

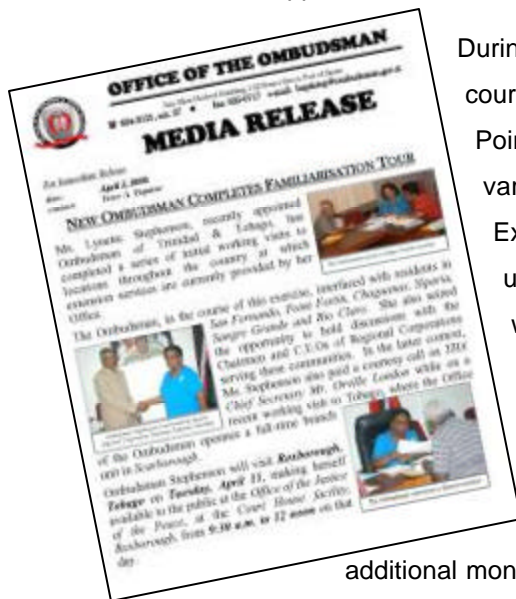
# Contents

• Preface	2
• Administrative & Other Matters	4
Conferences	4
Staffing, Training & Development	5
• Statistical Overview	8
• Areas of Concern	21
• Case Notes	33
• Appendices	53

## PREFACE

The Republican Constitution of 1976 provided for the establishment of the Office of the Ombudsman and my predecessors the late Mr. Justice Evans Rees and Mr. Justice George Edoe laid down a sound foundation for that Institution in Trinidad and Tobago.

I was appointed the third Ombudsman of the Republic of Trinidad and Tobago on February 20, 2006, the first woman to be so appointed.



During the first three (3) months of my tenure as Ombudsman, I paid courtesy calls on the mayors of Port of Spain, San Fernando and Point Fortin and the Chairmen and Chief Executive Officers of the various Municipal Corporations. The Mayors, Chairmen and Chief Executive Officers have over the years kindly consented to the use of their facilities on a monthly basis for Investigators to meet with Complainants. I accompanied the Investigator assigned to each district and heard at first hand the myriad of complaints from citizens.

Further, having considered the demographic trends with respect to the receipt of complaints, I decided to open an additional monthly service to facilitate the Couva region and its environs.

I also made similar visits to Tobago. While In Tobago I met with the Chief Secretary, Tobago House of Assembly, Mr. Orville London and Mr. Stanford Callender the Minister of State in the Prime Minister's Office with responsibility for Tobago.



*Visit with the Hon. Stanford Callender,  
Minister of State*

The year 2006 was a busy one for the office as the number of complaints increased by 15.8% as compared to the figure for 2005. It is my firm belief, however, that many complaints are avoidable. Experience has shown that complaints arise because of inaccurate and/or insufficient information given, undue and inexplicable delays, illegal and arbitrary decisions, poor work attitude and wrong interpretation of laws and policies.

It is, therefore, imperative that when the Ombudsman refers complaints to Government agencies, officials treat with these matters with a degree of urgency, and where possible, implement appropriate measures which will include the revision of relevant policies and procedures and the training of staff to be more efficient, customer friendly and service oriented. These measures would result in a more satisfied public and a realization of the Government's vision to enhance the quality of public administration and service in Trinidad and Tobago.

It is my observation that citizens and public officials still seem to be unclear about the role and function of the Ombudsman as an independent and non political officer who is **responsible only to the Parliament**. While Complainants express the view that there are no limitations on the jurisdiction and powers of the Ombudsman, public officials view the Ombudsman's jurisdiction and ability to take remedial action as quite limited.

It is clear, therefore, that there is a pressing need to remind Government officials and the general public of the role and functions of the Ombudsman.

In an effort to achieve this objective I attended one of the monthly meetings of Permanent Secretaries which was held in November, 2006 where I addressed the gathering on the role, functions and jurisdiction of the Ombudsman.

It was envisaged that this interaction would result in a clearer understanding by Permanent Secretaries and senior public officers of the roles and functions of the Ombudsman. They would, in turn, educate and sensitize their staff members as to the importance of treating with complaints with alacrity, equity and professionalism.

In the case of the public, steps have been taken to ensure that they are properly educated as to the role and functions of the Ombudsman and the methods for accessing the services provided.

In spite of the several challenges facing the Office, we will continue to vigorously represent and seek to resolve the complaints of citizens in keeping with the mandate given under the Constitution.

We shall continue to encourage public officers to handle citizens' complaints expeditiously and in so doing ensure improvements in the delivery of public services and the level of client service expected by citizens of Trinidad and Tobago.

I appreciate the support and the contributions made by the dedicated and hardworking staff in the Office of the Ombudsman.

### **DRAFT CONSTITUTION**

The proposed draft to amend the Constitution makes provision for the appointment of an Ombudsman by the President following consultation with the Leader of the Opposition, President of the Senate and Speaker of the House of Representatives.

I was afforded the opportunity by Sir Ellis Clarke former President and drafter of the first Republican Constitution to submit my proposals for changes to the Constitution as they relate to the Office of the Ombudsman. I recommended amendments to Section 92 which deals with the staffing of this office; Section 93 which treats with a request for review of decisions taken by the Service Commissions and Section 95 on the discretion of the Ombudsman. I also proposed that Section 96 be amended to include provisions for the appointment of a Joint Select Committee of Parliament to deal with special reports from the Ombudsman and that the annual reports be now laid biannually. Recommendations were also made for amendments to Section 97 which relates to the power of the Ombudsman to obtain evidence.

## **ADMINISTRATIVE AND OTHER MATTERS**

### **CONFERENCES**

The Office of the Ombudsman of Trinidad and Tobago is a member of the **Caribbean Ombudsman Association** (CAROA), an association which has, as one of its mandates, “to maintain and promote the institution of Ombudsman and to encourage its development throughout the Caribbean by ensuring that the people are served by independent and effective Ombudsmen and other similar human rights institutions.”

I attended the **Fourth Biennial Regional Conference** of CAROA, which was held in Barbados from May 14 to 19, 2006. The theme of the conference, which was sponsored by the Commonwealth Secretariat, the Government of Barbados and CAROA, was “The Role of the Ombudsman in the Changing Environment of the Caribbean – Civil Liberties and Democratic Governance.” The conference was attended by current and former Ombudsmen and members of staff who represented Barbados, Antigua and Barbuda, Saint Lucia, Trinidad and Tobago, Jamaica, Haiti, Curacao, Bermuda, Cayman Islands and Belize. Also in attendance were representatives from St. Kitts and Nevis, Grenada and Anguilla whose Governments are considering the establishment of Ombudsman Institutions in those islands. The Human Rights Ombudsmen of Honduras and Guatemala, the previous and incumbent Presidents respectively of the Central American Ombudsman Council were also in attendance. Ms. Lorena Gonzalez Volio, Programme Officer for Ombudsman and Human Rights of the Inter-American Institute of Human Rights, Dr. Victor Ayeni and Dr. Deryck Brown of the Commonwealth Secretariat and Mrs. Patricia Sinclair McCalla, Permanent Secretary, Office of the Prime Minister Jamaica were also among the participants.



The feature address was given by Sir Neville Nicholls, Chairman of the Advisory Committee of the University of the West Indies, Chairman, Fair Trading Commission and former Governor of the Caribbean Development Bank. Greetings were delivered by Drs. Hayden Thomas, President of CAROA and Deryck Brown, Government and Institutional Development Division Commonwealth Secretariat.

I chaired the session dealing with “The Caribbean Single Market and Economy (CSME) and its Implications for the Work of the Ombudsman.” This topic was ably handled by Senator Erskine Griffith, Minister of Agriculture and Rural Development, Barbados.

A one-day Workshop on the topic, “The Application of Human Rights Within the Traditional Mandate of the Ombudsman” was presented by Professor Linda C. Reif of the Faculty of Law, University of Alberta. The Workshop examined the participation of Caribbean States in United Nations and Inter-American Human Rights treaties and instruments; methods by which Caribbean Ombudsman offices could apply International and Domestic Human Rights law and the development of an action plan for increasing the use by these offices of International and Domestic Human Rights law.

Discussions were held on whether there was a need for a Regional Ombudsman, as well as the issue of further collaboration between CAROA and the Central American Ombudsman Council and between CAROA and the Ibero-American Federation of Ombudsmen.

### **STAFFING**

In 2003, Cabinet agreed to the creation of the following posts to strengthen the Investigative Unit of Trinidad & Tobago’s Office of the Ombudsman, namely.

- 1 Director, Complaints
- 1 Senior Investigator
- 3 Investigators

The posts of Senior Investigator and Investigator were filled during the period under review. The post of Director, Complaints has not been filled. The Office still awaits the classification of the said post by the Chief Personnel Officer.

### **TRAINING AND DEVELOPMENT**

I attended a training programme in Rome, Italy from September 24 to 26, 2006 conducted by the International Ombudsman Association. The programme comprised the following courses:

- Ombudsman 101 Course
- Helping People Come Forward
- Working with Difficult People

The Ombudsman 101 Course covered the fundamentals of the Organizational Ombudsman’s role of which the basic principles are neutrality, independence and confidentiality.

“Helping People Come Forward” sought to examine the variety of reasons why people in organizations were reluctant to come forward with concerns, complaints and reports of misconduct. Through role plays and hypothetical case scenarios, discussions were held on tactics and actions that Ombudsmen could employ to mitigate the effect of such factors as organizational climate, practices and policies.

“Working with Difficult People” sought to explore what specific behaviours, preceptors and circumstances tend to label someone as “difficult.” Participants were informed of methods which could be used to develop and practise strategies for transforming difficult encounters into constructive interactions.

Under the auspices of Public Administration International, (PAI), I attended a training programme “Policy and the Public: Involving Civil Society in Policy-Making” in London, England, from October 30 to November 3, 2006.

Ms. Leonie Bernier, acting Senior Investigator, attended the International Programme for Development Evaluation Training (IPDET) which was initiated by the Operations Evaluation Department of the World Bank in partnership with Carleton University during the period June 12 to July 7, 2006 in Ottawa, Canada.

In December 2006 an abridged version of this programme was held at the Grafton Beach Resort, Tobago. Mrs. Donna Mollineau-Hyndman and Mrs. Claire Davidson-Williams, Investigators were in attendance. The programme's objective was to develop the basic knowledge of development evaluation concepts, processes and methods, as well as to enhance the skills of participants in designing and conducting evaluations of development programmes.

Developmental Evaluation refers to the process of determining the worth or significance of an activity, policy or programme. It is a systematic, objective assessment of a planned ongoing or completed intervention. The training therefore provided the Investigators with enhanced skills for determining whether Government Departments and Statutory Authorities were fulfilling their statutory mandate of better accountability, information dissemination of decision making and the national distribution of human resource and financial resources.

Mrs. Claire Davidson-Williams, Investigator in the Tobago Office was also selected to attend a programme on "Putting People First – the Key to Improving Public Services" which was facilitated by Public Administration International (PAI) in collaboration with the Governance and Institutional Development Division of the Commonwealth Secretariat. This programme was held in London from June 12 to 23, 2006 and was attended by a cross section of senior public officers from Barbados, Brunei, Dar-E-Salaam, Botswana, Lesotho, Malawi, Mauritius, Nigeria, Oman, Rwanda, South Africa and Tanzania.

Participants were exposed to information from consultants and practitioners in the field of customer service development. They also visited public service offices in order to gain practical knowledge of the methods used by experts to produce effective customer service.

### **OSHA**

An in-house training session on ***Occupational Safety and Health*** facilitated by the ***Employers' Consultative Association of Trinidad and Tobago*** was held on April 19, 2006. It was attended by all members of staff.

Members of staff participated in other training programmes as follows:-

1. Effective Business Communication (Writing and Speaking)
2. Business Etiquette and Protocol
3. Microsoft Certified System Engineer 2003
4. Preparation for Retirement – Public Service Academy, Ministry of Public Administration and Information.
5. Workshop – Emotional Intelligence: Enhancing the Skills of the H.R. Practitioner.

## **VISITS**

During the period September 11 to 15, 2006, the Regulated Industries Commission (RIC) hosted a team of Regulators from the Office of Utilities Regulation, Jamaica (OUR), who visited Trinidad and Tobago as part of a Peer Review. The primary objective of this Review was to effectively identify ways of evaluating, demonstrating and re-focusing improvement efforts as it pertained to OUR's responsibility to its consumers.

In this regard, a team from OUR visited this Office and discussions were held in relation to the competencies and challenges facing each organization and the systems and procedures which were being used to resolve issues as they arose.

## **REGULATED INDUSTRIES COMMISSION**

I received a request from the **Regulated Industries Commission** (RIC) that matters concerning utility related complaints be referred to that body for attention, to which I agreed. Complaints concerning the **Water and Sewerage Authority** (WASA) and **Trinidad and Tobago Electricity Commission** (T&TEC) were referred to the RIC and that Commission was requested to furnish this Office with reports when these matters were completed since for most Complainants the Office of the Ombudsman was the first point of contact.

## STATISTICAL OVERVIEW 2006

During the year 2006 I received a total of 1557 complaints as compared to 1344 which were received in the previous year. This figure represents a 16% increase in the average number of complaints lodged annually at my office. 10.5% 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 to have their matters addressed.

I commenced investigations on 1159 complaints which represent 74.4% of the new complaints received. At the close of the year investigation was concluded on 362 or 31.2% of the complaints. A total of 797 complaints or 68.8% remained under investigation.

Table I and Figure I show the number of new complaints received in 2006 and the manner of their disposal.

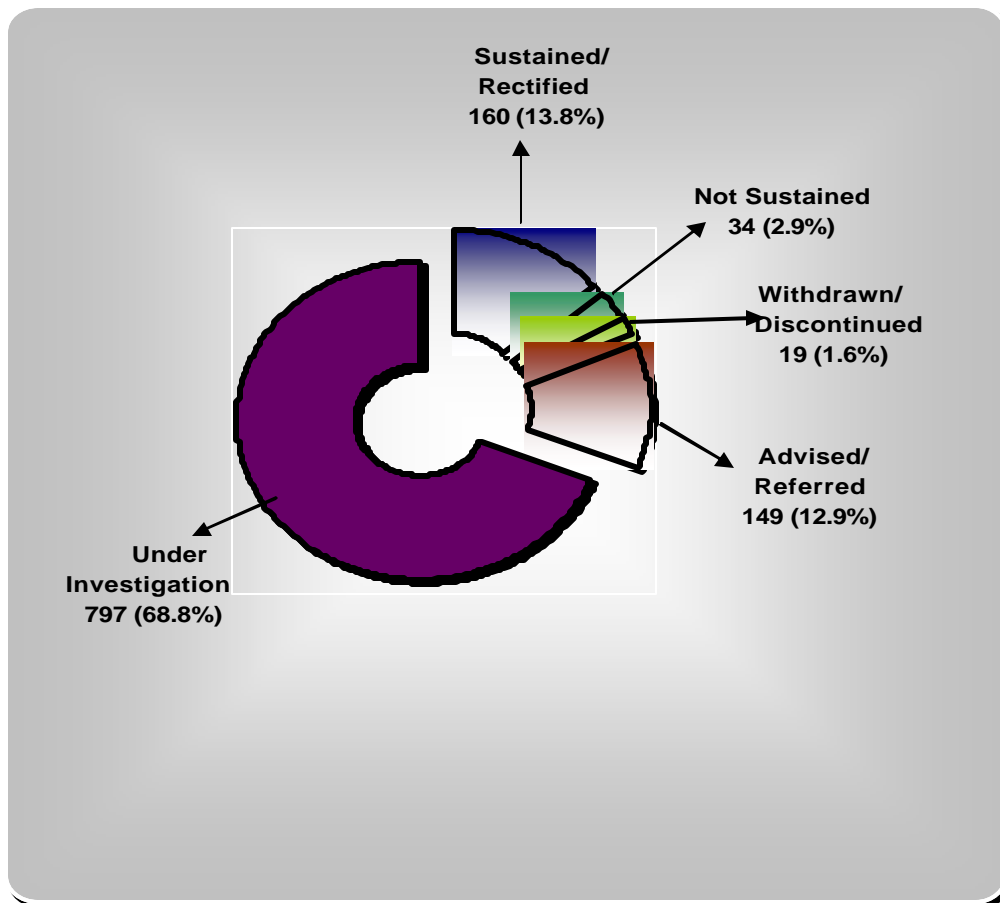


**STATISTICS ON NEW COMPLAINTS RECEIVED DURING THE PERIOD  
JANUARY - DECEMBER 2006**

**TABLE 1**

	<b>NUMBER</b>	<b>PERCENTAGE</b>
<b>Total number of complaints received</b>	<b>1557</b>	<b>100</b>
Total number against Private Institutions	164	10.5
Enquiries	194	12.5
Freedom of Information Act	40	2.6
<b>Total number proceeded with</b>	<b>1159</b>	<b>74.4</b>
<b>Total number concluded</b>	<b>362</b>	<b>31.2</b>
Sustained/Rectified	160	13.8
Not Sustained	34	2.9
Withdrawn/Discontinued	19	1.6
Advised/Referred	149	12.9
<b>Total under investigation</b>	<b>797</b>	<b>68.8</b>

**FIGURE 1**



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

**TABLE 1I**

	<b>NUMBERS</b>	<b>PERCENTAGE</b>
Total number of complaints brought forward from previous years	3216	
Total number of complaints received in 2006	1557	
<b>TOTAL</b>	<b>4773</b>	
Total number of complaints without jurisdiction	164	3
Total Enquiries	194	4
Freedom of Information Act	40	1
<b>Total number of complaints proceeded with</b>	<b>4375</b>	<b>92</b>
<b>Total number of complaints concluded</b>	<b>1210</b>	<b>27.7</b>
Sustained/Rectified	519	11.9
Not Sustained	80	1.8
Withdrawn/Discontinued	157	3.6
Advised/Referred	454	10.4
<b>Under Investigation</b>	<b>3165</b>	<b>72.3</b>

It is to be noted that the workload for the period under review comprised the investigation of 4773 complaints. This figure represents the total of 1557 new complaints in addition to 3216 unresolved matters brought forward from the previous years. Table II and Figure II show the manner of their disposal. At the end of 2006, investigations on 1210 complaints were finalized and a total number of 3165 complaints remained under investigation. This backlog can generally be attributed to the complexity of complaints and the correspondingly longer period of time needed to investigate these complaints. My Office also continues to face a major challenge in having the relevant Government departments and state agencies respond on a timely basis to our requests for information in the course of an investigation. The failure of public officers to respond promptly and to take decisions on simple issues of fact, has caused complaints to remain unresolved. This undermines the effectiveness of my Office and denies citizens a speedy resolution of their complaints.

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

**FIGURE 11**

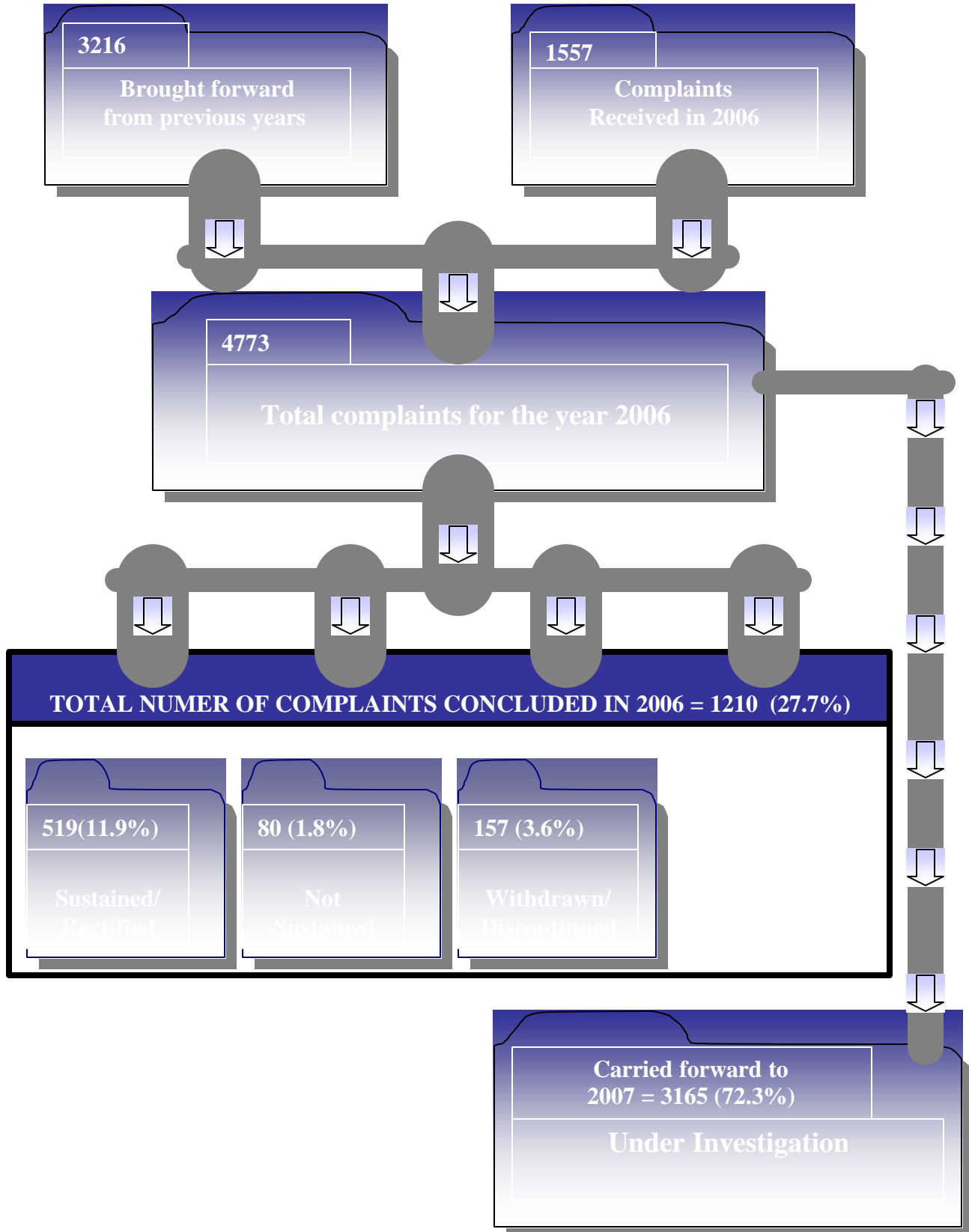


Table III shows in detail the number of complaints received in 2006 against ministries and state agencies and the manner of their disposal during the same period.

**DISTRIBUTION OF NEW COMPLAINTS IN RESPECT OF MINISTRIES/DEPARTMENTS**  
**TABLE 111**

<b>Ministry/Authority/Agency</b>	<b>Total No. of Complaints</b>	<b>Advised/ Referred</b>	<b>Not Sustained</b>	<b>Sustained/ Rectified</b>	<b>Under Investigation</b>	<b>Withdra Disconti</b>
Agricultural Development Bank	1	0	0	0	1	0
Agriculture, Land, and Marine Resources	42	0	1	2	38	1
Airport Authority	1	0	0	0	1	0
Attorney General	6	1	0	0	5	0
BWIA	2	0	0	0	1	1
Caroni (1975) Limited	2	1	0	0	1	0
Central Administrative Services Tobago (CAST)	1	0	0	0	1	0
Chief Personnel Officer (CPO)	6	1	0	1	4	0
Community Development, Culture and Gender Affairs	10	0	0	3	6	1
Education	51	6	1	10	34	0
Elections and Boundaries Commission	2	0	0	0	2	0
Energy and Energy Industries	6	0	0	2	4	0
Environmental Management Authority	9	1	2	0	6	0
Finance	43	2	0	10	30	1
Foreign Affairs	2	0	0	0	2	0
Health	69	9	2	18	39	1
Housing	52	16	0	3	32	1
Judiciary	19	4	0	0	15	0
Labour and Small and						
Micro Enterprise Development	6	0	0	0	6	0
Legal Affairs	13	0	0	5	8	0
Legal Aid and Advisory Authority	18	2	0	4	12	0
Local Government	3	0	0	0	3	0
Borough Corporations	20	1	0	2	17	0
City Corporations	14	0	0	3	11	0
Regional Corporations	108	13	3	8	82	2
Unemployment Relief Programme	4	0	0	0	4	0
Magistracy	24	2	0	6	16	0
National Emergency Management Agency	1	0	0	0	0	1
National Insurance Board	44	11	3	19	10	1
National Security	6	2	0	0	4	0
Coast Guard	2	0	0	0	2	0
Defence Force	5	0	0	0	5	0
Fire Services	11	0	0	2	9	0
Immigration	5	1	0	1	3	0

Police (Administrative Matters)	56	7	1	4	42	2
Prisons	30	1	0	2	27	0
<b>BALANCE CIF</b>	<b>694</b>	<b>81</b>	<b>13</b>	<b>105</b>	<b>483</b>	<b>12</b>
						/
<b>Ministry/Authority/Agency</b>	<b>Total No. of Complaints</b>	<b>Advised/Referred</b>	<b>Not Sustained</b>	<b>Sustained/Rectified</b>	<b>Under Investigation</b>	<b>Withdrz Disconti</b>
<b>BALANCE BF</b>	<b>694</b>	<b>81</b>	<b>13</b>	<b>105</b>	<b>483</b>	<b>12</b>
Office of the Prime Minister	3	1	1	0	1	0
Planning and Development	16	0	0	0	16	0
Port Authority	6	1	1	2	2	0
Public Administration						
and Information	7	1	0	0	6	0
TSTT	6	1	0	0	5	0
Public Transport Service Corporation	2	0	0	0	2	0
Public Utilities and Environment	6	3	0	1	2	0
Forestry, National Parks and Wild Life	8	1	1	1	5	0
T&TEC	44	8	2	8	26	0
TTPost	1	0	0	0	1	0
WASA	63	13	2	10	37	1
Science, Technology and Tertiary Education	8	3	0	2	3	0
Service Commissions Department	35	4	1	3	27	0
Social Development	73	12	0	12	48	1
Sport and Youth Affairs	5	0	0	1	4	0
Statutory Authorities Service Commission	4	2	0	0	2	0
Tobago House of Assembly	2	0	0	0	2	0
Agriculture, Marine and the Environment	14	1	0	1	12	0
Education, Youth Affairs and Sports	8	0	1	1	6	0
Finance and Planning	4	0	0	1	3	0
Health and Social Services	26	4	7	1	12	2
Infrastructure and Public Utilities	46	3	2	0	41	0
Land Management Agency	1	0	0	0	1	0
Tourism, Transportation, Enterprise						
Development and Settlements	3	1	0	0	1	1
Tourism	5	1	1	0	3	0
Tourism & Industrial Dev. Co. of T & T Ltd	1	0	1	0	0	0
Trade and Industry	2	0	0	0	2	0
Works and Transport	66	8	1	11	44	2
<b>TOTAL</b>	<b>1159</b>	<b>149</b>	<b>34</b>	<b>160</b>	<b>797</b>	<b>19</b>
Freedom of Information Act, 1999	40					
Private	164					
Enquires	194					
<b>GRAND TOTAL</b>	<b>1557</b>	<b>149</b>	<b>34</b>	<b>160</b>	<b>797</b>	<b>19</b>

The pattern of complaints received in 2006 was similar to the pattern in previous years in that the agencies which recorded the highest number of complaints remained the same. The details are reproduced below:

The Regional/Borough Corporations	146
Ministry of Social Development	73
Ministry of Health	69
WASA	66
Ministry of Works and Transport	66
Police Service	56
Ministry of Housing	52
T&TEC	44

Complaints against the Regional Corporations increased significantly in 2006. In 2006 a total number of 146 complaints were received as compared to 128 in 2005, an increase of 15%. At the end of 2006, 82 matters were still pending due to the failure of the respective corporations to provide pertinent information on a timely basis.

The recurring complaints against the Regional Corporations concern the lack of regular maintenance work with reference to drains and the non-paving of roadways. Other complaints relate mainly to the failure of the corporations to take immediate and timely action against offending parties for unauthorized building construction and renovation which create drainage problems and health nuisances on neighbouring properties.

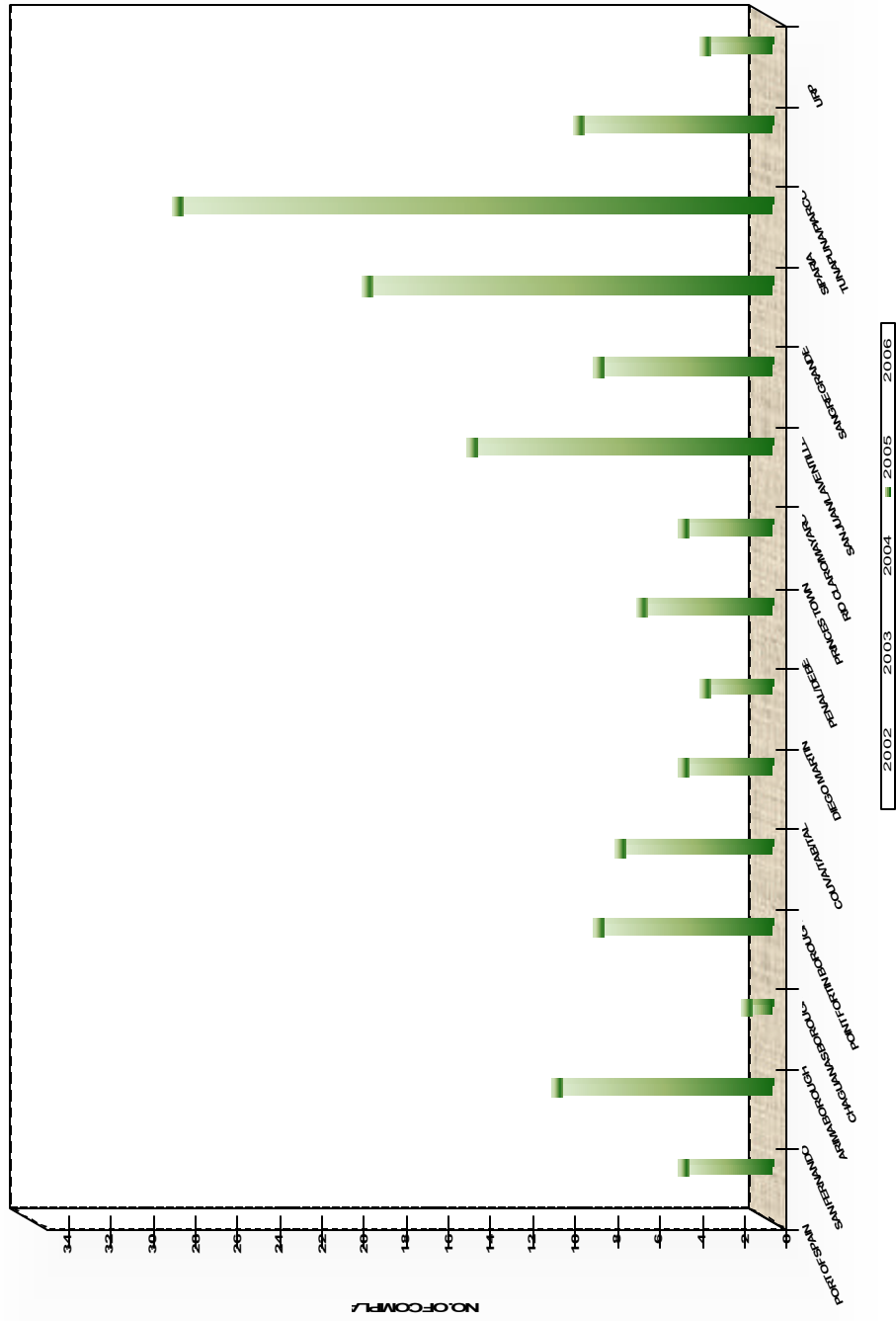
Table IV and Figure III show a breakdown of complaints received against these agencies over the period 2002-2006.

**LOCAL GOVERNMENT -  
CITY, BOROUGH AND REGIONAL CORPORATION**

**TABLE 1V**

CORPORATION	TOTAL NUMBER OF COMPLAINTS RECEIVED				
	2002	2003	2004	2005	2006
PORT OF SPAIN	8	3	10	4	5
SAN FERNANDO	20	6	9	10	9
ARIMA BOROUGH	0	2	2	1	1
CHAGUANAS BOROUGH	17	6	11	8	8
POINT FORTIN BOROUGH	7	3	4	7	11
COUVA/TABAQUITE/TALPARO	10	11	6	4	20
DIEGO MARTIN	1	1	2	3	2
PENAL/DEBE	8	6	3	6	11
PRINCES TOWN	3	2	4	4	4
RIO CLARO/MAYARO	19	12	12	14	23
SAN JUAN/LAVENTILLE	5	6	5	8	5
SANGRE GRANDE	32	33	14	19	16
SIPARIA	20	21	15	28	22
TUNAPUNA/PIARCO	6	10	6	9	5
UNEMPLOYMENT RELIEF PROGRAMME	6	1	1	3	4
<b>TOTAL</b>	<b>162</b>	<b>123</b>	<b>104</b>	<b>128</b>	<b>146</b>

**COMPLAINTS AGAINST LOCAL GOVERNMENT BODIES FROM 2002-2006**  
**FIGURE III**



Complaints against the Ministry of Health are centred on public health issues. As mentioned in the previous year's report there is an urgent need to have the legislation in this area updated since that will empower the departments to take immediate and effective action to eradicate health hazards and nuisances which are constant sources of distress in residential communities.

Mail from prisoners to my Office is classified as exempt mail so it is not subject to censorship by the prison authorities. Prisoners can therefore write my Office in confidence. 30 complaints were received from prisoners in 2006. The most common allegations received were with respect to the delay in having their matters heard, medical issues, poor diet, unjust charges, reduction in sentences and lost/damaged property.

The Freedom of Information Act was enacted in November, 1999 and 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 relating to trade secrets. In cases where access to information is refused, delayed or curtailed the legislation provides recourse to my office by aggrieved persons. 40 complaints were lodged with my office in 2006 which represent a 400% increase in the number recorded last year. A more detailed overview of the Act will be dealt with later in this Report.

### **OUTREACH SERVICES**

A total of 862 persons visited the Regional Offices under our outreach services programme during the year 2006 in order to make complaints. The purpose of the programme is to provide citizens in rural areas with easier access to the services of my office and to give them an opportunity to discuss their matters with Investigators on a face-to-face basis. The opportunity is also taken at that time to discuss complaints made against the particular corporation with the relevant desk officers on the spot. In this regard, I wish to express my sincere appreciation to the Corporations and their staff for the facilities afforded to my officers on a monthly basis.



Table V and Figure IV show the number of persons who accessed the services of my office and the Regional Offices each month during the year 2006.

**NUMBER OF PERSONS WHO VISITED THE REGIONAL OFFICES IN THE YEAR  
2006**

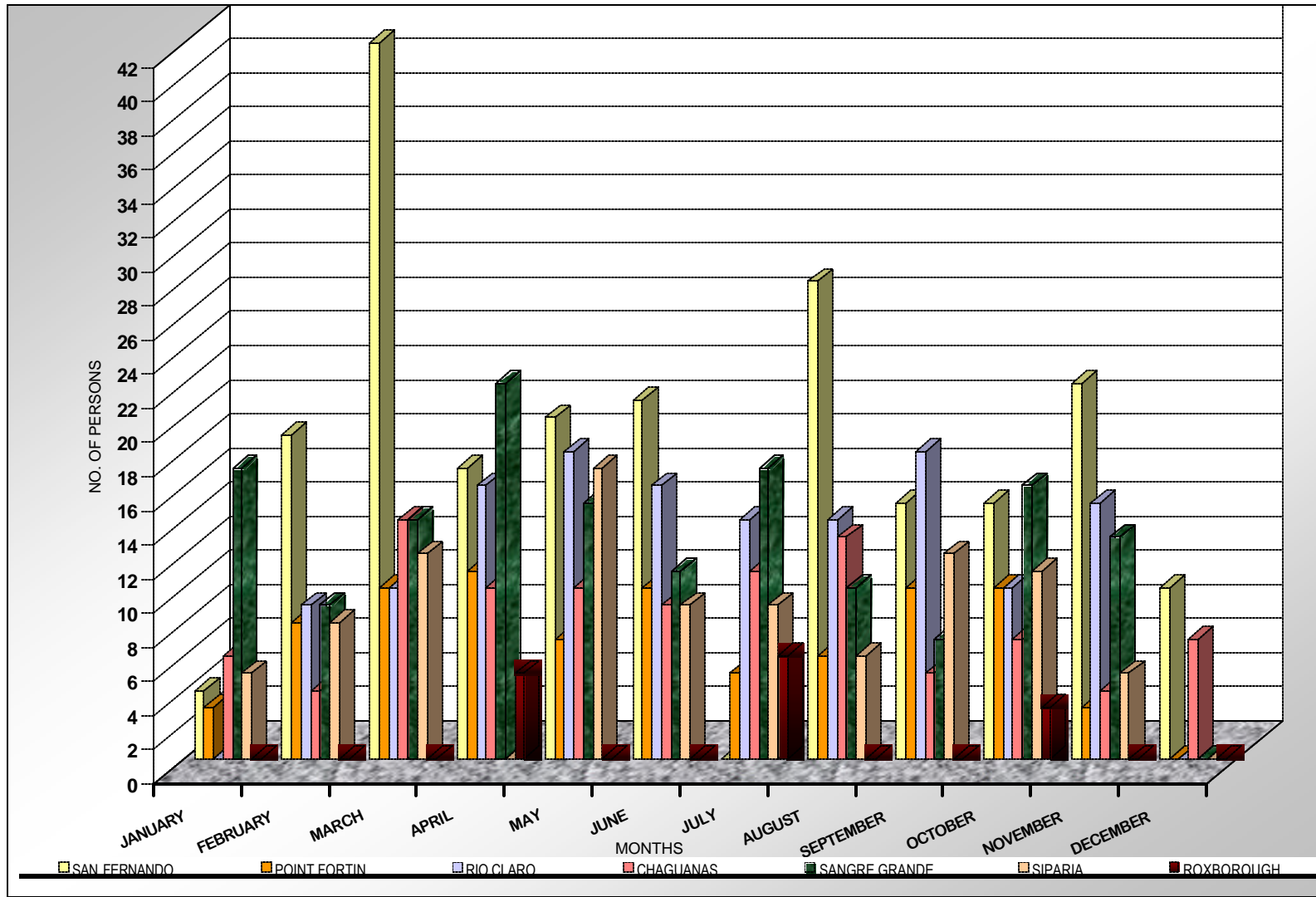
**TABLE V**

<b>MONTHS</b>	<b>POINT FORTIN</b>	<b>RIO CLARO</b>	<b>SAN FERNANDO</b>	<b>CHAGUANAS</b>	<b>SANGRE GRANDE</b>	<b>SIPARIA</b>	<b>* COUVA</b>	<b>* ROXBOROUGH</b>	<b>TOTAL</b>
JANUARY	3	NO VISIT	4	6	17	5	0	0	<b>35</b>
FEBRUARY	8	9	19	4	9	8	0	0	<b>57</b>
MARCH	10	10	42	14	14	12	0	0	<b>102</b>
APRIL	11	16	17	10	22	NO VISIT	0	5	<b>81</b>
MAY	7	18	20	10	15	17	0	0	<b>87</b>
JUNE	10	16	21	9	11	9	9	0	<b>85</b>
JULY	5	14	NO VISIT	11	17	9	14	6	<b>76</b>
AUGUST	6	14	28	13	10	6	20	0	<b>97</b>
SEPTEMBER	10	18	15	5	7	12	9	0	<b>76</b>
OCTOBER	10	10	15	7	16	11	7	3	<b>79</b>
NOVEMBER	3	15	22	4	13	5	8	0	<b>70</b>
DECEMBER	NO VISIT	NO VISIT	10	7	NO VISIT	NO VISIT	NO VISIT	0	<b>17</b>
<b>TOTAL</b>	<b>83</b>	<b>140</b>	<b>213</b>	<b>100</b>	<b>151</b>	<b>94</b>	<b>67</b>	<b>14</b>	<b>862</b>

\* Service to Couva only began in June, 2006

\* Service to Roxborough on a quarterly basis

**NUMBER OF PERSONS WHO VISITED THE REGIONAL OFFICES IN THE YEAR 2006**  
**FIGURE IV**



## TOBAGO OFFICE

For the year 2006 a total of 185 complaints were lodged at the Office located in Scarborough, Tobago. Table VI shows that in addition to the 185 cases received in the current reporting period 323 matters were brought forward from the preceding years. Therefore the Tobago Office's workload for 2006 comprised the investigation of 508 complaints. Investigations were finalized on 39.7% of those matters and 286 complaints remained under investigation at the close of the year. Delay on the part of the relevant state agencies in Tobago in providing information and implementing recommendations for the resolution of complaints is the main cause for the backlog of cases.

### TOBAGO OFFICE - STATISTICS ON COMPLAINTS RECEIVED DURING THIS REPORTING PERIOD AND THOSE BROUGHT FORWARD FROM PREVIOUS YEARS

TABLE VI

	<b>NUMBERS</b>	<b>PERCENTAGE</b>
Total number of complaints brought forward from previous years	323	
Total number of complaints received in 2006	185	
<b>TOTAL</b>	<b>508</b>	<b>100</b>
Total number of complaints without jurisdiction	34	6.7
<b>Total number of complaints proceeded with</b>	<b>474</b>	<b>93.3</b>
<b>Total number of complaints concluded</b>	<b>188</b>	<b>39.7</b>
Sustained/Rectified	68	14.3
Not Sustained	44	9.3
Withdrawn/Discontinued	42	8.9
Advised/Referred	34	7.2
<b>Under Investigation</b>	<b>286</b>	<b>60.3</b>

Table VII shows the number of complaints received in 2006 and the manner of their disposal.

**DISTRIBUTION OF COMPLAINTS FROM TOBAGO FOR THE PERIOD**  
**JANUARY -DECEMBER 2006**  
**TABLE V11**

<b>Ministry/Authority/Agency</b>	<b>Total No. of Complaints</b>	<b>Advised/ Referred</b>	<b>Not Sustained</b>	<b>Sustained/ Rectified</b>	<b>Under Investigation</b>	<b>Withdrawn/ Discontinued</b>
<b>TOBAGO HOUSE OF ASSEMBLY</b>	1	0	0	0	1	0
Agriculture, Marine and the Environment Division	14	1	0	1	12	0
Education, Youth Affairs & Sports Division	8	0	1	1	6	0
Finance and Planning Division	4	0	0	1	3	0
Health and Social Services Division	25	4	7	1	11	2
Infrastructure & Public Utilities Division	45	3	2	0	40	0
Land Management Agency	1	0	0	0	1	0
Tourism, Transportation, Enterprise Development and Settlements Division	3	1	0	0	1	1
<b>Other Agencies</b>						
Agriculture, land & Marine Resources - Lands and Surveys Division	1	0	0	0	1	0
BWIA	1	0	0	0	0	1
CAST	1	0	0		1	0
Elections and Boundaries Commission	1	0	0	0	1	0
Housing	2	0	0	1	1	0
Judiciary	4	2	0	0	2	0
Magistracy	2	1	0	1	0	0
National Emergency Management Agency	1	0	0	0		1
National Insurance Board	4	0	1	1	1	1
National Security - Fire Services	3	0	0	1	2	0
National Security - Police	9	0	0	3	6	0
National Security - Prisons	1	0	0	0	1	0
Office of the Prime Minister	1	0	1	0	0	0
Planning and Development	1	0	0		1	0
Port Authority	2	0		1	1	0
Public Administration & Information	3	1	0	0	2	0
Public Transport Service Corporation	1	0	0	0	1	0
Public Utilities & Environment - T&TEC	8	1	0	2	4	1
Public Utilities & Environment - WASA	3	0	0	1	1	1
Service Commissions Department	1	0	0	1	0	0
<b>TOTAL</b>	<b>151</b>	<b>14</b>	<b>12</b>	<b>16</b>	<b>101</b>	<b>8</b>
Private	34					
<b>GRAND TOTAL</b>	<b>185</b>	<b>14</b>	<b>12</b>	<b>16</b>	<b>101</b>	<b>8</b>

## **AREA OF CONCERN**

### **LOCAL GOVERNMENT**

In August, 2006 the Government of the Republic of Trinidad and Tobago launched its draft ***White Paper on Local Government Reform and Decentralization*** which it sees as an integral part of achieving its Vision 2020.

The stated aim of the Programme is to promote regional development and sustainable communities with an emphasis on the decentralization of the Local Government system and promotion of greater citizen participation in the affairs of Local Government.

The Office of the Ombudsman has its own important role to play in the achievement of these ideals and is committed to promoting a professional and improved Local Government service as well as the education of all stakeholders in respect of their duties, rights and privileges. It aims, wherever possible, to protect citizens from bureaucratic delays and administrative injustice.

In this context, the Office of the Ombudsman receives, pursues and resolves a number of complaints. In his first ***Annual Report of December, 1977 to December, 1978***, the then Ombudsman, the late Mr. Justice Evan Rees reported an average of fifty (50) complaints against the Ministry of Local Government. Empirical evidence confirms that in most of the successive years there has been a steady increase in the number of complaints received.

In 1997 the number of complaints received was seventy-nine (79) but it dropped to fifty-nine (59) in 2000. Thereafter in 2001 the number of complaints increased to one hundred and twenty-one (121); to one hundred and sixty-two (162) in 2002 and to one hundred and twenty-eight (128) in 2005. In 2006 the number received was one hundred and sixty-one (161).

Although the number of complaints has increased the areas of concern have more or less remained the same. Thirty-five percent (35%) of the complaints received were in relation to improper drainage. There were claims that the Corporations were neither maintaining the existing drainage systems nor were they constructing new ones where they were needed. Water courses that had been illegally blocked by residents had also not been cleaned despite the fact that this situation often resulted in flooding of the entire area. Although the **Public Health Ordinance Chapter 12 No. 4**, as amended by the **Public Health Act, 1999** provides for each Local Government Authority to take action against an offending party who has created a nuisance injurious to the health of the residents in the area, the Corporations have failed to address the public health issues caused by said flooding.

The Office has also been besieged with complaints from public officers, particularly daily rated employees, in respect of their inability to obtain continued employment as well as queries

about their terms and conditions of employment with the various Regional Corporations. Thirty-one percent (31%) of the Complaints received alleged discrimination in employment practices. Complainants were concerned that there appeared to be nepotism in the grant of daily employment as well as permanent employment when vacancies arose. There were also instances of discrepancies on the Cadre lists which affected the seniority and promotional opportunities for some officers.

In 2006, fifteen percent (15%) of the complaints received were related to unfulfilled requests for road construction, maintenance and/or repairs.

In addition, there is an increasing trend of complaints against the Corporations for their failure to take action against offending parties for unauthorized building construction, extensions and or renovations.

The **Municipal Corporations Act** (Act #21 of 1990), gives Corporations wide-ranging powers to deal with breaches of the law with respect to commercial or domestic buildings, streets, drains, dwelling units and water courses within the municipality.

Specifically *Section 163* of the said Act states *inter alia*:

***“Where any building or other structure is commenced or completed within a Municipality or any work is done in contravention of any of the provisions of this Part or of any building regulations of the Council or of the requirements of the Town and Country Planning Act or any other written law, the Council may serve on the owner or builder of the building, structure or work a written notice specifying the contraventions and requiring such owner and building –***

- (a) on or before a day to be specified in the notice, by a statement in writing, to show cause why such building or other structure or such work should not be removed, altered, or pulled down, or***
- (b) on such day and at such time and place as shall be specified in the notice to attend personally or by an agent duly authorized in writing in that behalf before the Council and show sufficient cause why such building or structure should not be removed, altered or pulled down.”***

The Regional Corporations, despite the provisions of the legislation have displayed a reluctance to take action against offending parties.

Public Officers at the Corporations also allege that they are stymied in providing the necessary services exactly where and when they are needed because Councilors take decisions at their Council Meetings as to the preference to be given to projects. Unfortunately in some instances the decisions taken do not always address the problems that should be given priority.

It is therefore evident that the Local Government Authorities ought to take a more conciliatory and proactive approach in the delivery of services to its burgesses. They need, if they are to be

successful in their efforts at reform, to be more responsive to the socio-economic, political and technological needs, resources and changes in Trinidad and Tobago.

The accompanying case illustrates some of these concerns.

## CASE NOTE

### MINISTRY OF LOCAL GOVERNMENT

In 2000, the residents of Richard Lane, Cunupia had complained to the previous Ombudsman that a resident had blocked the natural watercourse that services the Richard Lane area. The situation had resulted in severe flooding and had created a serious health hazard.

The **Chaguanas Borough Corporation** was approached to take the necessary action to alleviate the problems. The Corporation's Chief Executive Officer advised that this matter had been discussed at one of the Corporation's Public Health Committee Meetings. The Council recommended that construction of a box culvert and box drain would alleviate the problem and that the Technical Officers of the Corporation were in the process of preparing estimates and programming the work.

Subsequently, the Chief Executive Officer further advised that the Technical Officer had confirmed that one of the residents had constructed a concrete fence which restricted the free flow of water from the egress of the culvert. This resulted in a back up of water during the rainy season, with the consequent flooding of the premises of the residents.

In addition, the Chief Executive Officer advised that the opinion of the Legal Adviser, Ministry of Local Government, had been sought.

Thereafter, the Office of the Ombudsman was furnished with a copy of a report dated *November 8, 2001* from the Legal Adviser, Ministry of Local Government, in which it was stated *inter alia*:-

Under the *Section 17* of the **Waterworks and Water-Conservation Act, Chapter 54:41**, the Ministry has the legal authority to take the necessary steps by directing the said Offender to remedy the said situation by removing any obstructions or impediments to the natural flow of water whether it is a drain, channel or any watercourse.

As a pre-condition to the implementation of *Section 17* of the **Waterworks and Water Conservation Act** regarding this matter, the following must be established:

- a) The existence of the said natural water course/drain in the said area (perhaps the Drainage Division may be able to assist in confirming whether a natural water course/drain exists).
- b) If the answer to (a) is in the affirmative, evidence must be provided to show that the said watercourse/drain is blocked.
- c) The owner(s) of land in relation to which the said circumstance exists must be identified; this is to facilitate the issuing of the written notice in accordance with *Section 17* requiring the owner to remedy the situation.



A recommendation was at that time made that once the pre-conditions to the implementation of Section 17 of the Waterworks and Water Conservation Act, Chapter 54:41 had been met, the Ministry should initiate action in accordance with the said Section.

To date, however, the recommended action has not been taken and the matter remains unresolved.

### **AREA OF CONCERN**

### **MINISTRY OF HOUSING**

There was a multiplicity of complaints against the **Ministry of Housing**. These included;

- delays in obtaining housing accommodation,
- lack of maintenance and repairs to tenanted units,
- lengthy waiting periods to obtain deeds,
- delays in obtaining Letters of Comfort,
- site approvals for construction,
- allegations of injustice in the Ministry's mortgage procedures.

Complainants were not satisfied with the **Housing Development Corporation's** policy of selecting, at random via a computerized lottery draw, applicants for housing accommodation. This system allows for more recent applicants to be selected **before** those who had submitted applications many years earlier. They deemed the process unfair because in the event that the luck of the draw was not in their favour, home ownership would not become a reality.

There is an overall tardiness in effecting repairs to rented accommodation. The persons charged with effecting repairs to these units often either completely ignored the request or claimed that there was insufficient time, money or materials to do the work. There were also allegations of nepotism and cronyism because in some instances repairs were done as soon as they were requested while other households waited several years for work to be done. Complainants stated that they had to resort to carrying out the necessary repairs at their own expense.

In spite of the fact that applicants had satisfied all the requirements there was an inordinate delay in obtaining their *Deeds of Lease*.

Although there were claims by the **Ministry of Housing** of tardiness on the part of the State in vesting lands in the **Housing Development Corporation** and the **Land Settlement Agency**, there were also other situations when the delay was inexplicable. These delays have in some instances resulted in preventing persons from accessing financial assistance to construct their homes. In like manner, the waiting period for the grant of site approval for construction, even after a plot of land had been paid for in full, was quite lengthy, thus resulting in loss of financing. There is also evidence that mortgagees experience difficulty in obtaining their correct mortgage balances because of poor record keeping on the part of the Corporation.

Complainants also alleged that in certain circumstances the terms and conditions proposed to mortgagees by the Housing Development Corporation were unreasonable.

The following case note is a synopsis of such a complaint:-

**Ministry of Housing**

**Housing Development Corporation**

The Complainant occupies a house at Morvant, which he purchased from the then **National Housing Authority** (NHA), now **Housing Development Corporation** (HDC).

In 1993, the Complainant reported a problem of land slippage which was occurring adjacent to his property to the San Juan/Laventille Regional Corporation. It was discovered that due to inadequate drainage in the area, there was severe soil erosion and as a result the foundation of the Complainant's property was being undermined. Remedial work to the drains in the area was urgently required.



The San Juan/Laventille Regional Corporation was approached to implement the repairs but, due to the high cost of the project, the work was never undertaken and further deterioration to the Complainant's property occurred (*See accompanying photos*).

In December 2004, the Technical Division of the then NHA recommended that the Complainant be relocated, since the house was classified as uninhabitable. The Complainant was informed that he had to continue paying the mortgage on the property. Subsequently, this office was advised by the HDC that insurers for the Corporation had compensated the Complainant for damages sustained to his property in the amount of ninety-two thousand, five hundred dollars (\$92,500.00). The Complainant, however, advised that the cheque was sent to the Corporation by the insurers in full settlement because the property was no longer insurable. He was given a cheque for seventy-seven thousand, six hundred and fifty dollars (\$77,650.00).



The said sum of seventy-seven thousand, six hundred and fifty dollars (\$77,500.00) was used to effect repairs to the house; but further subsidence of the land caused by inadequate drainage on the southern side of the said premises contributed to a further collapse of the building.

In 2006, having not received a response from the HDC, the Complainant sought the intervention of the Ombudsman. He believed he was being unfairly treated because, although he had been offered relocation, the HDC had demanded that he clear off the existing mortgage and enter into a new one.

The Chief Executive Officer of the HDC was informed that, since the Complainant was unable to live at the Redwood Drive location, through no fault of his, it was unfair to expect him to clear off the mortgage on a property which was deemed uninhabitable. A property must be merchantable and since that property was no longer suitable for the purpose for which it was bought no further monies ought to have been demanded towards liquidating the debt on that property.

Consequently, it was recommended that in the interest of fairness, monies still payable on the old premises should be channelled towards the property to which the Complainant would be relocated.

The matter is being pursued.

## AREA OF CONCERN

### **Freedom of Information Act, 1999**

The enactment of the Freedom of Information Act, 1999 (the Act) was intended to ensure transparency in government services. The Act affords members of the public, within certain parameters, a right of access to official documents of public authorities. The Act also provides for the Ombudsman to review a decision given of a public authority where that authority has denied an applicant access to the document/information requested. Section 38 A (1) of the Act states –

*“A person aggrieved by the refusal of a public authority to grant access to an 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.”*

A review constitutes an analysis of the decision given by the public authority in each particular case. Once a review is undertaken, the Ombudsman is empowered to make recommendations and the public authority *“is required to consider the recommendations”* and *“exercise its discretion in giving effect to the recommendations.”* as specified in Section 38 A (3) of the Act.

It is important to note that in order to properly review decisions and make informed recommendations, the Ombudsman requires the cooperation of those authorities. This review process is very important since recommendations made by the Ombudsman will determine whether or not access to the information sought will be granted to the Applicant.

It has been recognized that certain factors hinder the smooth operation of the decision making and review processes. One of the problems identified in the implementation of the Act is inconsistency in the decision making process. Some public authorities would agree to furnish the information requested whereas a similar request for the same information would not be entertained by another authority.

The application of “Exempt Documents” as stipulated under Part IV of the Act is another issue which must be highlighted. There are specific categories of information which cannot be disclosed. Information falling under those categories is protected under the Act.

A public authority is not empowered under the Act to refuse access to information if such information does not fall within one of the exempt categories. It is imperative to note that before applying the exemptions, a public authority is under an obligation to fully consider each request in light of the public interest provision specified in Section 35 of the Act which states -

*“Notwithstanding any law to the contrary a public authority shall give access to an exempt document where there is reasonable evidence that significant –*

- a) Abuse of authority or neglect in the performance of official duty;*
- b) Injustice to an individual;*
- c) Danger to the health or safety of an individual or of the public; or*

*d) Unauthorized use of public funds, has or is likely to have occurred and if in the circumstances giving access to the document is justified in the public interest having regard both to any benefit and to any damage that may arise from doing so.”*

**Significant delays in accessing the information needed to conduct reviews have become the norm** To illustrate this point, information was requested from the Ministry of Education in June 2006 and to date the only response received is that the matter is still engaging the attention of the said Ministry.

Some authorities fail to acknowledge requests for information. They negate their responsibilities and obligations in treating with matters. Since there are no enforcement procedures under the Act, an authority cannot be compelled to produce information with dispatch. When such a situation arises an applicant is usually advised to initiate judicial review proceedings within the statutory period, as prescribed under Section 39 of the Act, since time is of the essence.

In recent times, authorities have alleged that the documents requested either do not exist or cannot be found. In these circumstances it is necessary to ensure that the authority has conducted a thorough and diligent search.

Thirty-six (36) applications were received from members of the public requesting reviews of decisions given by public authorities concerning their requests for access to information under the Act in 2006. Nineteen (19) applications have been dealt with conclusively, while seventeen (17) requests remain unresolved.

## **AREA OF CONCERN** **MINISTRY OF SOCIAL DEVELOPMENT** **(SOCIAL WELFARE DIVISION)**

This Office has consistently received complaints against the *Social Services* and, in particular, from applicants for *Old Age Pension* as has been documented in previous Annual Reports. The approval and subsequent disbursement of Old Age Pension are subject to the provisions of the *Old Age Pension Act Chapter 32:02*, as amended. The Act dictates certain specific criteria for the grant of a pension as follows:-

**Residence** – an applicant must be resident in Trinidad and Tobago for twenty years preceding the date of claim. “Temporary absences of up to five (5) years in aggregate within the said twenty year period or overall sixty (60) years residence in Trinidad and Tobago” will not count as periods of absences from Trinidad and Tobago when the period of residence is computed.

**Age** – an applicant must be sixty-five years of age and older.

**Income** – If a person's total monthly income exceeds the specific amount of *one thousand dollars*, (\$1,000.00), he will be ineligible for Old Age Pension.

### **ISSUES WITH RESPECT TO THESE CRITERIA**

**Residence** – Complaints have been lodged with the Ombudsman by persons who have stayed out of Trinidad and Tobago for a period exceeding five (5) years. Those persons have been informed that they do not qualify for a pension under the current residence criterion. Such persons are advised to apply for Public Assistance until they are able to meet the stated criterion of residence, at which time they may re-apply for Old Age Pension.

**Income** – The ceiling of \$1,000 was previously raised as an area of concern in the 25<sup>th</sup> Annual Report of the Ombudsman. Thereafter, the ceiling was increased in the 2006/2007 Budget. However, the legislative amendment required to implement these changes has not yet been enacted.

## OTHER ISSUES

**Transfer of Records** – Old Age pensioners who change residence are faced with yet another problem. When they move from one district to another, they encounter inordinate delays with the transferring of their file to the new local board and the reinstatement of their pension is consequently delayed.

Old Age Pensioners are advised to pay an annual visit to their Local Public Assistance Board to ensure continuity in the receipt of their monthly pension. However, quite often they fail to attend for various reasons including memory lapses, illness and the inability to read or see properly. This often results in the cessation of Old Age Pension, which then takes a period of two to three months to be re-instated.

**Home Visits** – Although there is a system of home visits by representatives of the local Social Welfare office (in respect of *all* applicants), this is not always conducted on a timely basis, sometimes causing undue delay before an application is brought before the Board for its consideration. In order to remedy this situation, time frames for visits should be standardized or at least closely monitored in order to facilitate the timely approval of applications.

There have been several other areas of complaint against the **Social Welfare Division**:-

- Currently there are many cases of persons who have had their applications for disability benefit denied by the local boards. These persons are denied benefits because their disabilities are deemed by the local board to be only partial. It should be noted that the existing composition of the boards does not cater for the inclusion of medical practitioners.
- Applications for benefits under the emergency cases fund are usually met with long delays (in some cases over twelve (12) months) due to the sporadic injection of monies into this fund by the Ministry of Social Development.

**The following case note will serve to illustrate some of these issues.**

## CASE NOTE

### MINISTRY OF SOCIAL DEVELOPMENT SOCIAL WELFARE DIVISION

A recipient of the *Disability Assistance Grant* complained of a delay in obtaining assistance from the **Social Welfare Division's Emergency Fund**.

The Complainant advised that after severe flooding in November 2005 and January 2006 his home had fallen into disrepair.

As a recipient of social assistance, he approached the Social Welfare Division for an Emergency Cases Fund *Housing Grant* and submitted all the relevant documents.

The matter was referred to the **Social Welfare Department, Nariva/Mayaro** and that department responded that an application for an Emergency Cases Fund Housing Grant had indeed been received on June 26, 2006 from the Complainant.

This case was investigated and a recommendation was made and submitted to the Social Welfare Central Office on June 11, 2006 for final approval. To date, however the Complainant still has not received the Grant.

The matter is being pursued.

**Note:** The Ombudsman is of the view that the word '**Emergency**' connotes immediate relief. Therefore, when an application is made for an *Emergency Cases Fund Housing Grant*, it is expected that such application would be processed as a matter of priority.

## AREA OF CONCERN

### Ministry of Health/Regional Health Authorities

The Government of the Republic of Trinidad and Tobago, as part of its efforts to decentralise the management and provision of health care in Trinidad and Tobago, embarked on a *Health Sector Reform Programme*. This resulted in the creation of the *Regional Health Authorities* (RHAs) in 1994-95. At present there are five (5) RHAs – North West, North Central, South-West, Eastern and Tobago which are governed by the *Regional Health Authorities Act, 1994* (the Act).

In accordance with the Act, the power and functions of an Authority are:-

- (a) to provide efficient systems for the delivery of health care;
- (b) to collaborate with the University of the West Indies and any other recognized training institution, in the education and training of persons and in research in medicine, nursing, dentistry, pharmacy and bio-medical and health-science fields, veterinary medicine as well as any related ancillary and supportive fields;
- (c) to collaborate with and advise municipalities on matters of public health;
- (d) to operate, construct, equip, furnish, maintain, manage, secure and repair all its property;
- (e) to facilitate new systems of health care;
- (f) to provide the use of health-care facilities for service, teaching and research;
- (g) to establish and develop relationships with national, regional and international bodies engaged in similar or ancillary pursuits; and
- (h) to do all such things as are incidental or conducive to the attainment of the objectives of the Authority.

The primary reason for the creation of the RHAs was to make the public health system operate more efficiently by adopting private sector expertise. As such, it was decided to transfer workers from the Ministry of Health to the RHAs so that there would be more effective supervisory management. However, since the establishment of the RHAs, administrative and supervisory problems continue to plague the health sector.

It was realized since 2001 that there existed a parallel employment structure between the Ministry of Health and the RHAs. The situation was untenable, as it resulted in Public Service personnel providing service to the RHAs although they were not employed by the RHAs. To date, the parallel structure remains unchanged in spite of several efforts to address this problem.

The majority of complaints lodged at the Office against both the Ministry of Health and the RHAs relate primarily to the failure of administrators to deal efficiently and effectively with the under mentioned issues namely:-

#### **Human Resource Policies and Procedures**

- Filling of posts in the RHAs.
- Granting of contracts instead of permanent appointments.
- Non-payment of acting allowance for both public service and appointed RHA personnel.
- Recalculation of vacation leave.
- The shift of workers from NWRHA to NCRHA.

#### **Finance**

- Delay in payment of Duty allowance for public officers in RHA posts.
- Payment for vacation leave.

#### Case Note

#### NORTH WEST REGIONAL HEALTH AUTHORITY

A Registered Nurse under the NWRHA visited the office in September 2005 to lodge a complaint against the Authority citing administrative problems. She was first employed with the Ministry of Health and was later assigned to the NWRHA with effect from December 1, 1996. Since 1996, she had only been receiving twenty-one (21) days vacation leave, per annum, and she was of the view that her leave entitlement should have been increased. The matter was finally resolved in August 2006 when the Authority acknowledged that she was entitled to vacation leave of twenty-eight (28) days per annum in accordance with the RHAs Human Resource Policies and Guidelines for Salaried Employees.

The Office of the Ombudsman has also been the recipient of complaints from members of the public against the various RHAs on issues ranging from delays in receiving medical reports and test results to complaints of misdiagnosis. Such complaints are caused by faults in administrative practices. The complaints are not in any way new but are recurrent issues that have been featured in previous Annual Reports.

For the year 2006, this Office received complaints from persons seeking assistance with respect to the following areas:-

- Delay in obtaining pensions and gratuities
- Delay in obtaining outstanding monies such as increments; salaries; duty, acting and on-call allowances and subsistence.
- Delay in obtaining records of NIS contributions.
- Requests for information pertinent to terms and conditions of employment.
- Requests for injury benefits.
- Queries with regard to alleged overpayments.
- Requests for assistance to obtain medical necessities.
- Complaints of alleged discourtesy by employees.
- Delay in obtaining medical records/reports.
- Complaints of misdiagnosis.
- Requests for a 24 hr service at health centres.
- Requests for investigation into deaths.
- Requests for compensation for lost items.

One complaint which was of particular concern was that of a member of the public who had a biopsy performed in 2004 but to date has not yet received the results.

The following is a synopsis of this case:-

#### Case Note

#### SOUTH WEST REGIONAL HEALTH AUTHORITY (San Fernando General Hospital)

The Complainant had a biopsy on 29<sup>th</sup> April, 2004 at the *San Fernando General Hospital*. The results of this biopsy were required in order that an informed decision could be made for her to receive the appropriate medical attention. She was given several appointments at the relevant clinic but could not be attended to by the doctor because the results of the biopsy had not been received.

The Complainant made several checks at the Hospital during the period 2004 to 2006 in an effort to obtain her medical report; but was unsuccessful. She then lodged a complaint at the *South West Regional Health Authority* but was still unable to obtain the report.

The Complainant subsequently approached the Office of the Ombudsman on 20<sup>th</sup> September, 2006 for assistance in obtaining her results. Investigations revealed that as at 31<sup>st</sup> December, 2006 the report on the results of the biopsy was still awaiting the signature of the pathologist.

**Note:** Out of concern for the number and the nature of complaints received from citizens against the Public Health sector, specific complaints were referred to the *Commission of Enquiry* which had been constituted to investigate the operation and delivery of Public Health Care Services in Trinidad and Tobago.

The said Commission of Enquiry requested that information be provided with respect to the receipt and investigation of all complaints which were lodged against public medical institutions during the period 2000 to 2005.



**CASE NOTE #1**  
**MINISTRY OF AGRICULTURE, LAND AND MARINE RESOURCES**  
**LANDS AND SURVEYS DEPARTMENT**

The Complainant, who was a lessee of State Lands situated in Point Fortin, contended that persons who occupied the adjoining property had encroached on a portion of her land.

The **Director of Surveys** had taken the offending parties to court and in 2000 the presiding Magistrate ordered them to vacate that portion of the land that had been encroached upon, on or before *August 2000*.

The **Director of Surveys**, however, never took the necessary procedural steps to effect the order of the Court.

Accordingly, in 2003 when the Complainant brought the matter to the attention of the Ombudsman, a status report was requested from the **Lands and Surveys Department**. There was no response to the initial request or to the several reminders sent. Eventually, further enquiries revealed that the **Lands and Surveys Department** had claimed that no action had been taken because of the unavailability of funds to remove the fence which the offending parties had erected. It was further revealed that the cost of the removal of the fence had to be borne by the offending parties.

In the interim the *Transfer of Functions (Commissioner of State Lands) Order 2004*, transferred the functions vested in the **Director of Surveys** to the **Commissioner of State Lands**, and authorized the Commissioner to take the necessary action to evict the offending parties from the subject parcel of land.

Accordingly the **Commissioner of State Lands** sought the advice of the **Chief State Solicitor** on the procedure to have the court's decision implemented.

The Chief State Solicitor submitted his advice to the Commissioner of State Lands via memorandum dated 14<sup>th</sup> June, 2006. To date however this matter remains unresolved and the Complainant continues to be deprived of the right of quiet enjoyment of the property.

<p><b>Note:</b> <i>This matter, where seven (7) years have elapsed since the court ruled in the Complainant's favour, is an example of the undue and inexplicable delay even when there appears to be no impediment to the taking of possessory action.</i></p>
---

**CASE NOTE 2**  
**MINISTRY OF AGRICULTURE, LAND AND MARINE RESOURCES**

The Complainant, a retired Public Officer, requested that his complaint against the **Chief Personnel Officer** and the **Ministry of Agriculture, Land and Marine Resources** be revisited. He advised that he had been pursuing this matter with these Government Departments since 1978.

He had requested a waiver of the compulsory requirement of the *E.C.I.A.F. Diploma* as a consideration for promotion to the post of *Forester II*.

In 1971, Cabinet, the Public Services Association, the Chief Personnel Officer and the Ministry of Agriculture, Land and Fisheries agreed to the re-assignment of the post of *Forester I (from Range 18 to Range 26)*. This reassignment was done on the condition that all officers who held the post of *Forester I* must satisfactorily complete the *E.C.I.A.F. Diploma*. It was also agreed that the *Diploma* would be the new criteria used in the future to promote officers to the post of *Forester II*.

The Complainant, who was then employed as a *Forester I*, commenced the *E.C.I.A.F. Diploma* programme in 1975. Unfortunately, five (5) weeks into the programme, he became ill and was unable to complete the course. As a consequence he was away from the job for thirteen (13) weeks. When he returned to active duty, the *Diploma* programme was no longer being offered. As a result the Complainant was never promoted nor was he ever given the opportunity to act in the higher positions of *Forester II* or *Forester III*. According to the Complainant, although he was tenth (10<sup>th</sup>) on the list in order of seniority, he had been bypassed for acting appointment and promotion in favour of officers who were

his juniors and some of whom did not have the required Diploma. He therefore held the view that he had been unfairly treated.

When these facts were presented to this Office, it was evident that the Complainant had indeed been treated differently. Hence, although the Complainant was no longer employed in the Public Service, his case was deserving of some form of redress to correct this anomaly. While it was not clear whether the Complainant's non-promotion was deliberate or simply an oversight, no explanation was given to justify the position that was taken, having regard to the fact that by memorandum dated 15<sup>th</sup> October, 1984, there was a waiver of the requirement of an E.C.I.A.F. Diploma for promotion. In that memorandum, the Ministry agreed that the E.C.I.A.F. Diploma "*be waived only in respect of the 'older' Foresters I and then as it pertains to their promotion to the post of Foresters II only.*" The Complainant was one of the named officers who would have been affected by this decision.

In the interest of justice and upon the principles of fairness and equity, some consideration ought to have been given to the Complainant's predicament so as to adjust his position/status upon retirement in order to adequately compensate him for his contribution to the **Forestry Division**.

The matter was therefore referred to the Acting Solicitor General with a recommendation that Cabinet approval be sought to grant the Complainant a pension and gratuity commensurate with that of a Forester II at the point of his retirement from the Public Service.

The matter is still being pursued.

### CASE NOTE #3

#### MINISTRY OF AGRICULTURE, LAND AND MARINE RESOURCES

In 1974, along with several other persons, the Complainant responded to an advertisement for the position of *Artificial Insemination Technician I* in the **Ministry of Agriculture, Land and Marine Resources**. Applicants were interviewed and those who were found to be suitable were placed on an Order of Merit List which was established by the **Public Service Commission on January 17, 1975**. The Commission also appointed Nos. 1 to 5 on the Order of Merit List as Artificial Insemination Technician I with effect from the date of their assumption of duty. The Complainant, who was placed at No. 5, assumed duty along with the officer placed at No. 4, on **February 3, 1975**.

The Complainant sought the intervention of the Ombudsman in 2006 because he was of the opinion that he had been dealt with unfairly. He claimed to have been performing the duties of *Artificial Insemination Technician II* since 1990 without remuneration. He also queried the Ministry's decision to promote the officer placed at No. 4 on the Order of Merit List before him, since he believed he was the more qualified.

The Ministry of Agriculture, Land and Marine Resources in its comments on the matter refuted the claim of the Complainant with regard to his entitlement for remuneration for performing the duties of Artificial Insemination Technician II since 1990. According to the Ministry, Staff Reports for the period 1990 to 1995 showed that the duties performed by the Complainant were not consistent with those of an Artificial Insemination Technician II. However, when the Complainant acted in July, 1995, in the higher position of Artificial Insemination Technician II, the additional duties relevant to that position were recorded on his Staff Report.

Thereafter, the Complainant acted for intermittent short term periods until he was eventually promoted with effect from **July 19, 2002**.

Further investigations revealed that the Complainant had been recommended to act in the position of Artificial Insemination Technician II. On those occasions he was also recommended for promotion to the said office.

In March 1995 he was recommended to act in and subsequently be promoted to the position of Artificial Insemination Technician II, since he was deemed to be the most technically qualified in procedures pertinent to the work of the particular agricultural unit to which he was assigned.

However, the Complainant was overlooked in favour of a senior officer even though the Complainant's performance rating was higher than that of the person promoted. The **Director, Animal Production and Health**, head of the unit in which the complainant was employed, noted that the officer promoted in the vacancy could not perform some of his duties and the complainant was the person who was assigned to assist.

In March 2001, the Director, Animal Production and Health confirmed that the Complainant not only performed duties beyond those that normally fell within the ambit of an Artificial Insemination Technician I but was also the practical Instructor for the Unit. The Director of the Unit and the Complainant's immediate supervisor advised that the Complainant was crucial to the efficient functioning of the unit and that based on his experience, technological expertise and exceptional dedication to duty, he should be promoted to the position of Artificial Insemination Technician II in the vacancy that arose with effect from **November 24, 2001**.

It was further recommended that the officer who was placed at No. 4 on the Order of Merit List, and who had been away from duty with effect from March, 2000 to February, 2001 be promoted as Artificial Insemination Technician II in the vacancy that arose with effect from **July 19, 2002**. The Ministry nevertheless submitted that the order of seniority be maintained and recommended the officer placed at No. 4 on the Order of Merit List be the first to be promoted.

The **Director of Personnel Administration**, who is the competent authority with regard to the development of Order of Merit listings, recruitment, placement and promotion, was asked to comment on the complainant's claims. She advised that even though the complainant had been a daily rated employee during the period 1973 to 1974, the Chief Personnel Officer had ruled that on appointment to a monthly paid office, the previous daily-rated service of an officer could not be taken into account when determining his placement on a seniority list. In the circumstances the officer placed at No. 4 on the Order of Merit List was considered to be senior to the complainant and therefore had been promoted as Artificial Insemination Technician II with effect from **November 24, 2001** while the complainant had been promoted with effect from **July 19, 2002** the dates on which the respective vacancies had occurred.

The Director of Personnel Administration further advised that the decision with regard to determination of seniority of officers was based on *Regulations 18(1) to (3) and Regulation 20(3) and (4) of the Public Service Regulations*, which treat with the eligibility of officers for promotion as follows:-

**18 (1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with relative efficiency of such officers, and in the event of an equality of efficiency of two or more officers, shall give consideration to the relative seniority of the officers available for promotion to the vacancy.**

**(2) The Commission in considering the eligibility of officers under sub-regulation (1) for an appointment on promotion, shall attach greater weight to –**

- (a) seniority, where promotion is to an office that involves work of a routine nature, or**
- (b) merit and ability, where promotion is to an office that involves work of progressively greater and higher responsibility and initiative than is required for an office specified in paragraph (a).**

**(3) In the performance of its functions under sub-regulations (1) and (2), the Commission shall take into account as respects each other:-**

- (a) his general fitness;**
- (b) the position of his name on the seniority list;**
- (c) any special qualifications;**
- (d) any special courses of training that he may have undergone (whether at the expense of Government or otherwise);**
- (e) the evaluation of his overall performance as reflected in annual staff reports by any Permanent Secretary, Head of Department or other senior officer under whom the officer worked during his service;**
- (f) any letters of commendation or special reports in respect of any special work done by the officer;**
- (g) the duties of which he has had knowledge;**
- (h) the duties of the office for which he is a candidate;**
- (i) any specific recommendation of the Permanent Secretary for filling the particular office;**
- (j) any previous employment of his in the public service, or otherwise;**
- (k) any special reports for which the Commission may call;**
- (l) his devotion to duty.**

**20. (3) The seniority of an officer shall be determined by the date of his appointment to the particular grade within the range which he is serving. The seniority of officers promoted to the same grade from the same date shall be determined by their seniority in their former grade.**

**(4) Where officers have entered the particular service within the public service by competitive examination and are appointed to the same grade in the range with effect from the same date, relative seniority of such officers shall be determined according to their performance in such examination.**

The Director of Personnel Administration could not treat with the Complainant's claim for compensation for having performed the duties as Artificial Insemination Technician II since the Permanent Secretary, Ministry of Agriculture, Land and Marine Resources had made no recommendations on behalf of the complainant for either approval of acting allowances or any other payment.

The matter is being pursued.

**Note:** *The pundits of Public Service Reform posit that a system of meritocracy should be introduced in the Public Service when treating with promotions. However before this is implemented, legislative reform must be undertaken.*

*In the interim promotions in the Public Service continue to be effected primarily on the basis of seniority. As a result, the persons promoted are not necessarily the persons best suited for the position.*

**CASE NOTE #4**  
**MINISTRY OF AGRICULTURE, LAND AND MARINE RESOURCES**  
**(LAND ACQUISITION)**

Previous Ombudsmen have written extensively in several of their Annual Reports about the problems experienced by citizens whose properties have been compulsorily acquired for use by the State. Some of these problems arose from a defect in the original **Land Acquisition Act**, which required that compensation for compulsorily acquired property be assessed on a date one year prior to the date of the acquisition.

The *new* Land Acquisition Act (**No. 28 of 1994**) was intended to address this discrepancy. However, in the event that the acquiring authority chooses to exercise its right to take possession of the land prior to the formal acquisition, then the date of valuation now becomes the date on which entry is effected. In addition, the lengthy delays that persons whose properties have been acquired are forced to endure is a source of grave concern.

In this matter, the **Director of Surveys** acquired the complainant's property in 1983 to construct the north bound carriageway of the then Princess Margaret Highway. The formal acquisition was however, never completed until 1998, some fifteen (15) years later, at which time the Complainant was finally allowed to submit his claim.

Although the new Land Acquisition Act was assented to in 1996, the **Valuation Division** assessed the complainant's compensation on the basis of values and conditions that existed in 1983. The Complainant, already aggrieved by the obvious delay, viewed this action as discriminatory since a number of owners of adjoining lands which were acquired for the same project were paid compensation that had been assessed on the basis of the value of their lands that existed at the date of payment; circa 1992.

The matter was eventually brought to the attention of the Ombudsman in 2000 and was referred to the Director of Surveys and the **Commissioner of Valuations** with a request for a report.

It was revealed that the Government agencies and the **Institute of Surveyors** sought clarification on the interpretation of **Section 12(1)(a)** of the **Land Acquisition Act, 1994** which stated as follows:-

12. (1) The assessment of the amount of compensation shall be made in accordance with the following rules:
  - (a) the value of land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, in the condition in which it was, might be expected to realize at the date of the taking of possession of the land under section 4(1) or the date of publication in the Gazette of the declaration made under section 5(3), whichever is the earlier.

Although this Office was not formally notified of the specific advice given, information was subsequently received that this matter had eventually been settled to the full satisfaction of the Complainant and that compensation and all the relevant interest had been awarded as at the end of December, 2006.

**CASE NOTE #5**  
**MINISTRY OF EDUCATION**

A form five student of a Government secondary school in Port of Spain claimed that he was scheduled to write the Caribbean Examination Council Secondary Education Certificate (CECSEC) examination in Physics on *May 29, 2006*.

On the day in question, he wrote the first paper (Paper 3) and was given a short break. On re-entering the examination room, the Invigilator then decided to check the register of students and having discovered that this student's name was not included on the registered list, promptly proceeded to tear up the first paper (Paper 3) which the student had written.

The student reported the matter to his form teacher; and after discussions held among the Invigilator, the Physics teacher and the Vice Principal, it was discovered that the student's name was erroneously omitted from the registered list. The Vice Principal admitted that she received the student's registration documents two (2) weeks prior to the examination; but failed to make the necessary arrangements with the **Ministry of Education** to have the student's name included in the registered list.

The student thereafter wrote to the *Director of Examinations* and requested that he be allowed to rewrite the examination at the earliest possible date.

The parents of the student subsequently sought the intervention of the Ombudsman since they were of the opinion that the student had been unfairly treated, because his immediate plans for furthering his education were now adversely affected through no fault of his own.

Following investigations by the Ombudsman's Office, the **Permanent Secretary, Ministry of Education** has confirmed that arrangements were made for the student to rewrite the Physics Examination in *January, 2007*.

<p><b>Note:</b> <i>It should be noted that the situation described above is part of a recurring problem. There have been other complaints against Invigilators who take action contrary to those prescribed by the Ministry of Education.</i> <i>The issue of training for Invigilators must be addressed by the Ministry of Education as a matter of priority.</i></p>
---

**CASE NOTE #6**  
**MINISTRY OF EDUCATION**

The Complainant, a part-time Cleaner in the Public Service, had been granted two (2) days bereavement leave on the demise of her daughter in the year 2003.

In 2006, she was informed that she was not entitled to the bereavement leave which had been granted to her three (3) years earlier and that the “erroneously” granted leave had resulted in her being overpaid for the period. She was advised that two (2) days pay would therefore be deducted from her salary.

After consultation with the **Chief Personnel Officer**, it was recommended that the two (2) days overpayment be waived. It was an error on the part of the *Human Resource Section* in not correctly apprising the Complainant of her leave entitlement as a part-time employee when she submitted the Bereavement application.

This office was later informed by the **Ministry of Education** that the relevant leave had been re-classified and approved as leave with full pay.

#### CASE NOTE #7

#### MINISTRY OF EDUCATION

An appointed secondary school teacher, who had been erroneously assessed by the **Ministry of Education** as *Teacher III* instead of *Teacher II*, sought the assistance of the Ombudsman when a large sum was arbitrarily deducted from her monthly salary.

The Complainant claimed that by letter dated **14<sup>th</sup> September, 2005** she was appointed as a Teacher II. The appointment was retroactive from **19<sup>th</sup> April, 2004**. She subsequently received a letter dated **28<sup>th</sup> April, 2006** in which she was advised that she had been overpaid salary with effect from **1<sup>st</sup> September, 2002 to 31<sup>st</sup> January, 2006**, as a result of being paid as a Teacher III. She was therefore indebted to the Government, she was advised in that letter, in the sum of **fifty thousand nine hundred and forty-five dollars and eighty cents, (\$50,945.80)**.

The Complainant acknowledged the overpayment and after having considered her financial commitments, offered to pay **one hundred dollars (\$100.00)** per month towards the liquidation of the debt. The **Comptroller of Accounts** however deemed this offer unacceptable.

Subsequently, when the Complainant received her monthly salary, she discovered that in addition to the **\$100.00** which she had offered to pay, an additional **\$3,000.00** had been deducted, leaving her with a net take home figure of **\$249.44**.

The matter was referred to the **Director, Human Resources, Ministry of Education**, outlining the provisions of the Financial Regulations under the Exchequer and Audit Act Chapter 69:01. It was recommended that the Complainant be allowed to pay the reasonable sum of **seven hundred dollars, (\$700.00)** per month. This amount she subsequently agreed to pay towards the liquidation of the overpayment.

At the time of writing this report, information was received from the **Permanent Secretary, Ministry of Education** that the complainant’s proposal to pay the **\$700.00** had been accepted and that the Pay sheet Section of the Ministry had been instructed to make arrangements for the said monthly deduction from her salary.

## CASE NOTE #8

### Ministry of Local Government

#### Couva/Tabaquite/Talparo Regional Corporation

In *July 2001*, the Complainant wrote to the then Ombudsman advising that he was being denied legal access to his property. The public access trace which separated the Complainant's property from the main road was fenced by the neighbour whose property adjoined the trace. This trace had been demarcated by the **Town and Country Planning Division** as the only access by which the Complainant could reach his property.

The Complainant alleged that this situation caused undue hardship to his family since, to get to the main road, they had no alternative but to pass through a ravine which flooded whenever rain fell.

The matter was brought to the attention of the Ministries of **Planning & Development** and **Local Government** and the *Chief Executive Officer* of the **Couva/Tabaquite/Talparo Regional Corporation**.

In January 2003, the *Permanent Secretary, Ministry of Local Government* advised that based on investigations done by Technical Officers of the Ministry of Local Government, the *Legal Adviser* had suggested that the matter appeared to be a private dispute between the property owners. The Legal Adviser further opined that the Couva/Tabaquite/Talparo Regional Corporation should first determine whether the drainage reserve fell within its jurisdiction and if it did, then steps should be taken to remove the blockage. This advice was relayed to the Chief Executive Officer, Couva/Tabaquite/Talparo Regional Corporation with the expectation that the advice would be acted upon.

Several reminders over the period *2002–2006* have been sent to the Permanent Secretary, Ministry of Local Government and to the Couva/Tabaquite/Talparo Regional Corporation. Responses thus far have been limited to two verbal requests for copies of the original complaint and reminders.

The matter is still being pursued.

## CASE NOTE #9

### MINISTRY OF LOCAL GOVERNMENT/REGIONAL CORPORATIONS

#### DISCRIMINATION IN EMPLOYMENT PRACTICES

Ten (10) 'Checkers' from the **Siparia Regional Corporation** complained that they had been subjected to discrimination at their place of employment.

The 'Checkers' who are daily rated employees with over three (3) years service claimed that on **May 15, 2004** they received letters from the Corporation stating that their service(s) had been temporarily terminated due to financial problems which the Corporation was experiencing at



that time. They further claimed that they had taken this matter to their Union Representative but the Union had not addressed their problems. They felt that they had been unfairly treated because two (2) other employees, who were junior to them, continued in the employ of the Corporation.

Reports were requested from the *Chief Executive Officer, Siparia Regional Corporation*, the *Chief Personnel Officer* and the *Permanent Secretary, Ministry of Local Government*. The Chief Executive Officer of the Siparia Regional Corporation furnished a report in which it was stated that the ten (10) 'Checkers' had not been overlooked because the two employees who continued to work had agreed to be transferred to the Rodent Control Unit of the Corporation and to receive a lower rate of pay. There was no evidence that the 'Checkers' were ever offered this facility.

The Permanent Secretary, Ministry of Local Government by letter dated **August 14, 2006** advised that of the ten (10) 'Checkers' one had retired in 2004 and the other nine (9) had been re-employed with the Siparia Regional Corporation during the period **September 30, 2004** to **June 16, 2005** on a phased basis, based on their order of seniority.

To date the matter remains unresolved pending a response from the Chief Personnel Officer.

#### **CASE NOTE #10**

##### **Housing Development Corporation**

The Complainant and her husband purchased a three (3) bedroom housing unit from the *National Housing Authority* (NHA) – now called *Housing Development Corporation* (HDC), in 1973. Within the initial 3year period of their occupancy, unsightly cracks appeared on the walls. These cracks became progressively worse in later years and separations occurred in the walls of the building.

The Complainant observed that the roadway directly in front of her home was constantly wet and she also noted dampness around the perimeter of the building. These conditions were attributed to leaking water mains. The problem of water seepage damaging the foundation of the house was drawn to the attention of the *Water & Sewerage Authority* (WASA). Officials of WASA visited the site on numerous occasions but took no action to rectify the problem. In 2000, at the request of the Complainant, an Engineer from the *Ministry of Works and Transport, Drainage Division* inspected the property and gave the following report:

*“It is evident that a destabilizing of slope resulting from softening and erosion of soil by ground water is the cause of damage to the Complainant’s building and not any drainage problem which may be associated with the Drainage Division.*

*The fact that the area is localized and considering its location in relation to visibly leaking water lines is evidence to conclude that the water from these leaking pipe-lines is the direct cause of the slope’s destabilization.”*

The Complainant sought the intervention of the Ombudsman in 2002 after having failed in her efforts over a period of thirty (30) years to have the problem of water seepage and the resulting structural damage to her home addressed by the relevant state agencies.

On 15<sup>th</sup> November, 2002, the previous Ombudsman wrote to the NHA and enquired whether their records disclosed the existence of an underground spring in the vicinity of the Complainant’s property, and if so, what type of drainage system had been installed to remove the flow of water. In response, the Authority forwarded a report from a Structural Engineer whom they had commissioned to investigate the Complainant’s claims. The Engineer’s report contained the following findings:

*“Whilst the foundation to a building is expected to ‘undergo some degree of settlement, the extent of cracking indicates that the settlement was excessive. This most likely resulted from the underground seepage from leaking WASA mains and the possibility that the fill on which the building was constructed’ was not properly consolidated. It was likely that further settlement and lateral displacement would continue to occur due to the problems of water seepage, which was causing piping and further softening of soils under the footings.”*

By letter dated 18<sup>th</sup> March, 2003, the **Drainage Division (North), Ministry of Works and Transport** wrote to confirm that based on a second inspection of the site, it was established that the moisture or subsoil water present on the compound did not originate from the water-course at the back of the property.

Soil testings conducted by **CARIRI** and the Ministry of Works and Transport have proven to be inconclusive as to the source of the water seepage.

On 12<sup>th</sup> January, 2006, a meeting was convened by the former Ombudsman which was attended by representatives of all the state agencies concerned i.e. WASA, Ministry of Works and Transport and HDC. It was determined at the meeting that given the extent of structural damage to the property and the existing conditions it was necessary that the Complainant’s house be demolished and a new house reconstructed. A recommendation in these terms was made to the HDC.

The Chief Executive Officer, HDC was written to on 31<sup>st</sup> March, 2006 when it was noted that the Corporation had not taken any action with respect to the implementation of the recommendation. The Corporation was reminded that the Complainant had endured years of suffering through no fault of her own. In the particular case it was foreseeable that the HDC would be obligated to ensure that the accommodation provided would be fit for human habitation. Failing to provide such accommodation would result in the HDC being under a duty to make amends and to correct the problems experienced by the Purchaser. On the grounds of equity and fairness therefore, the Corporation was urged to use its available resources to bring immediate relief to the Complainant and her family.

A period of one (1) year has elapsed without any action being taken. The Corporation has advised that it was awaiting legal advice on the matter.

**Note:** *Having regard to its mandate from the Government to provide suitable and adequate housing, the HDC, as a State Corporation is expected to exhibit a greater sense of responsibility than a private developer. In fact, I am of the opinion that the Corporation is under a moral obligation to rectify the situation expeditiously, especially in cases where the persons who have suffered loss may not have the wherewithal to have the matter litigated before the courts. As Ombudsman I also believe that I am obliged to bring to the attention of all State entities the concept of fairness. I am not simply limited to a strictly legal interpretation but must consider all factors when commenting on the administrative actions of Government agencies.*

#### **CASE NOTE #11** **TOBAGO REGIONAL HEALTH AUTHORITY**

The Complainant, a physically challenged woman, has sought the assistance of the Ombudsman to recover monies paid to a Doctor for a prosthetic leg and orthopedic shoe.

After the amputation of her right leg, the Complainant attended the Out-patient Clinic at the **Scarborough Hospital**. The Doctor at the Clinic was paid in excess of **thirty thousand dollars, (\$30,000.00)**, by the Complainant for the supply of the prosthetic leg and the shoe. The items supplied were not customized to properly fit the Complainant and she requested that the Doctor make suitable adjustments.

The Complainant claimed that instead of making the required adjustments, her request was met with hostility and defiance by the Doctor. She therefore did not take home the items but left them with the Doctor and demanded a refund. This request was also ignored.

The Complainant further alleged that:

- *Patients are usually treated with disrespect.*
- *This Doctor who uses the facilities of the Scarborough Hospital and is being paid by the Government demands an additional fee of **two hundred dollars, (\$200.00)**, per patient per visit. In addition, his visits have become inconsistent and scheduled days are usually cancelled with no explanation given to patients who wait in anticipation of the visit. On each occasion that there is a cancellation of the scheduled visits, over fifteen patients are affected. Despite complaints to the Hospital Administration, the issues raised have not been addressed.*

The Complainant also aired her problem on a call-in programme on a local radio station. Subsequently over five patients have called this office highlighting similar problems or experiences with the said Doctor.

To date, there has been no response from the **Hospital Medical Director** at the Scarborough Hospital to comments sought on the said allegations.

#### CASE NOTE #12

#### TRINIDAD AND TOBAGO ELECTRICITY COMMISSION

The Complainant reported that the **Trinidad and Tobago Electricity Commission**, (T&TEC), had erected seven (7) electricity poles on her property to supply electricity to a resident who lives on the opposite side of the road. She contended that too much of her land had been utilized to accommodate the erection of the poles. Many of her fruit trees and other agricultural crops had been destroyed in the process.

She requested that **T&TEC** relocate the poles; but was informed that the land had to be re-surveyed in order to determine a new location for the poles.

A report was requested from T&TEC, which advised that relocation of the poles was not a feasible course of action since the land was swampy and a large number of trees would be destroyed. T&TEC further advised that consideration would be given to the payment of compensation for the destruction of the fruit trees and agricultural crops.

In light of this, T&TEC was advised as follows:-

***“I will like to achieve an equitable solution since I am of the view that the Trinidad and Tobago Electricity Commission has acted illegally by trespassing on Complainant’s land. Merely compensating the complainant for the loss of bearing fruit trees and agricultural crops appears to be unreasonable considering that she has actually been deprived of the use of her land. State enterprises should not be perceived as acting in an unjust manner with regard to vulnerable individuals. The rationale provided by the Commission for not relocating the electricity poles is unacceptable since the Commission should have the wherewithal to make the adjustments required to treat with various types of soil and terrain which it will encounter in performing its statutory obligations.”***

Subsequently, the **Regulated Industries Commission** wrote the *Area Manager*, Trinidad and Tobago Electricity Commission informing him 'inter alia' that a site visit had been conducted by the Regulated Industries Commission and based on its findings, it was recommending that the Trinidad and Tobago Electricity Commission should re-survey the area to accurately determine property boundaries and then re-construct the line to criss-cross the roadway.

The matter is still to be resolved.

<p><b>Note:</b> It is imperative that the Trinidad and Tobago Electricity Commission act expeditiously on the recommendations so that the problem may be resolved to the satisfaction of all concerned.</p>
---

### CASE NOTE #13

#### MINISTRY OF WORKS AND TRANSPORT

The Complainant, who acts as the spokesperson for the **Cap de Ville Coastal Dwellers Association**, reported that the Point Fortin coastal area, located in the Gulf of Paria, had over the years suffered from minor erosion. However with the arrival of the **Atlantic LNG Company**, erosion had reached cataclysmic proportions and the complainant and other residents were in danger of losing their properties.

The Complainant contended that the waterfront developmental activities of Atlantic LNG have affected the tidal geographic status of the area, thus resulting in inconsistent ebb and flow of the tides and consequent changes in the high water mark. The matter had been brought to the attention of Atlantic LNG in 2004 and it is understood that there was some dialogue between that Company and the residents. The situation, however, was not rectified and has since deteriorated to the point where the sea is now actually invading the homes of the residents when the tides are high.

In addition, attempts by the complainant to have the **Point Fortin Borough Corporation** provide some assistance proved futile. He complained of being shunted back and forth between the various Government agencies with none of them willing to take responsibility for providing relief.

In the circumstances, in order to bring some measure of relief to the residents and an expeditious resolution to this matter, a site visit was conducted to view the affected area. Accordingly the **Ministries of Energy and Energy based Industries, Works and Transport**, and **Local Government**, together with the **Siparia** and **Point Fortin Regional Corporations** and the **Environmental Management Authority**, were invited to attend a site visit on *November 29, 2006*.



Notably, while representatives of the Ministry of Works and Transport and the two Regional Corporations were in attendance, there was no representative from the Ministry of Energy and Energy based Industries nor from the Environmental Management Authority.

The area viewed extended along the

shoreline in the vicinity of Beach Road; at Chin Kit and Chin Yuen Kee Streets. There was evidence of severe coastal erosion and subsequent damage to properties. In some instances the high tide water mark was elevated as much as four feet up on the walls of some of the residences. (**See photos**)

It was eventually concluded that the **Ministry of Works and Transport, Drainage Division**, should conduct the relevant studies with a view to determining the most appropriate course of action to deter and/or halt the erosion, albeit temporarily, in order to bring relief to the residents.

The matter is still being pursued.

#### **CASE NOTE #14**

#### **MINISTRY OF WORKS AND TRANSPORT**

The Complainant, a farmer, reported that the **Drainage Division (South) Ministry of Works and Transport** has failed to adequately maintain the drainage system in his area and this has resulted in the area being permanently waterlogged. Consequently, it was impossible for him to farm his land. He expressed the view that he should be able to claim compensation from the Government since he felt that he had suffered financial hardship because the Division had failed to maintain the drainage system.

The Complainant stated that the land which surrounds his house, and where he would usually plant his crops, is located at the southernmost section of the Oropouche lagoon. In the natural course of events, the area is covered with water during the rainy season and dries out in the dry season. The drainage system must, however, work efficiently to allow for the discharge of the water without interruption. According to the Complainant when that system fails, the land remains waterlogged making it impossible to cultivate when the dry season arrives.



Large amounts of vegetables and watermelons are usually grown in that area. The poor drainage system, however, severely curtails the resident farmers' ability to plant and harvest their crops. In order to reinforce his claim, he pointed out that under normal circumstances his crops would be almost fully grown by early March. Since 2004/2005 the land had not dried out properly due to the poor drainage system and he was therefore unable to cultivate the land.

The Complainant wrote to various agencies involved and in 2005 a machine was used to clear the Cunapo River almost at the end of the dry season. He claimed that as a result of the timing of the clearance, there was no way that he could have subsequently planted the land that year.

Apart from the consequent crop failures, livestock (including cattle) under his care which depend on the grass in the lowland when the hills are dried out, suffered considerably, since they could not walk and graze in the mud and water. As a result of the persistent swampy conditions a type of marsh grass which is unsuitable for grazing stock invaded the area and consequently the cattle languished.



After consultation with the relevant Government agencies, a site visit was conducted in *November 2006*. The objective was to identify the cause of the problem and to discuss with the relevant agency personnel what corrective action could be taken.

Having viewed the area, it could be reasonably deduced that inefficient drainage was indeed the issue. In fact, there appeared to be three main causative factors. Firstly, regulation of the outflow of water from the main watercourses in the area is dependent on the operation of the *St. John's Sluice Gates*, where these watercourses are drained at their confluence. Indications are that improvements in the area of efficiently manning the gates were forthcoming and this would be considerable assistance in controlling the problem.

Secondly, a strictly observed regimen for the clearing of the Cunapo River (one of the aforementioned main water courses) and its tributaries was required. The Ministry of Works had in fact advised that mechanical work in this regard was in process at the time of the visit. Visual confirmation of this was

evident. The Ministry also promised to continue remedial work on both the Cunapo River and Nagessar Channel during the 2007 dry season.

Finally, another factor that significantly complicated the situation was an increase of silt due to burgeoning construction activities. The Drainage Division (South) has advised that in this regard the river is still being excavated.

The situation is being monitored.

**CASE NOTE #15**  
**MINISTRY OF WORKS AND TRANSPORT**  
**PUBLIC TRANSPORT SERVICE CORPORATION, (P.T.S.C.)**

The owner of a two-story commercial building in Scarborough, Tobago stated that on **January 5, 2001** while he was in Trinidad, a **P.T.S.C.** bus driven by an allegedly drunk driver ran off the road and crashed into the front of the building. There was extensive damage to the garage and three (3) businesses housed on the ground level.

He claimed that immediately upon his return to Tobago, he sought to report the incident to the Personnel Manager of the P.T.S.C., Tobago, who was evasive.

After several futile attempts to hold discussions with the Personnel Manager, whose demeanor was described as "inexplicable, impatient, irritable, impulsive and not only undiplomatic but unconscionable and rude", he thereafter sought the assistance of the then Ombudsman to obtain compensation for damages and losses incurred as a result of the incident.

By letter dated May 23, 2003, the then Ombudsman brought the facts of the complaint to the attention of the *General Manager* since the matter had been outstanding for almost two years. The P.T.S.C. promised that the matter would be settled by its Insurers. The P.T.S.C. was requested to look into the matter and to ensure that the claims were settled since the claimants were contemplating legal action.

That request was followed by several reminders, but no response was given until *August 17, 2006*, when the Operations Manager **wrote saying that the matter was closed since it was considered "statute barred."**

On **September 8, 2006** the General Manager, P.T.S.C. was advised by the Ombudsman that this claim would only be statute barred if the Complainant had been contemplating legal action against the Corporation. The records suggested that the tardy submission of information to the Insurers may have been as a result of the lack of timely action on the part of the Corporation.

It was recommended that the total sum of this claim in the sum of ***twenty-one thousand, eight hundred and twenty dollars, (\$21,820.00)***, be paid in full and final settlement to the Legal Representative of the Complainant.

To date, a response from the ***Public Transport Service Corporation*** is still outstanding.

## CASE NOTE #16

### MINISTRY OF LOCAL GOVERNMENT CHAGUANAS BOROUGH CORPORATION

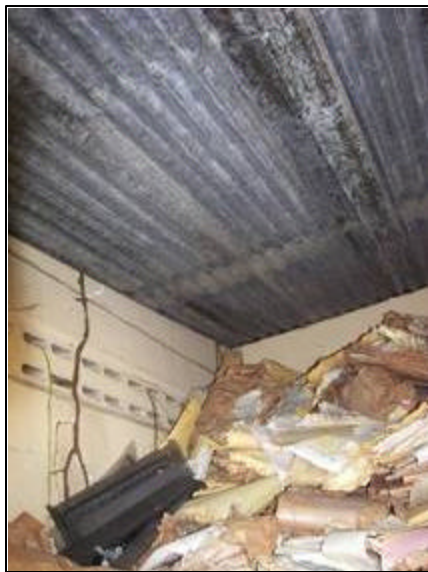
In October 2005, this Office received a complaint against the *National Insurance Board* which highlighted the issue of the storage of files at the *Chaguanas Borough Corporation*.



The Complainant, a former employee of the Chaguanas Borough Corporation, claimed that he had approached the National Insurance Board to have inconsistencies in the information on his Contribution Statement for the years 1979- 1984 corrected. He then approached the Borough Corporation, where he had worked during that period, hoping to have that matter corrected, but to no avail.

Initial investigations originally conducted with the National Insurance Board were eventually widened to include the Chaguanas Borough Corporation. Upon enquiries from officials at the Corporation, it was discovered that *employee records such as personal files and pay record cards, among other documents, were not properly stored*. Some of these documents were being kept in an unlocked shed at the back of a building on

the Corporation's compound. The shed was termite ridden, vermin infested and open to the elements. (See accompanying photos)



Officials at the Corporation advised that as a result of improper storage, the process to locate records, including those concerning the Complainant, was slow and tedious. There were two persons assigned to peruse all the loose sheets, files and packages in an effort to locate the Complainant's Pay Record Cards.

Although the Corporation is slowly addressing this matter, it is evident that facilities for the storage of archives need to be addressed expeditiously so that the records of past and present employees are kept secure. It should be noted that the Complainant's records have not yet been located.

The matter is being pursued.

**NOTE:** The *Chaguanas Borough Corporation* must address this problem urgently by implementing a proper system of storage and record keeping so that employees of the Corporation, both past and present would be able to obtain their employee records in a timely and efficient manner.



CASE NOTE #17  
**SOCIAL WELFARE DIVISION**

The Complainant, a forty-six (46) year old male patient at the **General Hospital San Fernando** stated that as a result of his complicated medical condition he was unable to work. He applied for *Disability Assistance Grant* from the **Victoria East Local Board** and was rejected.

He was requested to provide relevant reports from a Medical Officer, who was required to indicate the Complainant's percentage of disability and whether his condition would be deemed permanent. The Complainant submitted two reports, indicating that he required Coronary Angiogram, Angioplasty and CABG, since he was diagnosed as having Ischaemic Heart Disease (Acute M.I. 23.12.05), Diabetes Mellitus and Hypercholesterolemia. An Echocardiogram was also requested.

The Complainant further stated that he submitted a third report, yet he was again denied the Grant. He subsequently sought the assistance of the Ombudsman because he felt he had been unfairly treated.

The Victoria East Local Board was requested to submit a report on the Complainant's application. The *Acting Supervisor* reported that an application from the Complainant for a Disability Assistance Grant was received on 30/08/06. The Complainant had also submitted a report dated 18/08/06 from the Out Patient Clinic at General Hospital San Fernando stating that he was suffering from Heart Failure to Myocardial Infarction. This condition was not deemed to be permanent, by the Medical Officer. According to the **Public Assistance Act Chapter 32:03**, a person is entitled to receive Disability Assistance if he is certified by a Government Medical Officer as handicapped with a disability that is permanent or likely to be permanent. The Complainant's application was rejected because he was not certified to be permanently disabled from earning.

The Complainant is still however unable to earn a living due to his complicated medical condition. He is in dire need of the Grant. Several similar complaints have been made to this office and Complainants have no redress since there are no rights of Appeal under the Public Assistance Act. The Complainants' only recourse is to reapply.

<b>NOTE:</b>	It may be prudent either to secure the services of a medical practitioner on the Local Board or to have a medical assessor review cases, when the Board is of the opinion that the application should be rejected.
--------------	--

**CASE NOTE #18**

**MINISTRY OF SOCIAL DEVELOPMENT  
SOCIAL WELFARE DIVISION**

A recipient of the *Disability Assistant Grant* complained of a delay in obtaining assistance from the *Social Welfare Division's Emergency Fund*.

The Complainant advised that after severe flooding in November 2005 and January 2006 his home had fallen into disrepair.

As a recipient of social assistance, he approached the Social Welfare Division for an Emergency Cases Fund *Housing Grant* and submitted all the relevant documents.

The matter was referred to the *Social Welfare Department, Nariva/Mayaro* and that department responded that an application for an Emergency Cases Fund Housing Grant had indeed been received on June 26, 2006 from the Complainant.

This case was investigated and a recommendation was made and submitted to the Social Welfare Central Office on June 11, 2006 for final approval. To date, however the Complainant still has not received the Grant.

The matter is being pursued.

**Note:** The Ombudsman is of the view that the word '*Emergency*' connotes immediate relief. Therefore, when an application is made for an *Emergency Cases Fund Housing Grant*, it is expected that such application would be processed as a matter of priority.

CASE NOTE #19

**MINISTRY OF HEALTH**  
**SAN FERNANDO GENERAL HOSPITAL (SOUTH WEST REGIONAL HEALTH AUTHORITY)**

The Complainant had been involved in a vehicular accident on 25<sup>th</sup> November, 2005 and was warded at the *San Fernando General Hospital*. Arising out of the said accident, a Court action was filed which required that he produce a medical report from the attending neurosurgeon.

The Complainant paid for the medical report on 16<sup>th</sup> June, 2006. He however was unable to access same. When several checks with the San Fernando General Hospital proved futile, he approached the Office of the Ombudsman on 6<sup>th</sup> November, 2006 seeking assistance in obtaining the report.

Investigations revealed that the officer responsible for preparation of the reports did not have a computer of her own. She would therefore have to visit various departments within the Hospital to make use of an available computer in order to get her work completed. This situation had resulted in the backlog of medical reports to be prepared and there was no evidence that the Hospital Administration had been taking any action to remedy the situation.

The medical report is still outstanding.

CASE NOTE #20

**MINISTRY OF PUBLIC UTILITIES AND THE ENVIRONMENT**  
**WATER AND SEWERAGE AUTHORITY**

The Complainants, a couple and their relative who reside in Carapichaima, informed the Ombudsman that in 2002 they paid the *Water and Sewerage Authority* (W.A.S.A.) to have water connected to their parcels of land at another location in the area. Two of the parcels were adjoining, while the other was located approximately three house spots away. The Complainants advised that when they purchased the properties in the mid 1990s, they were requested to remit the sum of *two hundred dollars* (\$200.00) per property to the Water and Sewerage Authority. This payment was needed to facilitate a feasibility study to determine whether it would be possible to provide them with water connections. Subsequently, the Complainants were informed that the required connection was impossible due to low water pressure in the area. The Complainants, however, felt that they had been discriminated against because other properties in close proximity to theirs had received a water supply.

A project undertaken through the *Self Help Programme* in 2002 facilitated the running of a four inch water main in the street that is a short distance away and runs parallel to the one on which the Complainants' properties are located. The project was intended to alleviate the problem of the low water pressure and bring relief to the residents of the surrounding areas. Only two (2) premises however received connections to the new main, the one adjacent to

and immediately above one of the Complainants properties which is located at the lower end of the street and the property located at the higher end of the street.

The Complainants, having been advised by the *Town and Country Planning Division* that they must first have a construction tap on site before being able to proceed with any construction on the properties they have purchased, now felt frustrated in their efforts to build their homes.

In addition the Water and Sewerage Authority has already laid mains to facilitate the construction of new houses being undertaken by both the *Housing Development Corporation* and private developers. The Complainants properties fall within the environs of these new housing developments.

According to the Complainants, they had on several occasions brought the matter to the attention of the Water and Sewerage Authority, Chaguanas, where instead of receiving assistance they were treated with disrespect.

This Office was advised by WASA's *Chief Executive Officer*, by letter in response to our enquiry, that a water service connection was done to two premises on February 2, 2004 and June 9, 2004 respectively, since at those times there was a noticeably high water pressure on the system (25psi).

Subsequently, the area began experiencing very low pressures on the system (less than 5psi) and when applications were made for new service connections to the lots owned by the Complainants, the said applications were deemed not feasible until such time as the pressure in the area was adequate.

It was further stated that no discrimination was made in granting connections to the other two premises since it was feasible to do so at the time those requests were made. The Authority promised to continue to monitor the pressures in the area to determine when it would be feasible to grant the connections.

***It should be noted, however, that the Complainants had paid for their water connections in 2002.***

The complaint was subsequently referred in September 2006 to the *Customer Services Manager* of the ***Regulated Industries Commission*** because notwithstanding WASA's claims, it was difficult to understand why the Complainants, who had applied for connections in 2002, were not connected to the system in 2004 when their neighbours at the lower and upper ends of the street were so connected.

Despite reminders there has been no response from the ***Regulated Industries Commission***.

The matter is still being pursued.

**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 **Third Schedule** Third Schedule.
- (5) Notwithstanding subsection (4) the Ombudsman
- a) may investigate a matter notwithstanding that the Complainant has or had a remedy by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;
  - (b) is not in any case precluded from investigating any matter by reason only that it is open to the Complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the provisions for the protection of fundamental rights).

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

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

(d) the Complainant has not a sufficient interest in the subject matter of the complaint.

96. (1) Where a complaint or request for an investigation is duly made and the Ombudsman decides not to investigate the matter or where he decides to discontinue investigation of the matter, he shall inform the person who made the complaint or request of the reasons for his decision. **Report on Investigation**
- (2) Upon completion of an investigation the Ombudsman shall inform the department of government or the authority concerned of the results of the investigation and if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform the department of government or the authority of the reasons for his opinion and make such recommendations as he sees fit. The Ombudsman may in his original Recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.
- (3) Where the investigation is undertaken as a result of a complaint or request, the Ombudsman shall inform the person who made the complaint or request of his findings.
- (4) Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under sub-section (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament.
- (5) The Ombudsman shall make annual reports on the performance of his functions to Parliament which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigation.

**Power to obtain Evidence**

97. (1) The Ombudsman shall have the powers of the High Court to summon of the witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same



duties and liabilities and enjoy the same privileges as in the High Court.

- (2) The Ombudsman shall have power to enter and inspect the premises of any department of government or any authority to which section 93 applies, to call for, examine and where necessary retain any document kept on such premises and there to carry out any investigation in pursuance of his functions.

**Prescribed  
Matters  
concerning  
Ombudsman**

98.

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

- (7) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any enquiry by or proceedings before an Ombudsman under this Constitution is privileged in the same manner as if the enquiry or proceedings were proceedings in a Court.
- (8) No proceedings of the Ombudsman may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of an Ombudsman is liable to be challenged, reviewed, quashed or called in question in any Court.

**THIRD SCHEDULE**  
**MATTERS NOT SUBJECT TO INVESTIGATION**

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

9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to -
  - (a) the terms and conditions of service as such member; or
  - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
10. Any action which by virtue of any provision of this Constitution may not be enquired into by any Court.