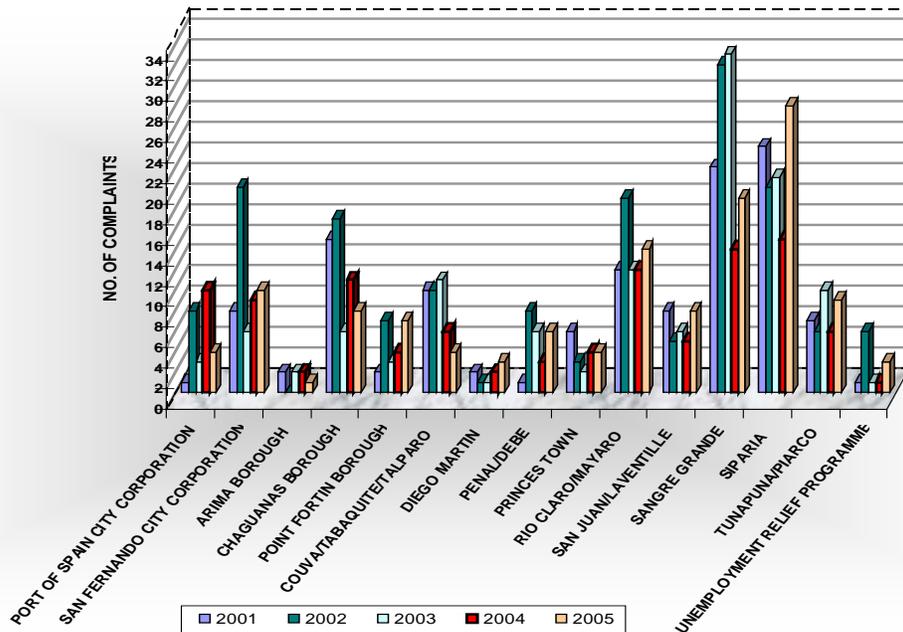
TABLE 1V

LOCAL GOVERNMENT-CITY, BOROUGH AND REGIONAL CORPORATION

CORPORATION	TOTAL NUMBER OF COMPLAINTS RECEIVED				
	2001	2002	2003	2004	2005
PORT OF SPAIN CITY CORPORATION	1	8	3	10	4
SAN FERNANDO CITY CORPORATION	8	20	6	9	10
ARIMA BOROUGH	2	0	2	2	1
CHAGUANAS BOROUGH	15	17	6	11	8
POINT FORTIN BOROUGH	2	7	3	4	7
COUVA/TABAQUITE/TALPARO	10	10	11	6	4
DIEGO MARTIN	2	1	1	2	3
PENAL/DEBE	1	8	6	3	6
PRINCES TOWN	6	3	2	4	4
RIO CLARO/MAYARO	12	19	12	12	14
SAN JUAN/LAVENTILLE	8	5	6	5	8
SANGRE GRANDE	22	32	33	14	19
SIPARIA	24	20	21	15	28
TUNAPUNA/PIARCO	7	6	10	6	9
UNEMPLOYMENT RELIEF PROGRAMME	1	6	1	1	3
TOTAL	121	162	123	104	128

FIGURE 111

COMPLAINTS AGAINST LOCAL GOVERNMENT BODIES FROM 2001-2005



Outreach Services

A total of **660** persons visited the Regional Offices under our outreach services programme during the year 2005 in order to make complaints. The purpose of providing the (outreach programme) is to provide citizens in rural areas with easier access to the services of my Office and give them the opportunity to discuss their complaints against government agencies on a face to face basis. Discussions with the respective desk officers at the Regional Corporations are also conducted in an endeavour to resolve particular matters on the spot where possible. In this regard I wish to express my sincere appreciation to the Councils, Corporations and their staff for providing the facilities to hold the monthly visits for the outreach programme and for the time they devote to discussing and assisting with matters.

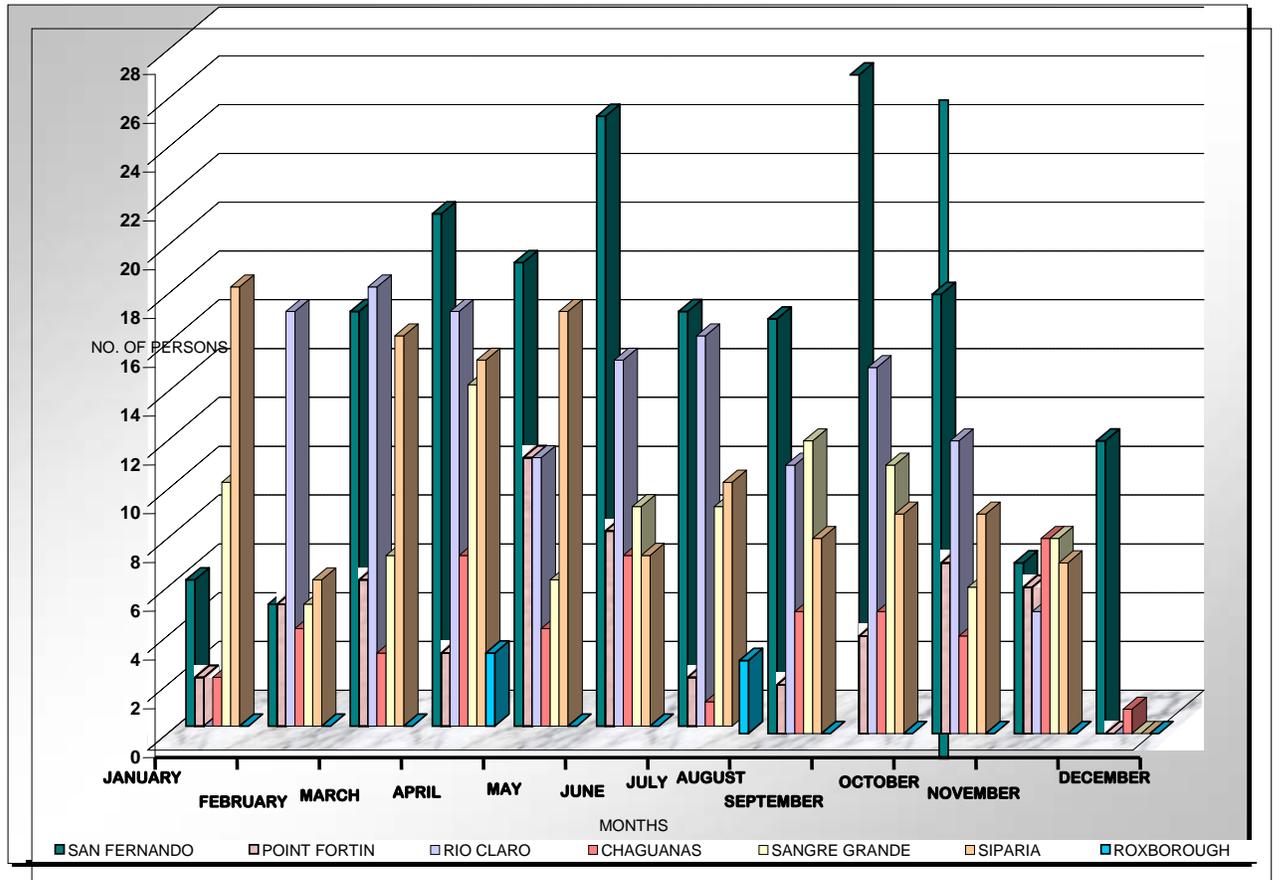
Table V and Figure V shows the number of persons who accessed the services of my Office at the Regional Offices for each month during the year 2005.

TABLE V
NUMBER OF PERSONS WHO VISITED THE
REGIONAL OFFICES IN THE YEAR 2005

MONTHS	POINT FORTIN	RIO CLARO	SAN FERNANDO	CHAGUANAS	SANGRE GRANDE	SIPARIA	ROX-BOROUGH	TOTAL
JANUARY	2	NO VISIT	6	2	10	18	0	38
FEBRUARY	5	17	5	4	5	6	0	42
MARCH	6	18	17	3	7	16	0	67
APRIL	3	17	21	7	14	15	3	80
MAY	11	11	19	4	6	17	0	68
JUNE	8	15	25	7	9	7	0	71
JULY	2	16	17	1	9	10	3	58
AUGUST	2	11	17	5	12	8	0	55
SEPTEMBER	4	15	27	5	11	9	0	71
OCTOBER	7	12	18	4	6	9	0	56
NOVEMBER	6	5	7	8	8	7	0	41
DECEMBER	0	0	12	1	0	0	0	13
TOTAL	56	137	179	50	97	122	6	660

FIGURE V

**NUMBER OF PERSONS WHO VISITED THE
REGIONAL OFFICES IN THE YEAR 2005**



SELECTED CASE SUMMARIES

OMB: 0256/2005

MINISTRY OF FINANCE National Insurance Board

The Complainant was employed as a clerical officer by British West Indian Airways Limited for the period 1965 to 1972. During this period contributions from his salary were made to the National Insurance Board (NIB). In 1972, he took up an appointment with LIAT Airline and was employed as a revenue accountant in Antigua for the period 1974 to 1992. Thereafter, he was employed as an accountant by Air Caribbean in Antigua. During his sojourn in Antigua, he made contributions to the Antigua-Barbuda Social Security Board.

Having reached retirement age he was accorded retirement benefits by the Antigua-Barbuda Social Security Board.

On his return to Trinidad, he applied to NIB for retirement benefits having made the necessary contributions entitling him to such benefits. For the period 28th February, 2002 to 28th February, 2005, he received pension benefits amounting to \$21,764.20. In a letter to the complainant by NIB in January, 2005, NIB informed him that the monthly payments which were made to him represented interim payments; that he had been overpaid by the NIB but that the matter would be finalised pending a response by the Antigua-Barbuda Social Security Board.

The Complainant brought his complaint to the attention of the Ombudsman soon afterwards. On investigation of the matter, I was informed that a mistake was made by NIB resulting in the overpayment of \$8,511.96 to the Complainant, details of which were furnished. Arrangements were then made by NIB to make deductions from his monthly pension payments. The refund of the overpayment will be satisfied on 31st May, 2006. Thereafter the complainant will receive a monthly pension payment of \$1000.00

OMB: 0120/2004

MINISTRY OF HEALTH South-West Regional Health Authority

The Complainant who was employed as an Emergency Medical Technician by the South West Regional Health Authority (the Authority) complained of an injury she sustained while lifting a patient in June, 2001. She was treated over a period of time by the Authority and obtained a certificate from a physician at the Institution which specified that she had suffered a permanent partial disability of 30%. She made a claim for workmen's compensation, refund of medical expenses, retroactive salary arrears and salary allowances.

Because of the delay by the Authority in settling these matters, she brought her complaint to the attention of the Ombudsman on March, 2004. On investigating the matter, I was informed by the Authority that:

1. With respect to the Workmen's Compensation claim, the delay was caused as a result of the handing over to the Authority of the Emergency Medical Services by another Authority which had employed the Complainant; the injuries having been caused during the tenure of that Authority. Further delay had been caused by not following proper procedure in the deposit of the amount due in the Supreme Court which had the responsibility of approving the payment.
2. With respect to the medical expenses, the Authority denied that they had undertaken to refund the complainant's medical bills. The Complainant had claimed that an official of the previous authority assured her that her medical expenses would be refunded. This was denied.
3. With respect to her retroactive salary arrears and her salary allowances, the Authority has settled the amount in a sum exceeding \$20,000.00 to the satisfaction of the Complainant.

The file was closed.

OMB: 0568/2001

MINISTRY OF HOUSING AND SETTLEMENTS
Land Settlement Agency

The Complainants, husband and wife, applied for and were granted a lot of land by the Land Settlement Agency at Carlsen Field for the specific purpose of constructing a one single family dwelling house. They were subsequently visited by a surveyor who pointed out the boundary lines.

The Complainants reported that after the visit by the surveyor, they had carried out construction works by laying down a steel foundation trench. A team of surveyors visited the site soon afterwards and assured them that their construction was within the specifications laid down by the Agency.

A subsequent visit by a group of three surveyors who visited the site informed them that the original surveyors had made a mistake with the bearing and as a result the roadway had to be re-aligned. The foundation trench which they had already laid posed an obstruction to the realignment of the roadway.

The Complainants eventually agreed to shift the foundation trenches, but complained they had to do so at considerable cost. They submitted a report by licensed surveyors in

the sum of \$5,000.00 as the estimated cost of relocation of the trenches. In addition, they claimed a further sum of \$1,035.00 as fees for employing the surveyors.

The Complainants eventually accepted the sum of \$5,000.00 in full settlement of the matter.

OMB:0759/1995

MINISTRY OF HOUSING AND SETTLEMENTS
Land Acquisition

The Complainant of Carnbee in Tobago, complained that the State had acquired a parcel of his land comprising 319.4 square metres for the purpose of carrying out improvements to Auchenskeoch Road, Tobago and that he had not been compensated for it. He made mention of the fact that the land had been surveyed by the Lands and Surveys Department since 1993, and sought an explanation of the reason for delay in the payment.

On investigation of the matter, I was informed by the Director of Surveys that the portion of the complainant's land had not yet been acquired by the State and that the survey plan was in the final stage of preparation. Further, shortage of staff and the need of the Division to meet its programmed priorities for 1993 were advanced as further reasons for the delay.

In May 1998, I was informed by the Director that the matter had been referred to the Commissioner of Valuations on the 24th June, 1997 for a Section 5 Valuation Report and that he was awaiting a response.

In July 1999, on further investigation of the matter, I was informed by the Permanent Secretary in the Ministry that Cabinet's approval was necessary for the publication of the requisite legal notice of acquisition and subsequent tabling of the matter in Parliament for its approval as reasons for the further delay.

Finally, I was informed in September, 2004 that the Complainant had been paid in excess of the sum of One Hundred and Eighteen Thousand Dollars (\$118,000.00) in full and final settlement. A period of twelve (12) years had elapsed from date of acquisition to date of final settlement of the matter.

OMB: 0507/2004

MINISTRY OF NATIONAL SECURITY
Fire Services

The Complainant was enlisted in the Fire Services on the 1st January, 1980 as an Extra Heavy/Tractor Trailer Driver. On 26th April, 1988, he was injured while on duty as a result of an explosion at Camp Omega, Chaguaramas. As a result of the injuries which

he suffered, he was discharged from the Service on medical grounds on 5th December, 2001.

Because he was experiencing difficulties in obtaining his retirement allowances, the Complainant brought his complaint to the attention of the Ombudsman on 20th April, 2004.

He was particularly concerned about a claim of overpayment in the sum of \$7,031.34 incurred while he was on injury leave. He contended that according to Personnel Department Circular No. 2 of 1996 and a memorandum of agreement made between the Chief Personnel Officer and the Fire Service Association Second Division dated 16th May, 1990 specifying that any absence from duty as a result of injuries sustained in the execution of duty shall be treated as injury leave; he was entitled to his salary while on such leave. He also complained that his application for disability allowance provided for under Section 8 of the Fifth Schedule of the Fire Service Act and arrears of proficiency allowance for the period January 1, 1997 to October 31, 2000 remained outstanding.

On investigation of the matter, I was informed by the Chief Fire Officer that the Complainant had been paid:

- a) The sum of \$100,000.00 as compensation for the injuries he had suffered as directed by the Solicitor General;
- b) Injury allowances from the 5th December, 2001 as directed by the Solicitor General.

With regard to the restoration of allowances taken from the Complainant's gratuity, an effort was being made to retrieve receipt numbers which would assist in the restoration.

The complainant further complained that proficiency allowances in the sum of \$8,306.83 outstanding from the year 1997 to 2001 had not been paid.

The matter is being pursued in respect of these two latter claims.

OMB: 0018/2005

MINISTRY OF NATIONAL SECURITY
Prison Services

The complaint in this matter was brought to my attention by a Dutch citizen with respect to her friend, also a Dutch citizen who was incarcerated at the Golden Grove Women's Prison pending her trial for a criminal offence.

The complaint was that the prisoner was eleven (11) weeks pregnant and had suffered a miscarriage on a previous occasion. The Complainant complained that the prisoner did not get enough food and medical supplements and that she feared the mother's and her baby's health would be impaired as a result.

I caused an investigation to be carried out at the Prison and brought the complaint to the attention of the Netherlands Embassy in Trinidad. I was assured by the Head of Consular Affairs of the Embassy that steps would be taken to ensure that the Prison authorities would furnish the prisoner with the necessary food, medical supplements and medical attention. I kept in touch with the two Institutions by making enquiries about the prisoner and her welfare.

The prisoner gave birth at the end of July, 2005. The Netherlands Embassy made arrangements for the parents of the prisoner to collect the baby. The parents and the baby have since left for Holland.

The prisoner has been granted bail, pending her trial.

OMB:0087/2000

MINISTRY OF PLANNING AND DEVELOPMENT

The Complainant who lived in Tacarigua in the Ward of Tacarigua complained that her neighbour operated an auto mechanic's garage at his home and that she and her family were being bombarded with noise and noxious fumes which affected their health and well being. The complaint was referred '*inter alia*' to the Environmental Management Authority (EMA) and to the Permanent Secretary, Ministry of Housing and Settlements.

The EMA on investigating the matter indicated that no planning permission for the operation of such an enterprise had been obtained and referred the complaint to the Town and Country Planning Division of the Ministry of Planning and Development. The area was residential and such uses would not be permitted in a residential area.

The EMA also conducted a sound level monitoring exercise at the premises of the neighbour and their findings indicated that a nuisance was being created.

A subsequent memorandum from the Town and Country Planning Division indicated that enforcement notices were prepared and eventually served on the neighbour.

A further memorandum from the Town and Country Planning Division indicated that the neighbour had complied with the specification of steps required in order to comply with the Enforcement Notice.

OMB: 0299/2005

MINISTRY OF PUBLIC UTILITIES

Telecommunication Services of Trinidad and Tobago

Between 1992 and 1998, the Complainant had cause to seek redress through the Public Utilities Commission to resolve an outstanding matter with the Telecommunication

Services of Trinidad and Tobago (TSTT). Despite resolution of the matter and a written apology from TSTT with a commitment to withdraw the Complainant's name from a debt-collecting agency, this had not been done. In frustration, the Complainant brought her complaint to the attention of the Ombudsman in May, 2005. She complained that numerous attempts to have the matter rectified were without avail. Failure to withdraw the matter from the debt-collecting agency, left her with the inability to conduct business with a commercial bank as she was still listed among delinquent debtors by the agency.

On investigating the matter, I was assured by the Credit Management Manager that TSTT had again recalled the Complainant's account from the debt-collecting agency and apologized for any embarrassment that may have been caused. Assurance was given that all measures had been taken to prevent any recurrence of the incident.

OMB:0737/2004

MINISTRY OF SCIENCE, TECHNOLOGY AND TERTIARY EDUCATION

In July 2004, the Complainant was employed on contract by the Ministry for a term of six (6) months as Technology Instructor/Assessor, Multi-Sector Training (MUST) Programme. His appointment took effect from 16th July, 2004.

On 27th September, 2004, he was informed by the Permanent Secretary of the Ministry that despite warnings verbally and in writing by the Regional Co-ordinator of the MUST Programme, his performance had not improved and there was no alternative but to terminate his employment with immediate effect.

The Complainant brought his complaint to the Ombudsman on 20th December, 2004. He denied that he ever received any warnings, written or verbal prior to his dismissal.

On investigating the matter, I was informed '*inter alia*' that the Complainant demonstrated non-commitment to the programme, tardiness and inadequate supervision of the trainees under his charge and that he was informed of his shortcomings by the Regional Co-ordinator. The Complainant's technical ability was also questioned. The Permanent Secretary iterated that the Complainant had received 'due process' treatment and the principles of natural justice were applied at every stage.

Further investigation was suspended as the Complainant indicated that he was taking the matter to court.

OMB: 0648/2005

OFFICE OF THE PRIME MINISTER
(Social Services Delivery)
National Family Services Division

The Complaint which was brought to my attention by a sitting Member of the House of Representatives, concerned a squatter whose home located at St. Flores Drive, Pleasantville, San Fernando was demolished on two occasions by agents of the Ministry of Housing. She lived at this house with her husband and four children, two of whom attended primary school. She was the sole breadwinner of the family.

Almost all of her household items, children's school books and uniforms were destroyed in the demolition exercise.

The Complainant sought assistance for shelter facilities, food and clothing. Prior to this, she had communicated with other Ministries on the matter but without any success. Because of the urgency of the matter, it was immediately raised with the National Family Services Division of the Office of the Prime Minister (Social Services Delivery). An investigation was conducted into the matter and a social worker assigned to the case. The family secured accommodation at the home of relatives and it was determined that the Emergency Cases Fund (E.C.F.) of the Social Welfare Division would be utilized to facilitate monthly expenses in the short term. Other forms of assistance were provided based on mutual discussions with the concerned parties and the National Family Services Division in an effort to provide a safe, healthy and secure living environment for the family.

Note: Under Section 93(2) of the Constitution, a member of the House of Representatives can request the Ombudsman to investigate a complaint on the ground that a person or body of persons specified in the request has or may have sustained an injustice.

OMB:T053/2004

TOBAGO HOUSE OF ASSEMBLY
Division of Health and Social Services
(Social Welfare Department)

The Complainant of Richmond Road, Mason Hall who had attained the age of 65 years applied for Old Age Pension benefits. The Board took the decision to deny payment since their information suggested that the Complainant was in receipt of an income as part owner of a Pre-school.

The Complainant queried the decision claiming that the information was incorrect as the school ceased to operate approximately one year prior to her application. This was not

taken into consideration by the Board and the Complainant sought the assistance of the Ombudsman.

Our investigations revealed that the school was operated as a non-profit community effort and was no longer in operation. The former Secretary to the School Board also confirmed, by a letter to the Board, that upon its closure the Complainant had not received compensation or terminal benefits.

A letter was sent to the Supervisor Social Welfare Department by the Office stating the facts gathered during investigation and requested that the Complainant's application be reviewed.

A review was conducted and the Complainant is now in receipt of a regular pension.

OMB:T092/2005

TOBAGO HOUSE OF ASSEMBLY

(Trinidad and Tobago Electricity Commission, Tobago Division)

The Complainant of Windward Road, Richmond, Tobago, complained that the Trinidad and Tobago Electricity Commission (T&TEC) embarked on a development programme in the District which required the erection of new electricity poles in the area. No notice was given to him by T&TEC regarding the erection of poles on his property.

The work crew entered his property in his absence, erected electricity poles and ran wires as part of the project plan.

He complained that in the process the crew indiscriminately broke down his fence, cut cedar trees and destroyed the trunks thereby depriving him of valuable lumber. Moreover, they destroyed the crops in his kitchen garden.

The Complainant made a claim to T&TEC for compensation but he was not pleased with the offers proposed as it was based on information derived from the Ministry of Agriculture which he deemed out-dated and which did not reflect the value of his losses. He therefore sought the intervention of the Ombudsman as discussions between himself and T&TEC had broken down.

The Ombudsman scheduled a meeting with the Complainant and T&TEC to assist in guiding the parties to a fair solution. The meeting was attended by representatives of T&TEC but the Complainant was absent from the meeting. However the Ombudsman recommended that T&TEC revise their offer to take into consideration the current market values of the trees and crops. The Complainant was also advised to seek the opinion of an independent Valuator to assess the extent of his losses.

The matter is being pursued.

MINISTRY OF WORKS AND TRANSPORT

The Complainant's house situated at St. Croix Road, Princes Town in the Ward of Savana Grande South was damaged in 1981 in the course of construction works by the Ministry of Works along the St. Croix Road. Liability was admitted and thereafter negotiations had taken place with a view to the settlement of the matter. Complaint to the Ombudsman was made on 25th February, 2005, after negotiations had failed, a period of twenty-four (24) years having elapsed since the damage.

The Ministry had in the interim taken steps to prevent further damage to the property. The Complainant had obtained a valuation report in 1988 which appraised the replacement cost of the house at approximately \$120,000.00

In August, 2004, the Permanent Secretary offered the complainant the sum of \$120,500.00 in full and final settlement for damages to her property. Alternatively, an offer was made in the sum of \$183,000.00 for the purchase of the 5000 square feet of land and the dwelling house in full and final settlement. This offer was made on the advice of the Solicitor General to the Ministry of Works and Transport, Highways Division. The Complainant refused the offer and it was at this stage that she brought her complaint to the attention of the Ombudsman. The complaint was brought by the daughter of the Complainant, who had since become partially blind. She complained that the property which was still occupied by the Complainant and herself was in a deplorable state of disrepair. The pillars were giving way and the house was on the brink of collapsing.

Rejection of the offer was then currently being reviewed by the Attorney-General's Office. A request to the Complainant to have the property surveyed and a new valuation report submitted met with refusal since the Complainant complained that she had no money to undertake either project. It was in these circumstances that I convened a meeting with the relevant State agencies involved.

The meeting was held on 27th October, 2005. Present were the Legal Officer of the Ministry of Works and Transport, the Assistant Commissioner of Valuations, a Senior State Counsel of the Solicitor General's Department, the daughter of the Complainant and Officers of the Ombudsman's Office.

The following issues were discussed:

1. In order to make an up-dated valuation of the property since property values had increased considerably, it was necessary to have the whole property which comprised three acres and thirty-two perches surveyed since the Complainant was contending that not only the lot on which the house stood fell in value, but the whole acreage for which the Complainant had applied to the Ministry of Planning for outline permission to develop.

2. The Complainant was entitled to apply for 80% of the amount offered as an interim payment pending the settlement of the matter. An interim payment would assist her in defraying expenses to have the property surveyed a sum for which she would be refunded.

Steps are being taken to bring this matter to finality by follow-up action.

OMB: 0255/2005

MINISTRY OF WORKS AND TRANSPORT

The Complainant, the President of the St. Christopher's Taxicab Co-operative Society Limited, a co-operative organization formed for the protection and welfare of its members, complained on behalf of its members that due to a recent policy of the Minister, the number of passes being issued to its members for entry into restricted areas and those for the use of the Priority Bus Route, were drastically reduced. They complained that they were suffering hardship and inconvenience as a result and advanced the following reasons why the number of such passes should be increased:

- a) That they did not compete with other taxi-cab drivers since they provided a specialized service available to foreign visitors and business people. They operated only within certain specific locations.
- b) That such visitors and business people often wish to visit places of interest within the restricted areas.
- c) On occasions they may have to take visitors to the Airport at short notice and the use of the normal routes resulted in delay and missing of flights. This was with respect to the use of the Priority Bus Route.

They further contended that the restrictions do not augur well for the development of the economy and the tourist industry.

These matters were draw to the attention of the Minister. In a reply by the Permanent Secretary, I was informed other taxi services operating in and around Port of Spain needed to access the restricted areas and that the Ministry had to ensure that the available passes were distributed in an equitable manner.

The complainant together with other taxi services have met with the Chief of Traffic Engineer of the Ministry and are having discussions with a view to resolving their problems.

MINISTRY OF WORKS AND TRANSPORT
Port Authority

The Complainant, who is a resident of Cunupia in the Ward of Tacarigua complained that he had imported a CRV Honda motorcar from Japan in the year 2002. When the car arrived in Trinidad, he observed that the following items were missing:

- TV with full navigation system
- Radio with cassette and CD player
- Jack with handle.

He made a claim to the Port Authority on June 25, 2002. In a reply of September 20, 2002, he was informed that the vehicle was received and delivered in apparent good order and condition and a clean receipt was given on the relevant Bill of Lading. The Port Authority denied liability. The complaint was brought to the attention of the Ombudsman in May, 2005.

On investigating the matter, I was informed by the Head of Marketing of the Port Authority that a review of the Complainant's claim was conducted and that the Port Authority would settle the claim in accordance with Bye-law 51(1) of the Port Services (Dues, Charges and Management) Ordinance. The Complainant was subsequently paid for his loss.

SUMMARIES OF OTHER COMPLAINTS RECEIVED IN 2005

Ministry of Agriculture

- ◆ Evicted from a parcel of state land for which she had been granted standard agricultural lease.

garbage and refuse on a road reserve.

- ◆ Blocked drain is causing a health hazard.

Board of Inland Revenue

- ◆ Inordinate delay in the processing of Income Tax Return for the year 2002.
- ◆ Seeking a review of the decision that he was not entitled to a refund of income taxes because he was no longer a resident of Trinidad and Tobago.
- ◆ Querying the disallowance of VAT refund.
- ◆ Querying an unusually high assessment value for the purpose of charging land and building taxes for her home.

Environmental Management Authority

- ◆ Failure of the Authority to address nuisances created by sandblasting operations in the vicinity of their home.
- ◆ Assistance in addressing the problem of noise pollution in the area where she lives.

Ministry of Health

- ◆ Assistance to obtain a Medical Report from the Port of Spain General Hospital.
- ◆ Querying whether the Port of Spain General Hospital can legitimately charge fees for undertaking Brain Scans on patients.

County Medical Officer of Health

- ◆ Failure of department to address health nuisance created by the rearing of dogs by his neighbour.
- ◆ Serious health hazard being created by the dumping of

Ministry of Housing

- ◆ Assistance to obtain Certificate of Comfort for the parcel of state land which he occupies from the Land Settlement Agency.

Industrial Court

- ◆ Delay in the delivery of a Judgment for matter in which proceedings were concluded since October, 2004.

Ministry of Legal Affairs (Consumer Affairs Division)

- ◆ Assistance to obtain a refund from a retail Electronics Store for a defective car stereo.
- ◆ Assistance to obtain a refund from Courts (Trinidad) Limited for household appliances which malfunctioned less than six (6) months from the date of purchase.

Ministry of Local Government

- ◆ The fumes and noise emanating from the unauthorized operation of an auto repair shop are posing a serious health hazard in residential area.
- ◆ Clogged and un-maintained public drain causing her property to flood.

- ◆ Neighbour's wastewater flowing unto his property creating unsanitary conditions and undermining the foundation of his home.

National Insurance Board

- ◆ Reinstatement of the payment of Survivor's Benefit.
- ◆ Unable to probate mother's estate due to the inordinate delay in obtaining NIS Statement.

Ministry of National Security

- ◆ Seeking a review of the results of the Prison Service 2003 Promotional Examination for Prison Officers.

Ministry of Public Utilities

- ◆ Seeking refund from TT Post for the cost of a package she mailed and which was never delivered.
- ◆ Health hazard exists due to the absence of a Sock-away Pit on neighbour's property.

Police Service

- ◆ Seeking assistance to have outstanding warrants served.

Port Authority of Trinidad and Tobago

- ◆ Seeking compensation for items stolen from his imported motor vehicle which was stored on the Port awaiting customs clearance.

Social Welfare Division

- ◆ Delay in the processing of Old Age Pension payment.
- ◆ Assistance to obtain disability benefit.

Telecommunications Service of Trinidad and Tobago

- ◆ Billed for telephone calls placed during the period of time when the telephone was not working.
- ◆ Clarification of Internet Billing.
- ◆ Querying charges on telephone bill for use of a fax machine which he does not own.
- ◆ Assistance in having rotting telephone pole replaced.

Trinidad and Tobago Electricity Commission

- ◆ Assistance to obtain electricity service for his home.

- ◆ Assistance to obtain payment of compensation for household appliances damaged due to voltage fluctuation.
- ◆ Seeking compensation for the destruction of her home by fire originating from Commission's overhead lines.

Ministry of Works and Transport

- ◆ Unable to obtain certified copy of the Certificate of Motor Ownership for his vehicle from Licensing Division.
- ◆ Seeks a review of the decision of the Transport Board to reject his application for a Taxi Badge License.
- ◆ Perennial landslides causing damage to his property.

Water & Sewerage Authority

- ◆ Billed for the supply of water to a property he does not own or occupy.
- ◆ Duplication of bills for service to her home and poor water supply.
- ◆ Unable to obtain Clearance Certificate for which fees were paid since 1997.

PART IV

APPENDICES

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

(k) freedom of the press.

**Protection of
rights and
freedoms**

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

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. (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.
- (2) The Ombudsman shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.
- (3) The Ombudsman shall hold Office for a term not exceeding five years and is eligible for re-appointment.
- (4) Subject to subsection (3) the Ombudsman shall hold office in accordance with section 136.
- (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.

**Appointment
of staff
of Ombudsman**

92. (1) The Ombudsman shall be provided with a staff adequate for the efficient discharge of his functions.
- (2) The staff of the Ombudsman shall be public officers appointed in accordance with section 121(8).

**Functions of
Ombudsman**

93. (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.

- 2) The Ombudsman may investigate any such matter in any of the following circumstances -
 - (a) where a complaint is duly made to the Ombudsman by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;
 - (b) where a member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice;
 - (c) in any other circumstances in which the Ombudsman considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.

- (3) The authorities other than departments of Government to which this section applies are -
 - (a) local authorities or other bodies established for purposes of the public service or of local Government;
 - (b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose revenue consist wholly or mainly of monies provided out of public funds;
 - (c) any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of Government;
 - (d) such other authorities as may be prescribed.

**Restrictions
on matters
for investigation**

94.

- (1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

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

only that it is open to the Complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the provisions for the protection of fundamental rights).

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

- (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.

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

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

**Power
To obtain
Evidence**

- 97. (1) The Ombudsman shall have the powers of the High Court to summon of the witnesses and to compel them to give evidence on oath and to produce 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
Mode of
Complaint**

1. This Act may be cited as the Ombudsman Act.
2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.

(2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the Ombudsman by the person for the time being in charge of the place where the writer is detained.

**Procedure
in respect
of investigation**

3. (1) Where the Ombudsman proposes to conduct and investigation under section 93 (1) of the Constitution he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make such representations.

(2) Every such investigation shall be conducted in private.

(3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries as he thinks fit.

(4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of

any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority to which section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate.

- (5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.
- (6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person out of money provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed for attendance in the High Court, so, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this 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.

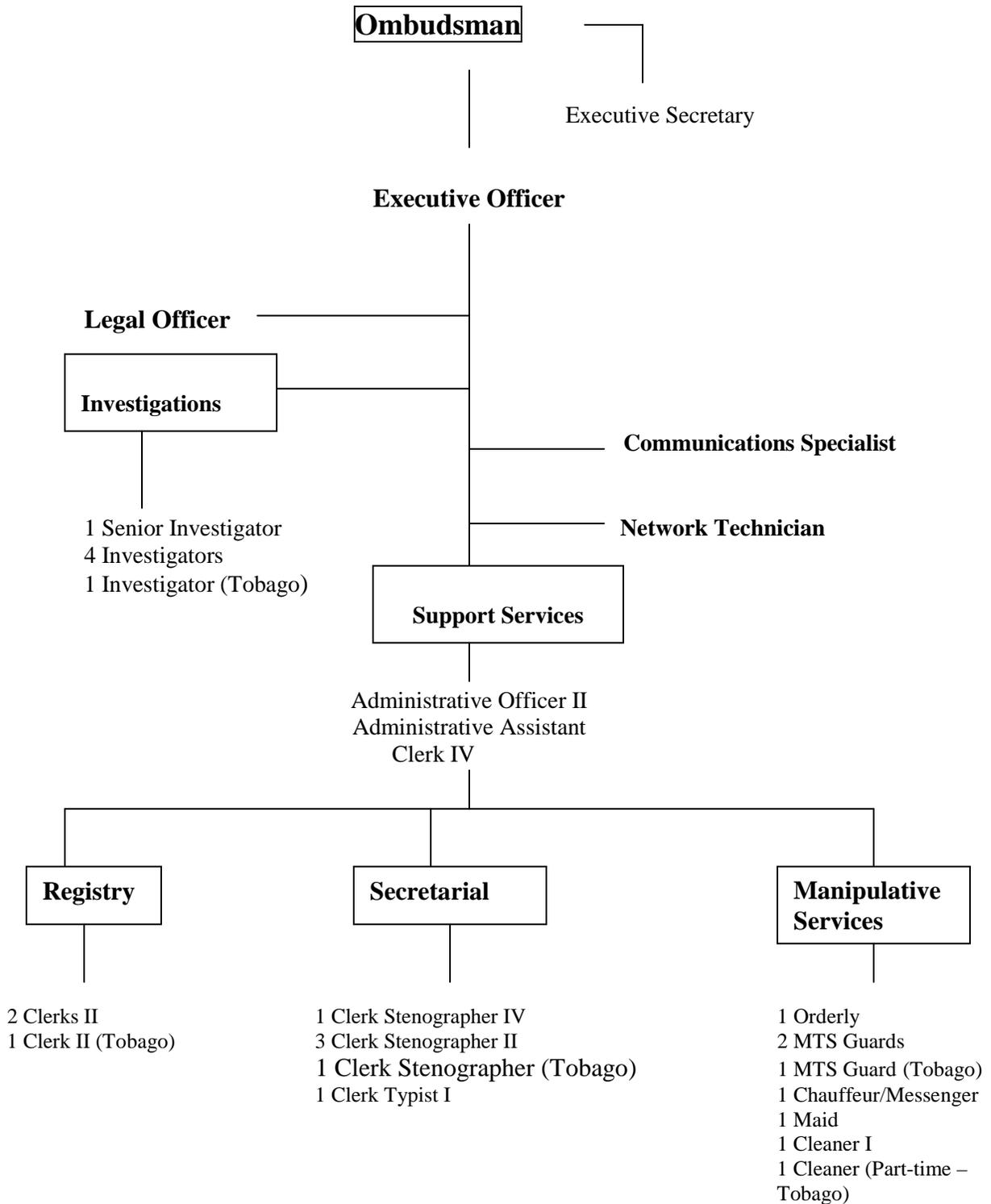
The Freedom of Information Act, 1999

38A (1) A person aggrieved by the refusal of a public authority to grant an access official document, may, within twenty-one days of receiving notice of the refusal under section 23(1), complain in writing to the Ombudsman and the Ombudsman shall, after examining the document if it exists, make such recommendations with respect to the granting of access to the document as he thinks fit.

Review by the Ombudsman

- (2) In recommendations under subsection (1), the Ombudsman-
 - a) is not required to include any matter that is of such a nature that its inclusion in a document of a public authority would cause that document to be an exempt document;
 - b) may state the recommendations in terms which neither confirm or deny the existence of any document, if the recommendations relate to a request for access to a document which is an exempt document under section 24, 25, or 28 or which, if it existed, would be an exempt document under section 24, 25 or 28.

- (3) A public authority is required to consider the recommendations of the Ombudsman and, to such extent as it thinks fit, exercise its discretion in giving effect to the recommendations.



Cabinet approved the recommendations of the Public Management Consulting Division (PMCD) of the Ministry of Public Administration and created the following additional posts in 2003:

- 1 Director, Investigations and Complaints Resolution
- 1 Senior Investigator
- 3 Investigators

These posts have not yet been filled.

