



THE REPUBLIC OF TRINIDAD AND TOBAGO

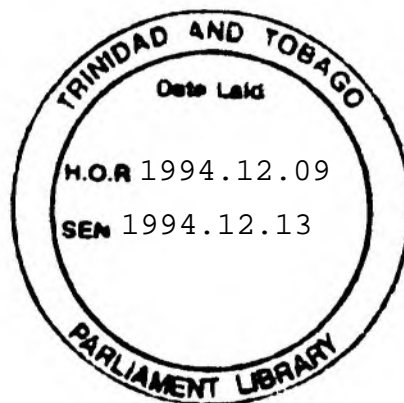
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**THE OMBUDSMAN**

**SIXTEENTH**

**ANNUAL REPORT**

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JANUARY 01, 199<sup>3</sup><sub>2</sub> TO DECEMBER 31, 1993

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*Office of the Ombudsman of Trinidad and Tobago*

*St. Ann's Avenue  
St. Ann's  
P.O. Box 886*

13th October, 1994

The Honourable Speaker,  
Parliament,  
Red House,  
Port of Spain.

Dear Madam Speaker,

I have the honour to present the Sixteenth Annual Report of the Ombudsman for the period January 1, 1993 to December 31, 1993.

The Report is submitted pursuant to Subsection 5 of Section 96 of the Constitution of the Republic of Trinidad and Tobago, 1976.

Yours faithfully,

GEORGE A. EDOO,  
Ombudsman,  
Trinidad and Tobago.



## MISSION STATEMENT

The Institution of the Ombudsman is an Office designed to ensure the protection of the individual against bureaucratic injustice. In the furtherance of such ideals, the Office seeks to ensure:

1. Investigation of complaints against government departments, agencies and authorities.
2. Provision of an impartial, informal and accessible service to the public.
3. Education of the public as to their rights and duties in a free and democratic society vis a vis the responsibility and accountability of public officers.
4. In an indirect way, the education of public officers with respect to their roles and functions under the prevailing system of Government.



## TABLE OF CONTENTS

<b>PART I</b>	<b>GENERAL</b>	<b>PAGE</b>
	Public Service Reform	4
<b>PART II</b>	<b>AREAS OF CONCERN</b>	
	Water and Sewerage Rates for Unmetered Dual-Use Premises	5
	Pollution of the Environment	6
	Stolen Vehicles in the Custody of the Police	8
	Claims for Damages Resulting from Vehicular Accidents	10
<b>PART III</b>	<b>1. STATISTICAL OVERVIEW</b>	13
	<b>2. SELECTED CASE SUMMARIES</b>	
	Ministry of Education	17
	Ministry of Health	18
	Ministry of Local Government	20
	Ministry of National Security	23
	Ministry of Social Development & Family Services	27
	Ministry of Works & Transport	28
	Public Service Commission	29
	Public Transport Service Corporation	30
	Tobago House of Assembly	32
	Trinidad and Tobago Electricity Commission	35
<b>PART IV</b>	<b>APPENDICES</b>	
	1. Public Service Reform and the Role of the Ombudsman in Trinidad and Tobago	37
	2. Extracts from Constitution:	
	(a) Recognition and Protection of Fundamental Human Rights and Freedoms - Chapter 1	42
	(b) Ombudsman - Part 2	44
	(c) Third Schedule to Constitution	50
	3. Ombudsman Act, Chapter 2:52	51
	4. Map of Caribbean Area and South American Mainland	57
	5. Map of Trinidad and Tobago	58



## PART I

### GENERAL





GENERAL

In reporting on the performance of my Office over the past year, I must make some general remarks on the complexity and difficulty of Ombudsmanship in Trinidad and Tobago, especially at this stage of the nation's development.

Bernard Frank, a former Canadian Ombudsman, in his article "The Ombudsman and Human Rights Revisited" (1975), commented that the Ombudsman not only investigates and recommends corrective action where necessary, but performs an important function in advising and referring complaints. His functions are mainly confined to investigating faults in administration of Government departments and statutory authorities. From the inception of the Office in Trinidad and Tobago, there have always been requests, by citizens for the Ombudsman to investigate complaints of alleged injustices by private institutions and institutions of a public nature over which the Ombudsman has no jurisdiction e.g. trade unions and the Service Commissions.

To the average citizen, matters relating to my jurisdiction are not fully understood. This is evidenced by the type of complaints which I receive. The public are generally under the impression that they have suffered an injustice and in their quest for a remedy deem that the Ombudsman is the fittest person who can remedy their grievances. Outside of the Courts, my Office is the only easily available and accessible avenue for possible redress, and judging from the type of complaints I receive, it would appear that the public feels that the protection given against maladministration and abuse by public officers should be extended to the private sector where similar complaints are levelled against employers and management personnel. Wherever possible, I assist complainants in these cases by advising them of the courses they should adopt in having their complaints remedied. I explain to them my inability to embark upon formal investigations, make recommendations or lay Special Reports before Parliament. In spite of these limitations, many persons have been assisted and I have received considerable assistance and co-operation from officials of private enterprise.

Similarly, in the case of complaints of professional negligence I have advised complainants to seek legal redress as these matters are outside my jurisdiction, my jurisdiction being limited to investigating faults in administration. Where liability has been admitted by a department or authority, I attempt to ensure that the complainant is adequately or fairly compensated and that there is not too much delay in the payment of compensation or in having the complaint remedied. Unfortunately, most complainants approach me when the limitation period for bringing actions in the Court have already expired. In these cases, especially where the delay has been caused or contributed to by the department or authority concerned, if I am of the opinion that the complainant

has suffered an injustice, I nevertheless try to assist him and ensure that he is fairly treated.

In recent times I have noted a qualitative change in the type of complaints received. This change has been gradual and can be traced back to the period 1985-1986 as a result of changes in public policy and Governmental activity. From the inception of the Office in 1977/1978 there had been a prevalence of complaints concerning delays by Government in the payment of compensation for property damage caused in the course of repairs or construction of roads and public facilities and other related activities. Of equal concern was the delay in paying compensation for property acquired for public purposes. There were also delays by the National Housing Authority in providing accommodation to citizens who met the qualification criteria. After 1986, there was a decline in the number of such complaints. These complaints were mainly against the Tobago House of Assembly, the Ministry of Works and the Ministry of Local Government. From an average of 25 in the period 1977 to 1986 it fell to an average of 5 in 1991 and onwards. Complaints of delay in providing housing accommodation fell from 32 in 1982/1983 to 26 in 1985 and 13 in 1991.

The number of complaints in matters of a personnel nature has always been high. There has been an increase in the number of complaints from daily paid employees alleging discrimination in selection for employment and promotion, the chief employers of such workers being the Tobago House of Assembly, the Ministry of Local Government and the Ministry of Works. There has been a steady increase in the number of such complaints for the period 1982 to 1991: 41 in 1982/1983, 44 in 1985 and 58 in 1991. Likewise for the years 1991 to 1993 there has been a steady increase in the number of complaints by public officers of attempts by their departments and/or the Director of Pensions to recover alleged overpayments from their salaries or from their pensions and gratuities. My two previous reports have highlighted this matter in some detail.

Acts of discrimination are difficult to substantiate. Moreso, when they relate to employment or retrenchment practices which are governed by existing State policy. Many complainants have alleged that they have been denied the opportunity of accumulating service through discriminatory employment practices on the part of recruiting officers. It is therefore, incumbent on the part of the Chief Personnel Officer, as employer and the recognised bargaining Union to ensure that there is adherence to the procedures agreed on for selection, promotion and retrenchment of employees, and that recruiting officers be made aware of such procedures.

Throughout the year I have continued to lend valuable assistance to members of the public in their interaction with the State bureaucracy. I have discovered that the public on a whole, steer clear of the State bureaucracy and only deal with it when they are forced, by necessity, to do so. My assistance is often



sought after many futile and frustrated attempts have been made by the public to deal with the simplest of matters. It must be realised that there is a substantial number of complainants who are disadvantaged, underprivileged, poor, weak and frightened who do not understand the ways of public bureaucracy or are afraid to deal with public officers or are reluctant to complain.

Generally, I have received the co-operation of senior officials but unfortunately in many cases there has been a delay in rectifying complaints or in the implementation of my recommendations. Unquestionably many recommendations cannot be implemented due to a shortage of public funds. In the majority of cases, however the availability of public funds is not the sole reason for the delay in remedying a complaint. The sheer pace of the bureaucracy and the antiquated methods being employed prevent the simplest of recommendations from being implemented within a reasonable time.

It is heartening to note that the Minister charged with responsibility for Public Administration has carried out a number of reforms in order to achieve a cost-conscious, efficient and client-oriented Public Service. There has been an increase in the training of public officers and an implementation of management and information systems. There has also been an increase in the use of computer technology. Ninety (90) public officers have been trained as Customer Contact Officers for the purpose of establishing links between the public and the departments whose services are being used. This augurs well for the future of the Public Service and for the general public whom it serves.

In a paper titled "Public Service Reform and the Role of the Ombudsman in Trinidad and Tobago", Mrs. Yvette Crichlow, an Investigator in this Office, seeks to make a critical assessment of the potential impact of the goals of public service reform on the role of the Ombudsman. This paper forms an appendix to this Report.

### PUBLIC SERVICE REFORM

Although the Office of the Ombudsman is independent of the Public Service, it is staffed by public officers drawn from the Public Service who retain their status as public officers in accordance with Section 92(2) of the Constitution.

In pursuance of the Public Service Reform programmes instituted by the Office of the Prime Minister (Public Administration), and in keeping with the Mission Statement and Strategic Plan formulated for the purpose of achieving the objectives of the Office, the Office embarked upon a number of projects and activities during the year under review. Details of some of these projects and activities are as follows:

1. Through the kind courtesy of the Sangre Grande Regional Corporation accommodation was provided to the Ombudsman to enable him and members of his staff to hold office on one (1) day per month for the purpose of interviewing complainants and rendering advice. This activity has been in operation since June, 1993. Complaints which require investigation are put into writing and dealt with at a later stage.

The Ombudsman and members of his staff continue to visit Tobago, San Fernando and Rio Claro where like accommodation is provided for the purpose stated above.

2. The computer which was acquired in 1992, has been of immense use 'inter alia' in the preparation of records and the annual and special reports of the Ombudsman. Twelve (12) members of staff attended courses in Wordperfect, Database, Lotus 1-2-3 and Information Technology Awareness during the months of September, October and November 1993 with a view to improving and expanding their knowledge of the computer system.
3. "In house" training sessions were held by the investigative staff on several occasions.
4. A Notice outlining the services offered by the Office was distributed to departments and Government Offices for posting on their Notice boards. Particulars were also published in the press.
5. Two (2) members of the staff attended a Customer Contact Service Course, the purpose of which was to sensitize the public as to whom they should contact in the event that they require information or assistance.

## **PART II**

### **AREAS OF CONCERN**





## AREAS OF CONCERN

### **WATER AND SEWERAGE RATES FOR UNMETERED DUAL-USE PREMISES**

During the year under review, I received several complaints from those citizens who operate small businesses from their homes. They complained that the Water and Sewerage Authority had changed the classification of their premises from domestic to commercial. This resulted in exorbitant increases in the amounts previously charged for water and sewerage rates to their properties. In most instances, complainants reported that they had received demand notices for arrears of payment for sums in excess of Ten Thousand dollars (\$10,000.00).

My investigations revealed that the change in classification of these properties occurred when the Authority implemented the Public Utilities Commission's orders Nos. 78 and 79 with retroactive effect from 13th August, 1992. Order No. 78 established as the criterion for determining whether unmetered dual-use premises or any premises on which a business is conducted should be charged non-domestic water rates, the fact that it is registered for the payment of Value Added Tax (VAT). Thus, instead of being charged a rate based on the annual rateable value of the property, this particular class of customers incur a flat rate of Three hundred and ninety-five dollars (\$395.00) per month for water and One hundred and ninety-seven dollars (\$197.00) per month for sewerage. By Order No. 79, the Commission approved an increase of 20% on these rates. Consumers complained that their bills which formerly averaged one hundred and eighty dollars (\$180.00) per quarter rose to Seven hundred and eleven dollars (\$711.00) per month, a phenomenal increase by any standard. Invariably, the earnings of these persons who operate small businesses from their homes provide their sole means of livelihood. They argued that the small income they derived from these cottage industries could not even meet the payment of the new rates.

Other similarly affected complainants were unemployed senior citizens who let portions of their premises to VAT registered businesses as a means of generating income for their sustenance. When their properties were billed at the new commercial rate, the rates charged exceeded the amount of rent collected. This caused great distress to them.

As a result of these complaints, I took up the matter with the Chairman of the Public Utilities Commission pointing out that the Commission had proceeded on a wrong basis in fixing rates for such premises, since the only criterion authorised under the Water and Sewerage Act was that the prescribed rate should be calculated on the annual rateable value of the premises.



Subsequently, the Commission sought by Order No. 83 to remedy the plight of these persons with the introduction of a "cottage rate". In its deliberations, the Commission acknowledged that Order No. 78 made no provision for the varying sizes of businesses. It found that the rates applicable to non-domestic unmetered customers in general were punitive when applied to dual-use premises which fell marginally within the VAT "net". Order No. 83 defines service to this group of customers as "cottage service" and charges such customers, rates which are intermediate between domestic and non-domestic rates. As I pointed out above this is in violation of the provisions of the Water and Sewerage Act as the criterion for fixing rates is to be based on the annual rateable value of the premises in which the business is conducted. To date, however, the Authority has declined to officially adopt the new rate and has disconnected its services to certain customers for failure to pay the rates fixed under Orders 78 and 79.

Some owners of dual-use premises have gained relief through the Authority's installation of meters on their premises. These customers had always maintained that the commercial rates they were previously compelled to pay were not commensurate with the volume of water consumed. These installations were undertaken by the Authority as a result of the recommendation of the Commission contained in Order No. 79 authorizing metering service to be provided to eight thousand industrial customers. These installations have been generally accepted except for a few complaints concerning the cost of installation. While the presence of a meter is welcomed by small business owners, some hurdles are encountered in billing procedures where there exists only one connection from the premises to the Authority's mains. In these cases the meter records an aggregate consumption in relation to premises occupied by two or more separate tenants and there is no attempt by the Authority to disaggregate the accounts. If separate connections are not arranged, bills have to be apportioned by private agreement between the parties themselves.

While this state of affairs continues, I have been trying to alleviate the complaints of customers of the Authority by taking up individual and collective claims with the Authority and the Commission.

#### POLLUTION OF THE ENVIRONMENT

One of the major concerns of governments today, especially those of small States, is the ability to embark upon and keep on the path of sustainable development. One of the major components of this path is an appreciation and consciousness of matters pertaining to the environment. Matters of this nature encompass almost all aspects of life but this note will be confined to problems with regard to land use and some of the pollution problems

which are concomitant with such use e.g. noise, dust and noxious fumes.

I have received a number of complaints in this regard from residents who claim that one or more of these pollutants are affecting their health and physical well-being. Complaints relate mainly to the operation of commercial/industrial enterprises. While some of these businesses had been in existence before the development of residential settlements, others have since been established by residents themselves. Other characteristics of these enterprises are their varied sizes and capacities, which range from single owner/operator operations such as automobile garages to large scale enterprises such as furniture factories employing large numbers of persons.

Land use in Trinidad and Tobago is regulated by the Town and Country Planning Act Chap. 35:01 (hereafter called "The Act"). Section 5(2) of the Act makes provision inter alia for the preparation and approval by Parliament of a development plan intended to regulate and develop land use in Trinidad and Tobago and providing for different stages of such development. More specifically, Section 5(3) provides for the allocation of land for agricultural, residential, industrial or other purposes as specified in the plan. As far as existing land use is concerned, Section 5(4) provides that an area may be defined as one of "comprehensive development" if it is found that the area should be developed or redeveloped for the purpose inter alia of "dealing satisfactorily with conditions of bad layout or obsolete development", or for "providing for relocation of population or industry". These plans are subject to amendment at least once in every five years. Under Section 6(1) the Minister with responsibility for planning is mandated to carry out an exercise aimed at discovering the need for amendments or alterations of these plans. Investigations have revealed that these sections of the Act have little or no operation in practice.

In the Fifth Annual Report the Ombudsman had cause to comment on the inadequacy of the staff arrangements of the Town and Country Planning Division (hereafter called "the Division") in relation to the processing of applications for planning permission. These comments are equally applicable today and especially to this area of concern. The lack of follow-up work by the Division in monitoring the businesses in residential areas has added to the problems. In fact, the proliferation of these businesses and the extent and manner of their operations have escaped official notice. The Division is only made aware of these activities when the operations adversely affect residents and complaints are made.

Section 16(1) and (2) provide that where any development of land has been undertaken without the permission of the Minister, or where any conditions in pursuance of any development have not been complied with, an enforcement notice be served on the owner and/or



occupier of the land for the purpose of securing compliance with its requirements.

According to Section 16(3) an enforcement notice takes effect at the expiration of a period of not less than 28 days after service thereof. During this period, the owner/occupier has a right of appeal to the Minister. The appeal suspends the operation of the enforcement notice, and at times, the offending works continue. The result is that the contravention of the Act continues and the aggrieved party continues to be affected. This point is aptly demonstrated by Case No. 2 in the Ninth Annual Report. I envisage that that kind of situation is more than likely to occur when related to the issues of pollution.

In addition, the Division has adopted the practice of submitting draft enforcement notices to the Office of the Director of Public Prosecutions for approval before serving on offending parties. This action results in further delay since, due to the heavy work load of the Office of the Director of Public Prosecutions, these Notices are not treated with the urgency they deserve.

Another consequence of such haphazard development and land use is the violation of public health laws specifically those set out under the Public Health Ordinance Chap. 12 No. 4. Recourse is often had to the County Medical Officer of Health of the county in which the alleged offence is committed. The County Medical Officer of Health takes action under Section 70(1)(f) of the Ordinance. However this too, is a time-consuming exercise which effects little in the way of bringing immediate or timely relief to residents of the area or to the public at large.

If sustainable development is the watchword of modern governments, it is my opinion that there is an immediate need to establish a proper regime for the preservation and protection of the environment in the interest of the citizens, the first step being the provision of a comprehensive environmental and legislative framework enhanced by effective implementation and enforcement mechanisms.

#### STOLEN VEHICLES IN THE CUSTODY OF THE POLICE

In my last Report I had highlighted the problems experienced by owners of vehicles purported to be stolen and seized by the Police as a consequence of the delay in returning them.

In the last paragraph of that report I had opined that once proof of ownership had been established, the vehicles should be

returned to their rightful owners on an undertaking not to dispose of them and to produce them at the date of trial.

I have since been informed that towards the end of 1989 instructions were given to the Police that in cases where matters were brought before the Court, evidence might be addressed by the use of photographs and witnesses. The advice was also given that all vehicles seized by the Police should be returned to the respective identifiable owners who should give a written undertaking to produce them at the trial, if required. This applied, however, in cases where there was no dispute as to ownership. In recent times, this has posed a problem since it has been discovered that vehicles have not only been stolen, but the engine number and chassis number have been tampered with. There are also cases where parts from other vehicles, presumably stolen, have been found on stolen vehicles. This poses a problem to the Police in determining who are the rightful owners.

At present the situation with respect to the return of seized vehicles to their respective identifiable owners has been improved to some extent as the Police are attempting not to keep seized vehicles on their compounds for indefinite periods. If, however, the engine and/or chassis number have been tampered with and there are no identifiable marks on other parts of the vehicle by which ownership can be determined, the vehicle is kept and eventually auctioned under the provisions of the Police Service Act as unclaimed property.

Even though the Police have embarked upon the measure of having seized vehicles returned to their respective owners, owners of such vehicles continue to experience delays with respect to their return. It has been brought to my attention that the unreasonable delay is attributed to the fact that the vehicles are being sent for the purpose of analysis to the Forensic Science Centre. Owners of seized vehicles suffer hardship and inconvenience as a result of this delay. This applies especially in those cases where the owner uses his vehicle as a means of earning his livelihood. This increases the burden placed upon him.

In one case, a complaint was made that the Police had kept the complainant's vehicle in their custody pending further investigation and it was not until five (5) months later that the vehicle was returned to him. The delay caused him great hardship as he used the vehicle in earning his livelihood. In another complaint, the complainant, a truck driver, alleged that his vehicle had deteriorated to such an extent while in Police custody that it was necessary for him to repair it in order to make it roadworthy. He is seeking compensation for loss of earnings and a refund of the expenses he has incurred in repairing the vehicle.

This issue of delays was addressed in the O'Dowd report at Paragraph 9.10 viz. -

*"A major issue involving public confidence is the seizure by the police of vehicles which are suspected of having been stolen and*



*which require chemical examination to identify chassis or engine numbers. At present this process is only undertaken at the forensic science laboratory where only two vehicles can be examined at one time. During the review there were 175 vehicles in police possession awaiting chemical etching and, with more seizures likely, it is obvious that the backlog will never be cleared. This in itself poses logistical problems but more importantly damages the credibility of the police within the community if it is subsequently established that many of the vehicles have not in fact been stolen but are rightfully owned. Within the UK the responsibility for chemical etching has been devolved to police officers and action could be taken whereby dedicated members of the traffic branch or scenes of crime officers and are used and the necessary equipment and working conditions should be provided. This would enable an immediate impact to be made on the backlog and would ensure that future seizures could be dealt with in a swifter manner."*

The recommendation was also made that the responsibility for chemical etching should devolve upon the Police.

It is obvious that much delay is experienced as a result of the present method used in determining whether a vehicle is stolen or not. While some delay is excusable in the normal course of Police duties, the unreasonable length of time experienced by vehicle owners as a result of having their vehicles impounded amount to a breach of their constitutional rights to the use and enjoyment of their property.

#### CLAIMS FOR DAMAGES RESULTING FROM VEHICULAR ACCIDENTS

I have over the years received complaints from members of the public and from public officers and employees of statutory authorities with respect to claims for personal injuries and property damage as a result of vehicular accidents involving vehicles owned by the State or by statutory authorities.

I am precluded by Section 94(4) of the Constitution from investigating such matters where the complainant has or had a remedy by way of proceedings in a court. The matters which I undertake to investigate are those in which liability has been admitted by a Government department or by a statutory authority and there is delay in the settlement of claims or those in which the statutory period for bringing actions in Court has expired either through the excusable fault of the complainant or those in which negotiations had been proceeding over a period of time and the complainants had, as a result refrained from bringing actions in court.

With respect to State-owned vehicles, the Government has been issuing Insurance Certificates under the Motor Vehicles Insurance (Third Party Risks) Act, Chapter 48:51 in order to comply with their statutory obligation under the Act and has been satisfying

their obligations through the Reinsurance Company of Trinidad and Tobago.

The Reinsurance Company of Trinidad and Tobago was appointed in 1979 to manage Government's Insurance Fund in connection with Third Party claims. There are approximately four thousand (4,000) Government vehicles covered by the Fund. This does not take into account the vehicles of the several statutory authorities and local Government bodies which make their own Insurance arrangements. These include the Water and Sewerage Authority, the Telecommunications Services of Trinidad and Tobago, Public Transport Service Corporation, Trinidad and Tobago Electricity Commission and the local Government Corporations of San Fernando, Port of Spain, Arima, Chaguanas and Point Fortin. What is of consequence here is the considerable delay experienced by claimants in having their claims settled even where liability has been admitted.

In one case, a complainant alleged that his vehicle had been damaged as a result of a collision with an Army vehicle, the driver of which had admitted negligence. The driver had gone on leave soon after the accident for a considerable period of time and the complainant was required to await his return from leave in order to have his claim settled.

In another case, the complainant was a nurse's aide employed by Government and was on August 8, 1982 in the course of her duties, accompanying a patient in a Government ambulance travelling from the Caura Chest Hospital to the Community Hospital, Port of Spain when it was involved in an accident at Curepe junction with a private motor vehicle. She became unconscious at the time and suffered serious injuries including a fracture of her right ankle, and injuries to her spine, brain and abdomen. Because of the serious nature of her injuries she was medically boarded. The driver of the ambulance was prosecuted for dangerous driving and the complainant was given an interim payment of \$20,000.00 presumably on the assumption that the driver was at fault. To date, more than twelve (12) years afterwards, the complainant has not achieved settlement of her claim for damages and loss of earnings.

In the case of statutory authorities which have entered into contracts with Insurance Companies to indemnify them in the event of liability on their part, different considerations apply. What happens when the Insurance Company goes into bankruptcy or is under judicial receivership? This is precisely what occurred in the case of the Public Transport Service Corporation. The Corporation's vehicles had been insured by West Indian National Insurance Company Limited which went into judicial receivership due to insolvency leaving a number of claims unsettled in which liability had been admitted and damages had been agreed upon but no payments had been made. When claimants applied to the Corporation for settlement of



these claims they were referred to the court-appointed judicial manager.

In the normal course of events, claimants would have taken their matters to court, obtained judgment and then proceeded to levy upon the Corporation's property in the event that the Insurers failed to settle the judgment. There can be no doubt that the primary liability for its drivers' faults rests with the Corporation, the Insurer's obligation being to indemnify the Corporation in the event that the Corporation becomes liable. The fact is that the Insurers had, at the time of judicial receivership, entered into agreements with a number of persons to pay them damages for the admitted fault of the Corporation's drivers. These agreements have been kept in abeyance pending the winding-up of the Insurers' business, leaving the claimants in a decidedly precarious position.

In one case (reported under Selected Case Summaries) the complainant had sustained severe personal injuries more than eight years ago when a Corporation's bus ran into his maxi-taxi. One of the consequences of the accident was that his right leg had been amputated, with the result that he was unable to earn his livelihood as a maxi-taxi driver. The Insurers had settled the claim in the sum of \$150,000.00, an amount which the complainant had agreed to accept but before that amount could be paid to him, a judicial receiver had been appointed by the High Court over the Insurer's assets. The complainant had made repeated requests to the Corporation to have the money paid to him but to no avail. The Insurers had informed him that due to insolvency his claim would not be settled in full. To date, the complainant has received no part of the agreed amount.

As a last resort, the complainant sought my assistance. I informed the Corporation of their primary responsibility but to no avail. The Corporation has stated that it was unable to pay the amount agreed upon and has referred the complainant to the Judicial Manager appointed by the Court. Other complainants have found themselves in a similar position. Because of the injustice suffered by these complainants I advised the Corporation to approach Cabinet with a view to alleviating their plight to some extent but the Corporation has declined to do so.

Here the matter rests pending the outcome of the winding-up of the assets and liabilities of the Corporation's Insurers.

## **PART III**

- 1. STATISTICAL OVERVIEW**
- 2. SELECTED CASE SUMMARIES**





## STATISTICAL OVERVIEW

A total of 880 new complaints were received this year. Of these, 183 were against private institutions and therefore fell outside my jurisdiction. As I stated in my last Annual Report and in the General Introduction to this report, I assist such complainants as far as I possibly can, mainly through advice and referrals to the competent authorities.

The number of new complaints against Government Departments was 697. At the close of the year, 287 or 41.18% of these complaints were concluded, and 410 or 58.82% were under investigation. TABLE I shows the manner in which the new complaints received this year were disposed.

TABLE I

Total number of complaints received ... ..	880	
Total number of complaints against		
private institutions ... ..	183	20.79%
Total number of complaints proceeded with ... ..	697	79.21%
Total number of complaints concluded ... ..	287	41.18%
Sustained/Rectified ... ..	48	16.72%
Not sustained ... ..	52	18.12%
Withdrawn/Discontinued ... ..	65	22.65%
Advised/referred ... ..	122	42.51%
Total number under investigation .. ..	410	58.82%

The majority of new complaints were disposed of under the category **Advised/Referred**; the second largest category was that designated **Withdrawn/Discontinued**. The category **Advised/Referred** includes not only those matters in which the complainant is advised on his/her first visit to the Office, but in most cases encompasses those where reports have been requested and received from Government Departments and from which I have concluded that there is no fault in administration, but in which the complainant was not

properly apprised of the situation and therefore these complaints could not be considered as unjustified or Not Sustained.

Of those complaints which were disposed of as Withdrawn/Discontinued, about 90% were discontinued under the provision of Section 95 of the Constitution. The category Not Sustained was comparatively larger than it had been in any previous year. This category refers to complaints in which I found no fault in the administration of the Government Department or Authority concerned after investigating the complaint. Only 16% of the complaints concluded this year were Sustained/Rectified. In these cases, complaints were found to be justified and remedial action was taken by the Department or Authority concerned.

TABLE II shows the number of new complaints this year and their disposal by Ministry/Authority/Agency.

TABLE II

Ministry /Authority/ Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
Agricultural Development Bank	1	0	0	0	0	1
Blind Welfare Association	1	0	0	0	0	1
Caroni (1975) Limited	3	0	0	1	0	2
Central Bank	1	0	0	0	0	1
Deposit Insurance Corporation	2	0	0	0	2	0
Elections and Boundaries Commission	1	0	0	0	0	1
Judiciary	33	1	0	3	15	14
Ministry of Agriculture, Lands and Marine Resource	8	0	0	0	0	8
Ministry of Consumer Affairs and Social Services	34	4	4	2	9	15
Ministry of Education	12	1	0	2	2	7
Ministry of Finance	25	5	2	6	3	9
Ministry of Health	23	0	5	0	4	14
Ministry of Housing and Settlements	36	2	5	5	11	13
Ministry of Labour and Cooperatives	14	0	0	2	2	10
Ministry of Legal Affairs	33	0	1	5	17	10
Ministry of Local Government	57	3	4	3	5	42
Ministry of National Security	168	6	9	20	26	107
Ministry of Planning and Development	19	1	0	2	1	15
Ministry of Public Utilities	70	12	6	5	3	44
Ministry of Trade Industry & Tourism	2	0	0	0	0	2
Ministry of Works Infrastructure and Decentralisation	41	3	4	2	3	29
National Insurance Board	12	3	2	2	1	4
Office of the Prime Minister	5	1	0	0	0	4
Petrolin (Trintoc)	5	0	0	0	3	2
Port Authority of Trinidad and Tobago	11	2	2	0	3	4
Service Commissions Department	30	1	4	3	11	11
S.C.O.T.T.	1	0	0	0	0	1
Telecommunication Services of Trinidad & Tobago	2	1	0	0	1	0
Tobago House of Assembly	45	2	3	1	0	39
Trinidad Turf Club	1	0	0	1	0	0
Worker's Bank	1	0	1	0	0	0
	697	48	52	65	122	410

As in previous years, most of the new complaints were against the Ministry of National Security, specifically against the Prison Authorities and the Police Service. Unlike previous years, the



complaints against the Judiciary were greatly reduced. The Ministry of Public Utilities shows a significant increase in the number of complaints recorded against it. The Ministry of Local Government recorded the third largest number of complaints against it. This trend in the comparative increase in the number of complaints against the Ministry of Local Government was noted in my last Annual Report. The number of complaints this year against this Ministry was however less than last year's number.

The disposal of complaints in general indicate that the conclusion of matters were directly related to the number of complaints, and this is reflected in the records. The highest number of complaints under investigation at the end of the year was recorded against the Ministry of National Security, the Ministry of Public Utilities and the Ministry of Local Government.

In the Seventh and Eighth Annual Reports, it was noted that from the inception of the Office, the majority of complaints recorded were against seven (7) Ministries. This pattern continued until 1990. Since then I have noted, a change in the distribution of the majority of complaints among Ministry/Authority/Agency. TABLE III shows the comparative difference between former years and the year under review.

TABLE III

<i>1983 - 1989</i>	<i>1993</i>
<i>Judiciary</i>	<i>Ministry of National Security</i>
<i>Ministry of National Security</i>	<i>Ministry of Public Utilities</i>
<i>Ministry of Housing and Development</i>	<i>Tobago House of Assembly</i>
<i>Ministry of Finance and Planning</i>	<i>Ministry of Local Government</i>
<i>Ministry of Works Maintenance and Drainage</i>	<i>Ministry of Works and Transport</i>
<i>Ministry of Agriculture Lands and Food Production</i>	<i>Ministry of Housing and Development</i>
<i>Ministry of Community Development and Local Government</i>	<i>Ministry of Local Government</i>

In addition to the new complaints, 482 complaints were brought forward from the preceding years. TABLE IV shows the manner of disposal.

TABLE IV

Files brought forward from preceding years ... ..	482	
Files closed ... ..	231	47.92%
Sustained/Rectified ... ..	65	
Withdrawn/Discontinued .. ...	42	
Advised/Referred ... ..	74	
Not Sustained ... ..	50	
Under investigation ... ..	251	52.08%

There was little difference in the disposal of the complaints brought forward as compared with the new complaints. Of the complaints brought forward, the majority were disposed of as Advised/Referred. A large number fell under the category Withdrawn/Discontinued. Unlike the new complaints, the category Sustained/Rectified showed the second largest number of complaints so concluded. The total workload of the Office for this year therefore numbered 1,362. TABLE V shows the manner in which these complaints were disposed.

TABLE V

Total number of Complaints ... ..	1,362
Total number of complaints proceeded with ... ..	1,179
Total number of complaints concluded ... ..	518
Sustained/Rectified ... ..	113
Withdrawn/Discontinued . ... ..	107
Advised/Referred .. ...	196
Not Sustained ... ..	102
Total number under investigation ... ..	661



Ref. OMB: 514/92

## MINISTRY OF EDUCATION

The complainant was appointed to the post of Special Teacher in Range 33 on a temporary basis at the Point Fortin Vocational Centre with effect from January 5, 1981 and continuing until further notice. He performed the duties of the post until January 30, 1989 when he was notified by the Director of Personnel Administration that he was permanently appointed as a Technical Vocational Teacher I in Range 31 with effect from January 5, 1981, the date he had assumed the temporary position in Range 33.

On August 7, 1989 he was informed by the Permanent Secretary, Ministry of Education that he was indebted to the Government in the sum of ten thousand three hundred and eighty-seven dollars and fifty-one cents (\$10,387.51) over the period January 5, 1981 to July 31, 1989, during which period he had performed the duties of a Special Teacher in Range 33 and had been paid the salary of that post. Deductions were being made from the complainant's salary at a rate of two hundred dollars (\$200.00) per month in an attempt to satisfy the alleged debt.

It was apparent that the Ministry had considered that the complainant had been overpaid on the basis that salary had been paid to him in Range 33 rather than in Range 31.

A similar matter arose sometime ago. It is pertinent to note the observation which I had made on that occasion viz:

"To proceed in the manner as the Ministry of Education has done, is tantamount to giving a person a job of work to do and after he had performed and completed the job satisfactorily and had been paid for it, he is then informed that it was intended that he should have performed a job with less remuneration attached and he is then required to refund as overpayment the difference between what he should have been paid and what he had actually received."

These views were brought to the attention of the Comptroller of Accounts, who by letter dated September 8, 1992, instructed the Accounting Officer of the Ministry of Health to cease deductions from the complainant's salary "pending the outcome of investigation". Investigations have not yet been completed.

## MINISTRY OF HEALTH

In 1991, Ms. J.R. of Central Trinidad complained to me that the health of herself and her family were being affected by a neighbour who fabricated water tanks under a shed abutting her premises.

She contended that the lights from the welding operations and the heavy pounding of galvanized iron sheets made life very uncomfortable and unbearable for her family.

I requested a report from the County Medical Officer of Health who reported that:-

1. the owner claimed that the factory produced galvanized water tanks and had been in operation for twenty (20) years;
2. a total of five workers were employed in the operation with no safety equipment;
3. the construction of water tanks was being done in an open shed twelve (12) feet away from the complainant's premises;
4. Prior approvals for this type of operation had not been obtained from: Town and Country Planning Division

Factory Inspectorate - Ministry of Labour  
Chief Fire Officer  
Local Health Authority

He further indicated that he had submitted a report to the Town and Country Planning Division of his findings that:

- (a) The complaint was justified; and
- (b) The operations were being carried out in an unauthorised shed.

The complaint was also referred to the Occupational Health Division of the Ministry of Health whose findings were as follows:-

- (a) That the operation not only constituted a nuisance, but also a health risk.
- (b) That prolonged exposure to this type of operation could lead to hearing impairment of both workers and neighbours.

The Occupational Health Division indicated that:



a metal fabricating factory-workshop should not be located in a residential area, and that necessary steps should be taken to have it relocated.

However, enquiries revealed that the Town and Country Planning Division had not dealt with the matter and a report was requested from that Division.

To date, the only action taken against the factory owner was the laying of a complaint by the Ministry of Health in the Couva Magistrate Court to abate the nuisance.

The Ministry of Planning and Development has formed the view that once an unauthorised structure has been in existence for over four years, legislation prevents them from taking any action in the matter.

The complaint is being pursued.

Ref. OMB:71/93

The complainant, a retired Radiographer who has been re-employed on contract at a State hospital, complained that the payment of his contract gratuities for the years 1990, 1991 and 1992 were being withheld by accounting officers of the Ministry of Health .

From enquiries, he learnt that the payment of resident overtime allowances which had been made to him over the years 1983 to 1989 were now considered to have been unauthorized. These payments were originally effected on the authority of the Permanent Secretary. The accounting officers were now seeking to recover the amounts paid because the Chief Personnel Officer's approval had not been obtained before the payments were made and they proposed to recover such 'overpayments' from the complainant's gratuity which was being withheld for the purpose I held two (2) meetings at my office in an attempt to resolve the issue quickly. These meetings were attended by representatives of the office of the Chief Personnel Officer, Ministry of Health and the complainant.

In my opinion the payments were properly authorized, since they were made on presentation of claims which had been certified by the complainant's supervisor for work he had performed. To suggest that approval should now be given with retrospective effect by the Chief Personnel Officer was to render the matter farcical. This observation, I brought to the attention of the Permanent Secretary, Ministry of Health.

After eight (8) months had elapsed and no action had been taken to release payment of the complainant's gratuities, I was constrained to write the Permanent Secretary.



I pointed out that no attempt had been made by the Ministry to comply with the provisions of the Exchequer and Audit Act which related to overpayments. In fact, if there was an overpayment then steps should have been taken to recover the overpayment from the person responsible for the payment (**Regulation 84 (2) of the Financial Regulations is relevant**). Moreover, such overpayments are irrecoverable by law as the limitation period relating to their recovery had expired.

With respect to the monies due to the complainant as gratuity, it is provided by Section 23 of the Pensions Act **Chapter 23:52** that no pension or gratuity is liable to be attached, sequestered or levied upon other than "a debt due to the Government". "Debt" means an established debt, for e.g., advances made by Government which have not been repaid.

Indeed, if the complainant had sought a judicial solution to his problem he would have been entitled to damages, interest and costs for the unlawful deprivation of his right to the enjoyment of property without due process of law as enshrined in the Constitution.

I am advised that the Ministry of Health has taken a decision to approach Cabinet for approval to waive what they have classified as an improper overpayment to the complainant.

Ref. OMB: 89/574

## MINISTRY OF LOCAL GOVERNMENT

### REGIONAL CORPORATIONS:

The complainant, the resident of a rural village, complained to me about a public health nuisance which affected her health and that of her family. Her premises abutted upon lands owned by an oil company. These lands are low-lying with the result that it forms a catchment for water from the surrounding areas and constitutes a breeding ground for rodents, insects, snakes and other vermin.

She stated that she had made representations to the local Public Health Department and County Council (now Regional Corporation); but the nuisance had not been abated.

My investigations revealed that the lands in the area were previously agricultural land, (rice lands), which were subsequently acquired by residents who had obtained permission to construct houses. In order to do so, they had to fill the portions which they had acquired, and raise them to a suitable height with the

result that the unacquired portion remained below the level of their land, as was the public drain which served to take water away from their premises. The situation was aggravated during the rainy season.

The landlord of the unacquired portion contended that the land was prone to flooding, a fact of which house owners were well aware at the time of purchase or at the time of acquiring their tenancies. The landlord felt no obligation to have the nuisance abated.

It was my view that since the village was being transformed from a purely agricultural one to that of a residential one, proper public health standards should have been instituted and maintained. I therefore recommended to the County Medical Officer of Health that he take the necessary steps to have the nuisance abated. Several notices were served on the landlord from time to time and on each occasion, there was compliance with the clearing of the vegetation and the draining of the land.

However, in order to have the nuisance properly abated, it was necessary that the land be levelled to the height of the surrounding areas so that water could run off into the public drain which should be properly maintained in order to prevent the accumulation of debris and vegetation. This would have to be the responsibility of the Regional Corporation after the land had been filled by the landlord. Both the landlord and the Regional Corporation have informed the Chief Medical Officer of Health of their intention to give these matters their urgent attention. In the meantime, the responsibility for ensuring the health of the residents would be that of the County Medical Officer pending the putting into effect of these long-term measures. This has been conveyed to the County Medical Officer.

I have recently been informed by the complainant that the oil company (the landlords) has constructed a dike which would considerably alleviate the complainant's problems and those of her neighbours, by preventing further deterioration of their premises from water seepages and floods.

Ref. OMB: 208/89

The complainant was employed as a Chauffeur/Driver by the St. George East County Council (now the Tunapuna/Piarco Regional Corporation). On November 25, 1987, he sustained serious injuries as a result of a collision which occurred between the Corporation's vehicle he was driving and another Corporation vehicle. His complaint had been made since March 2, 1989. Subsequently, he filed an action in the High Court seeking compensation for damages which he had sustained as a result of the accident. He subsequently withdrew the action.



Upon the filing of the action I pursued his claim for workmen's compensation due under the Workmen's Compensation Act. The Corporation had refused the claimant's application for workmen's compensation based on an opinion of the Solicitor General that the complainant did not fall within the definition of a 'workman' within the meaning of the Workmen's Compensation Act.

A recent judgment of the Court of Appeal put the issue beyond doubt when it was held that the driver of a motor vehicle was a 'workman' within the meaning of the Act. This fact, together with a copy of the judgment was relayed to the Regional Corporation.

Although the matter was referred by the Corporation to the Solicitor General for its advice, it nevertheless gave an undertaking on November 18, 1992 that the complainant would be paid the workmen's compensation due to him. To date, no payment has been made and the matter is still being actively pursued.

Ref. OMB: 421/91

In May 1991, the complainant alleged that she had been trying for fifteen (15) years previously to obtain relief from the Victoria County Council (now the Princes Town Regional Corporation) in respect of an inverted drain which abutted her property on Theodore Street, Princes Town, and which discharged waste and sullage water into her property. Apart from the nuisance caused, there was consequent damage to the foundations of her house.

Investigations revealed that an adjoining neighbour of the complainant had placed an earthen blockage at a point where water from another adjoining owner entered her drain with the result that the water flowed into the back of her premises.

The Regional Corporation refuted the claim of the complainant that water flowed from its inverted drain onto the complainant's property. In their reply to the complainant, which was copied to me, they stated as follows:-

- "1. The kerb wall and slipper drain constructed by the Princes Town Regional Corporation is preventing the seepage of water from Theodore Street onto your property.
2. Your property is situated on undulated land. This allows water from higher places (private lands) to seep into your property."

I was satisfied that there was no administrative fault on the part of the Regional Corporation, and so discontinued investigation of the matter.

Ref. OMB: 911/92

SAN FERNANDO CITY CORPORATION

Mrs. R. complained that she tripped and fell on an uneven pavement on Royal Road, San Fernando along which she was walking in August 1991 and sustained injury to her legs. She claimed compensation from the City Corporation.

On my investigation of the matter, I was informed by the City Clerk that the Corporation did not admit liability on the grounds that the pavement was not owned by it, but by the owner of the premises which abutted the pavement and it had not been maintained by the Corporation at any time.

In the circumstances, I discontinued investigation of the matter and so informed the complainant.

Ref. OMB: 876/93

MINISTRY OF NATIONAL SECURITY

PRISONS:

The sister of an inmate of Golden Grove Prison, Arouca complained to me that the Prison Authorities were unable to locate a B.W.I.A. one-way ticket to Canada which her brother had in his possession on entering prison. The ticket was kept by the Prison Authorities and had to be renewed each year until her brother's release. She informed me that her brother was serving a five (5) year sentence for Drug Trafficking and was due to be released in two (2) months' time.

I enquired from the Prison Authorities about the status of the matter and was informed that the ticket had been misplaced on one of those occasions when it was sent to the office of the Airline for renewal. I was also informed that it was last renewed in 1992. I was, however, given the assurance that if the ticket was not located at the time of the prisoner's release, the Authorities would make the necessary arrangements to purchase a replacement ticket for him. I was further informed that the Authorities were contemplating taking disciplinary action against the officer who was responsible for the loss of the ticket.

On the release of the prisoner, the ticket still had not been located nor was a new ticket purchased for him, although he was asked to return to the Prison to collect it.



On making further enquiries at the Prison, I was informed that as the officer who was responsible for the loss of the ticket had not accepted liability, the Authorities had to submit all relevant correspondence on the matter to the Ministry of National Security seeking approval to purchase a new ticket. Up to the time that this report was written the matter had not been finalized. I was informed that there was a possibility that the Ministry had to obtain Cabinet's approval to purchase the ticket. A recommendation was also received by the Ministry to take disciplinary action against the officer concerned for negligence.

This matter is being actively pursued by this office.

Ref. OMB: 872/93

POLICE:

A complainant sought my assistance in retrieving two pieces of jewellery which had been stolen from his home sometime in 1988. One, W.S., was arrested and charged with unlawful possession. The pieces were identified by the Complainant and were subsequently kept in the custody of the Police at Besson Street Police Station for use as exhibits in Court. W.S. subsequently died before the matter came to trial. After the death of the accused, the Complainant made enquiries at the Besson Street Police Station with respect to the retrieval of the jewellery but to no avail. He engaged an attorney who submitted two (2) letters dated July 01, 1992 and June 21, 1993 to the Commissioner of Police seeking return of the jewellery which letters remained unanswered.

On making enquiries at the Besson Street Police Station I was informed that the jewellery had been auctioned off by the Police. The Police were entitled to do this in accordance with Section 52(3) of the Police Service Act in cases where the owner cannot be ascertained and no order of a competent Court has been made with respect to such property.

I also made enquiries with respect to the Court matter. I was informed that the matter had been dismissed on September 03, 1992.

I was of the view that the complainant was entitled to the proceeds of sale of the auctioned jewellery since there was no dispute as to its ownership.

The matter is being pursued.

Ref. OMB: 538/93

The Complainant sought my assistance with respect to reimbursement for loss of earnings and for damages due to the withholding of his vehicle by the Police and Licensing Department.

He stated that on January 22, 1993 he had gone to the Licensing Office to have his vehicle inspected for the purpose of renewing his license. The Licensing Officer, on inspecting the vehicle, stated that the chassis number appeared to have been tampered with and kept the vehicle for further investigation.

In February of the same year, he had submitted to the Office of the Transport Commissioner a letter from Neal and Massy Motors, the dealers from whom he had purchased the vehicle, containing particulars about the engine and chassis numbers. On submission of the letter to the Licensing Authority, the vehicle was sent to the Criminal Investigation Department (C.I.D.) and then to the Central Police Station and later sent to the Forensic Science Centre on or about March 18, 1993. On April 20, 1993 it was returned to him, but it was not licensed until July 09, 1993. A period of approximately five and a half (5 1/2) months had elapsed during which time the Complainant could not have used his vehicle.

He claimed that the vehicle had deteriorated to such an extent that the cost of repairs was approximately Four thousand dollars (\$4,000.00), and that he had lost earnings to the extent of approximately One thousand Two hundred dollars (\$1,200.00) per week and sought compensation for such loss.

His claims were submitted to the Commissioner of Police seven (7) months ago, but I have not had a reply to date.

Ref. OMB: 220/93

An officer of the Police Service wrote to me claiming that he had been suspended from duty for fifteen (15) months with effect from July 8, 1987. On October 14, 1988 his suspension had been lifted and he proceeded on pre-retirement leave. During his suspension he continued to received full pay, but certain allowances - meal, armourer and acting - were discontinued.

In December, 1992 his meal allowance was paid to him. However, his armourer and acting allowances still remain outstanding. The officer stated that he was informed that the Chief Personnel Officer had not yet taken a decision on paying these two (2) allowances to him.



The Commissioner of Police, to whom the matter was referred, confirmed that the question of allowances to officers on suspension or interdiction and to those who had been reinstated, were at the time engaging the attention of the Chief Personnel Officer.

I also made enquiries of the Chief Personnel Officer with respect to the status of the matter. I was informed that the question of the eligibility of officers in the Public Service (including members of the Protective Services) for payment of allowances such as "overtime" and "acting" during periods of suspension and interdiction from duty, where officers had been reinstated or had been exonerated of pending charges, is now under consideration and is yet to be determined.

In addition, the Chief Personnel Officer has stated that the officer's claim for armourer allowance while he was on suspension would be dealt with when the issue of the other allowances was determined.

I advised the complainant accordingly and discontinued investigation of the matter.

Ref. OMB: 974/92

#### FIRE SERVICES:

The complainant, a fire officer, was suspended from duty on August 3, 1980 as a result of having been arrested and charged for possession of drugs. The case against him had been dismissed on September 10, 1980 and he had been reinstated in his substantive post on February 1, 1984. He complained that he was being by-passed for promotion in the Fire Services Department even though he was successful in the promotional examination which he had taken in 1979. He further complained that during the period of his suspension he had attended an interview at the Fire Services Headquarters, but had not been informed of the subsequent interviews held by the Promotional Advisory Committee.

Enquiries into the matter revealed that efforts by the competent authority to locate him in order to ensure his appearance at the interviews proved futile. As a result, his name did not appear on the existing merit list and therefore he could not have been considered for promotion. I was informed that the merit list was well over five (5) years old and that recommendations had been made to conduct new interviews.

This information was conveyed to the complainant who wrote to me again complaining that the Fire Services Department had made no effort to locate him in order to ensure his appearance before the interviewing panel in spite of the fact that his address had not been changed and that he had resided at his current address uninterruptedly for forty (40) years previously, a fact which the Fire Services were well aware of.

He was of the opinion that he was being victimized. He alleged that he had not been reinstated until February 1, 1984, although he had informed the Chief Fire Officer by letter dated December 3, 1980 that his case was dismissed by the Court on September 10, 1980.

From further enquiries made into the matter, it was discovered that promotion in the Fire Services is based on the findings of a Promotion Advisory Board and that passing the relevant examination is only the first step in the process towards promotion.

I was further informed that the complainant had not been reinstated before 1984 because the Director of Public Administration had initiated disciplinary action against him after the Court matter had been completed. The disciplinary proceedings were not determined until February 1984.

The Chief Fire Officer contended throughout the investigation of this complaint that efforts made to locate the complainant for interviews to be conducted by the Promotional Advisory Committee, proved fruitless.

Since then, I have been notified by the complainant that he was appointed to act in a higher post, but he is still under the impression that he is being discriminated against as officers junior to him have now become his seniors.

I was of the opinion that no fault in administration had been established against the Fire Services Department nor were the procedures leading up to the complainant's reinstatement faulty. I have discontinued investigation of the matter.

Ref. OMB: 67/93

## **MINISTRY OF SOCIAL DEVELOPMENT & FAMILY SERVICES**

The complainant was a member of the County Councils Employees Credit Union Co-operative Society Limited since 1987, and held shares to the extent of three thousand one hundred and eighteen dollars and seventy-two cents (\$3,118.72). When she applied for a



loan in April 1992 it was refused and she decided therefore to submit her resignation as a member and apply for a refund of the value of the shares to which she was entitled in accordance with the provisions of Regulation 9 of the Regulations made under the Co-operative Societies Act.

Although her application was granted, the Credit Union kept putting off the refund on the ground that funds were not available. In her frustration she complained to me on February 8, 1993. I took up her matter and was assured by the Credit Union that payment would be made to her on March 10, 1993.

I was subsequently informed by the complainant that she, in fact, received a cheque for the amount on that day.

Ref. OMB: 626/92

### MINISTRY OF WORKS AND TRANSPORT

The complainant alleged that he had been permitted by the owner, now deceased, to use a parcel of land at Paria, Matelot, for the purpose of planting crops; that persons unknown had destroyed trees on the opposite side which resulted in a massive landslip. Subsequently, the Ministry of Works carried out remedial work to correct the situation. The complainant said that the Engineer attached to that Ministry assured him that he would be compensated for the crops destroyed in carrying out the remedial works.

I was subsequently informed by the Ministry of Works that the parcel of land was owned by the State and that no permission had been granted to the complainant to plant crops on it, that the landslip was caused by the complainant himself, in removing the vegetation and that this had caused a loss of the complainant's crops. Furthermore, the Ministry had given him no assurance that he would be compensated.

Given the circumstances, I decided to discontinue my investigation and leave the complainant to his own resources.

Ref. OMB:930/92

## PUBLIC SERVICE COMMISSION

A temporary Clerk I who had been employed continuously in the Public Service for over eleven (11) years, appealed to me for my assistance in having the Public Service Commission reconsider its decision to invalidate her success at the 1983 Civil Service Entrance Examination.

In 1983 she sat the Entrance Examination for Clerical Officers I and, based on her success at this examination, she was interviewed by the Commission for permanent appointment to the post. However, by letter dated June 01, 1984 the Director of Personnel Administration informed her that her results at both the examination and at the interview were invalid because at the time of the examination she possessed only four (4) ordinary level subjects.

The complainant found this ruling to be unfair since the Commission was fully cognisant of her academic qualifications when she was required to sit the examination. In addition, she had acquired her fifth 'O' level subject later in 1983 and duly informed the Commission.

In support of her claim she drew my attention to the provisions of the Civil Service Regulations, 1967 Chapter III Regulation 5(3) (b) which prescribes:

- "(b) Where the interests of the Civil Service so demand, the Governor-General may permit candidates with the undermentioned qualifications to take the entrance examination provided for above and be admitted to the grade of Clerk I on the results of such examination provided that they are not less than seventeen and not more than twenty-three (23) years of age on January 01 of the year in which the examination referred to in paragraph (3) was held:-
- (ii) A General Certificate of Education with four subjects at Ordinary Level including English."

I noted that the complainant had worked in a pensionable office for over ten (10) years and during this period, there had been no report of unsatisfactory performance or misconduct on her part.



She had devoted a significant period of her adult working life to the Public Service, a fact which I believe should not have been treated lightly by the Public Service Commission. Accordingly, I wrote the Commission and requested that this case be reviewed. To date, the complainant's status remains unchanged.

[I am precluded from investigating decisions taken by the Public Service Commission by virtue of the provisions of the Third Schedule to the Constitution.]

Ref. OMB: 493/93

### PUBLIC TRANSPORT SERVICE CORPORATION

The complainant sought my assistance after trying unsuccessfully for eight (8) years to obtain compensation from the Public Transport Service Corporation for injuries he had sustained in a vehicular accident with one of the Corporation's buses. While driving his maxi-taxi on the North Coast Road, Maracas on October 24, 1985 at 11:00 am, the Corporation's bus crashed into the right side of his vehicle. As a result, he became unconscious for several hours during which time he had to be removed by Fire Services Personnel from behind the steering wheel of his vehicle against which he had been pinned.

He was hospitalized for seven (7) months following the accident for treatment to his right leg (which was eventually amputated), a broken left leg and severe burns on the left side of his body.

On February 27, 1986, he wrote to the Corporation enquiring about the status of his claim for compensation as no word had been received by him since the accident had been reported. The Corporation's Secretary, in response, advised that the matter had been referred to the Insurers, West Indian National Insurance Company Limited, and that he should submit his claim to that Company.

The Insurance Company however took over one (1) year to process his claim. After it had been approved for payment in the sum of \$150,000.00 he received a notice from the Court appointed Judicial Manager that the Company was in receivership and due to insolvency his claim in the sum of One hundred and fifty thousand dollars (\$150,000.00) would not be settled in full. In fact, the complainant has received no part of the settlement to date.



I wrote to the General Manager of the Corporation and urged that steps be taken immediately to settle the claim. I reminded him that the primary responsibility for the settlement of the claim lay with the Corporation. The duty of the Insurer was solely to indemnify the Corporation for the loss it had sustained. The General Manager replied that the Corporation would have liked to see that the complainant be fairly compensated but it was unable to do so.

It is worthy to note that during the normal course of things, the complainant would have brought an action in the High Court, obtained judgment (the liability having been admitted) and then proceeded to recover the damages by levying upon the Corporation's property on failure of the Corporation to meet payment of its admitted liability. This course of action was, however, not now available to the complainant as the limitation period had expired.

Since the Corporation is a wholly owned Government Corporation, I was of the opinion that the Government had a moral responsibility to satisfy the claim since it had led the complainant on in the belief that his claim would have been settled.

The Corporation was requested to approach Cabinet with a view to having the complainant compensated since the Insurers were unable to indemnify the Corporation.

I have received no further communication from the Corporation. The matter is being pursued.

Ref. OMB: 615/92

In 1992, a mother complained to me that in 1976 her 14 year old daughter was injured while travelling on a Public Transport Service Corporation bus which was involved in an accident.

The complainant stated that her daughter suffered transient loss of consciousness, a deep 3" laceration of her left elbow which exposed the bone, and abrasions to the right side of her forehead with contusions over the right eyebrow. She made a claim for compensation to the Public Transport Service Corporation.

The West Indian National Insurance Company Limited, the insurers of the Corporation's buses acknowledged and settled the claim in the sum of One hundred and Thirty thousand dollars (\$130,000.00). However, the Insurance Company had gone into receivership on February 18, 1988 and a judicial manager had been appointed by the Court.

The letter from the judicial manager to the complainant stated that due to the insolvency of the Company it was unlikely that the claim would be settled in full.

Here the matter rests pending the outcome of the winding up of the assets of the Insurance Company.

(This matter is similar to the one reported above.)

Ref. OMB: 295/93

### TOBAGO HOUSE OF ASSEMBLY

A resident of Scarborough, Tobago reported to me that a funeral home had been erected in 1989 on the street where he resides. He informed me that on enquiring into the matter it was revealed that the Town and Country Planning Division had not given the necessary approval for the erection of such a building in a residential area.

Although he had complained to the District Medical Officer of Health, Scarborough, in 1989, he had made no complaint to the Town and Country Planning Division, until 1993 and no action had been taken by either of these authorities to have the matter resolved. His complaint to the Medical Officer of Health was to the effect that the resultant waste emanating from the funeral home posed a health hazard to the residents of the area.

The Director, Town and Country Planning Division, from whom I requested a report, informed me that the funeral home had been in operation since 1988, and it was not until 1993 that the matter had been brought to her attention. He stated that under the Town and Country Planning Act Chapter 35:01, it was necessary for the Minister to take enforcement procedures within four (4) years of the development being carried out. Since more than four (4) years had elapsed in this case the Division was unable to enforce the provisions of the Act.

The Director further stated that the Division intended to continue to monitor the situation to ensure that there was no further intensification of the use of the site. She suggested that the matter be referred to the Medical Officer of Health, in order to ensure the health of residents of the area.

The matter is being pursued.



Ref. OMB: 427/93

An acting Sanitation Overseer who had been employed at the Public Health Services Division of the Tobago House of Assembly in Tobago for thirty-two (32) years and had twenty-five (25) years effective service, complained to me about the unfair employment practices which existed at his work place.

He claimed that a worker, F.Y., who had less effective years service than him, had been promoted to the post of Sanitation Overseer since 1980 while he only began to act in a similar post in 1989. He also claimed that at present the post in which he is acting became vacant on March 13, 1992 and that there were three (3) other vacancies in the Division. He is of the opinion that he should be promoted to one of the vacant posts in accordance with the Joint Negotiating Committee Agreement which states that a worker should receive a permanent appointment after acting in a post for a year providing that the worker is eligible and that there is an existing vacancy. He also complained that there were three (3) Overseers who had less effective years of service than him and whose names appeared before his on the seniority list.

I requested a report from the Clerk of the Tobago House of Assembly who confirmed that F.Y. was promoted to the position of Sanitation Overseer on June 06, 1980. The complainant is at present acting Sanitation Overseer and would obtain a permanent appointment when the permanent list is revised. The Clerk also informed me that the complainant had six (6) months in which to file his objection and that since this timespan had expired, the issue is now "statute-barred".

The complainant has denied having knowledge of F.Y.'s promotion in 1980, feels that he has been discriminated against and that he should be appointed to the vacant post.

My investigations into the matter are continuing.

Ref. OMB: 754/93

The complainants who lived in Tobago complained to me that a nuisance existed at Lambeau which was affecting the health of residents of the area. They stated that a pig pen was built near to their premises and the resulting nuisance had been in existence for many years. They claimed that they were required to purchase insecticidal sprays on a continuous basis in order to keep flies away from their premises. They also complained of contaminated water which flowed into their premises and the resulting unbearable stench. They informed me that several complaints had been made to the Health Department, but no action had been taken in the matter.



A representative of my Office together with a Public Health Inspector visited the site and found that the complaint was justified. The pig pen was in an unsanitary condition, there were numerous flies present and the drainage was inadequate.

The Health Inspector indicated that he would serve a notice on the owner to abate the nuisance. I was subsequently informed by the Public Health Services Division, Tobago that the owner had been served a statutory notice instructing him to provide a three (3) foot concrete pavement around the pen and concrete drains leading to a suitable outlet. He was warned that if these conditions were not met he would have to discontinue the rearing of pigs. He was further notified that the requirements laid down by the local Health Authority should be complied with to their satisfaction and that non-compliance would result in the issuance of a Summons for him to attend Court.

The Public Health Division has since informed me that consequent upon our visit the premises had been cleaned, but that the problem of the drainage outlet had not been attended to. The Division has indicated that follow-up visits and necessary follow-up action would be taken.

The complainants were informed and further investigation is continuing.

Ref. OMB: 298/93

The complainant, a licensing officer attached to the Tobago Branch of the Licensing Division complained to me that the Scarborough Police had seized his private motor car on August 5, 1992 on the grounds that it was a stolen vehicle. He informed me that it was a second-hand vehicle which he had purchased through a bank in Tobago by means of a mortgage bill of sale, and that the bank had, before entering into the transaction, conducted a search of title and found it to be in order. He also informed me that he, himself had conducted a search and had obtained a certified copy of ownership from the Licensing Office showing that the title was in order.

As a consequence of the seizure he had filed a constitutional motion in the High Court against the Police for infringement of his constitutional right to the enjoyment of property without due process of law.

My investigations revealed that the Tobago Police had sent the vehicle to the Forensic Science Centre for the purpose of conducting tests.

I was subsequently informed by the Police Criminal Investigation Department that with the assistance of "the Forensic Lab Analysis", it was discovered that the vehicle which bore a false registration number had, in fact, been stolen. The vehicle was owned by a Company operating in Tunapuna, Trinidad and was stolen from an employee who had the use of it. The Police had charged the culprit with larceny, and the matter was listed for hearing shortly at the Tunapuna Magistrate's Court.

The complainant was informed of the true position. I discontinued investigation of the matter.

Ref. OMB: 651/93

### TRINIDAD AND TOBAGO ELECTRICITY COMMISSION

The complainant was informed by the Trinidad and Tobago Electricity Commission that the meter on his premises had not been working properly during the preceding five (5) years. Electricity service charges for which he had been billed and which he had paid during the period were, they claimed, inaccurate. In order to correct this error the Commission decided to bill him retroactively for the period i.e. for five (5) years based on an assessment of his average consumption. Accordingly, the sum of \$3,642.32 was debited to his account as outstanding arrears.

The complainant sought my assistance when the Commission threatened disconnection of service for non-payment of the arrears. I immediately drew the Commission's attention to Section 58 of the Trinidad and Tobago Electricity Commission Act, Chapter 54:70(1) which prescribes:

"(1) The Commission shall at all times, at their own expense, keep all meters installed by them for the purpose of enabling them to ascertain the consumption of energy in proper order for correctly registering the consumption."

The Commission was clearly in breach of its statutory function and lost revenue as a result of this breach. There is no provision in the Act to demand retroactive payments from a consumer whose meter has been malfunctioning as a result of fault or the Commission's negligence.

There is, however, a provision in the Act which deals with the case of a non-registering meter i.e. Section 58(2) viz:

- "(2) If a meter ceases to register, the consumer shall pay for the energy consumed under such circumstances a sum based on the average daily consumption in the previous three (3) months."

Clearly, this applies to a meter which ceases to register. The average daily consumption of the previous three (3) months (i.e. when the meter was registering) would be used to determine the amount of electricity consumed during the period the meter ceased to register. There is no other provision in the Act dealing with this question and none with respect to retroactive payments. The Commission has legal authority only to charge the complainant for the electricity he consumes as determined by the meter and this cannot be made to apply retroactively.

Despite my intervention in the matter, the Commission has compelled the complainant to meet the liquidation of the arrears which they imposed through monthly instalments in the sum of \$400.00 by disconnecting his service.

To date, the Commission has not responded to my enquiry but the matter is being pursued.



## **PART IV**

## **APPENDICES**



**PUBLIC SERVICE REFORM  
AND  
THE ROLE OF THE OMBUDSMAN  
IN TRINIDAD AND TOBAGO**

BY  
**MRS. YVETTE CRICLOW**  
(BSc BUS.ADMIN.)

**A critical assessment of the potential impact of the goals of Public Service Reform on the role of the Ombudsman in Trinidad and Tobago.**

"The Public Service in every country, performs a significant task in improving the quality of life. The Government has heeded the Public's demands for an efficient Public Service. At the same time, it recognizes that as the country attempts to modernize for the 21st century, the Public Service must be specifically prepared for the many new and varied tasks it will be required to meet -- new challenges in the world economy, such as economic adjustment measures, and the demands of our people at home for improved service, overall."<sup>1</sup>

It is an inescapable fact that the quality of our lives is controlled to a large extent by public sector agencies. We depend on these agencies to provide a number of vital services such as security, health, shelter, transport, education, communications, social welfare and public utilities such as water and electricity. The distribution of these services is regulated by public policy formulated by the political arm of the Government. Public servants are entrusted with wide discretionary powers in implementing policy and in providing a wide range of services. Citizens are thus vulnerable to the decisions of these public officials.

The institution of the Ombudsman arose from a discerned need to protect the ordinary citizen from injustices incurred by reason of the abuse of delegated power and by general maladministration.

The basic concept is for the provision of an independent Office to receive, investigate and pursue resolution of citizens' complaints against administrative acts or omissions by public sector agencies. An Ombudsman seeks to ensure that in the administration of public policy, public servants effectively fulfill their obligations under the relevant laws and statutes. It is, however, not only sufficient for public sector employees to act in accordance with existing administrative policy decisions, but also to ensure that in the application of such policy, administrative acts should not be unfair, discriminatory, without reasonable purpose or executed inefficiently or erroneously.

The institution has developed as an instrument of democratic accountability between the individual citizen and the administrative government. Victor Ayeni in his paper - "Evaluating Ombudsman Programmes" - sees the institution as an irresistible response to the most problematic feature of modern bureaucratic society - the challenges of public accountability.<sup>2</sup>

1. Public Service Reform Brochure 1993 - Coordinating consulting Team - Office of the Prime Minister, Public Administration
2. AYENI, Victor - "Evaluating Ombudsman Programmes" - (1993) Vol. 11 International Ombudsman Journal, 1967



Today, the Office of the Ombudsman exists in over 50 countries worldwide. The institution was embraced into our society with the enactment of the Republican Constitution in March, 1976. During the first year of operation, the Ombudsman received a total of 1,098 complaints from citizens. In the following 16 years, the number of annual complaints averaged 1,200. These complaints centered largely on delays caused by the failure of public servants to take appropriate action on matters which adversely affected the daily lives of citizens. Examples of prevalent complaints filed in the Office in Trinidad and Tobago are as follows:-

- (1) Failure to provide regular supplies of water in communities.
- (2) Delay in the payment of compensation for land acquisition.
- (3) Failure to act in eradicating public health nuisances.
- (4) Police inaction.
- (5) Delay in approving the grant of agricultural leases of state lands.
- (6) Discrimination in dealing with squatters.
- (7) Failure to replace rotting electricity poles.
- (8) Discrimination in the allocation of public housing.
- (9) Inaccurate computation of superannuation benefits of public sector employees.
- (10) Lack of courtesy by public officers.

Not unlike bureaucracies in the developed countries, the Public Service of Trinidad and Tobago has often been characterized as being insensitive, oppressive and inefficient. Citizens have complained of unnecessary delays by public officers in dealing with matters affecting them and of rudeness and arrogance on the part of public officers. They have become insistent in their demands for improvements in the levels of service provided by public sector agencies, particularly in the areas of health, police protection and public utilities.

The Government has attempted to heed their demands and in 1991 a Minister was appointed in the Office of the Prime Minister and charged with responsibility for public administration. He was assigned the task of implementing "Public Service Reform". During the past two (2) years we have seen the implementation of a number of reform measures. Over 50,000 public servants are participating in the reform process which involves 'inter alia' strategic planning and the development of a customer contact service programme. Staff at each public sector department have been asked to set goals for their organizations, produce action plans to achieve these goals and submit annual reviews so that there can be some assessment of performance and actual achievement. Currently, each government department has a Customer Contact Officer who assists members of the public with requests for information on the department's services. The reform process is ongoing. The year 1994 saw the further implementation of other projects such as the introduction of Human Resource Management Agencies in each department, Customer Relations Training, Budgetary System Reforms, Resource Efficiency Audits and Procurement Management. The vision reflects a public service that:-

- \*\* produces prompt results.
- \*\* demonstrates a sense of caring for both its members and its customers.
- \*\* is client-driven - always conscious of the needs of the public.
- \*\* is constantly seeking motivation.
- \*\* promotes and demands higher standards of performance from its members.
- \*\* provides for growth and development of its members.
- \*\* has a 'high-speed' processing capacity.
- \*\* is results oriented.
- \*\* has a high profile leadership.
- \*\* becomes adaptable to the changing external environment.

and to have the following effects:-

- increased levels of efficiency.
- cost effectiveness in all operations.
- delivery of services within acceptable performance standards.
- appropriate organisational structures.
- establishment of a mutually beneficial interface between the public and the private sectors.<sup>3</sup>

The Minister for Public Administration, in his contribution to the Parliamentary debate of the Ombudsman's Fourteenth Annual Report, predicted that the reform would ultimately lead us to a situation where many of the criticisms and complaints cited by the Ombudsman in his report would become a thing of the past. He added that the reform process was emphasizing the importance of customer service.<sup>4</sup>

3. Public Service Reform Brochure 1993 - Coordinating Consulting Team  
Office of the Prime Minister, Public Administration

4. Parliamentary Debate of Ombudsman's Fourteenth Annual  
Report - Trinidad & Tobago Hansard, 05-03-93

Given the Minister's prediction, are we to assume that the Ombudsman's role in this society would be diminished in the future? Could the reformed Public Service effectively provide levels of service which would satisfy all its customers during a period of economic stringency?

It would seem that public sector agencies have been given a most formidable mandate in providing quality service to all customers while satisfying government's policies of economic austerity and internal cost efficiencies. Synonymous goals of fairness and efficiency are not easily achieved even for well managed and properly functioning bureaucracies. Causes of citizens' complaints may not be readily perceived and remedied by an agency that is feverishly striving to maintain cost effectiveness in all its operations.

Public Service Managers are human beings and as we are very much aware not infallible. Mistakes can and do happen whether as a result of mismanagement, wrong interpretation of facts, of rules and regulations or a lack of sensitivity to the personal circumstances of the individual citizen. Any error in judgement on their part could have serious effects on the lives of citizens. Consequently, the Ombudsman will remain without question an essential component of this society's democratic process in ensuring that the fundamental rights and freedoms of citizens are not encroached upon by the affairs of public administration.

The newly established customer contact service which was established within each department/agency affords citizens easy access to information and guidance on the services which they require. Another feature of this service is the investigation and resolution of complaints about departments' services. Customer contact officers in resolving these complaints regrettably may have to rely on the advice of the very officers who are directly responsible for the causes of complaint. Hence, the only avenue for a free and impartial investigation of complaints against a government agency is the Office of the Ombudsman. Indeed some citizens are only satisfied that a decision is fair when the matter has been investigated by a body they perceive to be impartial.

A great number of citizens who seek the Ombudsman's assistance simply need to have explained the intricacies and rationale of administrative decisions and actions which affect them. Many of them appear to be perplexed by the mass of rules and regulations and fearful of dealing with an impersonal bureaucracy. It is hoped that a welcoming and responsive customer contact service would serve to improve communication lines between public officials and the general population and eliminate the feelings of mistrust which exist.

One of the most important elements of the Ombudsman's concept is the expeditious resolution of citizens' complaints. Successive annual reports of the Ombudsman have cited difficulties in receiving information from government agencies on a timely basis. The failure of public officials to respond promptly to requests for information and to take decisions on simple issues of facts have caused a number of complaints to remain unresolved for years. Even complaints which are relatively simple in substance are allowed to drag on unnecessarily. This has undermined the office's effectiveness and violates the citizen's right to quick redress.

The Minister for Public Administration has promised that reform measures would correct the hurdles of information flows which exist between government agencies and their clients including the Ombudsman. Modern technology is to be introduced at all departments to provide efficient means of information storage and retrieval. The introduction of Human Resource Development and Management systems are expected to revolutionize current administrative systems and work practices.

It is still too early to judge whether these measures would produce the desired results. What must be recognized though is that citizens are unswerving in their demands for improved services. They believe that they are paying dearly for government services through taxes and are not receiving quality service in return. Transformation of the administrative system is therefore necessary if government is to respond to the will of the people.

Administrative reform has always been at the centre of the work of the Ombudsman. A fact underscored by Professor Larry Hill, author of 'The Model Ombudsman' when he defined administrative reform as one of the five (5) major objectives of the Ombudsman. Results from an Ombudsman's investigations have been an unmatched resource for public



administrators in identifying recurring administrative weaknesses which were not easily detected by the respective departments. Thus in the future Ombudsman's work and his reports to Parliament would be the barometer by which we measure how well the systems of reform are functioning and would continue to highlight the deficiencies which need to be corrected.

Undoubtedly, the institution has a permanent role to play in ensuring that the performance of public servants remain at the required standards of modern day government.

EXTRACTS FROM THE CONSTITUTION  
OF  
TRINIDAD AND TOBAGO  
CHAPTER I

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

**Recognition and  
declaration of  
rights and  
freedoms.**

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:-

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (c) the right of the individual to respect for his private and family life;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
- (e) the right to join political parties and to express political views;
- (f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;
- (g) freedom of movement;
- (h) freedom of conscience and religious belief and observance;
- (i) freedom of thought and expression;
- (j) freedom of association and assembly;  
and
- (k) freedom of the press.

Protection of  
rights and  
freedoms.

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not -

(a) authorise or effect the arbitrary detention, imprisonment or exile of any person;

(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

(c) deprive a person who has been arrested or detained -

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;

(ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;

(iii) of the right to be brought promptly before an appropriate judicial authority;

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

(d) authorise a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of rights and obligations;

(f) deprive a person charged with a criminal offence of the right -

(i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any



such person the burden of proving particular facts;

(ii) to a fair and public hearing by an independent and impartial tribunal; or

(iii) to reasonable bail without just cause;

(g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak English; or

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO  
ACT NO. 4 OF 1976

PART 2

OMBUDSMAN

Appointment  
and conditions  
of office.

91. (1) There shall be an Ombudsman for Trinidad and Tobago who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the Public Service or otherwise nor engage in any occupation for reward other than the duties of his office.

(2) The Ombudsman shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

(3) The Ombudsman shall hold Office for a term not exceeding five years and is eligible for re-appointment.

(4) Subject to subsection (3) the Ombudsman shall hold office in accordance with section 136.

(5) Before entering upon the duties of his Office, the Ombudsman shall take and subscribe the oath of office before the Speaker of the House of Representatives.

**Appointment of  
staff of  
Ombudsman**

92. (1) The Ombudsman shall be provided with a staff adequate for the efficient discharge of his functions.

(2) The staff of the Ombudsman shall be public officers appointed in accordance with section 121(8).

**Functions of  
Ombudsman**

93. (1) Subject to this section and to sections 94 and 95, the principal function of the Ombudsman shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.

(2) The Ombudsman may investigate any such matter in any of the following circumstances -

(a) where a complaint is duly made to the Ombudsman by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;

(b) where a member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice;

(c) in any other circumstances in which the Ombudsman considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.

(3) The authorities other than departments of Government to which this section applies are -

(a) local authorities or other bodies established for purposes of the public service or of local Government;

(b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose

revenue consist wholly or mainly of moneys 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 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 court; or



- (b) any such action, or action taken **Third**  
with respect to any matter, as is **Schedule**  
described in the Third Schedule.

(5) Notwithstanding subsection (4) the Ombudsman

(a) may investigate a matter notwithstanding that the Complainant has or had a remedy by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;

(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 dis- **Discretion**  
continue an investigation, the Ombudsman shall, subject to **of**  
section 93 and 94 act in his discretion and, in particular **Ombudsman**  
and without prejudice to the generality of this discretion,  
the Ombudsman may refuse to initiate or may discontinue an  
investigation where it appears to him that -

(a) a complaint relates to action of which the Complainant has knowledge for more than twelve months before the 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 **Report on**  
investigation is duly made and the Ombudsman **investigation**  
decides not to investigate the matter or where  
he decides to discontinue investigation of the  
matter, he shall inform the person who made the  
complaint or request of the reasons for his  
decision.

(2) Upon the 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 thinks fit. The Ombudsman may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.

(3) Where the investigation is undertaken as a result of a complaint or request, the Ombudsman shall inform the person who made the complaint or request of his findings.

(4) Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under sub-section (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament.

(5) The Ombudsman shall make annual reports on the performance of his functions to Parliament which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigation.

**Power to obtain Evidence** 97. (1) The Ombudsman shall have the powers of the High Court to summon witnesses to appear before him and to compel them 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 SCHEDULEMATTERS 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 required compulsorily;

(b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.

8. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.

9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to -

(a) the terms and conditions of service as such member; or

(b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.

10. Any action which by virtue of any provision of this Constitution may not be enquired into by any court.

LAWS OF TRINIDAD AND TOBAGOChapter 2:52OMBUDSMAN ACT

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

(Assented to 24th May, 1977)

<b>Enactment</b>	ENACTED by the Parliament of Trinidad and Tobago as follows:
<b>Short Title</b>	1. This Act may be cited as the Ombudsman Act.
<b>Mode of Complaint</b>	2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.  (2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the Ombudsman by the person for the time being in charge of the place where the writer is detained.
<b>Procedure in respect of investigation No. 4 of 1976</b>	3. (1) Where the Ombudsman proposes to conduct an investigation under section 93(1) of the Constitution set out in the Schedule to the Constitution of Trinidad and Tobago Act, 1976 (in this Act referred to as "the Constitution") he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make such representations.  (2) Every such investigation shall be conducted in private.  (3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries as he thinks fit.

(4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee or any department or authority to which section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate.

(5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.

(6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person out of money provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed for attendance in the High Court, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this sub-section, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.

(7) For the purposes of section 93(2) (a) of the Constitution a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorized to represent him.

(8) Any question whether a complaint or a request for an investigation is duly made under this Act or under Part 2 of Chapter 6 of the Constitution shall be determined by the Ombudsman.

#### Evidence

4. (1) The power of the Ombudsman under section 97 of the Constitution to summon witnesses and to compel them to give evidence on oath and to produce documents shall apply whether or not the person is an officer; employee, or member of any department or authority and whether or not such documents are in the custody or under the control of any department or authority.

(2) The Ombudsman may summon before him and examine on oath:



(a) any person who is an officer or employee or member of any department authority to which section 93 of the Constitution applies or any authority referred to in the Schedule and who in the Ombudsman's opinion is able to give any relevant information;

(b) any Complainant; or

(c) any other person who in the Ombudsman's opinion is able to give any relevant information, and for that purpose may administer an oath. Every examination by the Ombudsman shall be deemed to be the judicial proceeding for the purposes of the Perjury Ordinance.

(3) Subject to subsection (4) no person who is bound by the provisions of any enactment, other than the Official Secrets Act, 1911 to 1939 of the United Kingdom, in so far as it forms part of the law of Trinidad and Tobago, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, where compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any Complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the Complainant, and it shall be the duty of the person to comply with that requirement.

**Disclosure  
of certain  
matters  
not to be  
required**

(5) Except on the trial of any person for an offence under the Perjury Ordinance in respect of his sworn testimony, or for an offence under section 10, no statement made or answer given by that or any other person in the course of any inquiry or any proceedings before the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

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

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

(a) might prejudice the security, defence or international relationship of Trinidad and Tobago (including Trinidad and Tobago relationship with the Government of any other country or with any international organizations);

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

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

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

**Secrecy of  
information**

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

(a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any provisions of sections 93 and 96 of the Constitution, so, however, that no disclosure made by any such person in proceedings for an offence under section 10, or under the Perjury Ordinance by virtue of section 4(2) or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or the provisions of Section 3(4) or section 9, shall be deemed inconsistent with any duty imposed by this paragraph; and

(b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the proviso to paragraph (a)

**Notice of  
entry on  
premises**

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

**Delegation  
of powers**

8. (1) With the prior approval in each case of the Prime Minister, functions hereinbefore assigned to the Ombudsman may from time to time, by direction under his hand, be delegated to any person who is appointed to any office or to perform any function referred to in section 6.

(2) No such delegation shall prevent the exercise of any power by the Ombudsman.

(3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

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

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

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

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or



(d) in a manner inconsistent with his duty under section 6(a), deals with any documents, information or things mentioned in that paragraph.

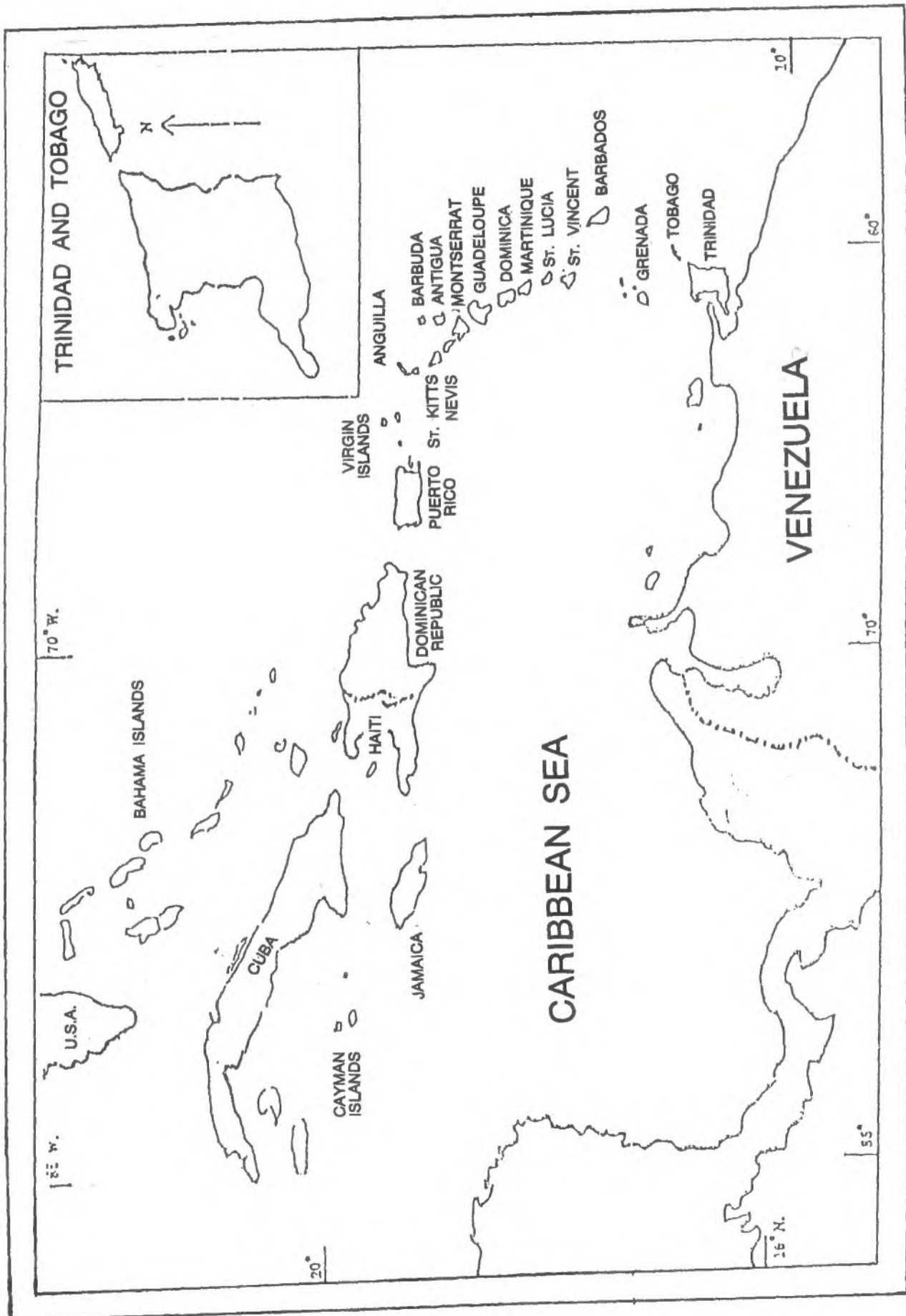
**Prescription  
of authori-  
ties subject  
to the  
Ombudsman's  
jurisdiction**

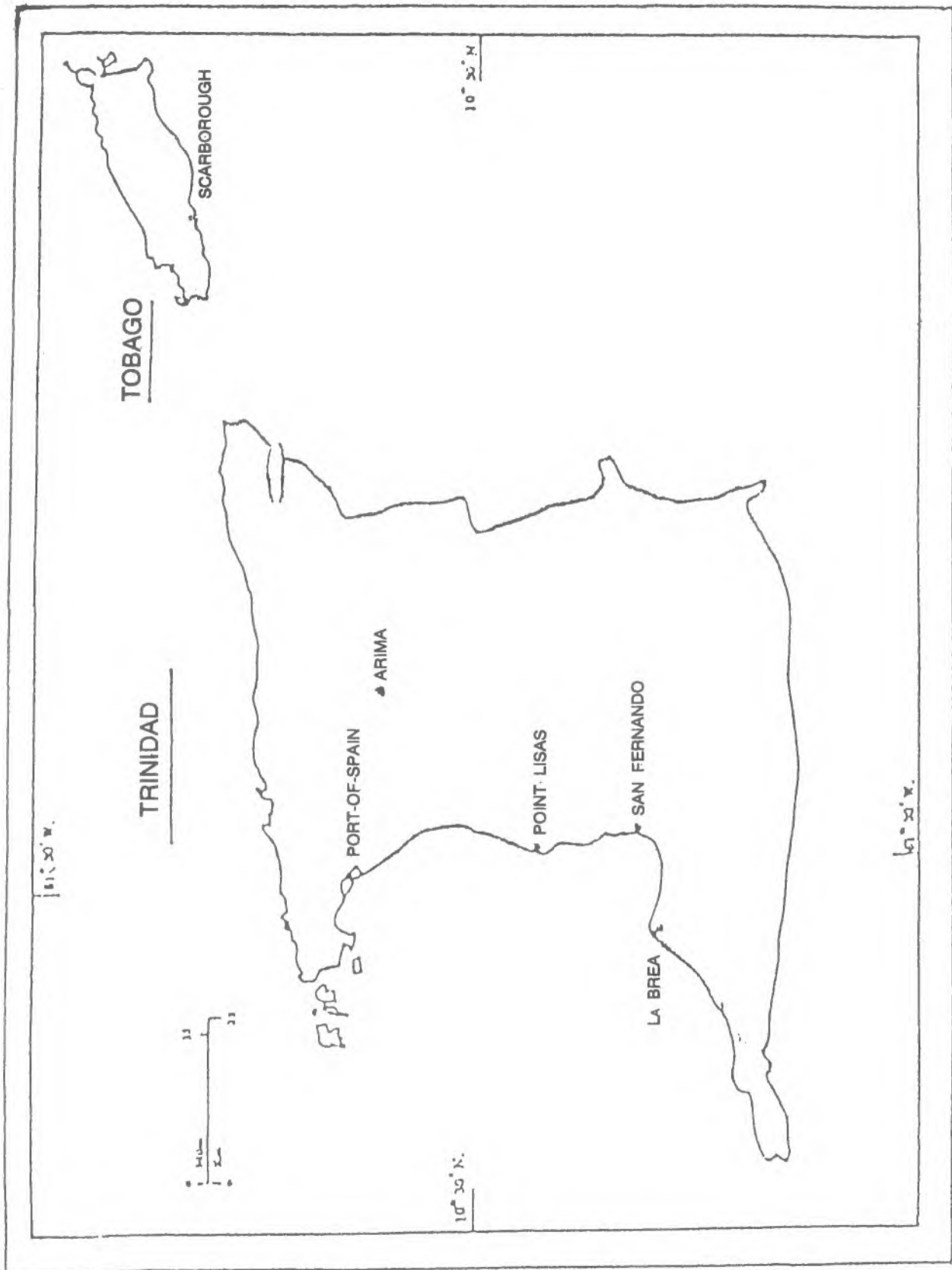
11. (1) The authorities mentioned in the Schedule are authorities to which section 93(3) (d) of the Constitution shall apply.

(2) The President may, by Order, amend the Schedule by the addition thereto or deletion therefrom of any authorities or the substitution therein, for any authorities or other authorities.

**Regulations**

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







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