THE REPUBLIC OF TRINIDAD AND TOBAGO

# THE OMBUDSMAN

# NINETEENTH

# ANNUAL REPORT



JANUARY 01, 1996 TO DECEMBER 31, 1996

## ***Mission Statement***

The Office of the Ombudsman is an institution 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.

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24th September 1997

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

Dear Mr Speaker

I have the honour to present the Nineteenth Annual Report of the Ombudsman for the period January 01, 1996 to December 31, 1996.

This 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

## TABLE OF CONTENTS

# PART I

# GENERAL

## GENERAL

## STATUS OF COMPLAINTS FILED

Since assuming Office as Ombudsman in 1991, I have to report that for the year 1996, I received a record number of 1,373 complaints which represents the largest number received over the past ten years. During the preceding five year period 1991 to 1995, the numbers received were as follows:

| Year | Number |
|---|---|
| 1991 | 967 |
| 1992 | 1053 |
| 1993 | 880 |
| 1994 | 897 |
| 1995 | 977 |

This increase can be attributed mainly to the following facts:

(a) The much improved publicity being given to the work of the Ombudsman in the media.

(b) The appointment of a joint select committee of Parliament to consider the functions and duties of the Office of the Ombudsman and to make recommendations for a more effective machinery. The Committee has been holding public meetings.

(c) The increase in complaints against the public utilities as a result of the increase in rates and charges and the inadequacy of the services which they have been providing to the public.

The details of the increase in the number of complaints received in 1996 are included in the Statistical Overview reported at page 23.

## DUTY TO ACT FAIRLY

One of the main features of the 1962 Independence Constitution was the recognition and protection of fundamental human rights and freedoms. This self-same feature became an integral part of the 1976 Republican Constitution and is enshrined in Chapter 1. An extract of Chapter 1 is included in this Report as an appendix.

The fundamental rights with which public officers should be concerned in the performance and execution of their duties, are those enshrined in sections 4 (a), 4 (b) and 4 (d) viz.

| | |
|---|---|
| 4 (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. |
| (d) | the right of the individual to equality of treatment from any public authority in the exercise of any functions. |

Under sub-sections 5(2) (e) and 5 (2) (h), it is stipulated that Parliament may not abrogate, abridge or infringe any of the rights declared in Section 4. In this context it is necessary to note that Parliament may not:

> deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations (Section 5 (2) (e) ).
>
> 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 (Section 5 (2) (h)).

What do these provisions of the Constitution mean and import? Broadly speaking, they mean that citizens should be treated fairly and equally and in accordance with the rules of natural justice; that their rights and property should not be taken away arbitrarily and that the due processes of the law should be observed and applied by every public officer and every public authority. The rules of natural justice include the right not to be condemned or have a decision given against him until a person has a right to a fair hearing and that persons should not be judges in their own cause e.g. by dealing with matters in which they have an interest. The provisions in Chapter 1 are not exhaustive of the rules of natural justice.

What this implies is that the public is entitled to fair and equal treatment by the officers of the State and by public authorities whether or not rules of natural justice are enshrined in the Constitution or in statutory rules and orders.

The absence of statutory rules and orders does not negate the necessity of observing and applying rules of natural justice.

The pages of this Report provide ample testimony that the rules of natural justice and due process of law are honoured more in the breach than in their observance.

The taking of unilateral decisions, and this occurs very often, violates the right to a fair hearing. Discriminatory practices violate the right to equality before the law and to equality of treatment from a public authority in the exercise of its functions and the arbitrary deprivation of property violates the right to the use and enjoyment of property.

A classic example of violation of due process which has been occurring for a number of years and has been reported in these pages is the arbitrary deduction of overpayments and wrongful payments from a retired officer's gratuity. It is not that the State may not be entitled by law to recover debts, overpayments and wrongful payments, it is the method used to achieve this result which violates the rules of natural justice and brings about injustice.

There are comprehensive regulations under the Financial Regulations which pay observance to the rules of natural justice. These ensure fair and equal treatment to the individual but they are seldom observed. When an unauthorised payment or overpayment is discovered, the person overpaid shall be informed and given the opportunity to contest the allegation of overpayment (Regulation 84).

Under Regulation 85, when proposals are made for the repayment of the unauthorised payment or overpayment, the officer is to be informed and given the opportunity to respond. These regulations constitute fair and equal treatment. While the Financial Regulations apply to serving officers, there is no reason why some such fair method of dealing with retired officers and the public at large should not be devised.

What takes place in the case of retired officers is that the department or authority submits to the Comptroller of Accounts a statement of the overpayments or wrongful payments by way of an indebtedness certificate and the amount stipulated therein is automatically deducted from the retired officer's gratuity. The retired officer only becomes aware of the deduction after the 'fait accompli' has been established. The rights which are violated here are the right to a fair hearing, the right to the protection of the law and the right not to be deprived of property except by due process of law.

Cases which are brought before the High Court by way of applications for judicial review and by way of motions under the Constitution are with respect to matters in which there are allegations of violation of these rights or the rules of natural justice. Good cases are lost by the State because of the insensitivity and the cavalier attitude of public officers in denying the public not only access to rights and freedoms enshrined in the Constitution but generally to denial of fair and equal treatment in accordance with the rules of natural justice.

This is not the only area in which it is necessary for public officers to act fairly so as to ensure that justice is done. In the following areas there has been an increasing tendency for unfair treatment.

**Policy**

A public officer cannot make policy or issue policy directions unless this power is given to him by law. Very often, in correspondence, I come across statements such as " It is our policy" or "It is the policy of the department" followed by a statement outlining the policy. It is the duty of the public officer to obey the law, statutory rules and regulations and long established rules and practice directions. It is also his duty to apply and carry out the policies made by Ministers and not to make and apply policy of his own which affects the public interest.

Where a Minister's policy decision affects or offends the public interest, it is not open to the Ombudsman to investigate any matter leading to, resulting from or connected with that policy decision. (Section 94 (1) of the Constitution).

But it is recognized that very often a Minister's policy decision is made or influenced as a result of advice or recommendation made to him by public officers. Hence in Section 93(1) of the Constitution, it is stipulated that the Ombudsman can investigate any advice or recommendation made to a Minister.

**Discretion**

In the same way as a public officer is unable to make policy decisions unless that power is given to him by law, a public officer cannot exercise a discretion unless that power is given to him by law. Where the exercise of a discretion is not given by law, then it is a public officer's duty to act in accordance with the law, statutory rules and regulations and long established rules and practice.

Even where a discretion has been given by law, it is required to be exercised in a fair and even manner. This is often referred to as the judicial exercise of a discretion. There is evidence that abuses take place as a result of an improper exercise of discretion even though the person exercising it acts in good faith. The improper exercise of a discretion, even when done in good faith often results in uneven treatment and discrimination.

## Precedent

Precedent is a term often used in correspondence. According to the Concise Oxford Dictionary, it is a term used to describe a decision, procedure etc, serving as rule or pattern. Used in a legal sense, it is a previous decision by a higher court which is used as justification by a lower court. Very often in correspondence reference is made to "precedent" as defining a pattern set by administration. As mentioned heretofore when a person's rights or property are to be affected by a decision of a public officer, precedent has no place in the officer's determination. He must act, as already indicated in accordance with the law, statutory rules and regulations and in accordance with well-established practice and procedure.

Oftentimes a wrong decision is made and then used as a precedent leading to injustice and hardship.

## Reasons For Decision

Very often decisions are taken by public officers which affect the public interest. In administrative law which is the law relating to public administration, it is not necessary to give reasons for a decision unless reasons are required by law. But in order to act fairly and in accordance with the rules of natural justice it is incumbent on a public officer to give reasons for his decisions, especially in cases where he is dealing with a controversial problem. Very often unilateral decisions are taken by public officers without giving the public an opportunity to state its case. The unfairness of this situation is compounded by a failure or refusal to give reasons.

A workshop in Administrative law was held in Barbados from 29th July to 1st August, 1996 in which the issues discussed above were some of the topics dealt with by the Workshop. Mr Hugh Clarke, the Executive Officer of the Ombudsman's Office was a participant at the Workshop. Details of Mr Clarke's participation and observations are included in this Report as an Appendix.

## DEDUCTIONS FROM RETIRED PUBLIC OFFICERS' GRATUITY

In previous annual reports I drew attention to the injustice and hardship suffered by retired public officers from whose gratuity benefits substantial sums were being deducted on the ground that increments not due to them had been paid for periods ranging between ten (10) and twenty (20) years prior to their retirement. I was under the impression that the State was barred by a period of limitation from recovering debts which had been outstanding for such a long period of time.

It now appears that as a result of the Limitation Act, 1981 not having been proclaimed, the State can, as it has been doing, recover debts from its public officers and the public, no matter how long these debts have been outstanding.

The State Liability and Proceedings Act Ch. 8:02 which was patterned after the Crown Proceedings Act 1947 (U.K.) was intended to level the playing field between the citizen and the State and it has done so in the United Kingdom as a result of the conjoint effect of the Crown Proceedings Act, 1947 and the Limitation Act, 1939 (U.K.) The state of the law here highlights the injustice caused to retired officers and to the public as a whole as a result of the lacuna.

It is ironical and decidedly unfair that whereas no limitation period bars the State from recovering debts due to it, the individual to whom the State owes money is bound by the statutes of limitation and can only recover monies due to him within the time stipulated by the relevant legislation.

In the Fifteenth Annual Report, I made reference to the case of a retired wardsmaid from whose gratuity a substantial sum of money had been deducted. I posed the question:

> "Is it fair and equitable for an employee of the State who has given so many years of service to the State and who has a legitimate expectation to pension and gratuity under the Pensions Act, to be told in the twilight of her years that the State has a legitimate claim to a substantial portion of the money due to her, which over a period of time, it had advanced to her voluntarily and which she had accepted in good faith? The answer must clearly be in the negative."

What makes it worse is the manner in which the prospective recipient becomes aware of the debt. It appears that the departments concerned submit to the Comptroller of Accounts a statement of the overpayments or wrongful payments by way of an indebtedness certificate and the amounts stipulated therein are automatically deducted from the recipient's gratuity although there is a clear prohibition in the law against doing so. It is only when he receives the balance of his gratuity does the recipient become aware that a substantial deduction has been made from it.

The cases in which overpayments and wrongful payments have arisen are not confined to any one department but prevail in a number of departments. It may be that the accounting system is faulty if overpayments can only be discovered after an officer has retired.

It is desirable for the Government to come to a policy decision as to whether to continue its present practice of recovering debts which have been outstanding for as long as twenty (20) years in some cases and which have arisen through the fault of accounting officers or adopt the recommendations I made in the Seventeenth Annual Report, i.e by limiting deductions in respect of overpayments or wrongful payments to the four (4) years prior to an officer's retirement and adjusting the salary of the recipient to its proper incremental level for the purpose of computing pensions and gratuities.

## JUSTICE, AT LAST!

The complainant who was a student nurse employed at the General Hospital, San Fernando, fell down a flight of steps on 25th December, 1963, at the Hospital and on 16th January, 1965, slipped on the waxed floor of the Nurses sitting room. As a result of these two (2) accidents, the complainant suffered severe injuries.

As a result of her injuries, she became a paraplegic and was confined to a wheelchair. By the time she brought her complaint to the attention of the Ombudsman in 1978, more than thirteen (13) years had elapsed from the date of her last accident. By that time the limitation period for bringing an action in the Court had expired.

The Solicitor General had advised the Government to deny liability but as the complainant had come with clean hands and having regard to the unfortunate circumstances which had occurred, recommended that she should be granted compensation in the form of an *ex-gratia* award. This advice was given in 1977 but no action was taken on this advice until 1980 when Cabinet awarded an *ex-gratia* sum of Two Thousand, Five Hundred and Twenty Dollars, ($2,520.00). My predecessor was of the opinion that Cabinet had been wrongly advised since the Supervisor of Insurance had recommended the sum of Eighty Six Thousand, One Hundred and Twenty Nine Dollars, ($86,129.00), being an estimate of the complainant's loss of earnings which estimate did not include any sum in respect of the complainant's pain, suffering and loss of amenities.

As a result of further delay in the matter, a Special Report was laid in Parliament. On 3rd October, 1990, some nine (9) years after the receipt of the recommendation of the Supervisor of Insurance, the matter was referred to the Solicitor General by the Ministry of Health.

When I assumed Office in 1991, after a careful review of the situation, I recommended that the sum of One Hundred and Fifty Thousand Dollars, ($150,000.00), in respect of damages for pain, suffering and loss of earnings be paid to the complainant since I considered that she had suffered a grave injustice and that it was time that the matter be brought to a reasonable conclusion.

On the 2nd January, 1997, I was informed by the Permanent Secretary, Ministry of the Attorney General, that Cabinet had made an ex-gratia award to the complainant in the sum of Two Hundred and Fifty Thousand Dollars, ($250,000.00).

More than thirty two (32) years had elapsed since the complainant had suffered the injuries which had confined her to a wheelchair and more than eighteen (18) years had elapsed since her complaint to the Ombudsman had been made.

It was brought to my attention that the complainant had recently died.

## MARRIED WOMEN

Section 15 of the Pensions Act, Chapter 23:52 was amended to provide for the payment of a gratuity to a female officer who "retires for the reason that she is married or is about to marry notwithstanding that she is not otherwise eligible under the section for the grant of any pension, gratuity or other allowance."

It is obvious that when the Act was amended to include this provision, it was done for the purpose of giving relief to female officers who, for the reason of marriage, wished to retire before attaining retirement age.

These officers were already married at the time of the amendment of the Act. Subsequently, however, the provision was narrowly construed and made to apply only to female officers who had married while in the Service or about to marry and to the exclusion of female officers who were married prior to their entry into the Public Service.

This narrow interpretation had, over the years, caused injustice to many female officers who were married before their entry into the Public Service and who, when they retired were deprived of the benefits due to them.

In a recent opinion and advice to the Comptroller of Accounts, the Solicitor-General has advised that "both Section 15 (6) and Regulation 4 (ibid) are unambiguous and apply to married female officers **whether or not their marriage pre-dated their entry into the Public Service**."

## THE PRICE OF INJUSTICE

The complainant, a medical doctor employed as a house officer by the Ministry of Health made a complaint to the Ombudsman on 10th September, 1989, to the following effect: that he had been employed on a contract basis since December, 1974, on three-year renewable contracts for the periods 23rd December, 1974 to 22nd December, 1977; 5th May, 1978 to 4th May, 1981 and 11th September, 1981 to 10th September, 1984. These contracts provided for an Inducement allowance of 20% of the monthly salary and was applicable to a person recruited from abroad. By a Cabinet decision of 17th November, 1983, the Inducement allowance to personnel recruited on contract from abroad was discontinued with immediate effect but the allowance was preserved to those officers whose contracts were in force at the time of the Cabinet decision. As a result the complainant's entitlement to the Inducement allowance remained in effect until 5th December, 1984.

However, when his contract was renewed on 6th December, 1984, he continued to receive the Inducement allowance due to the fault of the Ministry. The contract for this period was signed by him on 15th October, 1986. By a letter dated 18th July, 1988, the complainant was informed that his contract gratuity of $39,603.60 would be withheld so as to enable the Ministry to recover the overpayment of Inducement allowance paid to him. The complainant immediately wrote to the Permanent Secretary, Ministry of Health, protesting that Cabinet had waived the payment of the Inducement allowance in the case of another doctor paid in similar circumstances.

The complainant had another cause for complaint. He had been, since January, 1983, rostered for on-call duties for sixteen hours on alternate days due to the shortage of staff. This arrangement had been approved by the Principal Medical Officer. When he submitted his claim for extra duty allowances, he was only paid for the periods March to August, 1988 and January, 1989 to March, 1989. His claim to the Ministry for the period 29th January, 1983 to 6th December, 1987 was made in July, 1988 and was rejected by the Ministry for the following reasons:

1. that the Hospital Medical Director, Port of Spain General Hospital commented that while there was a possibility that officers rostered for on-call duty may be called out to his patients at night, the probability was minimal.

2. that rosters submitted by the complainant in support of his claim were signed by his supervisor within his (the supervisor's) vacation leave period.

In response to these queries, the supervisor stated that it was necessary for doctors to remain on call to handle emergencies and to make themselves available for that purpose. The number of patients they saw could not be the basis for the payment of the allowance.

The complaint to the Ombudsman was made on 10th September, 1989 and since then had been investigated by this Office with a view to bringing the parties to a settlement. The complainant stated that he had been visiting the Ministry and attempting to have the matter settled with the Accounts Executive II as he was in dire financial straits. He required the money to pay off the mortgage on his home. He eventually lost his home.

On 24th February, 1990 on the advice of his lawyers he filed a claim in the High Court claiming damages for breach of contract so that his claim would not become statute-barred. He claimed the sum of $165,909.83 as monies due under the respective contracts; a declaration that the Inducement allowances paid to him did not amount to an overpayment and that he was entitled to the said sum. The complainant also claimed interest and costs. The Defence filed in answer to the claim, was a denial of all the allegations in the Statement of Claim and, in my opinion, had only the effect of delaying the claim.

The complaint was investigated by an Investigator of this Office who verified the facts stated in the complaint. On 7th April, 1992, there being no response to a memorandum of 23rd November, 1989 sent to the Solicitor General, I took up the matter with the Permanent Secretary, Ministry of Health pointing out the facts stated above and called for a settlement of the matter.

There has been no response to this memorandum and to other memoranda submitted to the Ministry in an effort to have the matter settled.

In a memorandum of 20th May, 1993, the Ministry stated that steps were being taken to seek Cabinet's approval to have a waiver of the Inducement allowance already paid to the complainant but that in respect of the institutional allowance (i.e. payment for on-call duties) there were grave concerns about the compilation of the duty rosters.

As a result of further delay, I wrote to the Permanent Secretary on 15th June, 1993 to the effect that the complainant's claim should not be rejected outright because of a few discrepancies in the periods claimed; that payment could be made for those periods which had been substantiated by the Supervisor and that the periods in dispute should be subject to negotiation with the complainant. I have had no response to this memorandum.

I had previously met with the Legal Advisor and Officers of the Ministry with respect to the complaint on two previous occasions in an effort to have the matter settled, but to no avail.

On 22nd September, 1995, I convened a meeting with the following officers of the Ministry: the Manager, Legal Services, the Internal Auditor and the Accounts Executive II, the officer directly responsible for the Accounting portfolio of the Ministry, in an effort to resolve what I considered to be relatively simple issues. Also present at this meeting was a Senior State Counsel of the Solicitor General's Department who was asked to assist in having the matter resolved. Assurance was given that by the end of October, 1995, the matter would be settled. However, no effort was made by the Ministry to have the matter settled.

Various excuses were given for the delay, such as misplacing of the relevant files and enquiry into facts of which no proper record was made.

The matter came up before the High Court on the 12th May, 1997 and a consent order was made to the following effect: that the complainant be paid the sum of $141,280.00 together with interest thereon at the rate of 6% per annum from the 9th February, 1990 until payment and that he do recover the costs of the action, certified fit for advocate and instructing attorneys.

During my meetings with officers of the Ministry of Health, I had attempted to impress upon them the necessity of having the matter settled so as to save interest and costs. This advice, however, fell on deaf ears. In effect, the complainant, having suffered anguish, hardship and inconvenience for over nine years was vindicated when the Solicitor General consented to the Order.

Apart from the amount awarded, the complainant is entitled to interest and costs incurred which are likely to exceed the amount awarded.

**Note:** **There are many simple matters pending which have not been settled due to the recalcitrance of Public Officers and in which complainants have had to resort to Court action in order to obtain justice. This is due to the fact that public officers , unless they are sensitive to the plight of the public in circumstances such as the one reported above, remain unmoved or indifferent. Moreso, as they are not accountable for their acts or decisions to any authority to which an appeal can be lodged. When an action is brought in Court in a civil matter, it is brought against the State in the name of the Attorney General in compliance with the State, Liability and Proceedings Act Ch. 8:02. The public officer who acts or omits to act in matters within his competence, does so as a servant or agent of the State and the State becomes vicariously liable for his acts or omissions. Rarely does a public officer, acting in this capacity, become personally liable for his acts or defaults.**

**Usually the matter has to be defended by the Solicitor General who depends on the instructions which he receives from the department or authority concerned. In many cases, instructions are not forthcoming with the result that the claim has to be settled, incurring interest and costs which have to be paid out of public funds as the matter reported above, demonstrates.**

**Unless the Court orders costs or the payment of damages against public officers personally, the State becomes responsible for meeting damages, interest and costs.**

## SIXTH INTERNATIONAL OMBUDSMAN CONFERENCE

The Sixth International Ombudsman Conference was held in Buenos Aires, Argentina from the 20th to the 24th October, 1996 and was hosted by Dr George Luis Maiorano, Defensor del Pueblo (Ombudsman) of Argentina.

It was attended by 121 Ombudsmen representing over 36 countries around the world. There were over 500 participants including representatives from international organizations such as UNESCO, the Organization of American States (OAS), the United Nations High Commission for Refugees and the United Nations High Commissioner for Human Rights.

When it is considered that there were approximately 228 participants at the Fifth International Conference held in Vienna, Austria four years previously, it is evident that the concept and institution of ombudsmanship have grown by leaps and bounds over the last four years and are now fully accepted by the world community of nations.

The theme of the Sixth Conference was "The Ombudsman and the Strengthening of Citizen Rights: The Challenge of the XXI Century".

There were plenary sessions and a number of workshops dealing with a host of topics, notably "Challenges That Meet the Ombudsman Concept in Latin America", "The Ombudsman Around the World", "Helping People Facilitate Fairness in Government and Justice" and "At the Threshold of the XXIst Century: Identity Crisis or Evolution?".

I attended the Conference as a voting member of the International Ombudsman Institute (IOI). Apart from taking part in the workshops and plenary sessions of the Conference, I discussed with participants a variety of issues which were of common interest and concern.

As I said on a previous occasion, attendance and participation at these conferences are of vital importance in that it demonstrates our commitment to democracy and the rule of law and to the protection of fundamental human rights and freedoms of the citizens of the Country.

The circulation of Annual Reports of Ombudsmen around the world provides evidence of the commitment to these ideals.

# SPECIAL REPORT

**Text of a Special Report made to Parliament and tabled in the Senate on the 22nd April, 1997**

As a result of numerous complaints which I have been receiving against the Water and Sewerage Authority ("the Authority") and the Trinidad and Tobago Electricity Commission ("the Commission"), I have found it necessary to bring the following matters to the attention of Parliament.

Over the past year, I have received 164 complaints against the Commission and 65 complaints against the Authority. In the few cases in which I have received responses to my enquiries, both the Authority and the Commission have sought to justify their actions and decisions in the main, on very untenable grounds.

Both the Commission and the Authority are monopolies. They are also public authorities which are governed by the Acts of Parliament under which they are constituted and by subsidiary legislation including rules and Orders. Of particular significance and relevance, it is their duty to observe and conduct their affairs in accordance with the rules of natural justice. The basic procedures enshrined in the Constitution are designed for the protection of the fundamental rights of citizens. These include the right to fair and equal treatment and the right not to be deprived of property except by due process of law.

The complaints which I have received and continue to receive show a blatant disregard of the law and its processes in that citizens are treated unfairly, unequally and arbitrarily and deprived of property without due process with the result that they suffer injustice, hardship and distress.

The responsibility for the management, administration and operation of these Authorities is defined by law. It is a shared responsibility in which the Public Authorities have responsibility for operation and administration and the Boards have responsibility for management which includes the making of policy decisions, especially in matters which involve the public interest with the Minister exercising a general supervisory control over them . The Public Utilities Commission ("the P.U.C.") is an independent body responsible for the determination of rates payable for the services provided by the public utilities.

These Authorities constantly exceed their jurisdiction by trespassing on the preserves of the other partners in their shared responsibility "inter alia" by making and enforcing policy without referring issues to their Boards or to the Minister as the case may be, imposing rates and charges without reference to the P.U.C., exercising a discretion where none is given by law and generally acting as judges in their own cause.

Part of the fault lies with the P.U.C. which has exceeded its jurisdiction in making certain Orders. The invalidity of these Orders has been brought to the attention of these Authorities but they continue to enforce them regardless.

If public confidence is to be restored and the citizens' rights and pockets are not to be further eroded, it is incumbent that these Authorities be brought under regulatory control and their activities constantly monitored. This safeguard is all the more necessary since there is no permanent body established to review their decisions and activities.

In the 18th Annual Report, I drew attention to some of the matters of which complaints were being made. This Special Report is in furtherance of that Report.

## THE PUBLIC UTILITIES COMMISSION

The jurisdiction of the P.U.C. is defined in Section 17 (1) of the Public Utilities Commission Act Chap. 54:01. It's main purpose is defined in sub-sections (1) (a) and (1) (b).

(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 of its services**.

By using the wrong criteria and by making orders in respect of matters over which it has no jurisdiction the P.U.C. has opened the door to injustice and hardship.

This Report is confined to Orders and Directions made by the P.U.C. which have been the source of prevalent complaints. But there is an urgent need to review all the Orders made by the P.U.C. which are now in force as in many cases it has exceeded its jurisdiction or used the wrong criteria in the determination of rates and the imposition of charges.

For a rate to gain credibility, it ought to be fixed, certain and reasonable and not subject to fluctuation or manipulation by an Authority.

In the bills issued by the Commission and the Authority, charges for services are made, some with the sanction of the P.U.C., others without. These reflect administrative, operational and material costs which ought to be taken into account by the P.U.C. in determining rates instead of being shown as separate items on bills. This gives rise to speculation that the bills are being padded.

Other discrepancies are reported in the following pages.

## THE WATER AND SEWERAGE AUTHORITY
## Unjust Classification

By Order 78, the P.U.C. classified dual-use premises i.e. premises used partly for residential and partly for business purposes as 'non-domestic' and fixed monthly rates of $711.00 for water and sewerage services in cases where the business was subjected to Value Added Tax.

Then by Order 83, the P.U.C. relented and substituted flat rates of $300.00 for water and $150.00 for sewerage services per month in respect of some dual-use premises but left it to the Authority to determine which premises fell within this category. The Authority has administered this Order in such an uneven-handed manner that it has given rise to further complaints.

These Orders made by the P.U.C. were in violation of the provisions of Section 16 (1) of the Fourth Schedule to the Water and Sewerage Act Chap. 54:40 which prescribes rates based on annual rateable values in respect of all premises without distinction.

The invalidity of Orders 78 and 83 has been brought to the attention of the Authority, but the Authority nevertheless continues to enforce them, simply on the premise that they were made by the P.U.C.

This has resulted in the accumulation of huge arrears by customers who operate small-businesses with the result that injustice and hardship continue to plague them.

Even the present statutory provisions have outlived their relevance and usefulness having regard to the reality of our present situation. The Act was passed in 1965 at a time when there was an adequate water supply and an equitable rating system. In our present situation where there has been a sporadic supply to a great number of consumers and little or no supply to an even greater number, to base rates on a deficient rating system is to make a mockery of the provisions of Section 31 (3) of the Act which prohibits the Authority from showing undue preference and exercising discrimination as between consumers or rate payers similarly situated. The consequent injustice and hardship which have ensued calls for an urgent rectification of the situation.

The public already suffers hardship by not having an adequate supply of water, it should not have to bear the added burden of paying for water which it does not receive.

The present situation calls for the metering of all premises as a top priority. In the few cases in which a metered supply was given, the decrease in the bills of customers was most dramatic. There is no reason why the metering of all premises cannot be achieved at an early stage since customers are willing to bear the cost of installation of meters with the cost to be credited towards their accounts.

## Disaggregation of Premises

Order 78 also contains the following provision.

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

This provision obviously refers to separate self-contained units within a main building which can be disaggregated and rated separately - such as condominiums.

The P.U.C. left to the Authority the responsibility for disaggregation with the result that where premises were tenanted by two or more tenants, the customer was presented with as many bills as there were tenants.

Subject to what has been said above as to the metering of all premises, if this Order is to remain in effect, it will be necessary for the P.U.C. to define the type of premises to which the Order shall apply.

## Disconnection of Supply

By Order 78, the P.U.C. imposed a charge of $500.00 for reconnection of a customer 's supply after disconnection for failure to pay a debt and $312.00 for disconnection at customer's request.

The P.U.C. acted without jurisdiction in imposing these punitive charges as its jurisdiction extends only to the determination of rates. The Authority has been taking advantage of this imposition by indiscriminately cutting off customers' supplies and recouping the $500.00 charge for reconnection as a means of boosting its revenue.

The provisions of Section 74 of the Act which provide a fair and comprehensive procedure to be followed before a customer's supply can be disconnected are frequently disregarded by the Authority. This Order should be revoked and the charges should be refunded to customers where supplies were so arbitrarily disconnected.

## TRINIDAD AND TOBAGO ELECTRICITY COMMISSION
## Retroactive Charges

By Order 80 which came into effect on 1st October, 1992, the Commission became entitled to increased rates and charges for the supply of electrical energy. There was such a haphazard application of these increases to the accounts of customers, that while many customers' accounts had been adjusted, numerous other accounts were neglected and are now in the process of being adjusted. Retroactive charges amounting to thousands of dollars are being included in the accounts of these customers by a unilateral decision of the Commission.

At first the Commission laid the blame on malfunctioning meters. Subsequently the blame was laid on its own accounting system, allegedly that due to a data input error, accounts were being billed at 1/80 of true consumption. Customers were given no opportunity to verify whether the ludicrous reasons given, were true. In some cases, meters were removed and replaced without the knowledge, and in the absence of the customer.

Section 58 (1) of the Trinidad and Tobago Electricity Commission Act Chap. 54:70 ("the Act") provides that 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.

Apparently, little heed was paid to this requirement of the law with the result that the Commission lost a great deal of revenue and was attempting to recover it many years afterwards.

The fact is, that although the legislation makes provision for recovery of revenue lost in the case of meters which cease to function, no provision is made in the case of malfunctioning meters or for negligence in any other respect. In the case of meters which cease to function, the Commission is entitled under Section 52 (2) of the Act to a charge for energy consumed, based on the average daily consumption in the previous three months when the meter was functioning.

The present practice of the Commission, once it determines that a meter is malfunctioning or the customer is being under-billed, is to send him a demand notice for a staggering sum of money, allegedly based on his present average daily consumption.

The customer is then co-erced into signing an "agreement" containing harsh terms, the breach of any of which will result in disconnection of his electricity supply. It is pertinent to note that Section 36 of the Act prohibits the Commission from cutting off a customer's supply where there is a dispute pending.

As a result of numerous complaints, the Commission has formulated a policy statement based on the assumption that it is entitled, by law, to the recovery of retroactive charges. The main features of the policy statement are: that retroactive charges be limited to one year; that customers be exempted from disconnection and interest charges as a result of retroactive billing; that no refunds will be made to customers whose bills were paid by the 28th October, 1996 and that accounts will be re-opened solely at the discretion of the Commission. It is worthy to note that many poor and needy customers had to obtain loans at high rates of interest in order to meet their commitments to the Commission under the co-erced agreements.

The policy statement has not been published for general information and has been applied by the Commission's officers selectively. They, in their idiosyncratic judgment, have been billing customers in an uneven and arbitrary manner for estimated amounts allegedly based on their current consumption and without the customer being given the opportunity to challenge their estimates.

To put matters right, it is recommended that the recovery of retroactive charges be suspended immediately pending the settlement of the following matters:

1. That it be determined first whether the Commission is entitled, by law, to recovery of retroactive charges.

2. That if so entitled, that it be determined as a matter of policy the period for which the charges are to be imposed having regard to the Commission's admitted negligence and the effect which the payment of such charges would have on the public interest.

3. If retroactive charges are to be imposed, that a proper and fair formula be devised and applied.

4. That the Commission be prohibited from co-ercing customers into signing agreements containing harsh terms.

## Disconnection Policy

Under Section 36 of the Act, the Commission is required to make a legal demand in respect of debts owing to it before the electricity supply to a customer can be cut off. The legislation contemplates that a sufficient time be given to the customer to meet the demand before any action is taken.

The Commission has devised a disconnection policy (which it has published in the press) which has paid little or no regard to this statutory requirement. The policy statement is in the following terms: that customers are being billed every sixty days and are expected to pay the amount due within 30 days of billing. If bills are not received within 14 days of posting (how is a customer to know when a bill is posted?) a customer's duty is to ascertain the amount due from the Commission; that once an account is disconnected, a disconnection/reconnection charge of $145.00 plus VAT becomes payable. Failure to settle the account within 30 days of billing may result in the meter and secondaries being removed and the account closed. To re-open an account could entail having the premises re-inspected and the making of a new application for an electricity supply. It may be stated here that the P.U.C. exceeded its jurisdiction in imposing a disconnection/reconnection charge since its jurisdiction is limited to determining rates for the Commission's services.

This policy is being rigidly enforced and it seems, on a selective basis. It has caused inconvenience, hardship, loss and distress to customers, especially to the poor and needy who can hardly meet their current billing. Not only does the tardiness of the post result in a customer being unable to meet his obligations, so does forgetfulness on his part due to the pressures of every day living.

There can be but few cases in which a customer refuses to pay his bill or is guilty of such inordinate delay so as to be subjected to the penalty of disconnection. To make matters worse, seldom is reconnection prompt as certain days are set aside for the re-connection process. Customers suffer loss, inconvenience and hardship as a result of this nefarious policy and have had to wait for days before their electricity supply was restored. Others, especially the poor and needy, have had to re-wire their premises at great expense and have them passed for inspection before their electricity supply was restored.

The Commission on the other hand, gains little advantage or benefit in pursuing this policy as the human and material resources expended in the disconnection/ reconnection processes can hardly be compensated by a charge of $145.00.

One would have thought that the purpose of the exercise was to ensure the payment of debts. This is not the case, however. The purpose of the disconnection crews is not the collection of debts but to punish customers for not paying their bill within the time limited by the Commission for its payment. The disconnection crews do not collect debts.

It is incumbent that the Commission abandon its present policy and adopt a more humane policy for the collection if its debts. Disconnection should only be used as a last resort and only after a legal demand has been made and a sufficient time given for its compliance.

## Unjust Charges

I have received several complaints from persons who were not previously customers of the Commission and who on application for an electricity supply were forced to pay retroactive charges incurred by the previous tenant or owner of the premises. For example, where a person who has purchased a property and renovated it applied for an electricity supply, he was refused a supply unless he paid the debt or retroactive charges imposed upon the previous occupier or owner. Retroactive charges run into thousands of dollars. The new owner or customer reluctantly pays the charges for fear of reprisal by the Commission.

Unlike the case of water rates which are charged upon the land and are subject to the Rates and Charges Recoveries Act, electricity charges arise out of a contract either expressed or implied between the Commission and the customer and becomes the personal liability of the customer.

To remove the injustice which has been caused to such persons, it is incumbent upon the Commission to abandon its present practice and refund the monies which it has taken in such circumstances. If the Commission wishes to recover such charges, then it is only equitable that they be recovered from those who incurred them.

## Entitlement to an Electricity Supply

Section 48 of the Act stipulates 'inter alia' that the Commission shall, upon being required to do so by the owner or occupier of any premises situate within fifty yards from any distributing main, give and continue to give a supply of energy to such premises.

The Commission had heretofore complied with this provision of the law even going so far as to give an electricity supply to hundreds of squatters who had been occupying State and private lands.

As a result of a decision in the High Court against the Commission in which the Commission was sued for trespassing on lands of the owner and supplying electricity to squatters, despite objection by the owners, the Commission changed its practice and by a policy decision which has caused hardship and injustice and continues to do so, requires applicants who request a supply of electrical energy to produce deeds of ownership and the consent of the owner where the owner is not in occupation, before a supply is given.

Lawful occupiers include:

1. Persons who have been occupying land for generations and have acquired possessory titles, their tenants and licencees.

2. Tenants and licencees who can, during the terms of their tenancy or licence as the case may be, hold exclusive possession even against the true owners.

There are other categories of lawful occupiers. Lawful occupiers who have incurred considerable expense in wiring or re-wiring of their premises have been denied an electricity supply as a result of this policy.

It is desirable that a proper policy statement be formulated and published for general information. The public is entitled to know on what grounds an electricity supply would be denied them.

## Interest Charges

By Schedule 'D' of Order No 80, the P.U.C. has imposed interest charges on the debts of customers of the Commission in accordance with an elaborate formula based on the utility's daily overdraft rate.

Interest is being added to the accounts of customers 30 days after billing, on a daily basis.

Interest on debts due to the State or any Public Authority requires statutory sanction. The P.U.C. exceeded its jurisdiction in this respect by the imposition of interest charges since its jurisdiction extends only to the determination of rates for any service provided by a public utility.

The interest charges imposed by the Commission should be refunded or credited to the accounts of customers and the Order rescinded.

## Property Damage

Over the past five years, I have received several complaints against the Commission of property damage as a result of surges and other deficiencies in the distribution system. Complaints are being made of damage to electrical appliances and in other cases to the destruction of homes and other property.

These complaints are being treated in a very cavalier manner by the Commission. Without making any proper enquiries in order to determine whether it or its employees are at fault, the Commission invariably denies liability and lays the blame on defects in the customer's own wiring system.

In other cases, it points to provisions of the Act which exempt it from liability for negligence or it seeks to avoid liability by other means e.g. by relying upon the expiration of the limitation period for bringing of actions in the Court. Generally, it seeks to act as judges in its own cause.

As a public authority, it is incumbent upon the Commission to act in a more responsible manner. It is desirable that some proper mechanism be set up to deal with such matters. An independent body such as the Electrical Inspectorate should be appointed to deal with complaints relating to property damage as a result of acts or omissions of the Commission and to make recommendations to the Board if the public interest is to be protected.

# PART II

## 1. STATISTICAL OVERVIEW

## 2. SELECTED CASE SUMMARIES

## STATISTICAL OVERVIEW

A total of 1373 new complaints were received in 1996; of these 297 or 22% were made against private organisations. In all instances where complaints were made against private organisations I referred all the complaints and the complainants to the relevant authorities or agencies or advised complainants on the action they should take towards having their complaints resolved.

I commenced investigation on the 1076 complaints which fell within my jurisdiction. This represents 78% of the new complaints received. At the end of the year, investigations on 418 or 39% of these complaints had been concluded. 658 or 61% were still under investigation.

Table 1 shows the number of new complaints received this year and the manner of their disposal.

### TABLE I
### STATISTICS ON NEW COMPLAINTS RECEIVED DURING THE PERIOD JAN-DEC 1996

| | | |
|---|---|---|
| Total number of complaints received | 1373 | % |
| Total number of complaints against Private Institutions | 297 | 21.6 |
| Total number of complaints proceeded with | 1076 | 78.3 |
| Total number of complaints concluded | 418 | 39 |
| | | |
| Sustained/Rectified | 97 | 9.1 |
| Not Sustained | 54 | 5 |
| Withdrawn/Discontinued | 24 | 2.2 |
| Advised/Referred | 243 | 22.5 |
| | | |
| Total number under investigation | 658 | 61.1 |

This year's statistics show a significant increase in the number of new complaints received over last year's figure, and indeed it is the highest in the last 10 years. This increase in the number of new complaints this year is due in part to the phenomenal number of complaints received against the Trinidad and Tobago Electricity Commission and the Water and Sewerage Authority. However, there have been increases, though much less significant, in complaints against ministries and departments such as Prisons, Ministry of Local Government, Ministry of Health, Police, Service Commissions Department and Ministry of Finance.

Table II shows the distribution of new complaints against Ministries and agencies.

## TABLE II
## DISTRIBUTION OF NEW COMPLAINTS IN RESPECT OF MINISTRIES/DEPARTMENTS

| Ministry /Authority/ Agency | Total No. of Complaints | Sustained/ Rectified | Not Sustained | Withdrawn/ Discontinued | Advised/ Referred | Under Investigation |
|---|---|---|---|---|---|---|
| 1. Agricultural Development Bank | 3 | 0 | 0 | 0 | 1 | 2 |
| 2. Airport Authority | 1 | 0 | 0 | 0 | 0 | 1 |
| 3. Attorney General | 10 | 0 | 0 | 1 | 2 | 7 |
| 4. B.W.I.A. | 3 | 0 | 0 | 0 | 0 | 3 |
| 5. Caroni (1975) Ltd | 7 | 0 | 0 | 0 | 3 | 4 |
| 6. Chaguaramas Development Authority | 1 | 0 | 0 | 0 | 0 | 1 |
| 7. Chief Personnel Officer | 1 | 0 | 0 | 0 | 0 | 1 |
| 8. Elections & Boundaries Commission | 2 | 0 | 0 | 0 | 1 | 1 |
| 9. Judiciary | 29 | 4 | 0 | 0 | 12 | 13 |
| 10. Legal Affairs | 5 | 0 | 0 | 0 | 3 | 2 |
| 11. Magistracy | 9 | 2 | 0 | 1 | 2 | 4 |
| 12. Medical Board of Trinidad and Tobago | 1 | 0 | 0 | 0 | 0 | 1 |
| 13. Ministry of Agriculture, Land & Marine Resources | 39 | 1 | 2 | 0 | 5 | 31 |
| 14. Ministry of Consumer Affairs | 2 | 0 | 0 | 0 | 0 | 2 |
| 15. Ministry of Community Development | 6 | 0 | 0 | 0 | 0 | 6 |
| 16. Ministry of Education | 26 | 6 | 2 | 1 | 6 | 11 |
| 17. Ministry of Finance | 43 | 5 | 1 | 0 | 10 | 27 |
| 18. Ministry of Foreign Affairs | 3 | 0 | 0 | 0 | 0 | 3 |
| 19. Ministry of Health | 51 | 5 | 4 | 3 | 3 | 36 |
| 20. Ministry of Housing & Settlements | 34 | 6 | 4 | 0 | 13 | 11 |
| 21. Ministry of Labour & Co-operatives | 33 | 0 | 1 | 0 | 18 | 14 |
| 22. Ministry of Local Government | 55 | 8 | 0 | 1 | 4 | 42 |
| 23. Ministry of National Security | 17 | 0 | 0 | 0 | 1 | 16 |
| Defence Force | 8 | 1 | 0 | 0 | 1 | 6 |
| Fire Services | 6 | 0 | 0 | 0 | 0 | 6 |
| Immigration | 4 | 1 | 0 | 1 | 1 | 1 |
| NEMA | 1 | 0 | 0 | 0 | 0 | 1 |
| Police | 103 | 4 | 1 | 2 | 52 | 44 |
| Prison | 134 | 6 | 8 | 5 | 36 | 79 |

| Ministry /Authority/ Agency | Total No. of Complaints | Sustained/ Rectified | Not Sustained | Withdrawn/ Discontinued | Advised/ Referred | Under Investigation |
|---|---|---|---|---|---|---|
| 24. Ministry of Planning & Development | 16 | 0 | 1 | 1 | 3 | 11 |
| 25. Ministry of Social Development | 51 | 8 | 5 | 0 | 13 | 25 |
| 26. Ministry of Sport & Youth Affairs | 2 | 1 | 0 | 0 | 1 | 0 |
| 27. Ministry of Trade & Industry | 4 | 0 | 0 | 0 | 0 | 4 |
| 28. Ministry of Works & Transport | 46 | 2 | 5 | 2 | 1 | 36 |
| 29. National Feed Mills | 1 | 0 | 1 | 0 | 0 | 0 |
| 30. National Fisheries | 1 | 0 | 0 | 0 | 0 | 1 |
| 31. National Gas Company | 2 | 0 | 0 | 0 | 0 | 2 |
| 32. National Insurance Board | 28 | 6 | 6 | 0 | 2 | 14 |
| 33. N.I.P.D.E.C. | 2 | 0 | 0 | 0 | 0 | 2 |
| 34. Office of the Prime Minister | 1 | 0 | 0 | 0 | 0 | 1 |
| 35. Petrotrin | 4 | 0 | 0 | 0 | 0 | 4 |
| 36. Port Authority | 10 | 0 | 2 | 0 | 4 | 4 |
| 37. Postal Services | 7 | 2 | 0 | 0 | 1 | 4 |
| 38. Public Transport Service Corporation | 10 | 0 | 0 | 0 | 6 | 4 |
| 39. Public Utilities Commission | 1 | 0 | 0 | 0 | 0 | 1 |
| 40. Service Commissions Department | 33 | 0 | 2 | 2 | 15 | 14 |
| 41. Statutory Authority | 1 | 0 | 0 | 0 | 0 | 1 |
| 42. T.I.D.C.O. | 2 | 0 | 0 | 0 | 0 | 2 |
| 43. Tobago House of Assembly | 38 | 2 | 5 | 0 | 1 | 30 |
| 44. T.&T.E.C. | 104 | 17 | 2 | 2 | 8 | 75 |
| 45. T.S.T.T. | 10 | 1 | 0 | 1 | 2 | 6 |
| 46. W.A.S.A. | 65 | 9 | 2 | 1 | 12 | 41 |
| TOTAL | 1076 | 98 | 54 | 24 | 243 | 659 |
| Private | 297 | | | | | |
| | | | | | | |
| Grand Total | 1373 | | | | | |

Last year I noted that there had been a change in the pattern of the distribution of complaints among ministries/agencies from earlier years. The distribution of complaints this year has tended to adhere to the pattern of recent years. This year the Ministry of Finance and the Tobago House of Assembly are included in the nine ministries/agencies which recorded the highest number of complaints received while the Ministry of the Attorney General and Legal Affairs and the Ministry of Labour and Co-operatives which fell within that number last year have been excluded.

The ministries/agencies with the highest number of complaints recorded against them this year, and in the order of priority are: Ministry of National Security (Police and Prisons), the combined Public Utilities (T&TEC, WASA, TSTT), Ministry of Local Government, Ministry of Social Development, Ministry of Health, Ministry of Works and Transport, Ministry of Finance, Tobago House of Assembly and Ministry of Agriculture, Land and Marine Resources.

In general, the number of new complaints closed this year has tended to be less than those closed at the end of the previous year. Last year, 45% of new complaints were closed as compared with 39% this year. The total number of complaints which remained under investigation at the end of the year is due in part to the increase in the number of complaints received against the Trinidad and Tobago Electricity Commission which remained unresolved at the end of the year due to the fact that a contemplated policy decision which would have disposed of most of them had not been formulated by the end of the year.

Table III shows the nine ministries/agencies which recorded the largest number of complaints last year as compared with this year and the number which remained under investigation at the end of the year.

## TABLE III

## MINISTRIES/DEPARTMENTS WHICH RECORDED HIGHEST NUMBER OF COMPLAINTS FOR 1995 &1996 AND THE NUMBERS CONCLUDED

| | 1995 | | | 1996 | |
|---|---|---|---|---|---|
| MINISTRIES/DEPARTMENTS | NO. OF COMPLAINTS RECD | NO. CONCLUDED | MINISTRIES/DEPARTMENTS | NO. OF COMPLAINTS RECD | NO. CONCLUDED |
| National Security (Police, Prison) | 160 | 79 | National Security (Police, Prisons) | 237 | 114 |
| Public Utilities (T&TEC, WASA, TSTT) | 54 | 28 | Public Utilities (T&TEC, WASA, TSTT) | 179 | 57 |
| Social Development | 44 | 34 | Local Government | 55 | 13 |
| Works and Transport | 43 | 11 | Social Development | 51 | 26 |
| Labour & Co-operatives | 34 | 12 | Health | 51 | 15 |
| Agriculture | 32 | 7 | Works & Transport | 46 | 10 |
| Attorney General & Legal Affairs | 25 | 13 | Finance | 43 | 16 |
| Local Government | 23 | 3 | Agriculture | 39 | 8 |
| Health | 22 | 9 | Tobago House of Assembly | 38 | 8 |

In addition to the new complaints received this year, 387 were brought forward from preceding years. Of the 387 complaints brought forward, investigations on 330 were concluded while 57 remained under investigation at the end of the year.

## TABLE IV
## STATISTICS ON COMPLAINTS BROUGHT FORWARD FROM PRECEDING YEARS

| | | |
|---|---|---|
| Total number of complaints brought forward from previous years | | 387 |
| | | |
| Total number of complaints concluded | | 330 |
| | | |
| Sustained/Rectified | 107 | |
| Not Sustained | 53 | |
| Withdrawn/Discontinued | 82 | |
| Advised/Referred | 88 | |
| | | |
| Number of complaints still under investigation | | 57 |

The total work load of the Office for this year was 1760, that is the number of new complaints received plus those brought forward from preceding years. Table V shows the manner of their disposal.

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

| | | |
|---|---|---|
| Total number of complaints brought forward from preceeding years | 387 | |
| Total number of complaints received in 1995 | 1373 | |
| Total | 1760 | |
| Total number of complaints without jurisdiction | 297 | 17% |
| Total number of complaints proceeded with | 1463 | 83% |
| Total number of complaints concluded | 748 | 50% |
| | | |
| Sustained/Rectified | 204 | 14% |
| Not Sustained | 107 | 7% |
| Withdrawn/Discontinued | 106 | 7% |
| Advised/Referred | 331 | 22% |
| | | |
| Total number of complaints under investigation | 715 | 49% |

**Ref. OMB: 556/96**

## MINISTRY OF AGRICULTURE

The complainant who owned and operated a sawmill sought the assistance of my Office when her sawmill licence was suspended for a period of six months by the Conservator of Forests. She complained that suspension for such a long period of time was likely to cause hardship to her, her family and workers whose sole means of livelihood were dependent on the operation of the sawmill. There were 15 persons employed in the operation of the sawmill. She estimated a financial loss of over One hundred and seventy five thousand dollars ($175,000.00) as a consequence of its closure.

Of particular loss to her was her inability to fulfill a contract with a large manufacturing company for the supply of wood pallets used in the export of locally used products. Her fear was, that given the fierce competition in the industry she would never regain a similar comtract with the company.

In reviewing the facts of the case, I noted that the Conservator of Forests had the power to suspend a sawmill licence under Section 4 (4) of the Sawmill Act Chapter 66:02, for a variety of reasons.

According to the letter of suspension issued to the complainant, this action was taken as a result of her failure to comply with the instructions of the Forestry Officers who had visited her premises and found teak logs which were suspected to have been stolen. The letter further cited the abuse and threats which were allegedly made to these officers and the complainant's failure to produce records for inspection.

In writing to the Director of Forestry, I pointed out that no investigation had been undertaken into the allegation that the complainant was handling stolen logs. There was only a suspicion. If this was in fact the reason for the suspension then it appeared to me that the punishment meted out to the complainant was harsh. Having regard to the hardship which she, her family and workers were enduring, it seemed that justice would have been better served by the issue of a stern warning rather than by the suspension of her licence for any period of time.

As this was the only occasion on which a fault was leveled against her, I requested that the decision in the matter be reconsidered. I was subsequently advised by the Conservator of Forests that the Honourable Minister of Agriculture, Land and Marine Resources had reduced the suspension to a period of three (3) months as he was entitled to do in accordance with the provisions of the Sawmill Act.

**Ref. OMB: 91/95**

## MINISTRY OF EDUCATION

The complainant who was employed as a laboratory technician at the Siparia Senior Comprehensive School and had completed nineteen years of service, submitted an application for the voluntary termination of his employment (VTEP) under the Voluntary Termination of Employment Act, 1989 in July, 1989 and soon thereafter migrated to the United States of America. His application had been approved by his Supervisor. By a letter of 4th March, 1991, the complainant was informed by the Ministry that he had not followed the proper procedure in making his application.

By the time his complaint had reached this Office, the VTEP plan had been discontinued and the VTEP Committee had been disbanded.

It appeared to me that the complainant's application had been rejected as a result of a procedural error and that the Ministry had not dealt with the substance of his application. I therefore convened a meeting with senior officers of the Ministry and was given the assurance that they were working towards a speedy solution of the problem. The matter is being pursued.

**Ref. OMB: 452/95**

The complainant was employed as a daily paid watchman at the Malick Trade Centre for the period 1968 to 1995 when he retired. He claimed that he had worked continuously in this capacity for the entire period. Upon his retirement he was not credited with terminal benefits for his years of service from 1968 to 1977. The Permanent Secretary, Ministry of Education, under whose administration the Malick Trade Centre fell, had informed him that there were no available records to verify his period of employment.

My investigation into this complaint revealed that in 1968 the complainant was employed by the Special Works Department which at that time fell under the administration of the Prime Minister's Office. The Community Development Department was, at that time also, a division of the Prime Minister's Office. The complainant worked as a watchman at the Chaguaramas Youth Centre, during its construction and for some time afterwards. In 1970 he was transferred to Special Works Department, Sea Lots and finally to the Malick Trade Centre in 1977 which also fell under the Department of Community Development.

During the period 1968 to 1977, the administration of the youth and trade centres was removed from the Ministry of Community Development to the Ministry of Education and Culture, then to the Ministry of Youth, Sport and Culture. Again the administration of trade centres was removed to the Ministry of Community Development and finally to the Ministry of Education. Meanwhile, the Special Works Deparment became a division of the Ministry of Works.

The Ministry of Community Development produced records for the period 1974 to 1982 but the records of the complaintant's service for the years 1968 to 1973 were unavailable. Extensive searches were made in the archives at the Chaguaramas Youth Centre and at the Ministry of Community Development without success. The complainant produced copies of TD4 slips and income tax assessment notices in respect of five of these outstanding seven years.

These documents provided evidence that the complainant was employed as he claimed but they were insufficient to satisfy the requirements for effecting payment of terminal benefits to a daily rated employee. The Pensions Department required an audited record of the number of days worked for each year of service. The matter is being pursued.

**Note: This is a matter of frequent occurrence. Because of the haphazard manner of keeping and preserving records of employees, they suffer hardship and injustice in having terminal benefits to which they are entitled, paid to them on retirement.**

**Ref. OMB: 798/98**

## MINISTRY OF FINANCE

### COMPTROLLER OF ACCOUNTS

The complainant had been employed in the department of the Comptroller of Accounts from April 18th, 1956 to the date of his retirement on February 9th, 1989.

He complained that in the computation of his retirement benefits, the period April 18th, 1956 to October 31st, 1958 during which period he was a temporary clerk, was omitted from his pensionable service. He complained that he was unfairly treated by being deprived of two and a half years of his pensionable service.

He stated that he was aware that two officers who were similarly appointed as temporary 2nd Class Clerks at about the same time as he was appointed, had been deemed to be in pensionable vacant posts for the period of their temporary appointments and had the periods of their temporary service included for the purpose of computing their retirement benefits.

In response to my enquiry, the Comptroller stated that the complainant's service for the disputed period was acting service in the capacity of a 'leave relief' which period was part of the pensionable service of the substantive holder of the office and that in the circumstances, the period could not be used in the computation of the complainant's superannuation benefits; that the authority for this decision was Regulation 10 made under the provisions of the Pensions Act Chap: 23:52; and that the two officers to whom the complainant made reference, acted in vacant offices during the periods of their temporary appointments and so had those periods included in their pensionable service.

The complainant refuted the Comptroller's statement that the two employees to whom reference was made were employed in vacant posts; that he found it difficult to understand how one of them could have been appointed in a vacant post ahead of him when he was in the Treasury at the time of that person's appointment.

Further, that the Treasury records from which the Pension and Leave document was prepared showed that all three of them were paid on the same leave relief paysheet and he found it difficult to understand how such a distinction could be made in his case to his detriment.

The complainant's reply was referred to the Comptroller since 7th September, 1995 but there has been no reply from that department. If the complainant's contentions are correct, he has been unfairly treated and is being discriminated against.

It has been ascertained from the Service Commissions Department that they have not been able to ascertain the name of the person 'in lieu' of whom the complainant acted or the vacancy in which he was placed when he was appointed to act as a 2nd Class Clerk. The same result was achieved with respect to the persons to whom reference was made by the Comptroller.

The matter is being pursued.

**Ref. OMB: 854/95**

## INLAND REVENUE DIVISION

The complainant, an employee of the Public Health Department, Tobago, owed taxes for the period 1977 to 1981. He was served with a garnishee order by the Board of Inland Revenue in 1984; his salary was garnished and the amount due was deducted from his salary in fortnightly amounts of $610.77 over the period 13th July, 1984 to 4th October, 1984. When he retired in 1995, the sum of $12,600.00 representing a debt of $3,600.00 and $9,000.00 interest due on the debt was deducted from his gratuity entitlement. When the complainant enquired from the Board of Inland Revenue as to the reason for the deduction he was advised that he should obtain documentary proof that he did, in fact, pay the amount due. This he produced but apparently the Chairman of the Board was not satisfied since the Board was unable to confirm that the taxes were paid by Garnishee deductions and held the view that the Board was constrained to recover the taxes from the complainant's retirement benefits. The view was also held that in order to facilitate a resolution of the matter, the Board was prepared to consider a waiver of the interest deducted from the complainant's retirement benefits.

I pointed out the inconsistency of the decision and the injustice being caused to the complainant as a result of these views. The complainant cannot be held responsible for the deficiencies in the accounting system or for the unavailability of records. It was unjust that he should be made to pay twice in respect of the same debt when evidence was produced that the debt was paid in 1984.

I urged the Board of Inland Revenue to withdraw the indebtedness certificate so that the complainant would be able to obtain the retirement benefits due to him.

The matter is being pursued.

**Ref. OMB: 526/96**

## MINISTRY OF FOREIGN AFFAIRS

The complainant entered the Foreign Service in January, 1963 and on 11th May, 1977 was appointed a Head of Mission. He served as such in Brazil and in India and by the time he demitted office had served as a Head of mission for a period of over eleven years.

On retirement, his pension and gratuity, as had been the practice, were computed on a notional salary instead of on his real salary at the date of his retirement.

There is such a wide gap between the notional salary and the real salary that the injustice is most evident.

Under the Pensions Act and in accordance with Section 11 of the Pensions Regulations, the computation of pensions to a public officer is based on his full pensionable emoluments for a period of three years preceding the date of his retirement.

In the case of Heads of Mission, this principle is not applied either due to a misinterpretation of the relevant legislation or an inadequacy of the legal provisions. Resort is being had to obtaining Cabinet approval for the placing of such Heads of Mission in a lower range than that applicable to a Head of Mission.

The Retiring Allowances (Diplomatic Service) Act Ch. 17:04 which applies to Heads of Mission and makes provision for their retiring allowances, specifically excludes from its provisions persons, who at the time of appointment as Heads of Mission were civil servants. Unless there is legislation requiring such persons to elect whether they wish to be considered under the Retiring Allowances (Diplomatic Service) Act, there is no reason why such persons should not be paid their full pension and gratuity under the Pensions Act.

These views were brought to the attention of the Minister of Foreign Affairs and the Permanent Secretary in the Ministry.

The matter is being pursued.

**Ref.OMB: 864/95**

The complainant, a foreign service officer, was posted to Kingston, Jamaica. In July, 1989, she was transferred to Port of Spain. At that time, she made an arrangement with the Director of Administration of the Ministry to leave certain items of her personal effects at the Government Quarters which she occupied in Kingston, Jamaica, to facilitate the immediate occupancy of the premises by an officer assigned to replace her. This arrangement, was due to the fact that the Ministry was suffering severe financial constraints and could not accommodate her replacement at a hotel in Jamaica. It was agreed that, at the end of three (3) months, the period for which her replacement was temporarily assigned, the items would be packed and forwarded to Trinidad.

Under Section 9 of the Civil Service (External Affairs) Regulations, the Government is obliged to pay for the transportation of household effects after an officer's tour of duty has ended.

The Ministry having made an official arrangement with the complainant for the use of her household effects for a period of three (3) months, it was their duty then to transport these effects to Port of Spain where the complainant was officially posted.

The Ministry holds the view that no use was made of the effects by the Officer who replaced the complainant in Jamaica and that the effects are now available to the complainant - seven (7) years after the event. The Director, Legal and Marine Affairs more than a year ago, was of the opinion that reasonable compensation be offered to the complainant, a view with which I agree. This has become the more necessary in view of the fact that the complainant is now posted to New York.

Having regard to the length of time which has elapsed and the injustice which the complainant has suffered and continues to suffer, I have urged the Ministry to offer the complainant adequate compensation. The matter is being pursued.

**Ref. OMB: 1153/96**

In September 1996, a foreign service officer sought my assistance to have his position in a foreign mission regularized. He informed me that on 29th August, 1989, he assumed duty at the Trinidad and Tobago High Commission, Kingston, Jamaica, as a Foreign Service Officer I on temporary transfer from Headquarters. In July, 1989, he had been informed that his services would be required at the High Commission in Jamaica for a period of four months pending the assumption of duty of another officer. On 10th August, 1989, he was issued with an Instrument of Temporary Transfer under the hand of the Prmie Minister. In spite of the assumption of duty by a substantive officer at the Mission, the complainant's position was never regularized with the result that he was never transferred back to Headquarters.

The complainant had another cause for complaint. For the entire period of his posting to Jamaica, he had not been accorded the meal allowance, rent free accommodation and foreign service allowances which were normally paid to officers on temporary posting. He complained that instead, he had been treated as an officer on permanent transfer. Ten percent (10%) of his salary had been deducted for housing accommodation and he had to meet all his living expenses. In particular, he referred to electricity bills which were unusually higher than those in Trinidad. The temporary nature of his transfer had prevented him from renting his mortgaged home in Trinidad and coupled with the continued uncertainty of his position, he was unable to make any decision with respect to this property with the result that he had to maintain two homes.

The complainant had been making representations to the Administration since 1990 without avail.

In response to my enquiries, I was informed by the Permanent Secretary, Ministry of Foreign Affairs that the complainant was due to return to Headquarters on 16th June, 1997 at which time it is anticipated that a solution satisfactory to both parties would be concluded.

The matter is being pursued.

**Ref. OMB: 1148/96**

## MINISTRY OF HEALTH

The complainant, a senior Radiographer employed at the General Hospital, San Fernando, was assigned by the Hospital Administrator to the Area Hospital, Point Fortin. Her complaint was that, for no apparent reason, she was not paid her salary for the months of September and October, 1996.

As a background to her complaint the complainant stated that she had been employed as a radiographer for the past twenty-five (25) years and as a consequence of her prolonged employment in radiography, she had developed a sensitized immune system which was adversely affected if the occupational enviornment in which she was employed, was not up to a required standard. In May, 1996, she had requested the Hospital Administrator to provide her with a working area away from the X-ray department because of her sensitized condition.

Despite her repeated requests she was not afforded a workplace outside of the radiography processing unit and by letter dated 22nd August, 1996, she informed the Hospital Administrator that because of the poor state of her health, she intended to resume duty in the main Radiography Unit. She produced medical reports from medical officers testifying as to the state of her health and to the fact that her working environment was hazardous to her health.

On 9th August, 1996, the Hospital Administrator assigned the complainant to work at the Area Hospital, Point Fortin, and informed her that she would not be allowed on the Hospital Compound, San Fernando. The complainant then proceeded on continuous sick leave until 10th September, 1996. On 11th September,1996, she assumed duty at the Area Hospital, Point Fortin. She was not paid her salary for the month of September, 1996, and when she enquired as to the reason, she was required by the Hospital Administrator to list the duties she had performed for the period 11th September, to 23rd September, 1996.

In a comprehensive reply to my enquiries the Hospital Administrator made the following points:

1. The late payment of the complainant's salary was due to the fault of the complainant, herself.

2. The fact that she signed the Attendance Register was no indication that she worked during the period she was assigned to Point Fortin.

3. That she was fortunate that she was not subjected to disciplinary action.

4. That the sick leave certificates she submitted were questionable.

5. That the environment in which the complainant worked, was safe.

However, I was assured that the complainant had received her salary for the months of September and October. This part of her complaint, was therefore satisfied.

As to her complaint about the working environment and the occupational risk to which she was exposed, I referred the matter to the Occupational Hygienist of the Ministry of Health for a report. I am awaiting a reply.

**Note: The payment of salary to a public officer cannot be stopped by his Head of Department. Even where disciplinary proceedings are taken against an Officer, the decision to stop the payment of his salary must come from the Public Service Commission.**

**Ref. OMB: 1206/96**

The complainant, who lives in a residential area in South Trinidad complained that her neighbour operated a motor car spray painting shop on his premises and that the noise , fumes and dust from the operation was affecting her health and that of her family. She had reported the matter to the Public Health Department but had obtained no relief.

Enquiries from the Public Health Department elicited the reply that the complaint was legitimate and that the following steps were taken:

(1) A letter was sent to the Town and Country Planning Division that a garage was being operated within a residential area.

(2) A letter was sent to the Occupational Health Unit in the Ministry of Health concerning the nuisance being created.

(3) The Chief Administrative Officer of the Couva/Tabaquite/Talparo Regional Corporation was informed of the unauthorized garage being carried on within a residential area.

(4) A letter was sent to the offending party advising him to enclose his garage from roof to existing wall height as a temporary measure.

The matter is being pursued.

**Ref. OMB: 192/96**

## MINISTRY OF LEGAL AFFAIRS
### REGISTRAR GENERAL

Two categories of staff employed at the Registrar General's Department were owed retroactive remuneration for the same reason, but only one of those categories was paid. The complainant, a printing operator, was one of the affected parties.

She complained that the printing operators as well as the clerical assistants were entitled to increments under the Unemployment Levy Programme from March 1978 to May 1987. However, in 1995, payments were made only to the clerical assistants, while the printing operators were told that additional approval was needed to pay the retroactive amounts due and that even so there were no funds available in order to effect payment to them.

When I first enquired into the matter I was assured that everyone who had been similarly affected had already been paid. Further investigations revealed however, that for some unexplained reason, only the clerical assistants were mentioned when approval for payment of the retroactive increments was originally sought and obtained from Cabinet and that it was the intention of the Ministry to seek approval for the payment of the retroactive increments to the printing operators.

Subsequently, however, the Chief Personnel Officer advised that in accordance with the Civil Service Regulations as they apply at Chapter V Part II 41(1) to the grant of increments to temporary officers, the approval of Cabinet in this instance referred not only to the clerical assistants, but to all persons whose tenure of service complied with the relevant terms and conditions of service. The Ministry then sought approval for the relevant release of funds in its 1996 Estimates but none were made available. Nevertheless, I received the assurances of the Permanent Secretary that other avenues would be explored with a view to expediting payment to the affected persons.

The matter was pursued through correspondence and constant dialogue with the officers of the Ministry of Legal Affairs and I am happy to report that some very satisfied printing operators have since informed me that they have now received full payment.

**Ref.OMB: 149/95**

## MINISTRY OF PUBLIC UTILITIES
### PORT AUTHORITY

In 1995 the complainant, a longshoreman employed by the Port Authority in Tobago, complained that he was experiencing difficulty in having a record of his service for the period 21st August, 1977 to 31st May, 1984, when he worked at the Port Authority in Trinidad transferred to the Port Authority in Tobago, where he had been employed since June, 1984.

Enquiries at the Port Authority revealed that the complainant had ceased reporting for duty at the Port in Trinidad with effect from June, 1984.

As he had not reported for duty for at least six (6) consecutive months after 31st May, 1984, he was considered as having abandoned his job.

The records at the Port in Tobago revealed that a worker with a similar name was given temporary employment in Tobago effective from 25th June, 1984.

Subsequent to the decision to consider him as having abandoned his job in Trinidad it became apparent that he was the same worker who had relocated himself to Tobago without the knowledge or consent of the Port Authority.

The General Manager of the Authority emphasized that because the complainant had relocated himself to Tobago, without the knowledge and consent of the Authority in Trinidad, he saw no justifiable reason why the decision taken to consider him as having abandoned his job should be altered.

As I considered that no fault in the administration of the Port Authority had arisen, I decided not to pursue the matter any further.

**Ref.OMB: 151/95**

On 21st February, 1995, the complainant, who was employed as a Linesman by the Port Authority in Tobago, complained that he was short paid wages in the sum of Four Thousand Dollars, ($4,000.00), for the period 7th December, 1996 to 27th March, 1988.

The General Manager, Port Authority of Trinidad and Tobago from whom I requested a report, advised that the research with respect to the complainant's claim was very involved and the issues raised affected other employees. The exercise, he stated, was inevitable.

Five (5) months later, the General Manager informed me that due to prohibitive cost, management was moving cautiously towards finalization of the matter.

I continued to pursue the matter and after several reminders I received the following reply in October, 1996:-

> ..... due to the prohibitive demands by the complainant the Union and Management are locked in delicate negotiations which are not held in a continuous manner .....

To date this matter remains unresolved.

## TRINIDAD AND TOBAGO ELECTRICITY COMMISSION

## ELECTRICAL INSPECTORATE

The complainant resided with her mother in a house in Tobago with the owner who died in January, 1995. Soon thereafter, the electricity supply to the premises was disconnected. Apparently there was a dispute between the occupants of the house and the son of the owner. At the time of the complaint, eviction proceedings were pending in Court against the occupants by the son who claimed ownership.

The complainant at her own expense had the premises re-wired and applied to the Electrical Inspectorate for a certificate so that the premises could be restored with electricity by the Trinidad and Tobago Electricity Commission.

The Electrical Inspectorate, however, received a letter from the son's attorneys requesting that the certificate should not be issued on the basis of Section 4 of the Electricity (Inspection) Act, which reads as follows:

> "4. On the **completion of a new installation the owner thereof** shall give notice in writing to the Chief Inspector ...".

The Electrical Inspectorate agreed with my interpretation of the Section that the reference was to the owner of the new installation and not to the owner of the premises and that the certificate was required not for the benefit of the owner of the premises but for the satisfaction of the Electricity Commission.

I have been advised that the certificate was issued and the complainant's electricity supply was restored.

**Ref. OMB: 1373/96**

The Complainant's home was destroyed by fire on the 16th November, 1994. He claimed that the fire started atop the electricity pole and spread along the wire leading to his home. On several occasions his neighbours had observed sparks on the pole and had telephoned the Commission's Offices. However, no action had been taken by the Commission.

At the inquest held to determine the cause of the fire, the coroner held that the Commission was negligent and laid the blame for the fire on the Commission.

The Commission's reply to my enquiries was in very ambiguous terms and to the following effect: the fire occurred on 16th November, 1994 but no claim was made to the Commission until 21st March, 1996. However, the matter was passed to their insurers. In what appeared to be gratuitous advice, the Commission advised that the Complainant could still file a writ in the hope that the Court would disallow the defence of 'statutory limitation'.

In a memorandum to the Chairman of the Commission, I pointed out that the Commission, as a public authority, was required by law to deal fairly with the citizens of the State and that it was not right to simply deny liability without making proper enquiry and raise defences which were only applicable in a Court of Law.

The matter is being pursued.

**Ref. OMB: 132/97**

The complainant lived alone in an apartment. Electricity was used mainly at nights since he was out at work during the day. His bills, based on minimal consumption, were usually at an average rate of eighty-five ($85.00) dollars per billing period comprising approxmiately two (2) months.

In 1996, he received a bill in the sum of two hundred and sixty-two dollars and twelve cents ($262.12) for the period March 3rd to April 26th, 1996 which included charges in the sum of one hundred and forty-five dollars ($145.00) plus V.A.T. for the reconnection of his electricity sypply which the Commission claimed was disconnected a year earlier - on May 16th, 1995.

The complainant contended that the service was never disconnected and therefore the charges imposed were invalid. On failure to pay this bill, his service was then disconnected.

On enquiring into the matter, I was informed by the Commission that the complainant's supply was disconnected for outstanding arrears of one hundred and eighty-four dollars and eight cents ($184.08) and that since the premises had been without a supply of electricity for over a period of three (3) months, it was required to be re-wired and a certificate of inspection obtained before electricity could be restored.

**Note: This case demonstrates the hardship and distress which consumers undergo, it seems, at the whims and fancies of the Commission's officers. Could not the officer who made this decision warn the complainant that if his bill was not paid within three (3) months, his premises may have to be rewired?**

**Ref. OMB: 850/95**

## PORT OF SPAIN CITY CORPORATION

The complainant, an elderly man, who lives on the Western Main Road, St. James in the City of Port of Spain complained that due to incessant loud noises emanating from a neighbouring business place due to a faulty compressor, his health and well-being were being affected. He stated that the compressor which was previously located on the eastern side of the building was removed to the western side abutting his premises.

The matter was referred to the Industrial Hygienist of the Ministry of Health, who conducted noise assessments at the complainant's premises and reported that the total noise level could produce adverse health effects depending on a person's susceptibility to noise and was, in fact, affecting the complainant's health.

The complaint and the Industrial Hygienist's report were submitted to the City Corporation under whose jurisdiction the complainant's premises fell.

At a meeting with senior personnel of the Public Health Department of the Corporation which was attended by the Senior Investigator of this Office and the complainant, it was disclosed that unauthorized alterations were made to the building in which the business was being carried on and that a public health nuisance was being created. The Corporation was proceeding to take legal action against the owner in order to have the situation remedied.

The occupier of the building wrote to me subsequently to inform me that he was in touch with the landlord who now lives in Canada and that he would take every step necessary to correct the problem.

The matter is being pursued.

**Ref. OMB: 751/96**

## MINISTRY OF WORKS AND TRANSPORT

The complainant was employed by the Ministry of Works and Transport for a period of 25 years as a daily paid employee until he retired in December, 1995. In July, 1996, he complained that he was experiencing difficulty in obtaining a retirement benefit from the National Insurance Board. He claimed that he had been employed continuously from 1960 to the date of his retirement in 1995. He was a contributor to the National Insurance Scheme from its inception and therefore entitled to a retirement pension.

My investigation of this complaint disclosed that the complainant was known to the National Insurance Board as A. W. but was claiming to be L. S. Records at the National Insurance Board showed contributions in respect of both names. Those in respect of A. W. ceased some time in 1977. Those for L. S. showed double payments from 1977 to 1983. Thereafter there were single payments. The National Insurance Board's records also indicated that L. S. died and his widow was in receipt of a Widow's Pension from the Board.

The complainant informed me that his name was originally A. W. but that he had changed it to L. S. in 1977. He insisted that from 1972 to 1995 he worked with the Special Works Division of the Ministry of Works now known as the Unemployment Relief Programme (URP). From my examination of the records of employment and deductions made from the complainant's salary at the Ministry of Works in respect of contributions to the National Insurance Scheme, I found the complainant's claim to be valid. The records at the National Insurance Board also indicated that contributions had been remitted to the Board on behalf of the complainant. The problem arose because L. S. bore one National Insurance number although two employers' registration numbers were attributed to him. It was obvious therefore that the records referred to two different persons with the same name. The complainant produced his birth certificate, although he was at first reluctant to do so, which proved that he was A. W. The National Insurance Board was satisfied that the complainant was entitled to a retirement pension which he is now receiving.

**Ref. OMB: 936/95**

## TOBAGO HOUSE OF ASSEMBLY - WORKS DIVISION

The complainant, a resident of Tobago, complained that during the construction of a highway by contractors employed by the Works Divison in 1994, her driveway and garage had been damaged. Despite assurances given to her by officials of the Tobago House of Assembly since that time that the driveway and garage would be re-constructed upon completion of the highway, nothing had been done. She had made several attempts to have the Works Division comply with the assurances given but without avail.

A memorandum from the Technical Officer of the Works Division dated 3rd June, 1996 elicited the reply that the complaint was legitimate but due to the lack of funds, nothing could be done until early 1997.

It appeared however, from a letter dated 23rd September, 1996 from the complainant that work had begun on the construction of her driveway and garage. However, the complainant now complains that due to faulty construction and the poor materials being used, the foundation of her dwelling house is being damaged.

The complainant's fears were brought to the attention of the Technical Officer, Works Division and the matter is being pursued.

# PART III

# APPENDICES

# REPORT ON THE COMMONWEALTH SECRETARIAT'S REGIONAL WORKSHOP ON ADMINISTRATIVE LAW

**by**

**Mr. Hugh Clarke, B.A. (Hons), M.A. Political Science**
**Executive Officer, Office of the Ombudsman**

The Commonwealth Secretariat's Regional Workshop on Administrative Law was successfully conducted from 29th July to 1st August, 1996 in Barbados.

The Workshop was part of a series that began in 1992 to carry forward the commitment of the Commonwealth Heads of Government made in the Harare Commonwealth Declaration of 1991 to promote good governance in their respective countries through support for and the strengthening of their democratic institutions. The Commonwealth Secretariat in Lusaka, Zambia organised a pilot workshop, and produced the Lusaka Statement of "Government under the Law," a statement endorsed as a guiding principle to be followed in work shops in other Commonwealth jurisdictions.

The participants represented members from the Caribbean Judiciary, University lecturers, Ombudsmen, Permanent Secretaries, Senior Public Officers, Representatives from the Caribbean Press, Human Rights Organisations and Non-Governmental Organisations. This diverse group provided enlightened discussions as they shared their experiences.

The Honourable Attorney General and Minister of Home Affairs of Barbados opened the Workshop. Some of the topics discussed were: What is administrative law? The impact of administrative law on Government; Judicial Review of Administrative action; other forms of Review; Role of Commissions; Tribunals and Inquiries; the Rules of Natural Justice and its application in Public Administration; the Review of Administrative Action; the Role of Judge in a Democratic State; Examination of the role of the legal profession; legal educators; the media and other professional groups in the operations of administrative law and in ensuring good governance; Human Rights and Administrative Law; law reform measures, (e.g. access to the Courts and lawyers).

Some of the speakers on the various topics were: Mr. Justice P. Nnaemeka-Agu, Professor Bradley, the Honourable Chief Justice Sir Denys Williams, Mr. Justice N. Liverpool, Mr. Justice E. Chase, Professor Carnegie and Mr. Justice M. Ibrahim.

Ms. Lawrence Laurent, Parliamentary Commissioner (Ombudsman), St. Lucia and myself gave enlightening insights on the role and functions of the Ombudsman in our respective countries.

These topics resulted in lively and informative discussions in which all participants shared their experiences. This no doubt provided a rich source of information for all.

The Workshop closed with a number of conclusions and recommendations being made. Some are stated here:

(1) Participants affirmed their belief in the central importance of administrative law in the conduct of government and the relevance of the Lusaka Statement on Government under the Law which was an overarching and constant point of reference throughout the workshop. They expressed their shared conviction that the Lusaka Statement provides a sound basis for promoting good administrative practices in the Caribbean region.

(2) Participants agreed that the members of the three arms of Government, namely Parliament, the Executive and the Judiciary together with the Public Service and the general public collectively have a duty to work together in promoting the objectives of the Lusaka Statement on Government under the Law and they committed themselves to playing their part in their respective posts and offices in promoting adherence to the principles of these objectives and in seeking to promote the realisation of just, honest, open and accountable government.

They noted that in recognising that the interests of the Government did not necessarily exhaust the interests of the State and its citizens, courts in the Caribbean region, in common with their counterparts in other regions of the Commonwealth, were showing increasing enterprise and vigour in exercising control over the exercise of executive power and thereby protecting the rights of the citizen against encroachment by the excesses of an overzealous executive.

(3) Participants discussed at length the essence of administrative law and the fundamental issues of just and honest government in this respect and the role of the courts in redressing the citizens grievances. They discussed ways in which public servants and political office holders should exercise discretionary powers and believed that there was an urgent need for the citizenry to be made fully aware of their rights and obligations under the law in order to be better able to prosecute those rights.

(4) In considering the element of fairness, the participants learned that this involved a number of factors to be taken into account when making decisions. This was acknowledged to imply that a decision maker must be satisfied as to the fact and all the circumstances when he is carrying out an investigation that if charges against any person were being contemplated, he should be informed of any allegations made against him; he should be given adequate opportunity to prepare his case and be allowed legal representation if required; that he should, in certain circumstances, have the opportunity of being examined by counsel of his choice and be given the opportunity of testing by cross-examination any evidence that might affect him.

(5) Participants discussed at length various aspects of the principle of natural justice which require a complainant to be given a fair hearing and agreed that there should be no limitations or exceptions to this requirement especially where this is conferred as a constitutional right.

(6) In the context of administration generally, participants agreed that there are many administrative situations where it behoves the decision maker to publicise an impending decision so as to give those who may be affected the opportunity of consultation before a decision is taken.

(7) Participants noted that although there was no universal rule as to the giving of reasons for decisions, all the trends were in favour of giving reasons. Although the Court may, in appropriate cases, order reasons to be given, fairness and common sense, and in some cases statutes such as the Administrative Justice Act of Barbados, require that reasons be given.

The justification for the giving of reasons, if any were required, is that when a decision is taken there must have been reasons for the decision. Such reasons should be capable of being made public so that if the reasons are untenable, then the decision should not have been taken and it is only when reasons are giventhat a reviewer can determine whether the action complained of, has been taken properly and judiciously.

(8) Participants, however, noted that disagreeing with a decision did not make it unreasonable, irrational or perverse and in the area of the exercise of discretion, they sought to emphasize that it should not be exercised capriciously. There was general agreement that discretionary action can only be seen as having been properly exercised only if relevant factors have been taken into account and irrelevant factors excluded. Arbitrariness has no place in a proper exercise of discretion and would be more likely to lead to injustice.

(9) In the context of the application of the principle of legitimate expectation, some concern was expressed as to the lack of appreciation of the rights of the employer and it was suggested that having regard to the resource implications of an unduly flexible interpretation of the principle of legitimate expectation, there was need to strike a proper balance between the rights of the employee and those of the employer, especially where there was evidence of sub-standard performance on the part of the employee.

(10) Participants were concerned that there was a gulf in language expression which had the effect of preventing a substantial number of people from having easy access to justice and agreed that it was the duty of the administration to educate the general public on their rights in a language that they can understand. They also agreed that lawyers had a role to play in educating the general public as to their legal rights and that they were failing professionally if large sections of the community remained ignorant of their legal rights.

(11) In focusing on other forms of review of administrative action in pursuit of administrative justice, participants noted, in particular, the important complementary role played by the Office of the Ombudsman, Human Rights Commission and similar bodies, in those jurisdictions both within the region and beyond where such institutions existed. Participants believed that such Offices as the Ombudsman with wide investigatory powers, operating as they do outside Government will often constitute potentially effective means for improving access to justice.

(12) Reference was also made to the growing popularity in the use of other mechanisms for the settlement of disputes, such as mediation and conciliation, which are referred to under the general title of Alternative Dispute Resolution (ADR). Subject to resource constraints, participants acknowledged these to be creative approaches.They were less expensive than the traditional legal mechanisms that they were worth being given consideration with a view to achieving a more effective delivery of legal services to citizens. Participants were impressed by the achievements of this method of settling disputes. In one Commonwealth jurisdiction where alternative methods of dispute resolution were widely used, as high as 80% of the cases referred to it were settled without the need to resort to the ordinary courts.

(13) Participants acknowledged the importance of a free press which can play a key role in a democracy by ensuring a free flow of information and the opportunity for an exchange of views. Journalists were key players in promoting a free press which was a major contributor to the development of a culture of democracy and good governance.

(14) There was acknowledgment of the contribution that Parliament and political parties have made to the development and practice of good administration and, in particular, there was recognition of the role that a responsible opposition political party can play in the development of a healthy democracy as well as recognition of the harm that can be caused by a wholly negative, destructive and irresponsible opposition political party.

## 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 and for his release if the detention is not lawful;

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

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

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

(i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;

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

(iii) to reasonable bail without just cause;

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

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

## EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO ACT NO. 4 OF 1976
## PART 2

## OMBUDSMAN

**Appointment and conditions of office**

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

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

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

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

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

**Appointment of staff of Ombudsman**

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

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

**Functions of Ombudsman**

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

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

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

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

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

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

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

(b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose revenues 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 a 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 provisions for the protection of fundamental rights).

95. In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to sections 93 and 94, act in his discretion and, in particular and without prejudice to the generality of this discretion, the Ombudsman may refuse to initiate or may discontinue an investigtion where it appears to him that - **Discretion of Ombudsman**

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

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

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

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

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

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

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

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

**Power to obtain Evidence**

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

giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as in the High Court.

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

**Prescribed matters concerning Ombudsman**

98. (1) Subject to subsection (2), Parliament may make provision -

(a) for regulating the procedure for the making of complaints and requests to the Ombudsman and for the exercise of the functions of the Ombudsman;

(b) for conferring such powers on the Ombudsman and imposing such duties on persons concerned as are necessary to facilitate the Ombudsman in the performance of his functions; and

(c) generally for giving effect to the provisions of this Part.

(2) The Ombudsman may not be empowered to summon a Minister or a Parliamentary Secretary to appear before him or to compel a Minister or a Parliamentary Secretary to answer any questions relating to any matter under investigation by the Ombudsman.

(3) The Ombudsman may not be empowered to summon any witness to produce any Cabinet papers or to give any confidential income tax information.

(4) No Complainant may be required to pay any fee in respect of his complaint or request or for any investigation to be made by the Ombudsman.

(5) No proceedings, civil or criminal, may lie against the Ombudsman, or against any person holding an office or appointment under him for anything he may do or report or say in the course of the exercise or intended exercise of the functions of the Ombudsman under this Constitution, unless it is shown that he acted in bad faith.

(6) The Ombudsman, and any person holding office or appointment under him may not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(7) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any enquiry by or proceedings before an Ombudsman under this Constitution is privileged in the same manner as if the enquiry or proceedings were proceedings in a Court.

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

## THIRD SCHEDULE
## MATTERS NOT SUBJECT TO INVESTIGATION

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

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

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

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

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

6. Any exercise of the power of pardon.

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

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

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

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

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

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

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

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

## LAWS OF TRINIDAD AND TOBAGO
## CHAPTER 2:52
## OMBUDSMAN ACT

**An Act to make privision 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 written law, 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 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 the 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 is 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 opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority to which section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate.

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

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

(7) For the purposes of section 93 (2) (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 the documents are in the custody or under the control of any department or authority.

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

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

(b) any Complainant; or

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

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

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

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

(6) No person shall be liable to prosecution for an offence against the Official Secrets Act, 1911 to 1939 of the United Kingdom, or any written law, other than this Act by reason of his compliance with any requirement of the Ombudsman under this section.

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

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

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

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

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

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

**Secrecy of information**

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

(a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any of the provisions of sections 93 and 96 of the Constitution, except that no disclosure made by any such person in proceedings for an offence under section 10, or under the Perjury Act and 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 exception to paragraph (a).

**Notice of entry on premises**

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

**Reports**

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

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

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

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

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

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

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

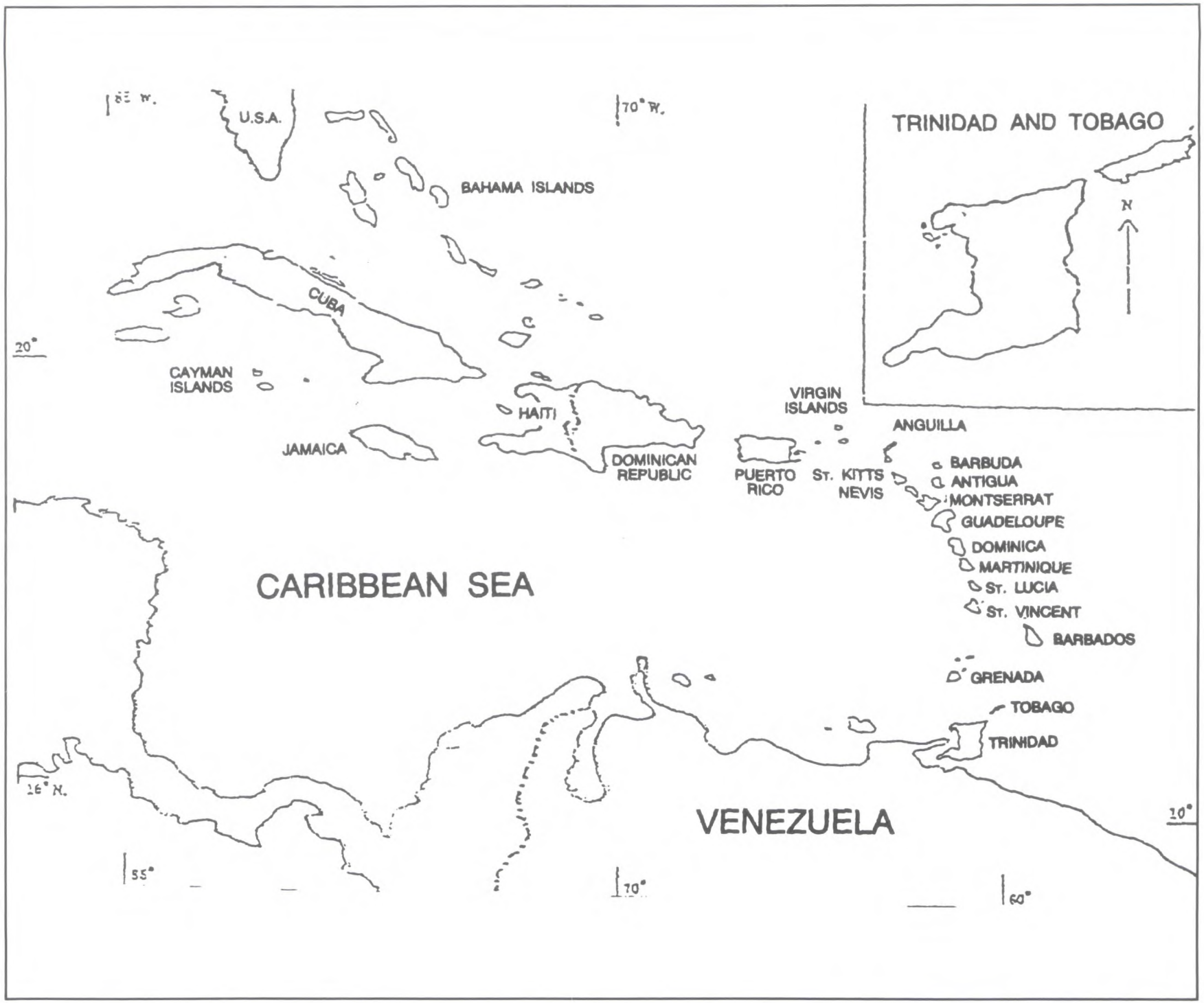
**Prescription of authorities subject to the Ombudsman's jurisdiction**

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

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

**Regulations**

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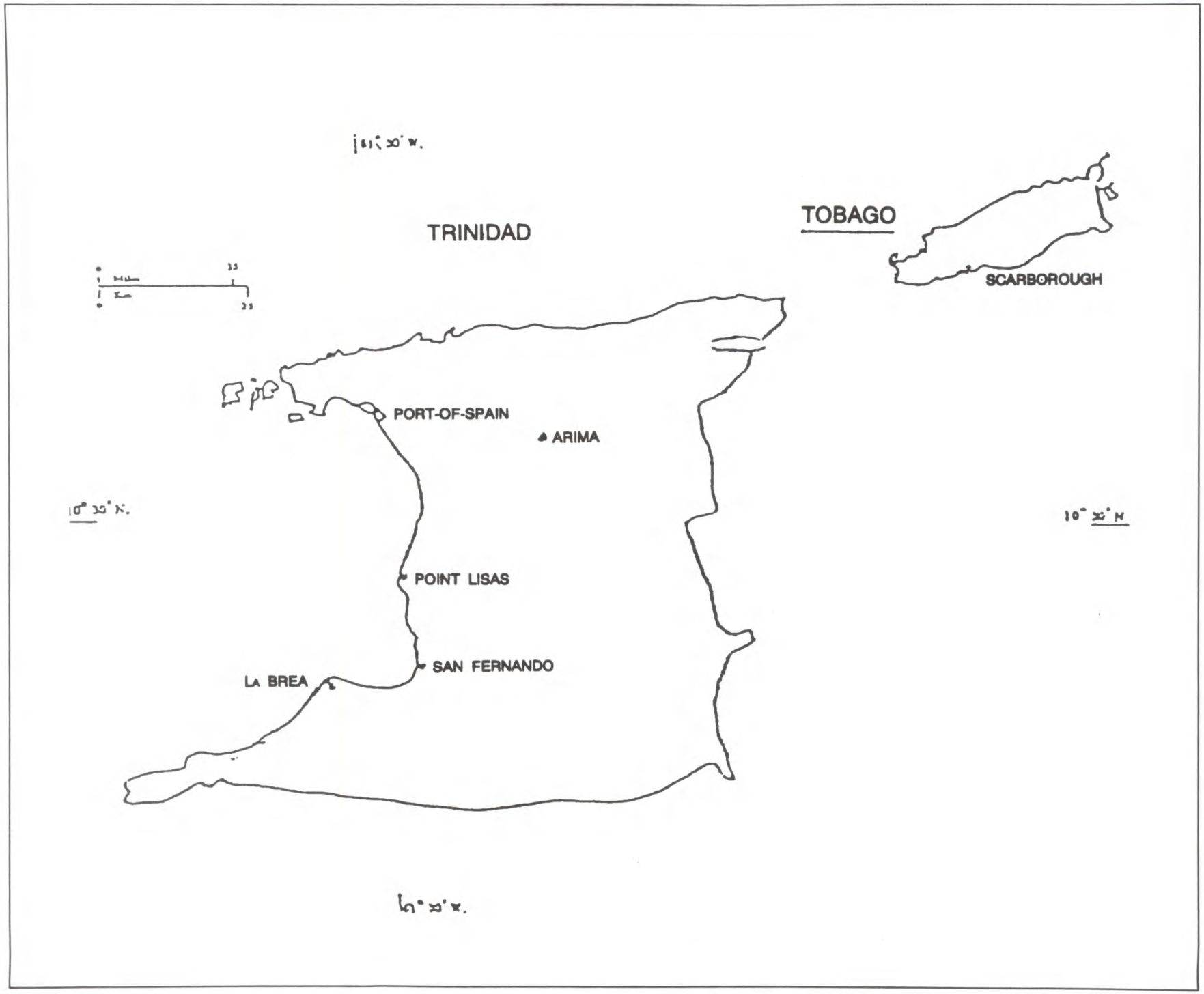
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