



The Republic of Trinidad and Tobago

The Ombudsman 20th

ANNUAL REPORT

**January 01, 1997 to
December 31, 1997**

**TTAR-OMB
W7**



Office of the Ombudsman of Trinidad and Tobago

*St. Ann's Avenue
St. Ann's
P.O. Box 886
Tel.: 624-3121-4
Fax: 625-0717*

27th July 1998

The Honourable Speaker
Parliament
Red House
St Vincent Street
PORT OF SPAIN



Dear Mr Speaker

I have the honour to present the Twentieth Annual Report of the Ombudsman for the period January 01, 1997 to December 31, 1997.

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

Yours faithfully

**George A Edoo
Ombudsman
Republic of Trinidad and Tobago**

TABLE OF CONTENTS

<i>PART I</i>	<i>GENERAL</i>	<i>PAGE</i>
	Status of Complaints Filed	2
	Delays	3-4
	Report of the Joint Select Committee of Parliament	5-6
	Trinidad and Tobago Electricity Commission	7-9
	Workshop “ Strengthening National Ombudsmen and Human Rights Institutions in the Caribbean ”	10-11
<i>PART II</i>	<i>AREAS OF CONCERN REVISITED</i>	
	Land Acquisition	13
	Deductions from Retired Officers’ Gratuity	14
	Oil and Water Board	14
	Remand Prisoners	15
	Blocking of Road Reserves	15-16
	Special Reserve Police	16
<i>PART III</i>	[1] STATISTICAL OVERVIEW	
	[2] SELECTED CASE SUMMARIES	
	Statistical Overview	18-22
	Ministry of Education	23-24
	Ministry of Finance	
	Comptroller of Accounts	24-25
	Inland Revenue Department	26
	Ministry of Health	27
	Public Health	28
	Ministry of Housing and Settlement	
	National Housing Authority	29-30
	Ministry of National Security	
	Immigration Department	30-31
	Police	31-32
	Fire Services Division	32-33
	Ministry of Public Utilities	
	Trinidad and Tobago Electricity Commission	33-34
	Water and Sewerage Authority	34-35
	Tobago House of Assembly	36
	Works Division	37-38
<i>PART III</i>	<i>APPENDICES</i>	
	[1] Types of Complaint and the Complaint Handling Process	40-45
	[2] Extracts from the Constitution	
	(a) Recognition and Protection of Fundamental Human Rights and Freedoms	46-48
	(b) Ombudsman Act - Part 2	48-54
	(c) Third Schedule	54-55
	[3] Ombudsman’s Act - Chapter 2:52	55-60
	[4] Map of Caribbean Area and South American Mainland	61
	[5] Map of the Republic of Trinidad and Tobago	62
	[6] Organisational Chart	63

PART I

GENERAL

STATUS OF COMPLAINTS FILED

In the Nineteenth Annual Report (January 01, 1996 to December 31, 1996) I reported that I had received a record number of complaints totalling 1,373 which represented the highest number of complaints received over the previous ten years.

For the year, 1997 (January 01, 1997 to December 31, 1997), I received a total of 1,276 complaints which ranks as the second highest number over the same period.

Of these, a substantial number of complaints were made against the public utilities viz:

Trinidad and Tobago Electricity Commission	90
Water and Sewerage Authority	81
Telecommunication Services of Trinidad and Tobago	19

Other complaints in order of priority were made against the following departments:

Ministry of Local Government	73
Ministry of National Security - Police Service	67
Ministry of Agriculture, Land and Marine Resources	54
Tobago House of Assembly	51
Ministry of Health	48

It is to be noted that there has been a substantial reduction in complaints against the Police which for the year 1996 totalled 103. No doubt, this is due to the fact of the establishment of the Police Complaints Authority.

Increase in complaints against the Trinidad and Tobago Electricity Commission arose as a result of its drive to collect retroactive payments for energy consumed in the past and its implementation of a billing policy which did not find favour with complainants.

The details of complaints received for the period January, 01, 1997 to December 31, 1997 are included in the Statistical Overview reported at page 18.

DELAY

Delay is the greatest single factor affecting the operation of the bureaucracy today and the main cause of the injustice resulting therefrom.

Soon after my assumption of Office, I referred to some of the causes which led to injustice. In my first annual report (The Ombudsman Fourteenth Annual Report, January 1, 1991 to December 31, 1991), I reported as follows:

“When I took up Office I was surprised at the number of complaints which had remained unresolved for a number of years mainly due to the fact of delay in replying to requests for information and in coming to decisions on simple issues of fact on the part of the department of Government or Authority concerned. Complaints which should take only a short time to be resolved, in many cases drag on for years ...”

“When a complaint is referred to a department of Government or to an authority, invariably at some stage it is referred to the department of the Solicitor-General or to the department’s or authority’s legal adviser. When a reply is eventually received, and this may be many months afterwards, it is usually to the effect that the department or authority is relying upon a legal defense. Invariably, this is so whether the department or authority admits or acknowledges fault or maladministration. In many cases too, bureaucratic delays are caused by a faulty system within the department or authority itself.”

The situation has not changed and persists to this day.

In the Seventeenth Annual Report, I referred ‘*inter alia*’ to some of the causes which gave rise to injustice viz:

- “6. Intolerable delay in arriving at decisions or in taking action necessary for the proper resolution of problems.
- 11. Intolerable delay in paying compensation where liability has been admitted for a wrongful act.”

The Reports are replete with matters which remain unresolved due to delay. The reasons as far as I can ascertain are mainly systemic viz:

- 1. There is no uniform system in dealing with correspondence. In some cases, although an acknowledgement may be forwarded to the sender stating that the matter is receiving attention, no action is taken despite constant reminders. In many cases, there is no reply to correspondence.

2. When it is decided that action be taken, the correspondence travels from one officer to another intradepartmentally and also interdepartmentally consuming much time in the process.
3. Much delay is caused also when files are misplaced or become unavailable.
4. Inability to deal with the matter results in the matter being shelved: constant reminders elicit the reply that the matter is receiving attention and a reply would be sent after certain enquiries are made.
5. There has grown up a practice of referring correspondence to different departments or agencies for advice or comment before a decision is made. This contributes to the delay.

It is evident, therefore, that there is need for improvement in the methods of dealing with correspondence and in the taking of decisions.

REPORT OF THE JOINT SELECT COMMITTEE OF PARLIAMENT

In the 18th Annual Report (for the period January 1, 1995 to December 31, 1995), I made reference to the Joint Select Committee of Parliament appointed to consider the 17th Annual Report of the Ombudsman and his functions and duties and to make recommendations for a more effective machinery for the Office of the Ombudsman so that Part II of Chapter 6 of the Constitution of the Republic of Trinidad and Tobago can be given effect.

The Report of the Committee has been published. The following recommendations have been made:

- a. That a fund, appropriately named, be established by the Cabinet under the Exchequer and Audit Act, and managed by the Treasury Division of the Ministry of Finance.
- b. That the fund operate as a revolving fund, perhaps not unlike the operations of the Advances Fund or the Contingency Fund.
- c. That initial financing of the Fund be made by way of Parliamentary Appropriation at the time of the 1998 Budget.
- d. That payments out of the Fund be made with respect to, and limited to, claims agreed by the Ombudsman and the relevant Ministries/Agencies.
- e. That payments out of the Fund be made on the request of the relevant Ministry/Agency and submission of the relevant documentation as agreed with and determined by the Treasury Division, and on the approval of the Ministry of Finance.
- f. That payments out of the Fund be recovered by the Ministry of Finance against the appropriate Vote of Expenditure of the relevant Ministry/Agency.

In conclusion, the Committee made the following observations:

The Office of the Ombudsman is a creature of the Constitution of the Republic of Trinidad and Tobago which came into effect in 1976. This institution has been well served by the incumbent and his predecessor and many of our less fortunate citizens have received some measure of justice and relief as a result of the creation of this unique office.

Unfortunately, over the years after initial “teething problems”, additional difficulties have emerged rendering the Office of the Ombudsman less effective than was originally envisaged. After very careful and deliberate consideration, your Committee is of the view that the major impediments in the system are purely administrative in nature. In recognition of this and in accordance with the philosophy behind the creation of the Office of the Ombudsman, the above recommendations are made by your Committee. It is therefore the fervent hope of your Committee that these recommendations will be accepted by Parliament and implemented with some degree of urgency.

[Parliament has not yet met to consider the Report]

TRINIDAD AND TOBAGO ELECTRICITY COMMISSION

The Public Utilities Commission by Order 80 which came into effect on 1st October, 1992, increased the rates to be payable for the supply of electrical energy. The application of these rates to the accounts of customers was so haphazardly applied that the accounts of many customers were not adjusted and there has been an on-going drive to collect retroactive payments.

Without warning, customers were notified overnight that they owed enormous sums in respect of consumption of energy used in the past and they were co-erced into signing "agreements" containing harsh terms.

As a result of numerous complaints, the Commission formulated a billing policy on 28th August, 1996, apparently intended for internal use.

For the period 28th August, 1996 when the policy was implemented to the 26th March, 1998, I received 178 complaints, most of which were in respect of retroactive billing.

As a basis for the imposition of retroactive billing, the Policy Statement provides as follows:

3.1 Commission Culpable

In circumstances where the Commission is deemed culpable, retroactivity will be limited to a period of one year immediately preceding the date on which the customer was first notified of the need for retroactive billing. The Commission would generally be considered culpable in the following instances:-

- Account previously billed on incorrect constant.
- Meter stopped or malfunctioning for reasons other than tampering by person or persons known or unknown.
- Meter readings originally used for billing subsequently found to be incorrect.

3.2 Commission Not Culpable

There shall be no retroactivity limit where the need for the retroactive billing can be traced to actions by the customer or his agents which knowingly or unknowingly, compromised or circumvented the Commission's metering and or billing system.

The Commission would generally be considered not culpable in the following situations:-

Inaccessibility of the meter whether for the purpose of reading, repair, inspection, replacement, disconnection or otherwise in spite of written requests by the Commission to make same accessible.

Inaccessibility in this context is defined as any situation where a meter is not on the front face of the premises and/or access cannot be gained without undue risk to personnel of the Utility.

- **Tampering with the installation.**

This unilateral concept of culpability when applied by the Commercial Officers of the Commission results in adverse consequences to the customer as the policy is not evenly applied. If a customer is deemed culpable, there is no limit to retroactive billing. Customers have been billed for four years and more depending on a commercial officer's view as to the customer's culpability.

The same applies where a commercial officer deems that there has been a tampering with the meter. This has been stated in paragraph 3.2 as 'Tampering with the installation.' A finding of tampering is usually based on very slender evidence such as the hearsay evidence of a meter-reader. The customer is accused of committing a criminal offence which, if not true, can give rise to an action for defamation.

No account is taken of Section 72 of the Trinidad and Tobago Electricity Commission Act Ch. 54:70 ("the Act") which provides for the prosecution of the offender. Rather, if the customer is deemed culpable by the Commercial Officer, he is retroactively billed for four years or more.

There can be little doubt that the meters of many customers are inaccessible through no fault of their own. In the first place, the meters were installed by the Commission itself in locations which made them inaccessible to their meter readers. This situation has existed for very many years and it is illogical and unjustifiable for the Commission to now lay blame on hapless customers in their bid to recover retroactive payments.

It is common knowledge that the houses of many customers are closed throughout the day while the occupants are out to work or at school. No attempt is being made as stipulated in paragraph 3.2 of the policy statement to notify customers in writing or otherwise to make their premises accessible to the meter reader. In all the complaints which I have received and in which customers have been billed for four years or more, no such written requests were made. Rather, customers are billed retroactively merely on the report of the meter reader that access could not be gained to the premises.

This state of affairs exists particularly in the South, where many accounts have been billed retroactively for four years merely on the report of the meter reader that access to the premises could not be gained. No attempt was made to contact the occupants either by telephone or in writing as stipulated in paragraph 3.2 of the Policy Statement and no attempt was made to fix a date and time when the meter reader would be available.

I have recommended to the Commission and to the authorities that the Commission's retroactive billing should be limited to one year in all cases in accordance with their policy statement but this has not found favour with the Commission.

The Commission insists that it is entitled by law to retroactive payments for a period of four years in all cases although this question is far from settled.

I have since drawn the attention of the authorities to the provisions of Section 5 of the Act which reads as follows:

- 1. The President may give the Commission directions of a general character on the policy to be followed in the exercise of the powers conferred and the duties imposed on the Commission by or under this Act in relation to matters that appear to the President to affect the public interests of Trinidad and Tobago.**
- 2. The Commission shall, as soon as practicable, give effect to all directions issued pursuant to subsection (1).**

The clear implication of this provision is that rules and regulations which have statutory effect should be enacted in order that the public interest would be protected in all cases where there is conflict.

**WORKSHOP: “STRENGTHENING NATIONAL OMBUDSMAN AND
HUMAN RIGHTS INSTITUTIONS IN THE CARIBBEAN”**

The Workshop entitled "Strengthening National Ombudsman and Human Rights Institutions in the Caribbean" was organised by the Commonwealth Secretariat in collaboration with the Office of the Ombudsman of Antigua and Barbuda and the International Ombudsman Institute. It was held from 9th to 12th March, 1998, in Saint John's, and included representatives from Antigua and Barbuda, Guyana, Haiti, Saint Lucia, Trinidad and Tobago, Argentina, Pakistan, Peru, South Africa, Ontario and Quebec. Also present were officials from the Office of the Ombudsman of Jamaica and Trinidad and Tobago, representatives from the Governments of St. Kitts and Nevis, and the Commonwealth of Dominica, as well as representatives and officials from the International Ombudsman Institute (IOI), the International Labour Organisation (ILO), the Organisation of American States (OAS), the Inter-American Commission of Human Rights, the Human Rights Commission of Bermuda, the Canada Human Rights Commission, the CARICOM Secretariat, the Caribbean Human Rights Network and the Commonwealth Secretariat in London.

The topics discussed included the development of the institutions in the Caribbean and around the world, their role and jurisdiction, methods of investigation, privatisation of public services and management problems of Ombudsman and Human Rights Institutions. Working groups also discussed staff training, funding strategies, cooperation with related organisations, improving public access to the Ombudsman and the establishment of new Institutions.

The Workshop recommended in the Antigua and Barbuda Resolution the following:

1. That the Heads of Government recognise the existence and meaningful role of Ombudsman and Human Rights' Institutions in the enhancement of good governance and democracy and that encouragement be given to countries to establish such institutions where they do not exist.
2. That a regional association be formed to encourage networking and collaboration among members.
3. That the Ombudsman and Human Rights Institutions be provided with the necessary financial, human, and physical resources to carry out their work.
4. That the independence and autonomy of the Ombudsman and Human Rights' Institutions be maintained.

5. That the Institutions remain vigilant in the face of changing situations, especially that of the privatisation of public services institutions.
6. That the management capability of the institutions be strengthened.
7. That a workshop to continue regional collaboration be held within the next two years in Saint Lucia or Bermuda.

Also the Antigua and Barbuda Declaration was adopted, and there the establishment of the Caribbean Ombudsman Association was agreed. Therefore, an Interim Committee was appointed, comprising Dr. Hayden Thomas, Ombudsman of Antigua and Barbuda as Interim President; Mr. Justice George Edoo, Ombudsman of Trinidad and Tobago as Interim Vice President; and Mrs. Lawrence Laurent, Parliamentary Commissioner, Saint Lucia as Interim Secretary/Treasurer.

*Excerpted from the Bulletin of the Latin American and Caribbean Chapter
of the International Ombudsman Institute (909)*

I was accompanied to the above-mentioned workshop by Ms. Joy Henry and Mrs. Yvette Hall, Senior Investigator and Investigator, respectively. I presented a paper entitled “**Types of Complaints and the Complaint Handling Process**” which forms an appendix to this Report.

PART II

*AREAS OF CONCERN
REVISITED*

AREAS OF CONCERN REVISITED

Since my assumption of the Office of the Ombudsman in 1991, I have been reporting on a number of matters which were of concern not only to specific complainants but to the general public as well. This report seeks to update the results of my investigations and recommendations and to refer to developments which have taken place since those matters were reported.

Land Acquisition

Complaints with respect to the acquisition of land by Government for public purposes and the payment of compensation therefor were first reported by me in the Fourteenth Annual Report (January 1 to December 31, 1991). It had been the subject of complaints by my predecessor in his reports for previous years.

The problems as I pointed out in the Fourteenth Annual Report, arose as a result of the involvement of a number of agencies in which, it appears, there has been little effective coordination. These agencies are: the Lands and Surveys Department, the Ministry of Planning and Development, the Chief State Solicitor and the Valuations Division of the Ministry of Finance. In addition, other departments were involved when they required land for the carrying out of public purposes.

Other factors have contributed to the delay and the consequent injustice suffered by complainants viz:

- a shortage of trained and experienced staff, particularly land surveyors
- inability of complainants to produce evidence of title and the burden being placed upon the Chief State Solicitor in this regard
- unavailability of proper records
- a lack of sensitivity on the part of the officers involved in the acquisition process.

In the Fourteenth Annual Report, I referred to a complaint in which the procedure from the time of acquisition to time of settlement took over sixteen (16) years. By that time, the complainant had died.

To date there are fifteen (15) matters which have not been settled.

Deductions from Retired Officers* Gratuity

Complaints of this nature had first been reported in the Fourteenth Annual Report (January 1, 1991 to December 31, 1991). As a result of complaints of a similar nature in ensuing years these matters had been reported in Annual Reports for those years.

Complaints concerned the deduction from retired officers' gratuities of overpayment and wrongful payments of salary incurred in the main as a result of the payment of increments which were not due extending for as long as twenty years in some cases prior to the officers' retirement.

It appears that the State is entitled to recover these overpayments and wrongful payments by law since the Limitation Act, 1981 which limits recovery to four years preceding the claim for recovery, has not been proclaimed.

However, in many cases where no fault was attributed to the officer concerned and the circumstances in which the debt was incurred made it unjust to recover it, the debt was written off with the approval of Cabinet and this trend continues to the present day. It seems that a proclamation of the Limitation Act, 1981 or an amendment of the law limiting recovery to a specific period of time is necessary if justice is to be meted out to payees to whom money is paid out and accepted by them in good faith.

A review of the accounting practice is required also as it appears that overpayments and wrongful payments are only discovered at the time of the preparation of the pension and leave record of an officer prior to his retirement.

Oil and Water Board

In the Fourteenth Annual Report (January 1, to December 31, 1991), I referred to a number of complaints which I had received with respect to damage to property, crops and livestock as a result of pollution caused by the operations of oil companies in the southern region of the Country. Prior to the enactment of the Petroleum Act, Ch. 62:01 in 1969, an Oil and Water Board which had exclusive jurisdiction to deal with such matters was appointed under the Oil and Water Board Ordinance. The High Court had declined jurisdiction in these matters. This Ordinance had been repealed by the Petroleum Act under which provision had been made for the enactment of Regulations for the carrying out of the purposes of the Act, inter alia, - *(j) for the prevention of pollution of land, water or air and for compensation therefor.*"

Regulations were made in the month of May, 1997 titled "*The Petroleum (Pollution Compensation) Regulations, 1997*" (Legal Notice No 134). It provides for the investigation of such complaints, for the filing of reports with the Minister of Energy and for the payment of compensation.

Remand Prisoners

In the Fourteenth Annual Report (January 1, to December 31, 1991), I reported that I had been in receipt of numerous complaints from prisoners who had been on remand at the State Prisons for considerable lengths of time. They complained that they were either not being provided with transport to attend court on the dates their matters were set down for hearing or were not being given dates of remand. Complaints were also made that after they were remanded for trial at the Assizes there was delay in bringing them up for trial.

The transportation issue has been resolved. Amalgamated Security Services Limited, a private firm, was awarded a contract on 1st November, 1996 to transport prisoners to and from court. As a result, I no longer receive complaints of this nature.

With respect to the delay in obtaining trial dates, I have to report that this matter remains unresolved. I continue to receive numerous complaints from prisoners on remand who have been seeking my assistance in obtaining early dates for the hearing of their matters.

These matters are exclusively under the control and jurisdiction of the Judiciary. Such complaints are, however, investigated to a limited extent and referred to the Judiciary.

Blocking of Road Reserves

In the Seventeenth Annual Report (January 1, 1994 to December 31, 1994) I referred to the illegal blockage of road reserves and established roads and traces by residents and others whose land abut on such reserves, roads and traces. I highlighted two (2) cases in which the complainants had been experiencing difficulty in gaining access to their properties as a result of the blockage of road reserves. Not only were the complainants affected by the indiscriminate acts of others but the general public also were affected.

In Case 1, the Penal/Debe Regional Corporation has commenced the construction of an access road to the complainant's home along Ramkalliah Trace, Barrackpore. The obstructions along Ramkalliah Trace have been removed with the exception of two large trees which are in the process of being removed. This complaint had been outstanding for more than ten (10) years.

With respect to Case II which concerns the obstruction of Deonarine Avenue off the Naparima-Mayaro Road, Palmyra, an occupier or owner of land which abuts the road reserve had extended his dwelling house across the road reserve effectively blocking access to a number of tenants of Caroni Limited who cultivated agricultural lands beyond the blockage. This complaint had been made since 1988.

There has been a further development in the matter as the occupier has brought an action in the High Court claiming 'inter alia' that he is entitled to remain in undisturbed possession. It appears that the Princes Town Regional Corporation had given him planning permission and are collecting house and water rates from him.

I have intimated to the authorities that if the court action were to run its course, Deonarine Avenue would remain blocked for a considerable period of time, causing hardship and loss to those who have a legitimate right to use the roadway. The situation has become more urgent since there is no availability for the provision of an alternative way.

At a meeting held with the complainants at which the Permanent Secretary, Legal Officer of the Ministry and the occupier were present, it was intimated to the occupier that notwithstanding the court action, the State can acquire for public purposes the land which he has occupied. The occupier was amenable to the payment of compensation and/or relocation.

I have since taken up the matter with the Attorney General intimating to him that in the interest of all concerned, it is desirable that this course of action be adopted so that the complainants and the general public would have early access to the roadway.

Special Reserve Police

In the Eighteenth Annual Report (January 1, 1995 to December 31, 1995) I reported the difficulty experienced by retired Special Reserve policemen who worked on a "temporary whole-time basis" in receiving retirement benefits.

It was highlighted in that report that there were no regulations governing the terms and conditions of employment of Special Reserve policemen who were used on a "whole-time basis" and who were required to perform duties similar to those performed by regular policemen.

In 1992 Cabinet requested the Minister of National Security to pursue with the Chief Personnel Officer the regularisation of their conditions with specific reference to the payment of superannuation benefits.

Five (5) years have since elapsed and the issue regarding their security of tenure and eligibility for retirement benefits has not been settled.

However, it has been the practice to refer such matters to Cabinet for the payment of "a compassionate gratuity not exceeding twelve days pay for each year of his service under the Government" in accordance with Section 14 of the Pension Regulations Chap. 23:52.

This practice is continuing but is subject to much delay.

PART III

*1. STATISTICAL
OVERVIEW*

*2. SELECTED
CASE CASE
SUMMARIES*

STATISTICAL OVERVIEW

A total of 1267 new complaints were received in 1997; of these 240 or 19% were made against private organizations. In all instances where complaints were made against private organizations I referred the complaint to the relevant authorities or agencies or advised complainants on the proper course of action to be followed in having these complaints resolved.

I commenced investigation on the 1027 complaints which fell within my jurisdiction. This represents 81 % of the new complaints received. At the end of the year, investigation on 496 or 48% of these complaints had been concluded. A total of 531 or 52% remained under investigation.

Table I shows the number of new complaints which were received during the period under review and the manner of their disposal.

TABLE I
STATISTICS ON NEW COMPLAINTS RECEIVED
DURING THE PERIOD JAN-DEC 1997

Total number of complaints received	1266	%
Total number of complaints against Private Institutions	241	19
Total number of complaints proceeded with	1027	81
Total number of complaints concluded	496	48
Sustained/Rectified	130	13
Not Sustained	74	7
Withdrawn/D iscontinued	36	4
Advised/Referred	255	25
Total number under investigation	531	52

This year's statistics show a slight reduction in the number of new complaints when compared to last year's figure. As I had reported in the previous year's report that figure was the highest number received in the proceeding 10 year period. This phenomenal increase was attributed to the increases in the number of complaints made against the Trinidad and Tobago Electricity Commission and the Water and Sewerage Authority. The number of new complaints recorded against these two agencies has remained high.

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? Referrec	Undet Investigator
1. Dental Council of Trinidad & Tobago	1	0	0	0	0	1
2. Elections & Boundaries Commission	1	0	0	0	1	0
3. Judiciary	39	4	1	2	18	14
4. Magistracy	18	2	0	2	7	7
5. Maha Sabha Board	1	0	0	0	0	1
6. Medical Board of Trinidad and Tobago	1	0	1	0	0	0
7. Ministry of Agriculture, Land & Marine Resources	54	3	1	1	4	45
Caroni (1975) Ltd	5	0	0	0	1	4
8. Ministry of the Attorney General	18	2	0	1	4	11
9. Ministry of Community Development, Culture & Women's Affairs	3	0	0	0	1	2
10. Ministry of Consumer Affairs	1	0	0	0	1	0
11. Ministry of Education	20	2	0	4	5	9
12. Ministry of Energy and Energy Industries	1	0	0	0	0	1
13. Ministry of Finance T.I.D.C.O.	49	7	3	2	9	28
14. Ministry of Foreign Affairs	1	1	0	0	0	0
15. Ministry of Health	1	0	0	0	1	0
16. Ministry of Housing & Settlements	48	7	4	2	14	21
17. Ministry of Labour & Co-operatives	30	2	0	0	8	20
Cipriani Labour College	35	2	2	0	6	25
18. Ministry of Legal Affairs	1	0	0	0	1	0
19. Ministry of Local Government	7	0	0	1	4	2
20. Ministry of National Security	73	5	17	2	10	39
Civilian Conservation Corps	7	0	1	0	4	2
Defence Force	1	0	0	0	0	1
Fire Services	5	1	0	0	4	0
Immigration	12	1	0	1	2	8
Police	7	0	0	0	5	2
Rison	67	10	2	3	27	25
	105	6	10	2	34	53

Ministry /Authority/ Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
21. Ministry of Planning & Development	11	0	1	0	0	10
22. Ministry of Public Utilities	1	0	0	0	0	1
Postal Services	4	1	1	0	0	2
T.S.T.T.	19	8	2	0	4	5
T.&T.E.C.	90	25	2	6	15	42
W.A.SA	81	16	4	2	3	56
23. Ministry of Social Development	41	11	7	1	14	8
24. Ministry of Sport & Youth Affairs	1	0	1	0	0	0
25. Ministry of Trade & Industry	2	0	0	0	0	2
Trinidad & Tobago Racing Authority	2	0	1	0	0	1
26. Ministry of Works & Transport	41	4	6	1	8	22
Airports Authority	3	1	0	0	1	1
Maintenance Training & Security Co.	1	1	0	0	0	0
Public Transport Sendee Corporation	7	0	1	0	3	3
27. National Flour Mills	5	0	2	0	3	0
28. National Gas Company	1	0	0	0	1	0
29. National Insurance Board	20	3	0	1	9	7
30. Office of the Prime Minister	2	0	0	0	0	2
31. Petrotrin	2	0	0	1	1	0
32. P.L.I.P.D.E.C.O.	1	0	0	0	1	0
33. Port Authority	8	1	1	0	6	0
34. Presbyterian Board	1	0	0	0	0	1
35. Sendee Commissions Department	18	1	1	1	13	2
36. Statutory Authorities Service Commission	1	0	0	0	1	0
37. Tobago House of Assembly	51	3	2	0	1	45
TOTAL	1026	130	74	36	255	531
Private	241					
Grand Total	1267					

Some notable changes have been observed in the distribution of complaints this year. The complaints against the Police Service have been significantly reduced due in large measure to the establishment of the Police Complaints Authority. Further increases have however been noted in the number of complaints received against those departments that recorded the highest figures last year. These departments/agencies are: Ministry of Agriculture, Land and Marine Resources, Ministry of Finance, Ministry of Labour and Co operatives, Ministry of Local Government, Tobago House of Assembly and the Judiciary.

There was a greater number of complaints closed this year when compared to last year. The number of new complaints closed was 49% as compared to 39% in the previous year.

TABLE III
MINISTRIES/DEPARTMENTS WHICH RECORDED HIGHEST NUMBER
OF COMPLAINTS FOR 1996 & 1997 AND THE NUMBERS CONCLUDED

MINISTRIES/DEPARTMENTS	1996		MINISTRIES/DEPARTMENTS	1997	
	NO. OF COMPLAINTS RECD	NO. CONCLUDED		NO. OF COMPLAINTS RECD	NO. CONCLUDED
Agriculture	39	8	Agriculture	54	9
Finance	43	16	Finance	49	21
Health	51	15	Health	48	27
Local Government	55	13	Local Government	73	34
National Security (Police, Prison)	237	114	National Security (Police, Prison)	172	94
Public Utilities (T&TEC, TSTT)	179	57	Public Utilities (T&TEC, WSA, TSTT)	190	87
Social Development	51	26	Social Development	41	33
Tobago House of Assembly	38	8	Tobago House of Assembly	51	6
Works & Transport	46	10	Works & Transport	41	19

Table III shows the nine Ministries/agencies which recorded the largest number of complaints during the previous year as compared with the period under review and the number which remained under investigation at the end of the year.

In addition to the new complaints received this year, 715 were brought forward from preceding years. Of the 715 complaints brought forward, investigations on 350 were concluded while 365 remained under investigation at the end of the year.

TABLE IV
SATATISTICS ON COMPLAINTS BROUGHT FORWARD FROM PRECEDING
YEARS

Total number of complaints brought forward from previous years		715
Total number of complaints concluded		350
Sustained/Rectified	140	
Not Sustained	81	
Withdrawn/D iscontinued	22	
Advised/Referred	107	
Number of complaints still under investigation		365

The total work load of the office for this year was 1742, that is the number of new complaints received plus those brought forward from the 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	715	
Total number of complaints received in 1997	1266	
Total	1982	
Total number of complaints without jurisdiction	24	1296
Total number of complaints proceeded with	1741	8896
Total number of complaints concluded	845	49%
Sustained/Rectified	270	16%
Not Sustained	155	9%
Withdrawn/D iscontinued	58	3%
Advised/Referred	362	21%
Total number of complaints under investigation	896	51%

Ref. OMB: 300/97

MINISTRY OF EDUCATION

The complainant entered the Teaching Service in 1964 and was employed as a Teacher II by a denominational board. In 1981, she was seconded to the National Council for Technology in Development (NCTD), Caribbean Industrial Research Institute (CARIRI) for a period of two years which was further extended for another period of two years. By letter dated 31st January, 1985, three months before the expiration of her second period of secondment, she was required by the Ministry to elect either to resume her duties in the Teaching Service at the end of such period or to resign and continue in the employ of NCTD.

In response, the complainant requested a transfer from the Teaching Service to NCTD on the completion of the second period of her secondment. The Ministry refused her request and called upon her to resign if she wished to continue in her employment with NCTD. The refusal was based on the position that there was no enabling legislation to preserve her rights to retirement benefits as a result of her transfer from the Teaching Service to NCTD. This question was, however, far from settled.

The complainant continued in her employment with NCTD pending the settlement of this issue. There was, however, a precedent set by the transfer of two teachers to NCTD and a preservation of their rights to retirement benefits.

It was noted that the complainant was erroneously informed by the Ministry that approval had been conveyed for extension of her secondment when she had been granted leave of absence without pay by Cabinet. Had she been so informed, she would have sought to preserve her service in the Teaching Service. In fact correspondence which passed between herself and the Ministry revealed that the whole state of affairs was brought about due to the fault of the Ministry.

It was recommended to the Ministry that in view of the misinformation conveyed to the complainant and in the light of the precedent set in two cases in similar circumstances, that Cabinet's approval be obtained in order to preserve her twenty five (25) years of service in the Teaching Service and with NCTD by deeming that she had retired at the age of fifty (50) years and entitled to retirement benefits. The matter is being pursued.

Ref. OMB: 702/95

The complainant was employed as a temporary Teacher II at a denominational secondary school for the period 11th September, 1972 to 8th September, 1974 when he left for the purpose of furthering his education. Subsequently, he resumed his duties at the same school and was continuously employed until he retired on the 5th May, 1995.

The reason for relinquishing his temporary appointment on 8th September, 1974 and not at a later date was to accommodate the appointment of a teacher in his place at the beginning of the new school term which began on 8th September, 1974.

Section 5(6) of the Law Reform (Pensions) Act, No. 20 of 1997, provides for the linking for pension purposes of the service of a person who completes at any time in the Public Service a period of not less than two years of unbroken service in a pensionable office.

The previous two (2) years of service performed by the complainant fell short of the two (2) year statutory period by two days.

At a meeting held with the representatives of the Ministry of Education, the Treasury and Personnel Department, it was agreed that it was unfair to deprive the complainant of the two (2) year period in the computation of his retirement benefits and that Cabinet's approval be obtained in order to increase his period of service by two (2) years. The matter is being pursued.

Ref. OMB: 342/97

MINISTRY OF FINANCE
Comptroller of Accounts

A retired Inspector of Police complained to me that her three (3) years of service as a student nurse prior to her enlistment in the Police Service was not counted for pension purposes.

The complainant entered the Public Service as a student nurse on 21st February, 1954 and before graduating was enlisted in the Police Service on 1st April, 1957.

Sometime after her enlistment in the Police Service, the then Acting Chief Secretary made a recommendation and gave her the assurance that the period of her service as a student nurse would be allowed to count for pension purposes.

She retired on 3rd July, 1987 having completed thirty (30) years of service with the expectation that the Acting Chief Secretary's recommendation would have been honoured.

The Comptroller of Accounts stated that the linking of the period of service as a student nurse with service as a police officer could not be effected within the provisions of the existing legislation and therefore he did not support the enactment of special legislation in that regard as it would create an undesirable precedent, since other officers in the protective services might be similarly circumstanced.

In an opinion given by the Solicitor General to the Permanent Secretary, Ministry of National Security, the advice was given that legislation at the time the assurance was given did not support the interpretation given by the Acting Chief Secretary.

In light of the opinions of the Comptroller of Accounts and the Solicitor General, it appeared that the complainant had suffered an injustice which ought to have been remedied.

Section 5(6) of the Law Reform (Pensions) Act No. 20 of 1997, provides for the linking for pension purposes of the service of a person who completes at any time in the Public Service a period of not less than two (2) years of unbroken service in a pensionable office.

It should be noted that even though the post of Student Nurse is not a pensionable post, nurses on their retirement have their years of service as a student nurse counted for pension purposes.

In addition, the reason why the complainant retired before she had completed her full pensionable service was on account of her reliance on the assurance given by the then Chief Secretary that her three (3) years as a student nurse would have been taken into consideration in the computation of her retirement benefits.

I subsequently met with representatives of the Ministry of National Security, the Comptroller of Accounts and the Director of Pensions and it was agreed that Cabinet's approval be obtained in order that the complainant's three (3) years of service as a student nurse be counted for pension purposes.

Ref. OMB: 456/96

Inland Revenue Department

The complainant was recruited from Canada to lecture in the Faculty of Medicine, University of the West Indies, Mt. Hope for a period of two (2) years from 8th October, 1988 to October, 1990. In accordance with Article 14 of the Double Taxation Relief (Canada) Order 1966 he was exempt from the payment of taxes for this period. He was, however, unaware that he was entitled to this exemption and income tax was deducted from his salary and paid into the Inland Revenue Department

He subsequently made representations to the Board of Inland Revenue to obtain a refund of the taxes paid. The Board in its letter dated 17th December, 1990 acknowledged that he was entitled to exemption from Trinidad and Tobago taxes in his remuneration. He was refunded the tax due for the 1989 income year but did not receive refunds for the years 1988 and 1990 and had been making futile attempts to obtain such refunds. By the time he brought his complaint to me in May, 1996, he had retired. He had suffered great inconvenience by the delay since the amount involved was a substantial sum. He claimed interest on the amount due.

I brought the matter to the attention of the Board and he was subsequently refunded the taxes paid in 1988 and 1990.

As far as the interest was concerned, I was advised that Section 92 of the Income Tax Act provided for the payment of interest where the refund is as a result of an overpayment of taxes made in accordance with Sections 79 and 82 of the Act. Section 79 refers to taxes paid by instalments i.e. quarterly taxes whilst Section 82 refers to taxes paid on behalf of others. In view of the fact that the complainant's refunds did not arise from overpayments under Section 79 or 82 interest could not be paid.

This advice was conveyed to the complainant.

NOTE: There have been many complaints about the delay in obtaining refunds of income tax. Of much concern is the fact that whereas interest becomes due at the rate of 15% per annum on tax due, the Board is not liable to pay interest on refunds, no matter how long refunds have been outstanding.

Ref. OMB: 144/97

MINISTRY OF HEALTH

The complainant, a retired seamstress, who was employed with the Ministry of Health, sought my assistance with respect to the quantum of terminal benefits due to her.

She stated that she had been employed at the Ministry from 1961 to 1995, a period of thirty-four (34) years. Upon retirement, she was paid a pension and gratuity on the basis of twenty-five (25) years of her service. When she queried the reason for the payment of reduced benefits, she was told that her period of service from 1961 to 1970 was not reckonable for pension purposes. In addition, she was advised that two (2) months service had been classified as extended sick leave without pay. She claimed no knowledge of any such period of sick leave.

In response to my letter of enquiry, I was informed by the department that the period of service from 1961 to 1970 had been classified as temporary service in a leave relief capacity which could not be reckoned for pension purposes. The Ministry's records showed that the periods 21st July to 16th August, 1964 (27) days and 17th November, 1965 to 16th January, 1966 (61 days) were classified as half pay maternity leave.

Following my intervention in the matter, the Ministry wrote the Comptroller of Accounts to point out that in light of the complainant's continuous service from 1961, the computation of her retirement benefits ought to have been reviewed in accordance with the provisions of Section 5(6) of Act No.20 of 1997 which reads as follows:-

“(6) Where a person completes at any time in the Public Service a period of not less than two years of unbroken service in a pensionable office under a pension law -

- (a) without being confirmed therein; or
- (b) in a temporary capacity in accordance with any written law, such service shall, if it is not broken by reason of suspension, dismissal or removal in consequence of disciplinary proceedings, count for super-annuation benefits together with his period of service in a pensionable office in which he has been confirmed.”

The complainant since reported that she had received the full benefits due to her in respect of her entire period of service.

Ref. OMB: 1058/97

MINISTRY OF HEALTH
Public Health

The complainant sought my assistance on behalf of his elderly mother regarding the failure of the Public Health Department to take the required steps necessary in abating certain health nuisances arising from the operation of a business in her neighbourhood.

He complained that the business involved the sale of building supplies and paving materials: including red sand, gravel and asphalt. Apart from the sale of these materials, the business activities on site also included the repair of diesel engines and the collection of scrap metal. The health and safety of nearby residents were affected by:-

- ▶ The generation of clouds of sand and dust particles which when combined with diesel fuel emissions produced a destructive air pollutant.
- ▶ Rodents and mosquitoes harboured within scrap metal heaps.
- ▶ Excessive noise from 5:00 a.m. to 6:00 p.m. six days per week emanating from the operation of diesel engines and trucks loading and offloading materials.

Because of this state of affairs, property values had fallen in the area which was approved solely for residential use.

I brought the complaint to the attention of the three agencies with responsibility for such matters, viz County Medical Officer of Health, Occupational Hygienist, Ministry of Health and the Director of Town and Country Planning.

The Chief Public Health Inspector, Ministry of Health, after investigating the matter, informed me that the complaint was justified. The owner of the business was instructed to store all disused iron in such a manner so as to eliminate mosquito breeding and rodent harbourage and to undertake general cleaning of the premises. The owner also agreed to construct a concrete fence to assist in redirecting the fumes away from the complainant's property.

The department assured me that the matter would be monitored for compliance with their recommendations.

Ref. OMB: 951/97

MINISTRY OF HOUSING AND SETTLEMENT
National Housing Authority

A group of residents from Maloney Gardens, D'Abadie, sought my assistance after having failed in their attempts to have the National Housing Authority (NHA) take steps to eradicate health nuisances due to a malfunctioning sewage system.

The complainants informed me that raw sewage could be frequently seen flowing out of underground manholes into the streets. In their homes, the sewage backed up into the toilet bowls, wash basins, bathrooms and, in some cases, spilled on floor surfaces. Apart from the pervading stench which induced nausea, residents complained of an outbreak of skin eruptions, diarrhoea and stress headaches.

Since the situation they described appeared intolerable and represented a potentially dangerous health risk, I convened a site visit with officials from the National Housing Authority. Two main problems areas were identified:-

1. An inadequate sewage collection system with faulty plumbing infrastructure.
2. Indiscriminate dumping of refuse/garbage into the manholes.

Sewage Collection System

The Maloney Housing Estate was developed by the National Insurance Property and Development Company (NIPDEC). After the units were handed over to the National Housing Authority, it was discovered that sewage connections were absent in some units and others were improperly fitted. It was discovered from a survey carried out by the Water and Sewerage Authority (WASA) that the flow of water which was channeled to the sewage treatment plant was greater than the amount discharged. The pumps at the plant were not equipped to handle the resultant build up of water which occurred particularly during peak hours between 6:00 a.m. to 9:00 a.m. and 8:00 a.m. to 11:00 p.m. Flooding was prevalent at these times.

The tremendous flow of water into the collection system was attributed to the faulty operation of the toilet bowl units in the houses. The flow of water did not cease after flushing.

Garbage Disposal

The housing estate comprises 2850 housing units with a population of over 15,000 persons. Garbage was being disposed into the manholes in the street resulting in blockages in the sewer lines with a consequent ejection of sewage onto the streets.

The following short term measures were proposed by the Authority to provide immediate relief to the residents:-

- {1} The installation of two additional pumps with the capacity to accommodate 1900 gallons of water per minute.
- {2} The replacement of an existing 8 inch sewer line with 12 inch suction and discharge lines.

An overall expansion of the sewer treatment plant was contemplated in the long term. It was decided that the lines would have to be cleared on a daily basis.

Claims for compensation were received and forwarded to the National Housing Authority. Six residents who had suffered considerable inconvenience and damage incurred substantial expenditure in dealing with the sewage problems in their homes. These claims have not been settled to date. Additional pumps have been installed and the Water and Sewerage Authority has cleared the collection system, giving relief to the occupiers.

My Office will continue to monitor the situation in order to ensure that the matter is resolved within a reasonable time.

Ref. OMB: 129/97

MINISTRY OF NATIONAL SECURITY **Immigration Department**

The complainant, a married woman, had obtained an order in divorce proceedings restraining her husband from taking their two (2) infant children outside the jurisdiction of the Court pending the further hearing of the matter. Her complaint was made on 27th February, 1997.

She feared that her husband would breach the order and had taken the precaution of writing to the Chief Immigration Officer, intimating to him that she had the passports of the two children in her possession and that no new passports should be issued to her husband.

Her attorneys had also advised the Chief Immigration Officer to the same effect.

However, in a memorandum dated 4th June, 1997, the Officer in Charge of Investigations, South, indicated to the Chief Immigration Officer that replacement passports had been issued to the husband since the 30th August, 1996 when he reported that the children's passports were lost.

In a final report dated 23rd June, 1997, the Chief Immigration Officer indicated that following normal procedures, the department was satisfied that because of the unavailability of the previous passports, new passports were issued.

He also indicated that the complainant had left the country on 19th August, 1996 for Miami, United States of America and returned on 20th September, 1996.

Having regard to the circumstances outlined above, the matter was no longer pursued.

Ref, OMB: 130/93

Police

On 19th March, 1986 the complainant's motor vehicle which was beige in colour with registration plates number PAB 8114 was stolen from him. In 1988 he was asked to visit the Morvant Police Station to examine a vehicle which had been seized in a police road block. He was able to identify the seized vehicle as his although it had been repainted black and bore registration plates numbered PW 4252.

A police officer from whom the vehicle had been seized also claimed that the vehicle belonged to him. The issue of ownership was subsequently determined in the complainant's favour by a court of law on 24th July, 1992. However, when the complainant visited the Morvant Police Station where the vehicle had been garaged since its seizure, he found that it had deteriorated to such an extent that it was no longer road worthy and that it was beyond salvage.

He did not take possession of the vehicle and sought my assistance in obtaining compensation in the sum of Fifty Thousand Dollars (\$50,000.00). This amount represented the 1986 value of the motor vehicle and compensation for himself and three (3) witnesses for loss of time and travelling costs incurred in attending Court.

When I brought the matter of the complainant's claim to the attention of the Commissioner of Police I was advised that the vehicle had been removed on 10th September, 1992 to the St. James Police Station for safe keeping and subsequently could not be located.

In fact no one had been able to provide any information as to the whereabouts of the vehicle. The Commissioner admitted that there was some degree of merit in the complainant's claim.

A reduced claim was submitted on behalf of the complainant together with the Commissioner's admission of liability to the Solicitor General seeking compensation for the loss of the complainant's vehicle and for expenses incurred resulting from the loss.

The matter is being pursued.

Ref. OMB: 1294/96

Fire Services Division

On 19th November, 1996, a former cleaner of the Crown Point Fire Station, Tobago, had sought my assistance in obtaining her retirement benefits. In 1977 she was employed as a Temporary Cleaner I at the Central Administrative Services, Tobago and in 1982 was transferred to a vacant post of Cleaner II at the Crown Point Fire Station where she remained employed until her retirement in February, 1995.

She stated that a request for her permanent appointment together with her medical reports were forwarded to the Service Commissions Department in 1992 but at the time of her retirement she had heard nothing in respect of her permanent appointment.

The Chief Fire Officer from whom I requested a report, claimed that the Complainant's Pension and Leave Record together with supporting documents had been submitted to the Comptroller of Accounts for the processing of her retirement benefits. On receiving the documents, the Comptroller of Accounts advised that the Service Commissions Department should be requested to appoint the complainant as a Cleaner II.

The Chief Fire Officer intimated that the Permanent Secretary, Ministry of National Security had complied with the Comptroller of Account's request and was awaiting a response on the matter.

Four (4) months afterwards, I received another report from the Chief Fire Officer stating that the Director of Personnel Administration had indicated that a request for the complainant's permanent appointment could not be entertained since she had already attained the age of retirement in February, 1995 at which date her temporary appointment in the Public Service had terminated.

The Director of Personnel Administration then advised that the Ministry of National Security should approach Cabinet with respect to the payment of an ex-gratia award to the complainant having regard to her continuous service in a temporary capacity for over a period of ten (10) years prior to her retirement.

Further enquiries revealed that the Comptroller of Accounts had sent a Note to Cabinet recommending that the complainant be paid an ex-gratia award in respect of her temporary service. This, she received in February, 1998.

Ref. OMB: 777/97

MINISTRY OF PUBLIC UTILITIES
Trinidad And Tobago Electricity Commission

The complainant sought my assistance after an unsuccessful bid to have the Trinidad and Tobago Electricity Commission address certain irregularities in the electricity bills which had been issued to her over a three year period.

She claimed that she only had one major appliance, a refrigerator, yet the electricity bills issued to her were very high and were computed on an estimated basis. Whenever she queried the bills she was requested to submit a meter reading. The bills which were issued after the submission of these readings were usually very low. On one occasion, she received a bill for Twenty One Thousand Dollars (\$21,000.00) which was immediately withdrawn without an explanation being offered when it was brought to the Commission's attention.

She further reported that her service was disconnected for outstanding arrears. An assurance was given to her that the electricity would be restored once she paid a deposit and signed an agreement to liquidate the amount by way of monthly installments. Although she complied with this request, the service was not restored. The meter was subsequently removed from her premises.

In response to her complaint, the Commission furnished me with a detailed statement of her account for the relevant period. It was explained that the bill for Twenty One Thousand Dollars (\$21,000.00) had been issued in error and was corrected by a subsequent billing.

An examination of the statement revealed that over the period, she was billed seven times on an estimated basis and five times from actual readings of the meter. The number of units of energy billed on the basis of actual readings were greater than the average number used for the estimated bills. I also observed that during a five-month period, the account was billed four times in respective sums of One Hundred And Forty Five Dollars

(\$145.00) being the charges fixed by the Public Utilities Commission for disconnection and reconnection of an electricity supply on failure to pay a bill within a stipulated time. Since the complainant's service had not been disconnected at any time within this period, I drew this to the Commission's attention.

Upon receipt of my letter, the Commission indicated that it would withdraw these charges but requested payment in full of the reduced balance from the complainant. The complainant subsequently paid her bill in full.

Ref. QMB: 521/97

Water and Sewerage Authority

The complainant, the owner of a small business enterprise, sought my assistance having failed in his efforts to persuade the Water and Sewerage Authority to withdraw retroactive charges which were included in his account with effect from 1992. These charges had accumulated in the sum of Thirty Eight Thousand, Six Hundred And Twenty Seven Dollars And Thirteen Cents (\$38,627.13) and arose from the Authority's implementation of the Public Utilities Commission's Order No.83.

By Order No.83, a flat monthly rate of Seven Hundred And Eleven Dollars (\$711.00) is imposed on unmetered properties on which Value Added Tax registered business activities are conducted. The complainant found this cost to be unrealistically high since his employees used very little water during business hours. He requested that he be furnished with a meter so that payments for service would be based on actual consumption. His request was denied.

In support of his claim of discrimination and unfair treatment on the part of the Authority, he provided me with the following table which showed a comparison in billings and service consumption as it related to his property and to other value added tax properties which were metered:-

	Complainant's Business	X Accounting Firm	Y Auto Service
<u>Fittings:</u>			
Toilets	2	15	4
Face Basins	2	17	-
External faucets	-	1	1
Showers	-	1	-
Kitchen sinks	1	2	4
Urinals	-	4	-
<u>Number of Employees:</u>	8	60	15
<u>Average Monthly Billing:</u>	\$711.00	\$514.95	\$154.92

I brought the matter to the attention of the Authority's Chief Executive Officer pointing out that Section 31(3) of the Water and Sewerage Authority Act prohibited the Authority from showing undue preference between consumers or rate payers who are similarly situated. Since it appeared that the complainant was in fact being discriminated against by the Authority, I advised the Authority to provide the complainant with a metered supply.

After several months had elapsed and no action was taken to supply the complainant with a meter, I convened a hearing of the matter which was attended by the Chief Executive Officer, the Customer Accounting Manager, the Authority's Legal Officer and the complainant.

The Chief Executive Officer agreed to provide the complainant with a meter but stated that he was still liable for the payment of outstanding charges which were previously levied in accordance with the Public Utilities Commission's Order.

The complainant was satisfied with the proposal that he would be furnished with a meter but was not satisfied with the billings based on the value added tax criterion and decided that he would pursue this matter in Court.

Ref. OMB: 387/94

TOBAGO HOUSE OF ASSEMBLY

In June, 1994 a former messenger of the Tobago House of Assembly, had complained to me that he had not received retirement benefits for his thirty (30) years of service from 1961 to 1991.

The Chief Administrator of the Tobago House of Assembly from whom I requested a report informed me that the complainant was retired in the public interest under Section 54 of the Public Service Regulations Chapter 1:01 of the Laws of the Republic of Trinidad and Tobago which states:-

1. **Where it is represented to the Commission or the Commission considers it desirable in the public interest that an officer should be required to retire on grounds which cannot suitably be dealt with under any of these Regulations, it shall call for a full report on the officer from the Permanent Secretary or Head of Department in which he is serving and shall take into account the officer's previous record during the last preceding ten (10) years.**
2. **If after considering such report and such record and giving the officer an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the particular service of which the officer is a member, the usefulness of the officer thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest to do so, it shall require the officer to retire on such date as the Commission shall determine and he shall be retired accordingly.**

I was further informed that for the last ten (10) years prior to his retirement there had been numerous complaints against the complainant regarding the deterioration in the performance of his duties which had seemingly resulted from substance abuse. The department was aware that he had been experiencing domestic problems and apparently had succumbed to substance abuse.

The Tobago House of Assembly, consequently reviewed the circumstances leading to the decision to retire him and requested that sympathetic consideration be given to him due to the fact that he performed his duties creditably when not adversely affected by his illness and recommended to the Director of Personnel Administration that he should not suffer any loss in the reduced retirement benefits to which he might be entitled.

Based on the recommendation of the Tobago House of Assembly, the Public Service Commission decided that the complainant should be paid his full pension benefits.

It should be noted that in cases of this nature benefits are granted by the Treasury Division only on the recommendation of the Public Service Commission and with the approval of Cabinet.

In light of the above, the Tobago House of Assembly submitted the matter to Cabinet recommending that the complainant be paid full superannuation benefits in accordance with the Pension Act Chapter 23:52 and Cabinet agreed to the said payment.

The complainant subsequently received an enhanced benefit as approved by the Comptroller of Accounts.

Ref. OMB: 0097/97

Works Division

The complainant, a retired Engineering Assistant III, who was formerly employed at the Works Division, Tobago House of Assembly, sought my assistance when he was informed by that Department that calculation of his pension benefits reflected an overpayment of salary which totalled Thirteen Thousand Seven Hundred and Seven Dollars and Ninety Two Cents (\$13,707.92). It was claimed that this overpayment had arisen as a result of the incorrect interpretation by the Tobago House of Assembly Accounts Department of the Chief Personnel Officer Circular PD No. 4 of 1979 which was later clarified by PD Circular No. 3 of 1984.

Investigations revealed that the complainant commenced temporary employment as a Works Supervisor I on 8th January, 1979 with salary at the point \$1,327.00 in Range 28 as a consequence of having to supervise daily-rated workers. Their salary of \$1,269.00 monthly would have exceeded that which the complainant would have received upon conversion in accordance with PD Circular 4 of 1979 which sought to determine the salary to be paid in such circumstances. The complainant was permanently appointed on 28th October, 1980 to the post and his salary was fixed at \$1,460.00 per month by the Public Service Commission.

P.D. Circular No. 3 of 1984 did not alter the conditions which gave rise to the salary fixed by the Director of Personnel Administration since the complainant continued to supervise daily paid workers. The operative words of both circulars made it clear that the quantum paid to officers in such monthly paid situations was salary, not wages plus supervisory allowance, as was claimed by the Internal Audit.

The Tobago House of Assembly reported that with effect from 1st January, 1980, the complainant received One Thousand Four Hundred and Sixty Dollars, (\$1,460.00), per month which comprised a flat salary of One Thousand One Hundred and Seven Dollars, (\$1,107.00), plus Three Hundred and Fifty-three Dollars, (\$353.00), supervisory allowance when he should have received a flat salary of One Thousand One Hundred and Seven Dollars, (\$1,107.00) plus Two Hundred and Eighty-two Dollars, (\$282.00) supervisory allowance.

It was alleged that the salary fixed by the Director of Personnel Administration was as a result of erroneous information furnished by the Works Division, Tobago House of Assembly, which did not seek to have the matter clarified when the Chief Personnel Officer's Circular No. 3 of 1994 was issued. It only did so when the officer applied to retire by stating that he was overpaid.

I was of the opinion that since the complainant was assigned a specific salary by the Public Service Commission i.e. One Thousand Four Hundred and Sixty Dollars (\$1,460.00), as stated in the complainant's letter of appointment, the question of overpayment did not arise. Nevertheless I brought the complaint to the attention of the Chief Personnel Officer, since the subject circulars had emanated from that Department.

In reply the Chief Personnel Officer stated as follows:

"The officer's salary was deemed to be properly computed when he was assigned a specific point on his appointment to the office of Works Supervisor I, by the Public Service Commission... The salary of \$1,460.00 as quoted by the Director of Personnel Administration adequately dealt with the supervisor/supervisee relationship that existed at the time - and which was based on the principle that - the supervisor's salary should reflect at least one increment clear of the daily-rated supervisee's salary."

The Tobago House of Assembly has since been advised to make appropriate representations to the Comptroller of Accounts to have the complainant's pension benefits recalculated and the outstanding sum credited to him.

PART IV

APPENDICES

TYPES OF COMPLAINTS AND THE COMPLAINT HANDLING PROCESS

by

Justice George A. Edoe
Ombudsman
Republic of Trinidad and Tobago

In approaching this paper, I faced the difficulty of arriving at a concept of typology for the complaints made to the Ombudsman in Trinidad and Tobago. Indeed, the Ombudsman of Trinidad and Tobago receives an average of 1000 new complaints each year. These complaints are made mainly by individuals or groups accessing the service of the Ombudsman, through visits to the offices and interviews by the Ombudsman and members of his staff. Many complaints are made through the mail and by way of telephone and fax. Complaints are received from citizens throughout the two islands and from every social group, race and class. The complaints received are as varied as the complainants themselves and are against the several departments, authorities and agencies of government over which the Ombudsman has jurisdiction. Complaints are also made against private organisations. Pleas for assistance and advice are also made. Appendix I shows the distribution of new complaints in respect of Ministries/Departments for the year January 1st, 1996 to December 31st, 1996, which is a typical year, and is a reproduction of Table II of the Ombudsman's Nineteenth Annual Report, which is the most recent Annual Report to Parliament.

I have found it more meaningful to approach this paper by discussing the complaint handling process which is established by statute and the way in which I operate this process to achieve the fundamental aims of Ombudsmanship which are effectiveness and speed in investigating and remedying complaints. The ways in which particular types of complaints are handled to achieve the desired results in each step of the complaint process will be highlighted.

The views which I express here are out of my experience as Ombudsman of Trinidad and Tobago for the past seven years and that of my investigatory staff who have been operating this system for over a longer period.

Trinidad and Tobago is approximately 1,980 square miles in area and has a population of about 1.2 million people. The two islands are separated from each other by some 22 miles of water and are accessible by air and sea transportation. The main office of the Ombudsman is situated in the capital city of Port of Spain. Sub-offices have been established in the towns of San Fernando, Sangre Grande and Rio Claro in Trinidad and in Scarborough, Tobago. These offices are so located as to make the service of the Ombudsman as accessible, available, cost free and time saving as possible to the entire population. Office is held in the sub-offices once per month by either the Ombudsman or an Investigator. The main office in Port of Spain is open throughout the working week between the hours of 8.00 a.m. and 4.00 p.m.

The Ombudsman of Trinidad and Tobago is a creature of the Republican Constitution of 1976. The legislation is modeled on the New Zealand concept. In most of the countries which have adopted the New Zealand model of Ombudsmanship, and this applies to the Commonwealth Caribbean, the Constitution or enabling legislation is so designed as to make the work of the Ombudsman as effective as possible having regard to the fact that his recommendations cannot be enforced in the traditional sense. The legislation provides, 'inter alia': limits on his jurisdiction, a restriction on matters for investigation, power to obtain evidence on oath and to enter and inspect premises of any

department or authority, to call for and examine documents, and his ability to lay special and general reports in Parliament. By and large the jurisdiction of the Ombudsman is confined to investigating faults in administration and where he discovers injustices, he seeks to remedy them by recommendation.

The bye-laws of the International Ombudsman Institute identifies the characteristics of a legislative Ombudsman as follows:

“The office of a person who has been appointed or elected pursuant to an Act of the Legislature; whose role it is to investigate citizen complaints concerning administrative acts or decisions of Government agencies from which the Ombudsman is independent and who makes recommendations to the Legislature as an officer of that body”.

Of the total number of complaints I receive each year, 25% are against private organisations. In such cases I refer the complainants to the appropriate agencies or advise them on actions which they can take to remedy their situations. (See Appendix II) Statistics on new complaints received during the year January to December, 1996 are taken from the Ombudsman's Nineteenth Annual Report.

The Ombudsman has sought in practice to extend his jurisdiction to appropriate cases where strictly speaking, the complaint does not arise out of the performance of administrative functions but it is perceived that an injustice has arisen through the acts or decisions of public officers. In cases where there is an absolute prohibition against investigation e.g. matters which come within the exclusive jurisdiction of the Public Service Commission regarding pay, pensions, discipline, etc., the Ombudsman investigates the complaints to the limited extent of ascertaining the facts and refers such matters to the appropriate authority.

Section 2 of the Ombudsman's Act, 1977 requires that all complaints to the Ombudsman shall be made in writing. However, complaints made by telephone or fax are acted upon. In order to assist the complainants in making their complaints, a Complaints Officer has been appointed at the main office in Port of Spain, whose duty it is to obtain all the necessary information from the complainants and assist them in putting their complaints into writing. This same facility is offered to complainants in the sub-offices by the Investigators. For the purposes of efficiency and speed, the Complaint Officer is responsible for opening new files on all complaints received either through interviews or by mail.

All complaints are screened so as to ensure that they are within jurisdiction and contain sufficient information to aid the investigation. I have also established a practice whereby all new complainants visiting the office are interviewed by the Ombudsman or an investigator. In this way, matters of jurisdiction are determined and investigations are commenced almost immediately and appropriate advice and referrals are made within a short space of time. Each year, several complaints are resolved at the level of the Complaints Officer through telephone calls to relevant agencies. In such cases, the complaint had arisen out of a lack of information or access to the department.

Each new complaint is given an individual registration number and a file opened. Files are generally assigned to the investigators based on the department, agency etc., against which the complaint is made. In other words an investigator is assigned to investigating complaints against a particular department, agency etc. This arrangement affords an investigator the opportunity of becoming familiar with the rules, regulations, policies and practices of the departments concerned and thereby expedites investigations. In cases where several individual complaints are received on the same issue, the individual complaint is brought to the attention of the department concerned but the investigation proceeds as a single investigation.

The initial step in the investigative process is to bring the contents of the complaint to the attention of the department or authority concerned and to invite a reply or comment on the allegations made by the complainant. Dependent on the reply or comments obtained, it may not be necessary to proceed further.

In the course of an investigation, the investigators may visit the offices of the departments or authorities concerned and interview the scheduled officer or officers handling the complaint. They also conduct investigation by way of the telephone or fax. These informal methods achieve better and quicker results than if the investigation is conducted by way of correspondence only.

In some cases, site visits are paid by the Ombudsman or by an investigator. Representatives of the department or authority concerned are invited to attend as well as the complainant. In this way, the subject matter of the complaint is investigated and expert opinion is obtained from experienced and qualified departmental officers.

This method of investigation is applicable to cases of property damage, and to inconvenience and hardship due to conditions of roads, drains, bridges, watercourses, pipeline systems and other infrastructural deficiencies, where such conditions arise as a result of alleged administrative deficiencies or defaults. This method of dealing with a complaint also reduces the volume of paper work and avoids delay.

I have also adopted the practice of holding meetings with both the complainant and the department concerned to discuss the complaint in an informal manner with an aim to arriving at an amicable solution in an atmosphere of co-operation and understanding.

Complaints from prisoners form one of the largest categories of complaints to the Ombudsman each year. Many of these complaints relate to conditions existing in the prisons such as accommodation, meals, medical care and welfare. Routine visits are made to the prisons, usually in the company of the Inspector of Prisons and the Commissioner of Prisons or other senior prison officials. Prisoners who have complained are interviewed and in many cases their complaints are settled then and there.

Our methods of operation therefore, in the interest of saving costs and in the provision of a speedy process, generally do not require formal methods of approach and the issue of process. It is only in cases where the Ombudsman decides to examine and compel the attendance of witnesses in order to obtain evidence on oath that it may become necessary to issue formal process in the form of summonses to compel their attendance. This, however, should only be used as a last resort when methods of persuasion and reason have failed and there is no co-operation on the part of the department or authority concerned.

It is of tantamount importance for the Ombudsman and his staff to develop a good working relationship with the officers of government departments and authorities whom he investigates and with whom he interfaces since his success will depend on his powers of persuasion and reasoning.

The final steps in the complaint handling process are specified in Sections 96 (2) and 96 (4) of the Constitution. According to these provisions, upon completion of an investigation, the Ombudsman shall inform the department of government or the authority concerned of the results of the investigation and may make a recommendation to remedy an injustice if he is of the opinion that the complainant has sustained an injustice in consequence of a fault in administration and may specify the time within which the injustice should be remedied. Section 96 (4) provides that the Ombudsman may lay special reports on cases before Parliament, where in his opinion it is of public importance or where the Ombudsman has made a recommendation under Sub-section (2) and the department has failed to carry out the recommendation. In cases where persuasion and co-operation have failed to produce the remedy, I have had recourse to invoke these provisions.

(Presented at the Workshop "Strengthening National Ombudsman and Human Rights Institutions in the Caribbean" held in St. Johns, Antigua from the 9th to 12th March, 1998)

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
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 and 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 Services 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					

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

EXTRACTS FROM THE CONSTITUTION
OF
TRINIDAD AND TOBAGO
CHAPTER 1

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

Recognition and
declaration of rights
and freedoms

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:-
 - (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
 - (b) the right of the individual to equality before the law and the protection of the law;
 - (c) the right of the individual to respect for his private and family life;
 - (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
 - (e) the right to join political parties and to express political views;
 - (f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;
 - (g) freedom of movement;
 - (h) freedom of conscience and religious belief and observance;
 - (i) freedom of thought and expression;
 - (j) freedom of association and assembly;and
 - (k) freedom of the press.

**Protection of
rights and
freedoms**

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

- (i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;
- (ii) to a fair and public hearing by an independent and impartial tribunal; or
- (iii) to reasonable bail without just cause;
- (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak English; or
- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO

ACT NO. 4 OF 1976

PART 2

OMBUDSMAN

**Appointment
and conditions
of office**

91. (1) There shall be an Ombudsman for Trinidad and Tobago who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the Public Service or otherwise nor engage in any occupation for reward other than the duties of his office.
- (2) The Ombudsman shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.
- (3) The Ombudsman shall hold Office for a term not exceeding five years and is eligible for re-appointment.
- (4) Subject to subsection (3) the Ombudsman shall hold office in accordance with section 136.

- (5) Before entering upon the duties of his Office, the Ombudsman shall take and subscribe the oath of office before the Speaker of the House of Representatives.
- Appointment of staff of Ombudsman**
92. (1) The Ombudsman shall be provided with a staff adequate for the efficient discharge of his functions.
- (2) The staff of the Ombudsman shall be public officers appointed in accordance with section 121(8).
- Functions of Ombudsman**
93. (1) Subject to this section and to sections 94 and 95, the principal function of the Ombudsman shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or member of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.
- (2) The Ombudsman may investigate any such matter in any of the following circumstances -
- (a) where a complaint is duly made to the Ombudsman by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;
- (b) where a member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice;
- (c) in any other circumstances in which the Ombudsman considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.
- (3) The authorities other than departments of Government to which this section applies are -
- (a) local authorities or other bodies established for purposes of the public service or of local Government;

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

**Restrictions
on matters
for investigation**

94. (1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.
- (2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.
- (3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.
- (4) The Ombudsman shall not investigate -
- (a) any action in respect of which the Complainant has or had
 - (i) a remedy by way of proceedings in a court; or
 - (ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than 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) of 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; | Discretion
of
Ombudsman |
| (b) | is not in any case precluded from investigating any matter by reason only that it is open to the Complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the protection of fundamental rights). | |
| 95. | In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to section 93 and 94 act in his discretion and, in particular and without prejudice to the generality of this discretion, the Ombudsman may refuse to initiate or may discontinue an investigation where it appears to him that - | |
| (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; | Report on
Investigation |
| (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 complaint. | |
| 96. | (1) Where a complaint or request for an investigation is duly made and the Ombudsman decides not to investigate the matter or where he decides to discontinue investigation of the matter, he shall inform the person who made the complaint or request of the reasons for his decision. | |

- (2) Upon completion of an investigation the Ombudsman shall inform the department of government or the authority concerned of the results of the investigation and if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, she shall inform the department of government or the authority of the reasons for his opinion and make such recommendations as he sees fit. The Ombudsman may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.
- (3) Where the investigation is undertaken as a result of a complaint or request, the Ombudsman shall inform the person who made the complaint or request of his findings.
- (4) Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under sub-section (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament.
- (5) The Ombudsman shall made 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 required compulsorily;
 - (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.
8. Actions taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.
9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to -

- (a) the terms and conditions of service as such member; or
 - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
10. Any action which by virtue of any provision of this Constitution may not be enquired into by any Court.

LAWS OF TRINIDAD AND TOBAGO

CHAPTER 2:52

OMBUDSMAN ACT

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

(Assented to 24th May, 1997)

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

**Short Title
Mode of
Complaint**

1. This Act may be cited as the Ombudsman Act.
2.
 - (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.
 - (2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the Ombudsman by the person for the time being in charge of the place where the writer is detained.

**Procedure
in respect
of investigation
No. 4 of 1976**

3.
 - (D) Where the Ombudsman proposes to conduct an investigation under section 93 (1) of the Constitution set out in the Schedule to the Constitution of Trinidad and Tobago Act, 1976)in this Act referred to as "the Constitution") he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make such representations.
 - (2) Every such investigation shall be conducted in private.

- (3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries as he thinks fit.
- (4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee or any department or authority to which section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate.
- (5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.
- (6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person out of money provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed for attendance in the High court, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this sub-section, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.
- (7) For the purposes of section 93 (2) of the Constitution a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorized to represent him.
- (8) Any question whether a complaint or a request for an investigation is duly made under this Act or under Part 2 of Chapter 6 of the Constitution shall be determined by the Ombudsman.

Evidence

4. (1) The power of the Ombudsman under Section 97 of the Constitution to summon witnesses and to compel them to give evidence on oath and to produce documents shall apply whether or not the person is an officer; employee or member of any department or authority and whether or not such documents are in the custody or under the control of any department or authority.
- (2) The Ombudsman may summon before him and examine on oath:
 - (a) any person who is an officer or employee or member of any department authority to which section 93 of the Constitution applies or any authority referred to in the Schedule and who in the Ombudsman's opinion is able to give any relevant information;
 - (b) any Complainant; or
 - (c) any other person who in the Ombudsman's opinion is able to give any relevant information, and for that purpose may administer an oath. Every examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of the Perjury Ordinance.
- (3) Subject to subsection (4) no person who is bound by the provisions of any enactment, other than the Official Secrets Act, 1911 to 1939 of the United Kingdom In so far as it forms part of the law of Trinidad and Tobago, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, where compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.
- (4) With the previous consent in writing of any Complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the Complainant, and it shall be the duty of the person to comply with that requirement.

- (5) Except on the trial of any person for an offence under the Perjury Ordinance in respect of his sworn testimony, or for an offence under section 10, no statement made or answer given by that or any other person in the course of any inquiry or any proceedings before the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.
 - (6) No person shall be liable to prosecution for an offence against the Official Secrets Act, 1911, or any enactment, other than this Act by reason of his compliance with any requirement of the Ombudsman under this section.
5. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing -
- (a) might prejudice the security, defence or international relationship of Trinidad and Tobago (including Trinidad and Tobago relationship with the Government of any other country or with any international organizations);
 - (b) will involve the disclosure of the deliberation of Cabinet; or
 - (c) will involve the disclosure of proceedings of Cabinet or any Committee of Cabinet, relating matters of a secret or confidential nature, and would be injurious to the public interest, the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper, or thing to be produced.
- (2) Subject to subsection (1), no rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall apply in respect of any investigation by or proceedings before the Ombudsman.

Secrecy of information

6. A person who performs the functions appertaining to the Office of the Ombudsman or any office or employment thereunder -
- (a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any provisions of sections 93 and 96 of the Constitution, so, however, that no disclosure made by any such person in proceedings for an offence under section 10, or under the Perjury Ordinance by virtue of section 4 (2) or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or the provisions of section 3 (4) or section 9, shall be deemed inconsistent with any duty imposed by this paragraph; and
 - (b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the proviso to paragraph (a).

Notice of entry on premises

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

Delegation of powers

- 8.
- (1) With the prior approval in each case of the Prime Minister, functions hereinbefore assigned to the Ombudsman may from time to time, by direction under his hand, be delegated to any person who is appointed to any office or to perform any function referred to in section 6.
 - (2) No such delegation shall prevent the exercise of any power by the Ombudsman.
 - (3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.
 - (4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

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

Regulations

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





