THE REPUBLIC OF
TRINIDAD AND TOBAGO

PARLIAMENT
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DEPARTMENT

THE OMBUDSMAN

18TH ANNUAL REPORT

JANUARY 01, 1995
TO
DECEMBER 31, 1995

TRINIDAD AND TOBAGO
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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.

Office of the Ombudsman of Trinidad and Tobago

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

2nd July, 1996

The Honourable Speaker
Parliament
Red House
St. Vincent Street
Port of Spain

Dear Mr. Speaker,

I have the honour to present the Eighteenth Annual Report of the Ombudsman for the period January 01, 1995 to December 31, 1995.

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

Yours faithfully,

G. A. Edoo

George A. Edoo
Ombudsman
Republic of Trinidad and Tobago.

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GENERAL

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GENERAL

THE PUBLIC UTILITIES

The Public Utilities comprise 'inter alia':

The Water and Sewerage Authority;
The Trinidad and Tobago Electricity Commission and
The Telecommunications Services of Trinidad and Tobago Limited,
(formerly The Trinidad and Tobago Telephone Company Limited).

This article is confined to these three utilities in the context of complaints received against them during the past five years. These utilities are governed by Acts of Parliament which provide 'inter alia' for the method of their operation and for the imposition of fees and charges in respect of the services which they provide to the public. Being monopolistic concerns and having regard to the vital nature of the services which they provide, the provisions of the Acts of Parliament under which they are constituted, are designed to ensure that their operations are competently and efficiently managed and that the public interest is properly served by the provision of proper services at reasonable fees and charges.

Under Section 16 of the Fourth Schedule of the Water and Sewerage Act, Chapter 54:40, the rates to be charged for the supply of water are based on the annual rateable value of the premises to which the water is supplied and under Section 52 of the Trinidad and Tobago Electricity Commission Act, Chapter 54:70, consumption of energy is to be determined by meter and the cost to the consumer is fixed by tariffs made by the Commission. Under the Trinidad and Tobago Telephone Act, Chapter 47:30, rates and charges are provided in Regulations scheduled to the Act.

In 1966, the Public Utilities Commission was established under the Public Utilities Commission Act, Chapter 54:01. The chief purpose of the Act was to remove from the various public utilities the ability to fix their own rates and charges and to vest jurisdiction for such duty and responsibility in an independent body. Thus, under Section 17 of the Act, the Commission was established a tribunal to exercise jurisdiction 'inter alia':

(a) to hear and determine complaints relating to rates payable for any service of a public utility;

(b) to hear and determine claims by a public utility for an increase of the rates payable for any service.

During the past five years there has been an increase in the number of complaints filed against the Water and Sewerage Authority and the Electricity Commission in particular. These relate mainly to the increase in rates and charges imposed by the Public Utilities Commission as a consequence of the removal or the reduction of the annual subsidy by the Government in order to clear the deficit incurred by the utility during the previous year. The effect of such removal or reduction of funds was to seriously hamper the operation of the utilities which depended on the Government's bounty as the revenue which they generated could not even meet the cost of their daily requirements. Thus in an application made by the Water and Sewerage Authority in 1992 for an increase in rates and charges, the Authority submitted that the utility was short of cash required to meet basic liabilities such as the weekly and monthly payroll and to equip its crews c/f Report of the Public Utilities Commission 1992.

No members had been appointed to the Public Utilities Commission in 1995. This was as a result of the intention of the Government to transform the Commission into a more effective body. A Cabinet appointed body made the following recommendations in 1993 viz:

(1) The quasi-judicial process in rate making which has been the pre-dominant pre-occupation of the Public Utilities Commission, should be abolished and replaced by new arrangements in order to emphasize the Commission's role as an organization charged with carrying out studies of economy and efficiency into the operations and standards of service of <u>all-designated</u> public utilities.

(2) The fixing of rates, though not unimportant, would occupy a somewhat more transparent setting in that public utilities would themselves play a more direct role in fixing their own rates with the Commission being a "Watch-dog" on behalf of the public interest, ensuring:-

(a) that rates are fixed in accordance with principles approved by the Minister as may be set out in a revised section 39 of the Public Utilities Commission Act;

(b) that such rates are "fair and reasonable" to both the consumer and the utility, given the cost of providing services and the need for a fair return on investment."

It is proposed to transform the Commission into a new body designated The Regulated **Industries Commission.**

Pending the enactment of legislation to give effect to the recommendations of the Cabinet-appointed Committee, and in the absence of a functioning Public Utilities Commission, it seems that the ability to fix rates and charges in respect of their services has reverted to the Public Utilities themselves.

This lacuna, however, does not absolve the utility from conducting its affairs in accordance with the law and the Constitution and in accordance with the principles laid down in the Public Utilities Commission Act. Being responsible to the Minister of Public Utilities, it would appear that, in the meantime the utilities should submit whatever proposals they desire to make in respect of rates and charges to the Minister for his approval.

Against this background it is now necessary to review the situation in the context of complaints received by this Office.

WATER AND SEWERAGE AUTHORITY

Numerous complaints have been received concerning inadequate water supplies or no supplies at all and of damage to premises as a result of leaking or faulty mains. Complaints increased in 1993 as a result of the decision of the Public Utilities Commission to increase the rates and charges payable by customers of the Authority. This increase in rates and charges affected mainly those who operated small businesses and in many instances whose consumption of water was negligible and those who had tenanted their homes in separate parts.

In the case of small businesses which, in most cases, were used partly for residential purposes and which previous to Order No.78 were classified as 'domestic', these were classified under Order 78 as 'non-domestic'. The criterion used for such a change in classification was that the business had been registered for Value Added Tax.

In the case of tenanted premises, the criterion used as stated in the Order is as follows:-

> **"Where the Annual Taxable Value of the separate parts of a building or of the separate covered buildings within a common boundary can be disaggregated, each part shall be classified and billed separately in accordance with these rules."**

It seems that the Commission had left the duty of disaggregation to the Authority which, in some cases, has refused to accept the rateable value fixed by the rating authority.

By Order 79, the Public Utilities Commission prescribed an increase of 20% on bills of all metered customers and unmetered non-domestic customers.The effect of Orders 78 and 79 was to increase the rates of these two categories of customers on an average between 600 and 900 percent, a phenomenal increase by any standard. These orders of the Commission were implemented by the Authority with retroactive effect from August 13, 1992 with the result that customers received demand notices for arrears in excess of Ten thousand dollars ($10,000.) or more in a number of cases.

The Orders by the Commission were in violation of the statutory provision contained in Part VIII of the Fourth Schedule to the Water and Sewerage Act which does not categorize between different classes of customers and prescribes rates based on the annual rateable value in respect of all premises. Section 16 (1) of the Fourth Schedule states:

> **"16 (1) where undertakers supply water to any premises for domestic purposes or where the Authority erects, maintains, and keeps supplied with water any public standpipe, they or it, as the case may be, may charge in respect thereof a water rate, which shall be calculated at a rate not exceeding the prescribed rate -**
>
> **(a) in the case of a house or of any premises not used solely for business, trade or manufacturing purposes or for the exercise of functions by any public authority, on the annual value thereof;**
> **and**
> **(b) in the case of any other premises, on such proportion of the annual value thereof as may be prescribed."**

Subsequently, by Order 83 which applied to dual-use premises, the Commission relented and fixed a flat rate of Three hundred and ninety-five dollars ($395.) per month for water and One hundred and ninety-seven dollars ($197.) per month for sewerage and defined service to these customers as "Cottage Service", rates which were intermediate between domestic and non-domestic rates. The reasons the Commission gave for lowering the rates which have applied only to some dual-use premises, were that some Value Added Tax-registered businesses were only marginally so and that the unmetered water rates in particular, were frequently punitive. The Commission left to the Authority the question of determining which customers fell within this category. This, too, was in violation of Section 16 of the Fourth Schedule to the Act as the new rate like the previous rate was based on criteria other than the annual rateable value.

In fixing these all-embracing categories, the Commission did not take into consideration the criteria laid down in Section 31(3) of the Water and Sewerage Act. That section reads as follows:-

> **(3) Where the Authority is by this Act empowered to fix rates and charges for the supply of water, sewerage facilities, and other services and facilities the Authority shall not -**
>
> > **(a) show undue preference as between consumers or rate payers similarly situated;**
> >
> > **(b) exercise undue discrimination as between persons similarly situated having regard to the place and time of supply, the quantity of water supplied, the regularity of supply, and the purposes for which the supply is taken...".**

In effect, what the Commission did was to impose a punitive tax on certain classes of customers in contravention of the constitutional guarantees as to equality of treatment and the protection of the law and to the enjoyment of property and the right not to be deprived thereof except by due process of law. The punitive nature of the Commission's determination was also reflected in the charges for reconnection for non-payment - Five hundred dollars ($500.) and disconnection at customer request of Three hundred and twelve dollars ($312.). The Commission had, in effect, usurped the functions of Parliament in re-classifying premises and in imposing what amounted to punitive taxes.

In order to comply with the provisions of Section 31 of the Water and Sewerage Act, and in the absence of any other stated method, it is incumbent upon the Authority to provide a metered supply to all of its customers. The Commission, it seems, was aware of this but it considered such a step not to be feasible in the short term. They viewed such a measure as a long term goal extending well into the next century. To bring about parity and fair and equal treatment to its customers, I suggested both to the Authority and to the Commission that pending the metering of all of the Authority's customers, a solution to the problem could be achieved by installing meters in different areas of the country for each category of user and an average be taken of the water supplied for each specific area so that for each area, a rate can be fixed which bears some relationship to the water supplied. I also recommended to the Commission and the Authority that the Commission -

> **(1) should invoke the provisions of Section 17(1) (e) of the Public Utilities Commission Act and of its own motion review and determine the rates to be charged in accordance with the law and the Constitution.**

(2) **should suspend the application of the Orders under which the wrong criteria were used in determining the rates payable by customers of the Authority pending the implementation of the proposal which I had made or some such equitable course.**

In March 1993, a comprehensive debate ensued in Parliament with respect to the memorandum sent to the Commission and the Authority. The Leader of Government Business in the House gave the assurance that certain corrective actions would take place so that relief could be given to the customers of the Authority.

Except for the passage of Order 83 by the Commission reducing the rate to some dual-use customers, nothing has been done to bring relief to the bulk of the customers of the Authority who continue to complain about inadequate and no supply of water, leaking mains which cause damage to their properties and the exorbitant rates to which they are subjected.

Many are saddled with arrears based on the new rates which they find difficult to liquidate. Their burden is increased by threats by the Authority to disconnect their water supply if they refuse to liquidate the arrears or make firm arrangements to do so.

As a step towards relieving the plight of the customers of the Authority pending the provision of universal metering, it is incumbent upon the Government to arrive at a rationalized rating structure based upon the criteria laid down in the Water and Sewerage Act. It is also necessary to review the Orders made by the Commission and determine the correct rates to be applied to those customers who were affected by Orders 77 and 78, that is, small business and dual-use customers and those who had tenanted their houses in separate parts.

TRINIDAD AND TOBAGO ELECTRICITY COMMISSION

During the past five years, customers of the Commission have complained about rotting or defective poles which pose a hazard to their properties, to discrepancies in their electricity bills and to irregularities in electricity supply due to surges in the system resulting in damage to their electrical appliances.

Since 1993, there has been an increase in such complaints. In addition, complaints have been received with respect to retroactive charges being imposed by the Commission on customers whose meters were deemed to be mal-functioning.

Under Section 58(1) of the Trinidad and Tobago Electricity Commission Act, a statutory duty is placed upon the Commission to keep its meters in proper order viz:-

> **'(58) (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 order for correctly registering the consumption."**

It is obvious that where the Commission defaults in this statutory duty it loses revenue as a result. If a meter ceases to register, then by Section 52(2) of the Act, the consumer is liable to pay for the energy consumed, a sum based on the average daily consumption in the previous three months.

So that in the case of a non-registering meter, the average daily consumption for the previous three months (when the meter was registering) ought to be used as a determinant in computing the charge to the customer during the period when the meter ceased to register.

There is no provision in the Act with respect to the charges to be imposed in respect of a malfunctioning meter. There is, however, under Section 59 of the Act, the procedure to be applied in the case of a malfunctioning meter. Either party can apply to an Electrical Inspector appointed under the provisions of the Electricity (Inspection) Act who shall ascertain whether the meter is or is not in proper working order for correctly registering the consumption of electricity.

Since 1993, the Commission has embarked on a drive to replace malfunctioning meters. In attempting to ascertain whether a meter is malfunctioning, the exercise carried out by the Commission and the eventual outcome constitute very unfair treatment to the customer and in the process the provisions of the law and the Constitution are being violated.

All of the complainants have complained that they were not aware that an employee of the Commission had visited their premises for the purpose of ascertaining whether or not their meters were malfunctioning and only became aware that this was so when their meters had been replaced. Sometime later, they were informed by the Commercial Manager that they were liable to retroactive charges in respect of an arbitrary period measured in years when the Commission had deemed that the meters had been malfunctioning. A considerable sum of money is then exacted by an agreement in which repayment terms are fixed. Failure to sign the agreement or to make necessary arrangements for the payment of the retroactive charges result in a threat to cut off the customer's electricity supply.

Section 58 of the Act which has been referred to above, like other provisions of the Act is a provision designed for the purpose of protecting the customer and making the Commission liable for its own default. Retroactive charges cannot be imposed upon the customer unless there are clear provisions in the Act to that effect. This is a time-honored legal principle.

Under the provisions dealing with the methods of charging for supply of electricity (Sections 52 to 60 of the Act) there is no provision for the imposition of retroactive charges.

Having regard to the comprehensive manner in which the pricing methods have been dealt with, it is only reasonable to assume that if Parliament had intended to impose retroactive charges in respect of a malfunctioning meter due to the negligence of the Commission, it would have done so in specific terms.

In any event, it would have been incumbent upon the Commission to apply to the Public Utilities Commission and seek approval for the imposition of such charges.

The absence of a functioning Public Utilities Commission, however, does not absolve the Commission from conducting its affairs in accordance with the law and the Constitution and the principles laid down in the Public Utilities Commission Act as stated above.

I have apprised the Commission of my recommendations but it seems that the Commission is still pursuing its objective of exacting retroactive charges in respect of meters which they deem have been malfunctioning.

TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO

Complaints against the Telecommunications Services of Trinidad and Tobago (TSTT) have mainly centered around the rates which have been charged for telephone services and delay in the provision of telephone services.

Recently, however, there has been an increase in complaints by customers with respect to charges for overseas calls which they vehemently protest had not been made by them or by members of their family. Such charges in some cases amount to thousands of dollars.

Although the Company has been aware that these calls had been placed through fraudulent means by persons other than the customer or his family, it is felt by customers that not enough is being done by the Company to root out this practice and relieve them of the burden of having to meet charges.

A further complaint by customers is that the onus of proving that the calls were not placed by the customers or their family is placed upon the customers, a burden which they find to be very unfair.

PARLIAMENTARY DEBATE
ON PROPOSED JOINT SELECT COMMITTEE

On December 08, 1995, the Honourable Attorney General moved a motion in the Senate in the following terms:

"*Be it resolved,*

That this honourable Senate take note of the 17th Annual Report of the Ombudsman for the period January 01, 1994 to December 31, 1994 (hereinafter referred to as "the said Report"):

And be it further resolved,

That pursuant to Standing Order 71, this honourable Senate appoint six members to sit with Members of the House as a Joint Select Committee for the purpose of considering the said Report and the functions and duties of the Office of the Ombudsman and to make recommendations for a more effective machinery for the Office of the Ombudsman so that Part II of Chapter 6 of the Constitution of the Republic of Trinidad and Tobago can be given effect." The motion was unanimously passed.

It is worth recalling the contributions made by Members in the course of debate, as reported in Hansard. Excerpts from such contributions are detailed hereunder:

Hon. Deborah Moore-Huggins (Senator):

"The Ombudsman is one of the key checks and balances provided in our Constitution to protect the citizen against arbitrary exercise of power by the state. He is intended to act as a buffer between the state and the helpless citizen. This Government therefore, is committed to ensuring that the Office of the Ombudsman is treated with the respect it deserves in order that it can accomplish the objectives which have been set out in sections 91 and following of the Constitution.

As a Government, we accept that if the Office of the Ombudsman is to become more effective in addressing the needs of members of the public who obviously rely on its intervention in matters applicable to government's mal-administration, then this Government feels that the initiative must begin with it.

We must, in our decisions and response to the Ombudsman's concerns, telegraph to members of the public and also to public officers, ministries and governmental agencies with whom the Ombudsman interfaces, that his functions are critical to the preservation of the democratic traditions which we all cherish and that his inquiries must be dealt with expeditiously."

Hon. Nafessa Mohammed (Senator):

"When we look at the various provisions in the Constitution that govern the Ombudsman, we see that the Ombudsman has a very critical role to play in our society. We know that the main function of the Ombudsman is to investigate false administration and to remedy any administrative injustices. But more significantly, we know that of the other means of redress that are available to the Ombudsman, he provides a very cheap, quick and simple avenue for redress, especially to those in need in our society."

Hon. Kamla Persad-Bissessar (Attorney General):

"Bearing in mind that the Ombudsman is expected to lay these reports where its recommendations have not been followed and where he sees as a matter of urgent public importance that this should be brought before Parliament in the hope that the Government of the day would take action and initiate debate on it, this does not appear to have been the case. In the first special report if that is in any way representative of the circumstances which lead the Ombudsman to bring special reports to the attention of Parliament, we would have expected a responsible government to debate and take action on every such special report.

This surely is a state of affairs which must be looked into and if the situation exists where the Ombudsman, created by the Parliament and reporting to it, is ignored by the Ministry (of Health) which is under the command of the Executive, then this certainly needs to be looked into and a Joint Select Committee, in our view, would be able to look at the options and bring recommendations to this Parliament." (Referring to the two Special Reports laid in Parliament, No.1 of 1995 and No.2 of 1995)."

Hon. Fitzgerald Hinds (Member of House of Representatives):

"We understand quite well the importance of the role and the Office of the Ombudsman of Trinidad and Tobago. We understand quite well that it is an integral and rather important part of our democratic process.

We understand, too, that in addition to the other methods of providing relief for citizens of this country, the Ombudsman does play a very crucial role. We understand that he provides an opportunity for redress which is cheap and much less awesome than the courts and other means of resolving disputes or grievances."

"I would like to take this opportunity to publicly congratulate the Ombudsman and the supporting staff for the wonderful job and service they have provided to the people of Trinidad and Tobago and to reaffirm our fullest support for this Motion and we look forward to making solid and sensible recommendations at the appropriate time."

Hon. Wade Mark (Minister of Public Administration and Information):

"There also seems to be a need, as I said, for more collaborative and team effort between the Ombudsman and client agencies. I make reference to ministries, government departments and other statutory authorities, with which it must interact on behalf of aggrieved citizens. Objectivity must prevail and, therefore, the situation warrants some investigation into the root causes of the apparent lack of responsiveness on the part of the vast majority of organizations whose assistance and co-operation are sought in pursuing and resolving matters expeditiously."

Hon. Gordon Draper (Member of the House of Representatives):

"You have also to deal with the whole question of management systems because, in a lot of respects, the delays which the Ombudsman speaks to, are delays which come about because - and it says quite clearly, and I will read this one - 12 on page 4:

"Persisting in faulty methods and systems which have outlived their usefulness." Some of those faulty methods and systems relate to the fact that in most of our public service we continue to operate on manual systems, which is why our government saw as a central part of our reform the introduction of computerized information systems in the public service.

These things are critical. If, also, we are going to hold persons to achieving certain standards, then we have to introduce, as we had started to introduce, new performance appraisal systems tied in to standards of performance."

Hon. Ramesh Lawrence Maharaj (Member of House of Representative and Advisor to the Cabinet):

"The Office of the Ombudsman in Trinidad and Tobago was created to be the vehicle whereby the ordinary citizen could make representation, or have representations made on his behalf - or the Ombudsman himself could decide to investigate - to have a particular complaint investigated.

When a complaint is investigated, the Ombudsman does not have the power to command the public officer to do what he should, but he, in effect, tries to persuade him, by his report and by a conciliatory process, to have the injustice corrected. The Ombudsman's Office, therefore, must be remembered - it is an independent office - he has to receive, investigate and try to resolve these complaints.

His task, therefore, is to attempt to ensure that the persons who are employed in the public service, state companies - whatever position they hold - execute the policies of the Government and fulfil their duties under the relevant laws and statutes.

Mr. Speaker, I am saying this in order to show that when one looks at the report, one sees that the task of the Ombudsman is not only to ensure that the established policies are followed, but his mission also is to ensure that the duties of the officers were not executed unfairly, unreasonably or discriminatory.

Mr. Speaker, the Office of the Ombudsman really, has been regarded as an instrument of accountability between the individual citizen and the administrative Government. This office is important because that is the machinery that the ordinary citizen has in order to get some redress. It is even referred to as a non-judicial machinery because one takes out all the legalism and procedures associated with a court. Therefore, the Ombudsman stands up as the guardian of the public interest in order to get redress for the ordinary citizens."

Dr. Eastlyn Mc Kenzie (Senator):

"With respect to the Report of the Ombudsman, there are a few things I would like to say.

I have had occasion to use the services of the Ombudsman and, having gone through all the processes, at the end of the day, the person who had the accountability and the responsibility to do something about it never knew anything about my complaint, despite the fact that I was receiving correspondence signed on his behalf.

The correspondence, although coming from the Permanent Secretary, were all handled by junior officers who wrote me some very rude letters.

When I took the matter to the Ombudsman and he had it settled, I was accused of going directly to him without pursuing the course before."

A CASE OF JUSTICE DENIED

Mr. K. R. *entered the Public Service in the year 1948. For the period 1957 to July 1989, he was employed as a Radiographer in the Ministry of Health. He was posted for duties at the General Hospital, Port-of-Spain from 1972 to 1979 and then transferred to the Sangre Grande Hospital where he served until his retirement in July 1989. By a memorandum of October 04, 1983, a Senior Officer of the Ministry acting on behalf of the Permanent Secretary authorized the payment of a resident on-call allowance to him with effect from January 01, 1981. Vouchers for payment of these allowances were certified by his supervisors, audited, processed and passed for payment by the Ministry and the amounts were duly paid to him. On his retirement, he was paid the gratuity and pension due to him under the Pensions Act.*

After he had retired, he was employed on contract for the periods April 02, 1990 to April 20, 1991; July 13, 1991 to July 14, 1992 and November 1992 to November 1994. Vouchers in excess of Twenty-five thousand dollars ($25,000.) representing gratuity due to him have been lying in the Pensions Department of the Ministry of Finance in respect of the three (3) contracts pending the issue of indebtedness certificates by the Ministry of Health.

An Indebtedness Certificate is not one required by law but it is requested by the Comptroller of Accounts as a matter of course whenever gratuity or other moneys are due to be paid by Government. This has been the practice so as to ensure the payment of debts due to the State.

Section 24 of the Pensions Act, Chapter 23:52 stipulates that no pension, gratuity or other allowance granted, is liable to be attached, sequestered, or levied upon in respect of any debt or claim whatsoever other than a debt due to the Government. Not even a court of law can lightly interfere with pensions and gratuities. When the complaint was made to the Ombudsman on February 11, 1993, the matter had been outstanding for two (2) years. During that time, the Complainant had been making representations to Senior Officers in the Ministry of Finance as to the payment of the gratuity moneys due to him, and was told that the Ministry of Health had not furnished the required indebtedness certificates.

At a meeting held on March 22, 1993, with representatives of the Ministry of Health and the Office of the Chief Personnel Officer, the Complainant complained that the unjustifiable retention of his moneys was causing hardship to him, a complaint which he maintains to this day. The representatives of the Ministry of Health gave the assurance that the Complainant would receive the moneys due to him shortly.

As a result of further delay, I drew the attention of the Permanent Secretary, Ministry of Health by memorandum dated November 11, 1993, to the provisions of Section 23 of the Pensions Act, in the hope that the required indebtedness certificates would be furnished without delay to the Director of Pensions. When there was no response, I reported the matter to Parliament by way of Special Report (No. 1 of 1995) under the provisions of Section 96(4) of the Constitution.

Apparently this had the effect of propelling the Ministry into action. By a demand notice of April 29, 1995, under the hand of the Accounting Executive II of the Ministry, the Complainant was called upon to repay the sum of One hundred and forty-three thousand, five hundred and eighty-three dollars ($143,583.) representing "overpayments" made to him for the period May 01, 1984 to November 30, 1988 in respect of resident on-call allowance claims. Surely if in fact this was a debt due to Government, a Certificate of Indebtedness should have been furnished to the Director of Pensions and steps should have been taken by the Ministry to recover the debt since the Complainant was no longer in the Public Service.

What is curious about this matter is the fact that the "overpayments" were only discovered six (6) years after the Complainant had retired and only after the presentation of a Special Report to Parliament. In fact, the amount of money demanded from the Complainant, represented "resident" allowances authorized by the Ministry and paid in respect of duties which he had performed as indicated above.

By memorandum of May 15, 1995, I addressed the Permanent Secretary, Ministry of Health again on the failure of the Ministry to furnish the Director of Pensions with the relevant Indebtedness Certificates. I also, in great detail, pointed out the injustice to the Complainant in calling upon him to repay such a huge sum of money which under no circumstances, whatever, could be considered as overpayments.

I have had no response to this memorandum. I was now strongly of the view that there was a settled intention on the part of the Ministry of Health to deprive the Complainant of the moneys due to him. I therefore made a Special Report to Parliament (No. 2 of 1995) in which I recommended that :-

(1) The necessary indebtedness certificates in respect of the three (3) contracts of service be remitted to the Director of Pensions by the Ministry of Health.

(2) The Complainant be paid the moneys due to him and be compensated in interest at the rate of 12% per annum from the date when the respective sums became due to the date of payment..

Because of its legislative and other agenda, Parliament did not have the time to debate either of the two (2) Special Reports. However, in reply to a question in the Senate, the Minister of Health read out a prepared statement on September 26, 1995 to the effect that on July 22, 1986, the Chief Personnel Officer had advised that Radiographers at the Sangre Grande Hospital did not qualify for the payment of a resident on call allowance, that the Complainant was so notified and that the claims were paid by mistake.

Further, that the gratuity moneys were withheld as part settlement of the overpayments. I have already indicated that this was in violation of Section 23 of the Pensions Act. The statement contained certain misrepresentations of fact. In fact the Complainant was never notified that he was not entitled to the payment of an on-call allowance and only became aware of such instructions which were directed to the Permanent Secretary, Ministry of Health when the Hospital Manager of the Sangre Grande Hospital was informed on March 28, 1990 of the Circular issued by the Chief Personnel Officer to the Permanent Secretary. By then, the Complainant had already retired from the Public Service. And in any event, it would have made no difference. The mistake was not his. He performed resident on-call duties on the authorization of the Ministry and was paid for such services as mentioned above and had no knowledge of such instructions from the Chief Personnel Officer at the time he performed such duties.

In another context, I had drawn the attention of the Ministry to the analogy of a man being given a job of work to do and after he had performed it satisfactorily and had been paid for it, he is then told that a mistake had been made some ten (10) years previously and that the moneys paid to him for the job should be refunded. In other words the Complainant is being penalized for a mistake made by others without regard to the fact that he had performed duties on the authorization of the Ministry of Health, and had been paid for his services, these moneys having been paid since 1981.

The Ministry of Health has sought to justify the retention of the gratuity moneys by the Comptroller of Accounts and their demand for the repayment of the said sum of One hundred and forty-three thousand, five hundred and eighty-three dollars ($143,583.) Dollars as "overpayments" made to the Complainant, by relying on very questionable opinion and advice given by a junior member of the Solicitor General's Department. This opinion arriving soon after the Special Reports to Parliament were made, seems to have been tailored to justify the Ministry's stand and that of the Comptroller of Accounts in the matter.

Without considering the facts and circumstances under which the on-call allowances were paid to the Complainant, it was sought to show by a process of legal gymnastics, that the sum of money was a debt owed to Government which had to be repaid. And by relying on an obscure provision in the Interpretation Act, it was sought to show that statutes of limitation did not bind the State. So that, however old a debt was, it could be recovered by the State. Of course, this is not the law since the State is subject to statutes of limitation in the same way as individuals are liable by virtue of the State Liability and Proceedings Act, Chapter 8:02.

A further attempt was made to have the gratuity moneys paid to the Complainant. By a memorandum of February 22, 1996 addressed to the Comptroller of Accounts, I pointed out that common sense and good conscience should prevail and that the moneys due to the Complainant cannot be withheld indefinitely awaiting an elusive indebtedness certificate which did not seem ever to materialize. There has been no response to this memorandum.

The Complainant is under the impression, not without justification, that there is a conspiracy between the Ministry of Health and the Comptroller of Accounts to deprive him of moneys which are lawfully due to him.

In the Seventeenth Annual Report, I drew attention to several administrative 'sins' of omission and commission in respect of complaints received in the Office of the Ombudsman. Some of them can apply admirably to the circumstances of this matter viz-

(1) Failure to deal reasonably and with administrative fairness.

(2) Misinterpretation or wrongful application of Government policies, procedures, rules and regulations.

(3) Failure or refusal to meet with the Complainant to discuss his problems and so arrive at a solution.

(4) Taking unilateral decisions without consulting the Complainant and an adamant refusal to change the decision whatever the consequences.

The Complainant's only hope it seems, is to bring an action in the Courts to recover the moneys due to him, a course which he is seriously contemplating. Of course this will entail expense, and delay and put him to further anguish.

There is little doubt that he will succeed and that the State will be ordered to pay the outstanding moneys and be mulcted in interest and costs. The question to be asked is: Why was this particular individual subjected to such harsh and unconscionable treatment by those who were charged with the duty and responsibility of looking after his interests?

COMMENTARY

In previous Annual Reports, I had drawn attention to the injustice suffered by retired officers, from whose gratuity moneys, sums had been deducted in respect of "overpayments" representing increments which were not due and paid by mistake.

These "overpayments" ranged over a period of ten (10) or more years (in most of the cases) prior to the retirement of the officer. Apparently the departments concerned rely on very questionable legal opinions of the kind which I have referred to above and despite my attempts to intervene and show them the errors contained in such advices or opinions, the departments continue to rely on them and continue to notify the Comptroller of Accounts of such "debts" which are automatically deducted from the retiree's gratuity despite the fact that the limitation period for the recovery of such debts had expired. It is only on the receipt of the balance of the gratuity moneys that the retired officer becomes aware of the overpayments made to him and of the amount deducted from his gratuity. This comes as a shock to him in the twilight of his years. By this unilateral action on the part of the department concerned and that of the Comptroller of Accounts, the hapless Complainant is not only deprived of the right to be heard and to state his case, but to the deprivation of his property without due process of law, rights which are guaranteed under the Constitution.

In any event, as I have pointed out above, such "debts" cannot be deducted from pensions or gratuities because of the prohibition contained in Section 23 of the Pensions Act, Chapter 23:52.

I have since pointed out to the departments concerned that if they differ with the considered opinions which I have expressed, they should seek the opinion and advice of Senior Counsel since their actions are affecting a large number of retired officers.

It is a matter of concern that such overpayments are discovered only after an officer has retired.

Such a state of affairs does not speak well for the competence and efficiency of Accounting Officers and those charged with the responsibility of ensuring that overpayments are not made, and when so made, recovered promptly and in accordance with the Financial Regulations.

I believe that the State should revert to its former practice of writing off genuine overpayments incurred in the past for such a course is based on the salutary principle of law and justice that money paid under a mistake of fact and received in good faith by the recipient cannot be recovered. (See Vol.32 of Halsbury's Laws of England, 4th Edition, Paragraph 63, Page 38.

ADMINISTRATION

STAFF:

The Office of the Ombudsman, comprising approximately twenty-five members of staff, is structured to provide for three main branches viz. Administration, Investigation and Legal. The details are set out in an organizational chart in an appendix to this Report. Additionally, sub office accommodations are provided in Tobago, San Fernando, Sangre Grande and Rio Claro. My Investigators and I visit these sub offices on a monthly basis to provide a more accessible service to the public in these areas.

Since the publication of my last report a number of staff changes have taken place. Mrs. Joy Carrington, Head of the Legal Division who was employed here from 1987 to 1995, resigned from the Public Service and has entered private practice. Mr. Michael Almandoz who held the post of Secretary to the Ombudsman (now designated Executive Officer) retired with effect from March 31, 1995. On his retirement, Mr. Hugh Clarke, Senior Investigator, was appointed to act as Executive Officer.

ACCOMMODATION:

My Office has outgrown its physical accommodation. As a result, part of a building adjacent to the main offices occupied in part by the Caribbean Meteorological Organization was made available to me by Government.

It now accommodates offices for two Investigators. It also provides much needed library space.

In the Fourteenth Annual Report I drew attention to the fact that the Office of the Ombudsman was not easily accessible to the public and that there was need for it to be centrally located. The same situation exists at the present. It is desirable that all of the staff be accommodated under one roof so that there can be proper and efficient management and as a consequence the provision of an enhanced service to the public.

However, care should be taken in providing accommodation since it is necessary to preserve the independence of the Office. Whatever accommodation is provided, therefore, should not give the impression that it houses another Government department since the public is wary of complaining to Government departments.

In his Ninth Annual Report (1986) my predecessor had mentioned the fact that in spite of persistent representations, the Office of the Ombudsman had been without modern office equipment, electronic typewriters, computer systems et cetera. On my assumption to Office, I continued those representations.A recent report of the National Information Systems Centre in reference to the main office revealed that our environment:

> *"is highly paper-intensive and is therefor exposed to all hazards associated with the storage of paper, for example loss of information through deterioration of storage medium or fire".*

In 1992, I received a 386 PC Computer and one Printer. The National Information Systems Centre has since been providing training and technical assistance to the staff.

In 1995, funds were provided for the purchase of five PC's and server and three printers including a laser printer. The National Information Systems Centre, however, had recommended the provision of ten Personal Computers. No funding has been provided for maintenance and representations are being made to address this situation. The main objective of the computerization exercise is to provide faster processing capability, improve the record management system, provide timely information and above all improve the delivery of service to complainants.

TRAINING:

*For the first time my Office introduced training programmes for members of staff. Mr. Clyde James of Management Processes Limited conducted a one day Seminar entitled "**Interpersonal Relations for Effective Client/Customer Contact".** This was followed by a three-day programme entitled **"Team Building"** which was conducted by Grace Talma and Associates. These exercises were held during the month of November and were well received by the staff. Training will continue to be provided during the coming months so that a more competent and efficient service can be provided to the public.*

PART II

AREAS OF CONCERN

PART II

AREAS OF CONCERN

ILLEGAL LOGGING ACTIVITIES

One of the vital areas of concern to the country is the illegal and indiscriminate logging activity which is taking place throughout the country wherever there are forested areas. Apart from its illegality, such operations cause damage to road surfaces, to pipelines, bridges and culverts and to water catchment areas and a consequent spoliation of the environment.

As a result of complaints made by the farmers and residents of the Narangho/Anglais area of Cumana, County of St. David, I convened a meeting with representatives of the Sangre Grande Regional Corporation, the Ministry of Works and Transport, the St. David's Farmers Association, the Cumana Village Council and the Grand Riviere Awareness Environmental Trust, a non-Governmental body to discuss the matter.

In order to transport logs across any road surface, it is necessary to obtain permission from the Government agency responsible for the particular road, that is, either the Regional Corporation or the Ministry of Works and Transport and to enter into a contract, giving an undertaking to repair any damage caused as a result of such transportation. The approval form indicates the dates on which logging activity should take place and the quantity of lumber to be removed. A deposit is required to cover damage.

The complaint was that the illegal activities take place under the cover of darkness. Not only are State lands being denuded of trees, but also private lands as well. The damage to the road surface and to culverts and bridges seriously affect farmers and residents of these areas especially those who have to transport their produce to market. The damage to water lines also seriously affect them since they are deprived of this necessary commodity in order to cultivate their crops. The Complainants complained that the trucks which are used in this illegal activity are so heavily overloaded that they are unable to mount the hills and can only pass over the bridges with difficulty. The residents of the area are burdened by having to repair the surface of the road in order to give passage to their vehicles.

In one case, a truck was seized by the Sangre Grande Regional Corporation and timber obtained from State lands was impounded. The fine imposed was so small that the deterrent effect was minimal.

Complainants allege that only the Police can stop these vehicles and demand to see the approval from the Regional Corporation since they are the only ones vested with such authority. The representatives of the Ministry of Works and the Regional Corporation say that the Police are ill-equipped to handle the situation and their own security guards find it difficult to discover the illegal activity which is taking place on a continuous basis.

The representative of the Sangre Grande Regional Corporation reported that the illegal activity was responsible for the underdevelopment of certain agricultural areas and that discussions were held with the Ministry of Agriculture (Forestry Division) and also with the Attorney General's Department and the Police in an effort to put an end to the illegal activities and to have the logging of the forests subject to better regulation and control. He suggested that:-

(1) attempts be made to strengthen legislation regulating the use of the forested areas.

(2) stiffer penalties be imposed on those who are engaged in Illegal activities, whether by larceny of lumber from State or private lands and in the use of the roads of the country to carry out their illegal activities.

(3) efforts be made to restrict the tonnage of vehicles.

There is no doubt that indiscriminate logging activities are *denuding forested areas of the country and are causing immeasurable harm to the environment. Having regard to the damage to the infrastructure and the effect it is having on residents and those who earn a livelihood from farming and other occupations, it has become necessary for the appropriate Authorities to take stock and devise measures to put a stop to such illegal activities. It is also necessary to regulate legal logging activities as a first step towards the establishment of a proper regime for the preservation of our natural resources and the protection of the environment.*

SPECIAL RESERVE POLICE

*In my Fifteenth Annual Report (**January 01, 1992 to December 31, 1992**) I highlighted the difficulty experienced by retired Special Reserve Policemen who worked on a "temporary whole-time basis' in receiving retirement benefits. Perhaps, my comments then, are worth repeating here viz:*

> ***"Since taking office a number of retired Special Reserve Police officers who had worked on a "temporary whole-time basis" have claimed that they had been informed by the Authorities that they were not entitled to such benefits.***
>
> ***My predecessor, to whom several complaints of this nature had been made, took cognizance of the fact that there were no regulations governing the terms and conditions of employment of Special Reserve Policemen and had cause to initiate investigations in accordance with Section 93(2)(c) of the Constitution.***
>
> ***In pursuance of his investigation he had written to the then Minister of National Security in 1988 recommending the grant of ex-gratia awards or compassionate gratuities to those officers who had reached retirement age. He had also requested that consideration be given to the formulation of regulations pertaining to the terms and conditions of employment of those officers.***
>
> ***Arising out of the recommendations made, I have been informed that Cabinet has agreed to pay compassionate gratuities to former Special Reserve officers and to the dependants of those who have died in office. This is being computed on the basis of twelve (12) days pay for each year of service.***
>
> ***Also, the Chief Personnel Officer is now pursuing the matter pertaining to conditions of service with specific reference to the payment of superannuation benefits.***
>
> ***I have continued to disseminate this information to Complainants and in order to assist them, I liaise with the Police Department from time to time to ensure that their names are included in the list of names that are being forwarded to Cabinet for approval of payment of ex-gratia awards.***
>
> ***I have been informed that it is the intention of the Commissioner of Police to regularize the position of Special Reserve Police officers as soon as possible.***
>
> ***It is hoped that this exercise will be completed soon."***

Since the publication of that Report, I have been continually receiving complaints from retired members of the Special Reserve Police as to the payment of retirement benefits to them when they reach retiring age. Applications for the grant of such benefits have been made by the Ministry to the Cabinet in the past. These grants have been made on an ***'ad hoc'*** *basis by the Cabinet. In 1991, twenty-seven such grants had been made in the form of compassionate gratuities and in 1992, seven such grants were made.*

The basis of Cabinet's approval for the payment of such gratuities is contained in Section 14 of the Pensions Regulations, Chapter 23:52 viz:

> ***"14(1) An officer holding a non-pensionable office may, in the circumstances contemplated by this regulation as hereinafter set forth, be granted, unless the President otherwise directs, a compassionate gratuity not exceeding twelve days pay for each year of his service under the Government".***

The use of Special Reserve Policemen on a "whole-time basis" requiring them to perform duties similar to those performed by members of the Police Service necessitates that they be treated equally with members of the Police Service with regard to their security of tenure and eligibility for retirement benefits.

In 1992, Cabinet requested the Minister of National Security to pursue with the Chief Personnel Officer the regularization of the conditions of Special Reserve Police with specific reference to the payment of superannuation benefits.

It appears that very little progress has been made with respect to the matter and I have since taken up the matter with the Minister of National Security.

PART III

STATISTICAL OVERVIEW

SELECTED CASE SUMMARIES

PART III

STATISTICAL OVERVIEW

Nine hundred and thirty eight (938) new complaints were received during this year; two hundred and seventy six (276) were against private organizations. I commenced investigations on six hundred and sixty two (662) or 70.6% of the new complaints. At the close of the year I had concluded investigations on three hundred and one or 45.5%. Of these complaints, three hundred and sixty one or 54.5% were still under investigation at the end of the year.

Table I shows the number of new complaints received during the year and the manner of their disposition.

TABLE I

Statistics on new complaints received during the period Jan-Dec 1995

Total No. of Complaints received	938	%
Total No. of Complaints against Private Institutions	276	29.42
Total No. of Complaints Proceeded with	662	70.58
Total No. of Complaints Concluded	301	45.47
Sustained/Rectified	66	9.95
Not Sustained	62	9.36
Withdrawn/Discontinued	21	3.17
Advised/Referred	152	22.93
Total No. Under Investigation	361	54.45

The number of complaints concluded has tended to fluctuate each year. This year showed a significant increase in the number of investigations concluded in relation to last year. Last year 37.6 % of investigations were concluded.

Table II shows the performance of the office for selected years.

TABLE II
STATISTICS ON COMPLAINTS FOR SELECTED YEARS

No. Of Complaints Received and Disposal	1981	1983	1985	1987	1989	1991	1993	1995
Complaints received	977	1390	1340	1347	1304	967	880	938
Private	36.8%	25.3%	37.5%	37.5%	38.6%	27.5%	20.9%	29.4%
Proceeded with	63.2%	74.7%	62.5%	62.5%	61.4%	72.5%	71.2%	70.6%
Concluded	57.4%	38.8%	66.8%	46.2%	29.1%	38.9%	41.1%	45.6%
Sustained	38.5%	26.4%	21.6%	18.3%	12.7%	22.1%	6.9%	10%
Not Sustained	11.3%	6.2%	17%	13.4%	7.2%	15.8%	7.5%	9.5%
Discontinued/Withdrawn	7.6%	6.9%	28.2%	14.4%	-	-	9.3%	3.2%
Advised/Referred	-	22.4%	-	-	9.1%	1%	17.5%	22.9%
Under Investigation	42.6%	61.2%	33.2%	53.8%	70.9%	61%	58.5%	54.5%

The distribution of complaints among Ministries this year bore a strong resemblance to that of last year and succeeding years from 1990. The Ministry of National Security again recorded the highest number of complaints. The combined Public Utilities (WASA, T&TEC, TSTT) were second followed by the Ministry of Social Development and then the Ministry of Works, Labour & Co-operatives, Agriculture and Attorney General and Legal Affairs. Last year, the Ministry of Works was second to the Ministry of National Security and was followed by the Ministry of Local Government, the combined Public Utilities, Ministry of Social Development, Attorney General & Legal Affairs, and then the Ministry of Health.

Table III shows the distribution of new complaints among Ministries this year and the manner of their disposition.

TABLE III
DISTRIBUTION OF NEW COMPLAINTS IN RESPECT OF MINISTRIES/AUTHORITIES

		Disposal of Complaints				
Ministry/Authority/Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
1. Airport Authority	2	0	0	0	0	2
2. Attorney General & Legal Affairs	25	4	0	1	8	12
3. Blind Welfare Association	1	0	0	0	0	1
4. B.W.I.A.	1	0	0	0	0	1
5. Caroni (1975) Ltd.	3	0	1	0	1	1
6. Chief Personnel Officer	2	0	1	0	0	1
7. Elections & Boundaries Commission	2	0	0	0	1	1
8. I.S.C.O.T.T.	1	0	0	0	0	1
9. Judiciary	23	2	1	1	10	9
10. L.I.A.T.	1	1	0	0	0	0
11. Magistracy	12	0	2	0	3	7
12. Ministry of Agriculture, Land & Marine Resources	32	1	2	1	3	25
13. Ministry of Consumer Affairs	1	0	0	0	0	1
14. Ministry of Education	18	2	3	0	1	12
15. Ministry of Finance	24	1	3	1	7	12
16. Ministry of Foreign Affairs	3	0	1	0	0	2
17. Ministry of Health	22	0	3	0	6	13
18. Ministry of Housing and Settlements	22	0	2	0	9	11
19. Ministry of Labour & Co-operatives	34	3	0	0	9	22
20. Ministry of Local Government	23	1	1	0	1	20
21. Ministry of National Security	7	1	0	0	2	4
Defence Force	1	0	0	0	0	1
Fire Services	3	0	0	1	1	1
Immigration	3	2	0	0	1	0
Police	81	10	3	6	28	36
Prison	79	5	12	4	13	45
22. Ministry of Planning & Development	9	1	0	1	1	6
23. Ministry of Social Development	44	9	6	0	19	10
24. Ministry of Works & Transport	43	1	7	1	2	32
25. National Insurance Board	19	1	5	0	8	5
26. Petrotrin	2	0	0	1	0	1
27. Port Authority	6	1	0	0	0	5
28. Postal Services	5	0	2	0	1	2
29. Public Transport Service Corporation	8	0	0	0	3	5
30. Service Commissions Department	12	3	0	0	7	2
31. Tobago House of Assembly	34	4	1	1	0	28
32. T & TEC	19	3	2	1	4	9
33. T.S.T.T.	5	1	2	1	0	1
34. W.A.S.A.	30	9	2	1	3	15
TOTAL	662	66	63	21	152	361
Private	276	0	0	0	0	0
GRAND TOTAL	938					

The distribution of complaints among Ministries shows a change from the pattern of earlier years. In the seventh annual report (December 6, 1983 to December 5, 1984,) my predecessor included a table to show the disposal of complaints against the eight Ministries which had recorded the highest number of complaints. These Ministries/Departments were: Judiciary, National Security, National Housing Authority, Finance and Planning, Works, Maintenance and Drainage, Agriculture, Lands and Food Production, Community Development and Local Government, and Health and Environment. In the eighth annual report, he commented that from the inception of the Office, these Ministries, with the exception of the Ministry of Health and Environment, had recorded the largest number of complaints against them each year.

The total work load of the Office for this reporting period was 1,532 complaints; of the 594 complaints brought forward from preceding years, investigations on 568 or 95.6% were concluded by the end of the year.

Table IV shows statistics on the disposal of complaints brought forward from preceding years which were dealt with during the year under review:

TABLE IV

STATISTICS ON COMPLAINTS BROUGHT FORWARD FROM PRECEDING YEAR

Total number of complaints brought forward from previous years		*594*
Total number of complaints concluded		*568*
Sustained/Rectified	*115*	
Not Sustained	*134*	
Withdrawn/Discontinued	*118*	
Advised/Referred	*201*	
Number of complaints still under investigation		*26*

Table V shows the total work load of the office for the year under review.

TABLE V

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

Total number of complaints brought forward from last report ...	*594*	
Total number of complaints received in 1995	*938*	
Total	*1,532*	
Total number of complaints without jurisdiction	*275*	*18%*
Total number of complaints proceeded with	*1,257*	*82%*
Total number of complaints concluded	*815*	*65%*
Sustained/Rectified	*181*	
Not Sustained	*197*	
Withdrawn/Discontinued	*139*	
Advised/Referred	*353*	
Total number of complaints under investigation	*387*	*31%*

SELECTED CASE SUMMARIES

Ref. No. OMB: 04/92
OMB: 885/94

MINISTRY OF AGRICULTURE, LANDS AND MARINE RESOURCES

The Complainant had, in 1973, obtained an agricultural lease of a parcel of land from the State comprising 7 acres, 3 roods and 25 perches at St. John Road, South Oropouche. Adjacent to it and occupied by another person ***(S.M.)*** *was a two-acre parcel of State land bounded on the St. John Road which was being cultivated by* ***S.M.*** *Both the Complainant and* ***S.M.*** *applied for a lease of the 2-acre parcel on* ***July 06, 1964 and March 18, 1965*** *respectively.* ***S.M.'s*** *application was recommended. However,* ***S.M.*** *abandoned cultivation of the 2-acre parcel and sold whatever crops he had on the land to the Complainant who planted a number of fruit, teak and pine trees on the 2-acre parcel after obtaining the permission of the officers of the Ministry.*

On ***March 18, 1965,*** *the Complainant applied for a lease of the two-acre parcel and it was recommended by an agricultural officer of the Ministry. In a report dated* ***June 25, 1966,*** *the agricultural officer made a strong recommendation in favour of the Complainant stating that having regard to the Complainant's good husbandry of the 7-acre parcel and its connection with the 2-acre parcel, that he be granted a lease of the two-acre parcel.*

In 1987, two squatters ***(S.J. and L.S.)*** *appeared on the scene and began occupying the two-acre parcel. They constructed dwelling houses and applied for agricultural leases. The Complainant complained that the squatters were being actively assisted by a State Land Inspector and by the South Administration of the Ministry and that he was being constantly harassed by the squatters who were destroying the trees he had planted on the two-acre parcel.*

I visited the site in company with Officers of the Ministry (South) who informed me that the Ministry was supporting the claim of the two squatters in preference to that of the Complainant.

I saw very little evidence of cultivation by the squatters who were occupying prime building land in a populated built-up area with a frontage on a main arterial road.

By a memorandum of ***April 25, 1994,*** *I was informed by the Permanent Secretary of the Ministry that the 2-acre parcel was stated by the Director of Surveys as being unavailable as it was reserved by the Forestry Division of the Ministry. However, it appears that the Director, Regional Administration (South) of the Ministry is pressing the claim of the squatters to an agricultural lease.*

On ***September 15, 1995,*** *I was informed by the Permanent Secretary that the Lands and Surveys Division had carried out a survey and sub-division of the 2-acre parcel with the intention of settling it on the squatters.*

The Complainant died in 1995 and his widow has obtained probate of his will. She has abandoned the claim of her husband to a lease of the two-acre parcel but maintains her claim to the trees which he had planted. They comprise valuable timber which have become fully mature.

At a meeting held at my Office which was attended by officers of the Ministry, it was agreed that the Complainant's widow would be afforded every facility in cutting the trees and removing them from the land.

However, the widow has been experiencing difficulty in carrying out this exercise. She complains that obstacles are being placed in her way by the squatters and that the Officers of the South Administration of the Ministry are more concerned in protecting the "rights" of the squatters than in assisting her in carrying out the terms of the agreement.

The matter is being pursued.

Ref. No. OMB: 143/94

TANTEAK LIMITED

On March 08, 1994, the Complainants, husband and wife, complained that Tanteak Limited had illegally entered their lands at Tabaquite Road, Rio Claro, removed One hundred and fifty eight (158) teak trees which were fifty (50) years old; excavated a portion of their property and constructed a roadway.

The Complainants submitted a claim for compensation on the basis of a valuator's report in the sum of Eighty two thousand, nine hundred and fifty dollars ($82,950.) being the market value of the trees and the sum of Twelve thousand dollars ($12,000.) for damage to their land.

At a meeting held on May 15, 1995, for the purpose of resolving the issue, at which the General Manager of Tanteak, a representative of the Forestry Division of the Ministry of Agriculture and the Complainants were present, the General Manager stated that the Company had entered the Complainants land on the advice of the Forestry Division under the impression that the lands in question were owned by the State; that Tanteak Limited was a State enterprise with authority to enter State lands for the purpose of production and sale of teak. He added that based on evidence furnished by his staff it was established that the trees were removed from an area of 8,000 sq.ft. In his estimation such an area could only yield forty-five (45) trees.

The Company was therefore willing to purchase forty-five (45) teak trees on the open market and return them to the Complainants. The Complainants however rejected the offer and reaffirmed their original claim for compensation.

I noted, however, that the current market value of their entire land holding of ten (10) acres was Eighteen thousand dollars ($18,000.). In view of this, I requested that the complainants reconsider their claim. I pointed out that if they could not reach a settlement with Tanteak Limited the matter would have to be determined in Court.

The General Manager eventually made a cash offer of Fifteen thousand dollars, ($15,000.), to the Complainants in full and final settlement of their claim which they accepted. He assured me that the payment would have been effected by May 31, 1995. However, to date, this sum has not been paid and the matter is being pursued.

Ref. No. OMB: 763/91

MINISTRY OF EDUCATION

The Complainant was employed as Cleaner I at a Primary School which fell under the administration of the Ministry of Education. Eight months after her retirement in 1987, she having served since 1970, was informed by the Ministry that she had been overpaid the sum of ***Thirteen thousand and seventy-two dollars and ninety cents ($13,072.90)*** *which had been incurred as a result of her unauthorized absences from duty during the period 1983-1987. The Complainant was advised by the Ministry to deposit that sum in the Government Treasury. She was unable to do so and the sum was deducted from her terminal benefits.*

The Complainant contended that she had not been absent from duty without leave and claimed that she was being discriminated against. Against this background, she requested that I investigate her complaint.

My investigation revealed that the official record of the Complainant's attendance was not in order and therefore was insufficient to prove the case of the Ministry. Pages were missing from the only official attendance register available for my scrutiny at the Ministry. In some instances, a copy book had been used to record the Complainant's attendance.

The report of the School Supervisor who had investigated the matter was the only reliable source of official information. It indicated that the complainant had been absent for a total of ***102 ½ days in 1983, for a total of 59 ½ days in 1984 and for a total of 96 ½ days in 1985, a total of 232 ½ days*** *in the aggregate. For the same period it was recorded that she had been present for* ***269*** *days.*

The Supervisor felt that "the Complainant's absence from duty should have been a matter of serious concern for the School's administration." At a meeting held at my office to discuss the matter with all parties concerned, the then Principal of the school intimated to me that the Complainant was a difficult employee who had refused to adhere to the terms and conditions of her service, for example, during the school's vacation, she did not work for a full day. At times she reported for duty just before the school sessions began and was therefore unable to carry out any of her duties.

Having regard to the foregoing, I did not accept the Complainant's contentions in its entirety. I was of the opinion that the Ministry of Education ought to have taken disciplinary action against her at the times she had acted contrary to the rules and regulations governing her employment. The Ministry having failed to do so, condoned the Complainant's conduct.

I therefore considered the Ministry's action in the matter to be unjustifiable at this stage of the Complainant's career. I therefore recommended to the Ministry that deductions should be taken from the Complainant's terminal benefits in respect of her last two years of employment, that is, 1986 and 1987. I had good reason to believe that a Court of law adjudicating in the matter would have decided in her favour and this, to my mind, was the most equitable resolution of this complaint given all the circumstances of the case.

My recommendation was accepted.

Ref. No. OMB: 288/95

MINISTRY OF FINANCE

COMPTROLLER OF ACCOUNTS

The Statutory Authorities Service Commission ***(SASC)*** *appointed the Complainant to the post of* ***Lifeguard Supervisor I at the Trinidad and Tobago Tourist Board on April 12, 1982,*** *on two years probation. His letter of appointment stipulated that he would be paid salary in Range 20E. He was confirmed in the post on October 18, 1985. At the time of the termination of his appointment in 1994, he had served for a period of twelve years and had been paid salary in Range 20E.*

Upon his retirement the Comptroller of Accounts deducted the sum of ***Nine thousand, five hundred and ten dollars and seventy-seven cents ($9,510.77)*** *from his retirement benefits. He was told that this sum was being withheld towards recovery of salary which had been overpaid to him during his tenure of service. The department claimed that Range 20E did not exist and that the correct salary range for the post of Lifeguard Supervisor I was Range 20.*

When the matter was brought to my attention, I wrote the Comptroller of Accounts to point out that the SASC was the sole Authority for determining the appointment and range of salary applicable to those public officers who were employed by the Statutory Authorities. Therefore no other criteria should be used in determining what pension and gratuity the Complainant was entitled to.

I further stated that in fact and in law there was no overpayment and that the deduction of ***Nine thousand, five hundred and ten dollars and seventy-seven cents ($9,510.77)*** *from an already reduced pension and gratuity was an injustice to the Complainant. In any event if there was an overpayment, the deduction of such moneys from an officer's gratuity was in violation of Section 24 of the Pensions Act which prohibits the attaching, sequestering or levying upon the gratuity or pension of any public officer except in the case of a settled debt.*

I was subsequently advised by the Comptroller of Acconts that the department had accordingly revised the Complainant's superannuation benefits and he was paid the additional benefits due to him.

Ref. OMB: 699/94

MINISTRY OF HEALTH

The Complainant, a ***Forensic Psychiatrist,*** *was employed at a Government institution for a number of years, finally retiring as Medical Chief of Staff. On his retirement he was employed on contract as a consultant psychiatrist at the same institution.*

On September 22, 1994, the Hospital Administrator advised the Complainant by letter that it was brought to his attention that the Complainant had removed, without authorization, two patients from the Forensic Ward and required him to give a response to him within a certain time.

The Complainant's response to the Hospital Administrator was to draw his attention to the provisions of the Mental Health Act to the effect that every patient was subject to the authority and control of the Psychiatric Hospital Director and any medical practitioner attached to the institution, who may prescribe for and administer to the patient under his care any treatment that he considered necessary for the patient and that he, the Complainant, had acted in accordance with such provisions. In fact, during his tenure as Medical Officer and Medical Director of the Institution he had practiced this form of rehabilitation with much success.

The complainant was suspended with immediate effect by the Hospital Director on the ground that he was guilty of gross misconduct. Apart from the immediate and arbitrary suspension, the Complainant was left in a state of uncertainity. His salary was stopped and he was denied access to his office.

Under the Public Service Regulations, a public officer can be suspended by the Public Service Commission for breach of duty. However, a person who enters into a contract with Government is employed under the terms and conditions contained in the contract. If there is a breach of such terms and conditions, then the appropriate authority representing the State can terminate the contract. The facts were brought to the attention of the Permanent Secretary. On August 08, 1995, the Ministry decided to honour the contract and give the Complainant the full benefits due under it.

The complainant had further complained that the arbitrary action on the part of the Hospital Administrator in tarnishing his good name and reputation by finding him guilty of gross misconduct and disseminating such information to senior officers of the Ministry warranted further satisfaction. He was, however, advised to pursue such matter through his legal advisors.

Ref. No. OMB: 698/92

The complainant qualified as a nurse in 1967 and since that time had been employed by the Ministry of Health. In 1978, she had been granted a Full-Pay Study Leave award by the Government in order to pursue the ***Sister Tutor Diploma Course in the United Kingdom.*** *Through no fault of her own, she failed to obtain a place at a suitable institution. I discovered that there was such procrastination on the part of the officers of the Ministry and the Personnel Department that the place was lost. Since then, she made several attempts to obtain a place in a recognized institution with the hope that the Government would honour its original commitment to her and award her full pay study leave for a period of two years to enable her to pursue higher education in the nursing field.*

Her latest attempt to take up the award was made in 1992 when she was successful in obtaining entrance to the University of the West Indies, Mona, Jamaica, for the term commencing in 1993 to pursue a course leading to the Bachelor of Science degree in Nursing Administration. These facts were brought to the attention of the Ministry but she was unsuccessful in her application to obtain full pay study leave.

The reasons given by the Ministry in a memorandum to the Chief Personnel Officer dated January 12, 1984 for refusal to give her full-pay-study leave between the years 1978 to 1982 were her ill-health and her failure to obtain a placement at a recognized institution.

This information was contained in a departmental document dated April 25, 1994.

The complainant refuted the reasons given by the Ministry for their failure in awarding her full-pay study leave.

As a result, I conducted an investigation into the matter and from documents and records in the possession of the Ministry, I discovered that a panel convened by the Ministry in 1978 had reported to the Permanent Secretary that the complainant was capable of passing the Sister Tutor Course but required a letter from her doctor as to her medical suitability at the time. The doctor reported favourably on her health and there had been no question or evidence as to the state of her health since that time.

In the course of my investigation, I discovered that a strong recommendation had been made by the Chief Nursing Officer in a memorandum dated September 14, 1993 that the complainant be awarded a fellowship to pursue the ***Certificate in Nursing Education or the degree course leading to the Bachelor of Science degree in Nursing at the University of the West Indies, Mona, Jamaica.***

At this time, the complainant held the post of Clinical Instructor and it was the Chief Nursing Officer's opinion that the post being a terminal one, that the complainant be given the opportunity to become a Nursing Instructor if she was to make progress in the nursing stream.

A further condition was imposed by the Ministry as recommended by the Technical Officers when I made enquiries in the matter. This was to the effect that the complainant should be subjected to the interview process for ***"any Fellowship which may become available and for which a suitable application has been made."***

However, I pointed out to the Permanent Secretary that this kind of procedure was applicable to persons who applied for Scholarships and not to a person of the complainant's standing who had been strongly recommended for further training by her superior officer.

I also recommended that a place be found at the earliest opportunity at a suitable institution of higher learning so that the complainant might obtain the necessary training for the better and efficient performance of her duties and for her advancement in the nursing profession.

To date, the complainant has not been granted full-pay study leave nor has a place been received for her at an institute of higher learning.

The matter is being pursued.

Ref. No. OMB: 84/287

In 1984, the complainant alleged that he had sustained as a result of negligence on the part of the Hospital authorities an injustice as a result of the failure of the Ministry of Health to pay him compensation for injury sustained as a result of negligence on the part of the Hospital authorities resulting in the loss of his right hand.

He claimed that on June 10, 1982, he was admitted to the General Hospital, Port-of-Spain suffering an epileptic fit. He was in a state of unconsciousness and had been treated intravenously, use being made of his right hand for the purpose. About three days later, he observed and informed the doctor on duty that his right hand was swollen and painful. The hand was x-rayed. He was not informed of the reason for the swelling. He was discharged on June 24, 1982, referred to the Physiotherapy Outpatient Clinic and finally discharged in September 1982. The condition of his hand further deteriorated and on October 29, 1982, he was retired as medically unfit from his position at the Water and Sewerage Authority where he was employed as an A Grade Mason. He was 42 years old at the time.

The complainant had been granted legal aid by the Legal Aid and Advisory Authority in order to enable him to pursue a claim for damages against the Ministry of Health. On February 18, 1986, this Office was informed by the Authority that legal assistance to the complainant had been withdrawn due to the fact that his disposable income did not qualify him for such assistance. The complainant intimated that he was unable to meet legal costs and my predecessor decided to investigate the matter on his behalf. The Ministry continually denied liability and claimed that injury to the complainant's hand was due to a dislocated shoulder joint and could not possibly have been caused by an intravenous drip. An independent medical opinion was sought and obtained which agreed with the complainant's claim that the Health Authorities had been guilty of negligence.

The complaint was referred to Parliament by way of ***Special Report No. 1 of 1988,*** *since the Ministry of Health had not implemented my predecessor's recommendation of July 27, 1987, that the complainant be paid compensation on the basis of an assessment of* ***60% permanent partial disability*** *made by an independent medical practitioner.*

As a consequence of the Special Report to Parliament, the Permanent Secretary, Ministry of Health proposed that the complainant be examined by a medical panel comprising of three medical specialists. This proposal was agreeable both to the Complainant and to my predecessor but was not undertaken since in the meantime the Ministry of Health had offered the complainant an ex-gratia settlement of ***Fifteen thousand dollars ($15,000.).*** *This he found unacceptable.*

I continued to pursue this matter with officials of the Ministry of Health and finally in 1995 the complainant was offered and paid the sum of ***Eighty-five thousand dollars ($85,000.)*** *by the Ministry of Health in full and final settlement of the injuries which he had suffered. More than thirteen years had elapsed since the complainant had suffered the loss of use of his hand due to the negligence of the Health Authorities.*

Ref. No. OMB: 765/95

MINISTRY OF HOUSING AND SETTLEMENTS

NATIONAL HOUSING AUTHORITY

The complainant who lives at Lady Young Avenue, Morvant, complained that as a result of construction work being carried out by the National Housing Authority in the vicinity of her premises, her house was being damaged.

The complaint was brought to the attention of the Authority and the reply received was to the following effect:

1. ***That her complaint had been brought to the attention of the Authority before construction works had begun.***

2. ***That as a result, a joint inspection of the premises had been undertaken and the following defects in the complainant's premises were found.***

    (a) ***The house was poorly constructed and was in a severe state of dilapidation with rotting wood beams supporting concrete floors.***

    (b) ***Cracks filled with dirt, dust and cobweb were evident, tending to the conclusion that cracks existed long before construction works had commenced on the site.***

The Authority, nevertheless, undertook to do cosmetic repairs to the cracks which were to be undertaken during building construction works scheduled to commence in January, 1996.

The complainant was informed.

Ref. OMB: 621/94

MINISTRY OF LOCAL GOVERNMENT

SIPARIA REGIONAL CORPORATION

Towards the end of 1994, several residents, who reside in and around the vicinity of Ramdhanie Trace and Maraj Trace, Cedros complained that an earthen drain which passes between these two traces was in dire need of repair as, after every downpour, flooding and erosion occur, resulting in damage to their properties and posing a severe hazard to their personal safety.

The Town Clerk of the Point Fortin Corporation to whom the matter was referred, disclaimed responsibility and referred us to the Siparia Regional Corporation.

On July 17, 1995, the Drainage Engineer (South) of the Ministry of Works and Transport confirmed that the drain came under the purview of the Siparia Regional Corporation and recommended that the Corporation regrade as well as place concrete inverts in the drain which would substantially reduce the current rate of erosion.

This advice was relayed to the Siparia Regional Corporation which accepted responsibility and promised to have the problem rectified in 1996.

The matter is being pursued.

OMB: 85/1209

MINISTRY OF PLANNING AND DEVELOPMENT

In 1987, my predecessor was approached by the Complainant who was of the opinion that he was being unfairly delayed by the Town and Country Planning Division in his attempt to develop his property.

The Complainant had sought and had been granted, outline planning permission in 1975 to develop a parcel of land comprising ***Sixty-six thousand, five hundred and seventeen square feet (66,517 sq.ft.) at Esperance Village*** *for residential purposes.*

He subsequently submitted an application for final planning approval but was unable to obtain approval as both the Director, Town and Country Planning and the Director of Highways were undecided how to act and had requested time to consider the matter before making a final determination.

After twelve (12) years had elapsed, the Complainant having still not obtained planning permission brought the matter to my attention. The Permanent Secretary, Ministry of Planning and Reconstruction, from whom I requested a report, advised 'inter alia' that the Town and Country Planning Division had information that the Highways Division had identified the portion of land which was the subject of the application, one of two vacant stretches of land along the Papourie Road, as an option for the alignment of the extension of the Solomon Hochoy Highway southwards.

I then referred the matter to the Permanent Secretary, Ministry of Works, Maintenance and Drainage who advised that since the Complainant's application had been submitted, a decision had been taken to review the question of the alignment of the said Highway and it was decided that the proposed re-alignment would not affect the Complainant's land. A final decision was expected to be made within six weeks.

Despite constant reminders to the Departments involved, the Complainant's application remained pending and as a result of the delay, the matter was reported to Parliament by way of a Special Report (No. 03 of 1989) in accordance with the provisions of Section 94(4) of the Constitution.

Subsequently, I was assured that the matter would be vigorously pursued by the Ministry. However six (6) more years elapsed before I was finally advised in January 1995 by the Ministry of Works and Transport that the Town and Country Planning Division had been directed to approve the Complainant's application, since the proposed developments would not interfere with the improvement works to the Solomon Hochoy Highway.

Eventually in April 1995, the Town and Country Planning Division informed me that in light of the advice received from the Highways Division of the Ministry of Works and Transport in February 1994, in response to their request of October 27, 1987, outline planning permission would be given to the Complainant.

Twenty years had elapsed since the Complainant had sought permission to develop his land.

Note:

This complaint illustrates in stark reality the frustration which owners face when they attempt to develop land within an area proposed for the development of highways or earmarked for some other public purpose. Previous annual reports have drawn attention to these problems but it seems that no attempt is being made by the Ministry of Planning and Development and other related Ministries to relieve complainants of these problems.

Ref. No. OMB: 778/94

MINISTRY OF PUBLIC UTILITIES

PUBLIC TRANSPORT SERVICE CORPORATION

On March, 01, 1983, the complainant was seconded by the Public Service Commission from his substantive position of Stores Clerk II (Range 20C), Ministry of Health to the non-pensionable (temporary) post of Supply Officer, (Range 46D) at the Public Transport Service Corporation. After he had worked in this position for a period of Eleven and one half years (11 ½)) he was served notice that the post was made redundant. He was offered an ex-gratia payment of Thirty-three thousand, eight hundred and seventy-three dollars ($33,873.) in consideration of his years with the Corporation.

He found the offer to be unjust and asked the Corporation to retire him under its Voluntary Separation Employment Programme which was being offered to other similarly affected "permanent" employees of the Corporation. His request was denied on the grounds that he had continued to be on secondment during the term of his employment with the Corporation and could not enjoy pension benefits from the post of Supply Officer because it was a temporary non-pensionable post.

When he complained to me about this injustice, I wrote the Head of the Public Service to draw his attention to a decision of the Court of Appeal, No. 52 of 1985, the Public Service Appeal Board and the Director of Personnel Administration, v. Aldric Tudor in which the issue was whether a public officer who was employed in a temporary capacity for eleven (11) years could be considered "temporary", the consequence of which would result in whether he would be entitled to the benefits of the Public Service Regulations and to retirement benefits applicable to permanently appointed officers.

I drew his attention to the judgement of Mr. Justice des Iles which is encapsulated in the following extract viz:

> ***"Accordingly, if the Service Commission wanted to appoint the respondent temporarily, then it should have specified the period for which the appointment was being made. Not having done so, the letters of March 16, 1977 and September 17, 1979 in law constitute a contract of employment for an indeterminate period. No law correctly interpreted permits a temporary appointment other than for a specified limited period. There cannot be a temporary appointment 'ad infinitum' and I would so hold."***

The complainant therefore, for all intents and purposes held a permanent appointment with the Public Transport Service Corporation in Range 46D and should have received on his retrenchment, similar benefits applicable to those employees who held permanent appointments with the Corporation and were retrenched.

The Corporation, however, refused to accept my opinion and the matter was referred to the Comptroller of Accounts and the Solicitor General for their comments. The Solicitor General subsequently concurred with my opinion.

The Comptroller of Accounts noted the views of the Solicitor General and advised that certain steps be taken to effect the complainant's retirement against the post of Supply Officer at the Public Transport Service Corporation.

The matter is being pursued.

Note:

> **There are other provisions contained in statutes, rules and regulations which deny serving officers in the Public Service benefits under the Public Service Regulations and retirement benefits as a result of their having held acting or temporary appointment for a significant period of time. This results in injustice to these employees who perform the same or similar duties as appointed officers.**

Ref. No. OMB: 170/95

TELECOMMUNICATIONS SERVICES OF TRINIDAD AND TOBAGO

The complainant's residence was connected with telephone service on November 01, 1994. Much to her consternation,, the first bill she received ***(in December 1994)*** *from the* ***Telecommunications Services of Trinidad and Tobago*** *included charges for overseas calls which were made on* ***October 31, 1994,*** *the day before her service was connected. The calls were recorded as having been placed to certain numbers in New York, United States of America and ranged from* ***five to sixty-one minutes.*** *The charges for these calls amounted to* ***One thousand, four hundred and fifty-nine dollars and eighty cents ($1,459.80).***

The complainant reported that when she queried the matter at the Office of the Telecommunications Services her telephone service was disconnected for non-payment of the bill.

Following my investigation of the matter, a rebate of the charges was made to the Complainant. The Company stated however, that her telephone service was never disconnected. They claimed that a fault on the line caused an outage of service during the particular period of time.

It should be noted that no explanation was offered for the billing of overseas calls on the days when the Complainant did not have a telephone service.

Note:

Similar complaints from consumers with longer established accounts have not been so easily resolved. They protest vehemently but remain liable for the cost of the calls which they claim had not been made from their homes.

Ref. OMB: 207/94

WATER AND SEWERAGE AUTHORITY

In 1993, the complainant's uncle transferred ownership of a parcel of agricultural lands to him. In that same year he received a bill from the Water and Sewerage Authority for arrears of water rates in the sum of Six thousand and thirty dollars ***($6,030.)****. The effective billing period for these rates was* ***January 01, 1986 to April 30, 1993.*** *He was advised by his uncle that the Authority was requested some ten years previously to disconnect service to the land. Since then, no bills had been issued. The property in fact, was in a state of abandon during this period.*

When I enquired into the matter, the Regional Engineer, Tobago, reported that voluntary disconnection required the payment of all outstanding rates and a disconnection fee. Since these requirements had not been met, disconnection was not effected at that time. The water supply was eventually disconnected on June 14, 1993 for non-payment of arrears. I subsequently sought clarification from the Authority's Commercial Manager of the approved policy regarding disconnection since I observed that in this case, disconnection made after a nine year period of indebtedness had occurred.

The Commercial Manager stated that it was the policy of the Authority to disconnect water service once the account was in arrears of at least one quarter. In this particular case he explained that the water supply was identified for disconnection when the Authority began a house to house survey to update its records in January, 1993.

The complainant has since signed an agreement with the Authority to liquidate the outstanding arrears through the payment of monthly instalments.

Note:

This case demonstrates the injustice suffered by customers of the Authority. If a customer desires disconnection of his water supply and there is no disconnection, by the Authority, the result is that he incurs more debt which he would find more difficult to liquidate in the future. The proper course for the Authority to adopt would be to disconnect the water supply and stabilize the debt at time of disconnection.

Ref. No. OMB: 509/95

MINISTRY OF WORKS AND TRANSPORT

The Complainant, a farmer of Point D'or, La Brea complained that he and other farmers in the area had suffered heavy losses for several years past due to the failure of the authorities to dredge the river which runs through their lands ("the Chinese Main Drain") which became silted and prevented the free flow of water.

On investigation of the matter, I was informed by the Drainage Engineer, South, Ministry of Works that the watercourse was maintained by the Ministry of Works, that it outfalls into a flat and low lying area of marshy and swampy condition, eventually outfalling into the Gulf of Paria. I was also informed that the area the Complainant had planned to cultivate was flat and because of its gradient, dredging the water course by mechanical means was not recommended as there was the likelihood of salt water intrusion which would result in an increase of the salinity of the surrounding land. This area was cultivated previously and had to be abandoned due to oil pollution.

The Ministry of Works also advised that it would continue manual works in cutting the overgrown grass and removing the debris within the channel but in the circumstances, the watercourse would not be dredged.

The Complainant was informed of the advice and the matter is no longer being pursued.

Ref. No. OMB: 285/93

PERSONNEL DEPARTMENT

On ***January 14, 1992,*** *the Complainant, a daily rated Lorry Driver employed by the Ministry of Works, was sworn in as an elected Member* ***of Parliament.*** *He applied to the Chief Personnel Officer for "time-off with pay" on the days he was required to attend compulsory sittings of the* ***House of Representatives.***

A year later when he had received no positive response from the Chief Personnel Officer, he appealed for my intervention. My investigation revealed that the Chief Personnel Officer had previously granted the Complainant "time-off with pay" when he was elected to serve as a Councillor on a Local Government body and he was paid his salary whenever he was required to be away from duty and on County Council business.

In view of this, I wrote the Chief Personnel Officer to point out that both positions, that is, Member of Parliament and Councillor of a Local Government body required the performance of civic duties in the national interest and, therefore, there should be no distinction, having regard to the consideration given to monthly paid Public Officers when they were required to perform such duties.

In reply the Chief Personnel Officer stated that as a Member of Parliament, the Complainant received a substantial salary, travelling allowances and perquisites which were more than that accorded to him when he was a County Councillor and that it was against this background that his request was being considered.

I advised the Chief Personnel Officer that Members of Parliament sit in the highest forum of the land for the purpose of conducting Public business and are accorded a special status and certain privileges under the Constitution. They were entitled to salary and perquisities by law for duties which they performed as Members of Parliament whether they came from the private or public sector and regardless of their circumstances. I also drew to her attention the case of public officers who were accorded leave with pay when they were required to attend Seminars or perform official business on behalf of the Government and suggested to her that since the matter concerned a sitting member of Parliament, that it be referred to Cabinet for a definitive ruling.

By letter dated October 30, 1995, the Permanent Secretary to the Prime Minister and Head of the Public Service informed me that the matter was being considered by a sub-committee of Cabinet.

I have since been assured by the Ministry of Public Administration and Information that the matter is being pursued.

Ref. OMB: 089/95

STATUTORY AUTHORITIES' SERVICE COMMISSION

On January 15, 1980 the Complainant assumed duty as a Maintenance Repairman at the St. Mary's Children Home. By letter dated March 27, 1980, the Manager of the Home confirmed his temporary employment.

By Legal Notice No.21 of 1980 dated February 20, 1980, the St. Mary's Children Home became subject to the Statutory Authorities Service Act. In spite of this, the Manager of the Home continued to recruit employees on a temporary basis.

In November 1994, as a result of representations by the Public Services Association, the Statutory Authorities Service Commission began granting permanent appointments under Section 11 of the Statutory Authorities Act, Chapter 24:01 to the persons who had been temporary employed with the St. Mary's Children Home both before the Legal Notice of February 1980 and afterwards. All such employees were granted permanent employment with the exception of the Complainant. He was granted a temporary appointment with effect from April 01, 1980. He made representations on his own and through his union to be given a permanent appointment with effect from the date of his assumption of duty, that is January 1980. These representations were without success.

On February 08, 1995, he complained to me that he had been discriminated against by the Statutory Authorities Service Commission.

I requested the Executive Officer of the Statutory Authorities Service Commission to place the complainant's matter before the Commission for its consideration.

Finally by letter of September 21, 1995, the Commission appointed the complainant as a Maintenance Repairman with effect from January 15, 1980.

Ref. OMB: 369/94

TOBAGO HOUSE OF ASSEMBLY

On June 27, 1994, ***V.S.*** *sought my assistance when his attention was drawn to the contents of a memorandum from the Chief Personnel Officer to the Clerk, Tobago House of Assembly, regarding his seniority.*

On September 20, 1974, the Complainant, an Electrician, was transferred from the Tobago County Hospital to the St. Ann's Hospital by the Ministry of Health in order to facilitate his attendance at a Course in Refrigeration and Air-Conditioning at the John Donaldson Technical Institute. During his stint of office in Trinidad, he was promoted to the post of Grade I Electrician.

Subsequently, on May 03, 1978, he was transferred back to Tobago by the Ministry of Health to replace an employee of the same grade who resided in Trinidad. Later on February 01, 1984, the Complainant took up an acting appointment as Chargehand ***(C.M.E. Department)*** *and in 1987, at his request, he was confirmed in the post retroactively to February 01, 1984, with the concurrence of his union.*

This enabled him to act in the senior position of Serviceman whenever the opportunity arose and he did so continuously with effect from July 16, 1992 to July 11, 1994.

The Complainant challenged the Chief Personnel Officer's decision that he could not rival other workers in Tobago for seniority since he was deployed at his own request to serve in Tobago. The period between 1974 to 1978 therefore could not be counted for purposes of seniority especially since he was only a Grade I Electrician and was paid in a higher classification than other electricians. The Chief Personnel Officer had deemed another employer, ***V.D.*** *to be his senior.*

The representative union - the National Union of Government and Federated Workers Trade Union - agreed with the Chief Personnel Officer's decision that V.D. was senior to the Complainant especially since he possessed a wireman's licence. V.D. was appointed to act as Serviceman and the Complainant reverted to the post of Chargehand.

I referred the matter to the Chief Personnel Officer seeking a review and requesting the Clerk, Tobago House of Assembly to defer implementation of the Chief Personnel Officer's decision until the matter was reviewed by her. The Chief Personnel Officer in her review, ruled in favour of the Complainant.

Since it was never brought to the Complainant's attention that it was a prerequisite to have a wireman's licence in order to hold the post of Serviceman and having regard to the fact that V.D. had only recently acquired his, the Complainant considered the Tobago House of Assembly to be acting with partiality to V.D.

I again wrote to the Clerk, Tobago House of Assembly suggesting that, having regard to the fact that V.D. had been appointed to the post of Serviceman, Scarborough, County Hospital by the Director of Personnel Administration, that the Complainant be deployed to a suitable section of the Tobago House of Assembly where he would be able to recover the loss he sustained as a result of reverting to his present position.

The matter is being pursued.

PART IV

APPENDICES

EXTRACTS FROM THE CONSTITUTION
OF
TRINIDAD AND TOBAGO
CHAPTER 1

The Recognition and Protection of Fundamental Human Rights and Freedoms

Rights enshrined

Recognition and declaration of rights and freedoms.

4. It is hereby 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 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 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 au-

thority, 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 raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.

(3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.

(4) The Ombudsman shall not investigate -

(a) any action in respect of which the Complainant has or had

(i) a remedy by way of proceedings in a court; or

(ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than court; or

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

(5) Notwithstanding subsection (4) the Ombudsman

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

(b) is not in any case precluded from investigating any matter by reason only that it is open to the Complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the protection of fundamental rights).

95. In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to section 93 and 94 act in his discretion and, in particular 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 - Discretion of Ombudsman

(a) a complaint relates to action of which the Complainant has knowledge for more than twelve months before the complainant was received by the Ombudsman;

(b) the subject matter of the complaint is trivial;

(c) the complaint is frivolous or vexations or is not made in good faith; or

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

Report on Investigation

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

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

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

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

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

Power to obtain Evidence

97. (1) The Ombudsman shall have the powers of the High Court to summon 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 enquire or proceedings were proceedings in a Court.

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

THIRD SCHEDULE

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the Attorney General to affect relations or dealings between the Government of Trinidad and Tobago and any other Government or any International Organization.

2. Action taken in any country or territory outside Trinidad and Tobago by or on behalf of any officer representing or acting under the authority of the Government of Trinidad and Tobago.

3. Action taken under any law relating to extradition or fugitive offenders.

4. Action taken for the purposes of investigating crime or of protecting the security of the State.

5. The commencement or conduct of civil or criminal proceedings before any court in Trinidad and Tobago or before any international court or tribunal.

6. Any exercise of the power of pardon.

7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 93 applies not being transactions for or relating to -

   (a) the acquisition of land compulsorily or in circumstances in which it could be required compulsorily;

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

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

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

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

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

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

LAWS OF TRINIDAD AND TOBAGO

CHAPTER 2:52

OMBUDSMAN ACT

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

(Assented to 24th May, 1977)

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short Title

1. This Act may be cited as the Ombudsman Act.

Mode of Complaint

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

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

Procedure in respect of investigation No. 4 of 1976

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 a judicial proceeding for the purposes of the Perjury Ordinance.

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

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

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 persuant 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.

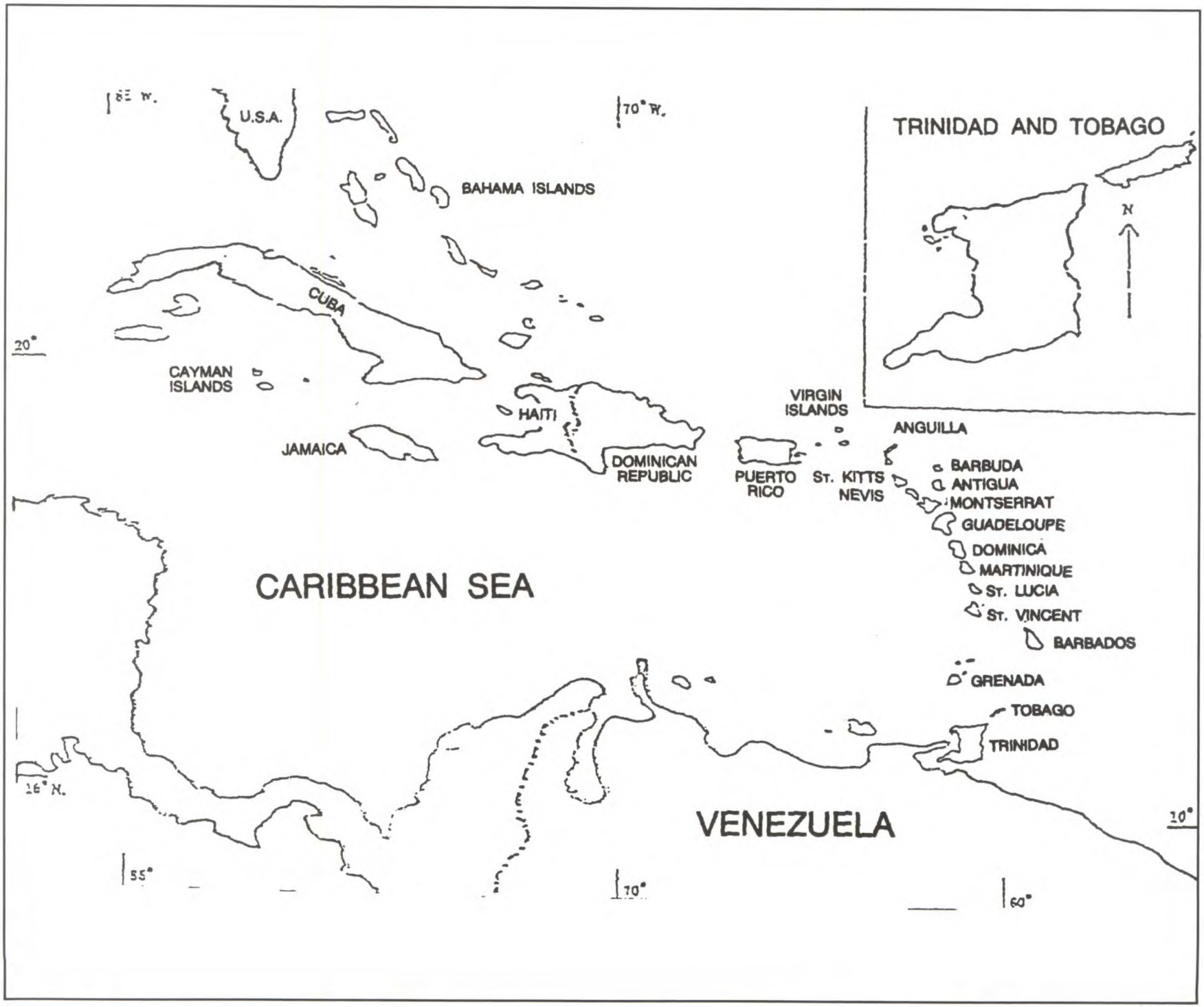
Prescription of authorities subject to the Ombudsman's jurisdiction

11. (1) The authorities mentioned in the Schedule are authorities to which section 93 (3) (d) of the Constitution 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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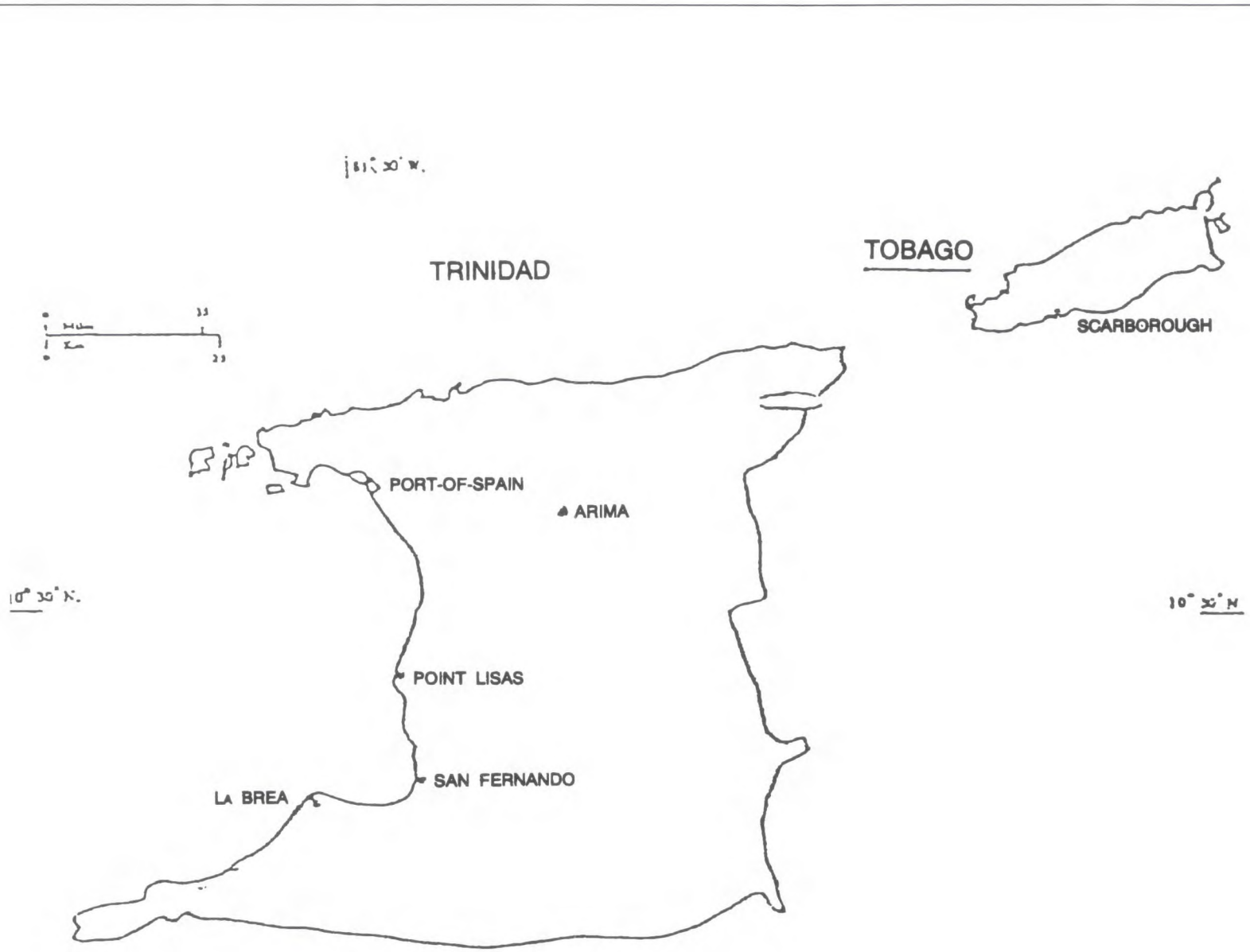
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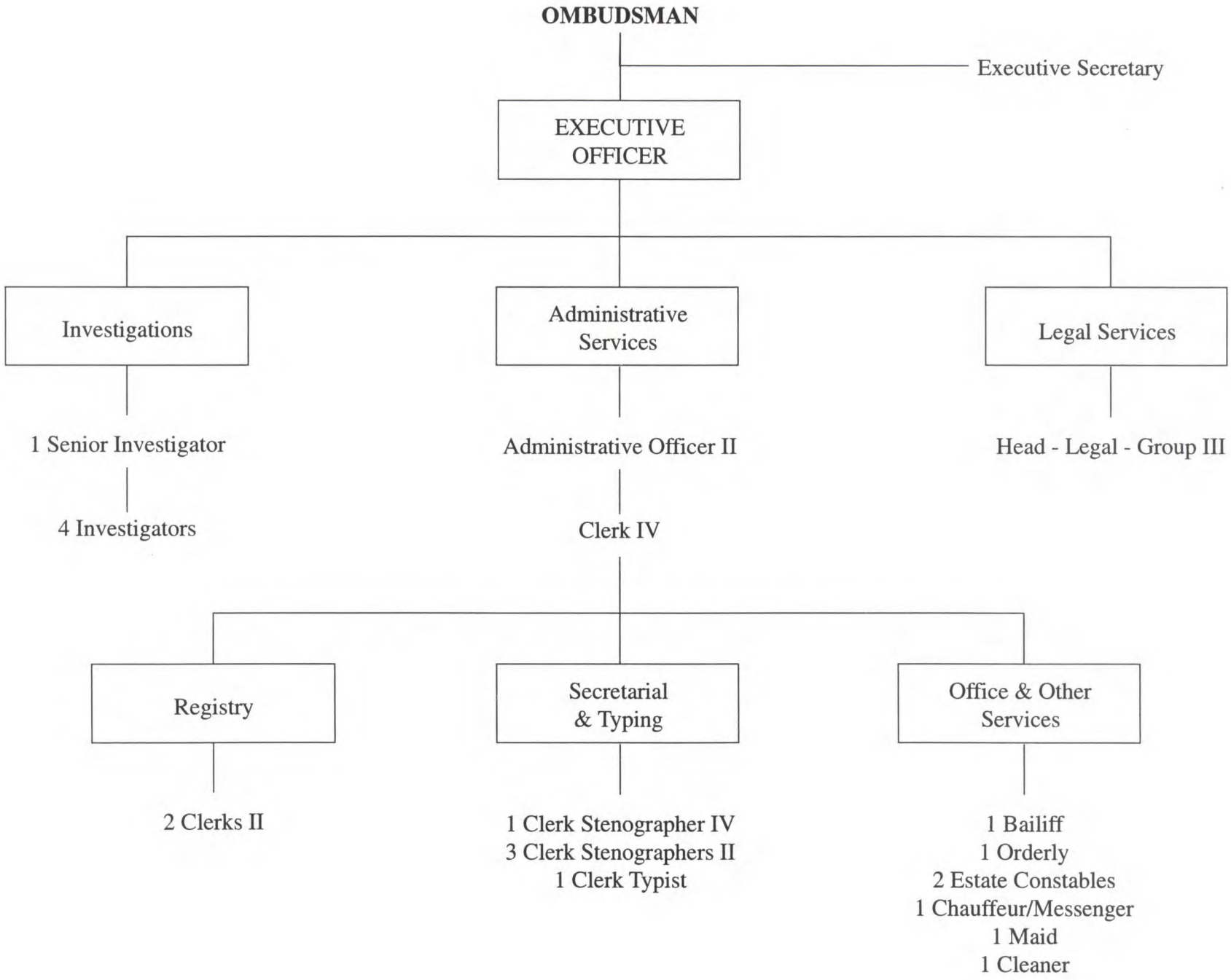
OMBUDSMAN
Executive Secretary
EXECUTIVE OFFICER
Investigations
Administrative Services
Legal Services
1 Senior Investigator
Administrative Officer II
Head - Legal - Group III
4 Investigators
Clerk IV
Registry
Secretarial & Typing
Office & Other Services
2 Clerks II
1 Clerk Stenographer IV
3 Clerk Stenographers II
1 Clerk Typist
1 Bailiff
1 Orderly
2 Estate Constables
1 Chauffeur/Messenger
1 Maid
1 Cleaner