

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**THE OMBUDSMAN**

**21<sup>st</sup>**

**ANNUAL REPORT**

**JANUARY 01, 1998 TO DECEMBER 31, 1998**

## *Mission Statement*

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

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



*Office of the Ombudsman of the Republic of Trinidad and Tobago*

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22nd June, 1999.

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

Dear Mr. Speaker

I have the honour to present the Twenty-First Annual Report of the Ombudsman for the period January 01, 1998 to December 31, 1998.

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

Yours faithfully,

A handwritten signature in cursive script, reading "G. A. Edoo".

George A. Edoo  
Ombudsman  
Republic of Trinidad and Tobago.

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# *PART I*

## *GENERAL*

## PERSPECTIVE OF OMBUDSMAN'S OFFICE

As we approach the end of the millennium and embark upon the twenty-first century, it becomes necessary to determine the extent to which the Office of the Ombudsman has fulfilled its role in providing services to the public and in contributing to the good governance of the Country.

Since its establishment under the Republican Constitution 1976, and in accordance with the mandate given therein, the Office has sought to fulfill its role in protecting the individual against bureaucratic injustice. A Mission Statement as to the role of the Ombudsman has been appearing in issues of the Annual Report for the past five years. Implicit in the role is the provision of an impartial, informal and accessible service to the public, free of cost. Education of the public as to their rights and duties in a free and democratic society vis-a-vis the responsibility and accountability of public officers, is also one of the tasks undertaken by the Ombudsman.

From its inception, 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.

Section 2 of the Ombudsman's Act, Ch. 2:32 requires that all complaints to the Ombudsman be made in writing. However, complaints made by telephone or fax are acted upon. In order to assist complainants, a Complaints Officer has been appointed at the Office in Port of Spain whose duty it is to obtain all necessary information from complainants and assist them in putting their complaints into writing. For the purpose of efficiency and speed, the Complaints Officer is responsible for the opening of 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. A practice has been established 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, et cetera, against which the complaint is made. In other words, an investigator is assigned to investigating complaints against a particular department, agency, et cetera. 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 investigation 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. Dependant 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 investigations 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 the condition 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.

Since my assumption of Office, I have established temporary offices at San Fernando, Sangre Grande and Rio Claro for the purpose of facilitating complainants in making their complaints so as to save costs and expenses to them. An Office had been established in Tobago since the year 1978 by my predecessor.

Visits to these offices have been paid once per month for the purpose of receiving complaints and advising complainants with respect to their complaints. Visits to Tobago have also been paid once per month or as often as the necessity arises since complainants there do not have easy access to the Ombudsman as they do in Trinidad.

Shortage of staff prevents me from extending such services to other parts of the Country.

For the past five years, I and my staff have interviewed complainants and received complaints at these venues. The number of complaints received during the past five years are as follows:

<b>Tobago</b>	...	<b>433</b>
<b>San Fernando</b>	...	<b>490</b>
<b>Sangre Grande</b>	...	<b>210</b>
<b>Rio Claro</b>	...	<b>148.</b>



The Chart provided overleaf shows the total number of complaints received for each year over the period 1978 to 1997. These numbers include private complaints. The numbers of private complaints from individuals and organizations are also shown separately. Also included are the numbers of complaints which have been sustained and/or rectified over the period.

A consistent pattern has emerged. The statistics reveal that there has been little variation over the period covered.

On a whole, I have received the assistance and co-operation of public officers from departments and authorities in resolving complaints. In a few instances, some of which have been reported in successive issues of the Annual Report, I have had to resort to other measures to bring relief to complainants where persuasion or conciliation has proved difficult in these matters. I have had to resort to laying a Special Report before Parliament in accordance with Section 96(4) of the Constitution.

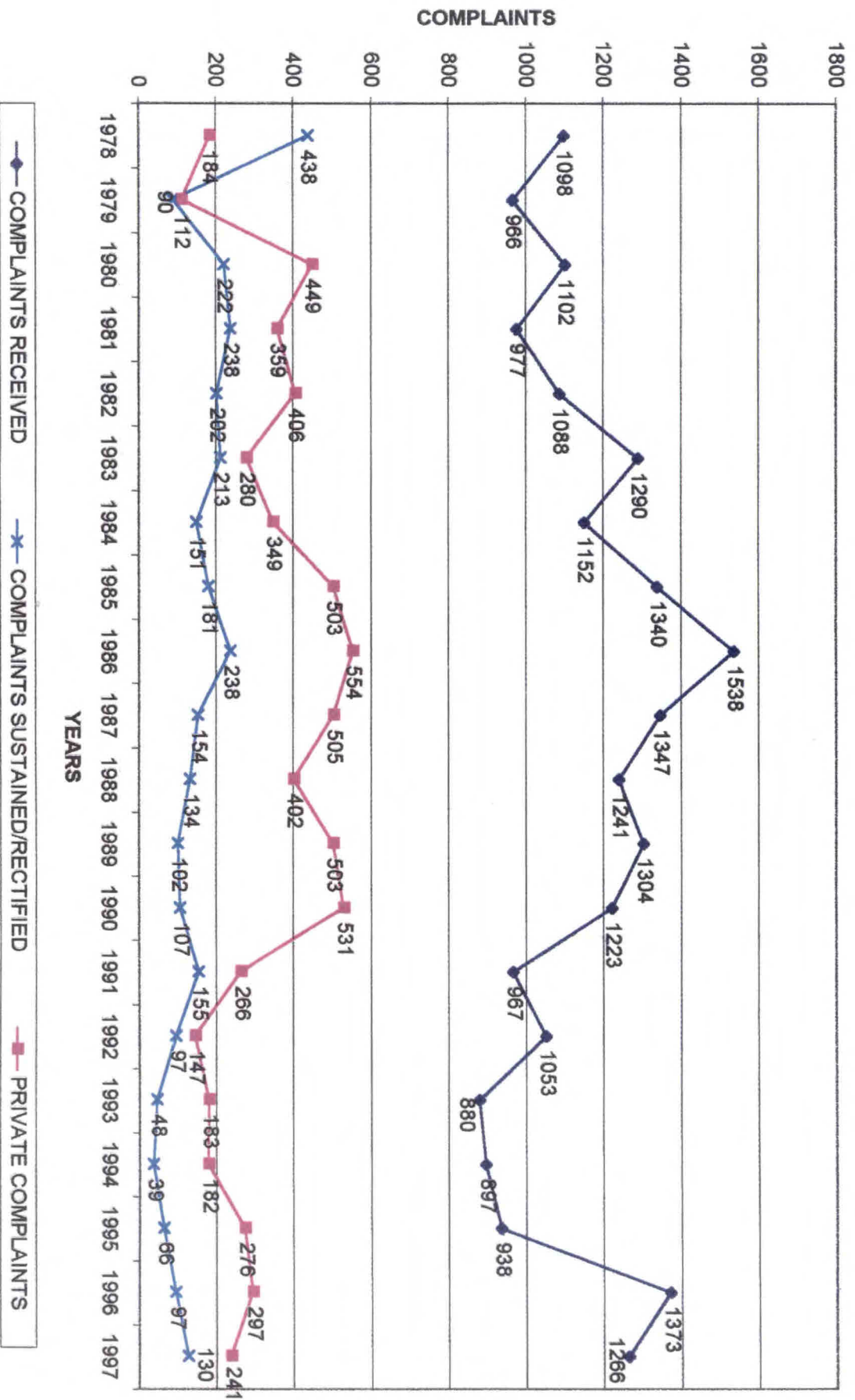
I have received many complaints of negligence including professional negligence of Government employees alleging injury and damage to life and property. In many of these cases, I have advised complainants to seek legal redress since my jurisdiction is limited to investigating faults in administration. Where liability is admitted, however, by a department or authority, I attempt to ensure that the complainant is adequately or fairly compensated and that there is not too much delay in the payment of compensation or in having the complaint remedied.

During the period under review, I attended two conferences of the International Ombudsman Institute. The first held in Vienna in 1992, attracted 228 participants from countries around the world including the newly liberated countries of the Soviet Union.

In 1996, the Sixth International Ombudsman Conference was held in Buenos Aires which was attended by over 500 participants including 121 Ombudsmen representing over 36 countries around the world and representatives from international organizations such as **UNESCO**, the Organization of American States (**OAS**), the United Nations High Commissioner for Refugees and the United Nations High Commissioner for Human Rights.

Attendance and participation at these conferences are of vital importance in that it demonstrates our commitment to democracy and the rule of law and to the protection of fundamental human rights and freedoms of the citizens of the country.

# COMPLAINT TRENDS



In 1998, I attended a workshop in Antigua entitled "Strengthening National Ombudsman and Human Rights Institutions in the Caribbean" which was organized by the Commonwealth Secretariat in collaboration with the International Ombudsman Institute. Many of the Commonwealth Caribbean territories were represented and Ombudsmen from various parts of the world were present.

One of the main recommendations of the Workshop was that Heads of Government recognize the existence and meaningful role of the 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.

The Antigua and Barbuda declaration was adopted and the establishment of the Caribbean Ombudsman Association was agreed. An Interim Committee was appointed comprising Dr. Hayden Thomas, Ombudsman of Antigua and Barbuda as Interim President, Mr. Justice George Edoo, Ombudsman of the Republic of Trinidad and Tobago as Interim Vice-President and Mrs. Laurence Laurent, Parliamentary Commissioner, Saint Lucia as Interim Secretary/Treasurer.

A committee comprising the above together with Mr. Justice Meerabux, a judge of the Bermuda Supreme Court and Sir Frank Blackman, a past Ombudsman of Barbados was appointed to prepare a draft constitution for the Caribbean Ombudsman Association. The Committee is now in the process of preparing such a draft for presentation to the next meeting of the Workshop.

Since its introduction in the Commonwealth Countries beginning with New Zealand in 1962, doubts have been expressed as to the efficacy of the Office of Ombudsman or an Ombudsman-type institution and whether it would have lasted out the end of the century. This was predicated on the fact that the Constitutions of these countries provided adequate safeguards and sufficient checks and balances designed to protect the rights and freedoms of citizens and that there were proper and adequate institutional frameworks to ensure compliance.

It appears that such doubts can be laid to rest, as the close of the century has provided evidence that the Institution has grown by leaps and bounds since its modern introduction in 1962.

Over the years various problems have arisen on a number of issues, chief among them being questions of jurisdiction, independence of the Ombudsman and whether sufficient publicity is being given to the work of the Ombudsman by publishing reports et cetera as a means of enforcing compliance with his recommendations. These are dealt with hereunder.

## **JURISDICTION**

Section 93 of the Constitution circumscribes the jurisdiction of the Ombudsman limiting his investigations to decisions and recommendations made or acts done or omitted by Government departments and authorities being action taken in the exercise of administrative functions.

In the Third Schedule to the Constitution are listed matters not subject to investigation. Among these are the conduct of civil or criminal proceedings in any court, action taken relating to contractual or other commercial transactions and actions taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters. I receive many complaints which fall within these three categories.



The bulk of these complaints, however, are from public officers and employees of statutory and local authorities alleging discrimination in employment practices such as preferment for acting appointments or promotions which, it is alleged, contravene the Public Service Regulations and departmental policies and procedures.

Where there is a clear prohibition against investigation, I refer these complaints to the appropriate authorities. Where matters appear to be on the borderline and I perceive that injustice has occurred from decisions or acts of the authorities, I investigate these to a limited extent and submit my findings to the appropriate authority. In other cases, I advise complainants as to what course they should take in having their matters resolved.

## INDEPENDENCE

One of the principal characteristics attributed to the Office of the Ombudsman, is its independence.

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 citizens' 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."

The Ombudsman is not accountable to the Executive but only to Parliament and only within the limits set down by the Constitution or other legislation. The Office of Ombudsman is outside the Public Service establishment.

It has been found necessary to make this point from time to time as the view is held by many Government departments and authorities that the Office is part of the Public Service establishment and is accountable to the Executive. When this view is held by members of the public, it erodes their confidence. They become wary of bringing their complaints to the attention of the Ombudsman since they consider that by doing so they **"are going from Caesar to Caesar"** in their quest for justice.

In the **Fourth Annual Report**, my predecessor had made the following observation viz:

"27. In my view the Office of the Ombudsman of Trinidad and Tobago can improve its effectiveness and image if it were not totally dependent for its goods and services on Government departments, which, from time to time may possibly be under investigation.

28. It becomes more difficult for an Ombudsman to make an objective examination of decisions by public officers or feel free to censure government departments when his office is solely dependent on these public officers and Government departments for its operation and services."



From its inception, the vote for expenditure relating to the Office of the Ombudsman appears under the Head: **PARLIAMENT** in the Estimates of Expenditure. This vote is under the control of the Clerk of the House of Representatives who is the Accounting Officer under the Exchequer and Audit Act Ch. 69:01. This gives the impression that the staff of the Ombudsman's Office is under the administrative control of the Clerk of the House of Representatives. While no complaint is being made about the existing arrangements, there is no reason why the Office of the Ombudsman should not have a separate vote under the control of the Executive Officer of the Ombudsman's Office.

Under other jurisdictions worldwide, a vote is provided by Parliament or the legislature to the Ombudsman directly. The Ombudsman is accountable to Parliament and not to the Executive in respect of such a vote as a means of ensuring his independence and projecting a proper image to the public.

## **PUBLICITY**

When the Office was first established, my predecessor and members of his staff embarked upon a series of public talks and were interviewed by the media on various aspects of the Ombudsman's work. This has been an ongoing process and, from time to time, the Ombudsman and his staff have, by invitation, continued to publicize the Office. This has resulted in the response of the public not only in bringing complaints to the Office in Port of Spain, but also at the temporary offices which have been established throughout the country.

There is the view, however, that the work of the Ombudsman is not sufficiently publicized in that publication of reports of wrong doing by public bodies and public officers can be used effectively as a means of enforcing his recommendations.

As far as publishing reports of cases in the media is concerned, the Ombudsman feels constrained by a provision in Section 6 of the Ombudsman Act, Chap. 2:52 relating to the confidentiality of documents and information disclosed by complainants. The Section reads as follows:

"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 Section 93-96 of the Constitution..."

This provision has been interpreted to mean that publication in the media is restricted. In such a small country as ours, it is difficult to preserve the anonymity of any complainant and the nature of his complaint; even where names are not disclosed.

I, myself, cannot see the necessity of such a provision, since the staff of the Ombudsman's Office have access to such information and the departments and authorities are necessarily furnished with such information in the course of investigating complaints. The work of the Ombudsman can be greatly enhanced if he is not encumbered by such a restrictive provision.

## **SPECIAL REPORT**

(Ministry of Health)

**Text of a Special Report laid in the House of Representatives  
on 13th November, 1998 and tabled in  
the Senate on 17th November, 1998.**

### **Complaint of Dr. J.A.**

Dr. J.A. ("**the complainant**") entered the Public Service in 1957 as a Medical Officer. He retired on 12th September, 1991. During the years 1974 to 1978, he was employed as a Specialist Medical Officer in Medicine. He claimed that he had performed extra-sessions duties under a scheme set up by the Chief Medical Officer. The terms and conditions of such service were comprehensively outlined in a Circular [No. 27 of 1979] issued by the Permanent Secretary, Ministry of Health to All Heads of Institutions/Units/Divisions."

Dr. J.A. brought his complaint to the attention of the Ombudsman on 21st January, 1997. He claimed the sum of \$129,239,30 in respect of extra-session duties performed for the years 1974 to 1978. His complaint was brought to the attention of the Permanent Secretary, Ministry of Health on 12th March, 1997. As a result of receiving no response from the Ministry, I convened a meeting which was held at the Office of the Ombudsman on 16th April, 1998. Present at this meeting were the Permanent Secretary, the Accounts Executive II and the Internal Auditor of the Ministry.

The complainant testified under oath that he had submitted his claims **en bloc** since 1983 to the Officer at the General Hospital, Port of Spain, charged with the responsibility of handling such claims and they were returned to him later that year without any explanation being given. Since then, he had been making repeated attempts to have his claim settled but without avail. He emphasized that he had not at any time abandoned his claims.

It appears that there were other medical officers similarly affected. One of them, Dr. K.R. had brought an action in the High Court in 1990 to recover inter alia extra-duty allowances incurred in similar circumstances. On 12th May, 1997, judgment was given in his favour in the sum of \$141,280.00 together with interest and costs. The interest and costs, I have been informed, have exceeded the amount of the award. The complainant thereupon, on the delivery of the judgment, renewed his efforts in seeking the settlement of his claim.

At the meeting held at the Ombudsman's Office on 16th April, 1998, the returned claims were produced by the complainant and re-submitted by an Investigator of this Office to the Hospital Administrator, Ministry of Health on 10th June, 1998, for processing and eventual payment. Since then the complainant has been making futile attempts to have his claim settled but without avail. This Office, too, has been investigating the matter but without avail. Enquiry of the Hospital Administrator has revealed that the claims were submitted to the Permanent Secretary since 18th August, 1998.

Enquiry from the Internal Auditor has revealed that the claims have not yet reached him to be processed in accordance with the established system set up by the Comptroller of Accounts under the provisions of the Finance Act.



The most disturbing feature of this matter is the refusal and/or failure of the Ministry of Health to deal with or to take steps to have the matter speedily and satisfactorily resolved. A total of fifteen years had elapsed since the complainant initially submitted his claim. The refusal and/or failure to deal with the matter has resulted in a great deal of frustration and injustice to the Complainant.

I have been informed that there are other matters outstanding which have not been dealt with for over a long period of time.

I lay this Special Report before Parliament in accordance with Section 96(4) of the Constitution.

**Note:** Soon after this Special Report was submitted to Parliament, I received a reply from the Ministry of Health in response to my memorandum threatening the laying of the Report before Parliament. The reply was to the effect that the complainant was not entitled to the claim he had made. Reasons were given for the rejection of the claim. What is most disturbing about this matter is that such a reply should have been given more than fifteen years ago when the complainant had initially submitted his claim. Had this been done then, the matter would have been resolved a long time ago. Instead, the complainant had been subjected to a great deal of frustration and injustice as a result of the delay caused by the failure and/or refusal to deal with the matter. Indeed, Dr. K. R. referred to above, who had found himself in a similar situation, had brought an action in the High Court before the expiration of the limitation period for bringing such actions and had his claim settled in 1997 by a consent judgment.

Since 1960, there has been a decentralization of Accounts in which the Ministries had been given responsibility for the passing of vouchers and obtaining release of funds, a duty hitherto undertaken by the Accountant General. The system provided for Accounting and Sub-Accounting units to be set up and become responsible for the passing of vouchers by its own Check Staff and Vote Control Section. This was designed in order to achieve a faster processing time and the prevention of delay. Accounting Officers have been instructed to seek the assistance of the Ministry of Finance via the Comptroller of Accounts concerning the propriety of a particular payment. Section 4[1] of the Exchequer and Audit Act, Chapter 69:01 provides as follows:

“All persons concerned in the collection, receipt, custody and payment of public moneys or other state property shall obey such instructions as they may receive from time to time from the Treasury.”

Had this matter and other matters pending at the time, been referred to the Comptroller of Accounts, they would have had an early resolution. It appears that the Ministry of Health has not, in a number of cases, sought the instructions of the Ministry of Finance with regard to the processing of such matters and this has resulted in a great deal of frustration and injustice to the individuals concerned.

## **WATER AND SEWERAGE AUTHORITY**

In 1998 the Water and Sewerage Authority once again attracted the highest number of complaints. There were 86 complaints during the year under review [81 in the previous year].

The most frequent complaints received concerned:

1. Retroactive billing of consumers' accounts due to increases in the annual taxable values of properties by the rating authorities.
2. Delays in the repair of leaking water mains.
3. Non delivery of a regular supply of pipeborne water.
4. The use of value added tax registration as the criterion for charging commercial rates.

### **Retroactive Billing Of Consumers Accounts Due To Increases In The Annual Taxable Values Of Properties.**

Towards the end of 1997, some 6000 customers of the Water and Sewerage Authority were billed retroactively. These billings stemmed from the fact that increases in the annual rateable values of properties listed on the assessment rolls of the municipalities and district revenue offices were made retroactively, in many cases without the knowledge and the opportunity being given to ratepayers to contest such increases. Subsequently, the Authority used these retroactive increases by the rating authorities to bill their customers retroactively.

The general rule of thumb method used by the rating authorities to determine annual rateable values involves a consideration of the rent which a tenant would reasonably be expected to pay having regard to the purpose for which the premises are actually used. Factors such as size, location and amenities are matters for consideration when calculating rental values. Water rates are charged as a percentage of the annual taxable values as determined by the rating authorities.

District revenue offices are required to assess property values on an ongoing basis to ensure that up to date and current values are maintained on the rolls. However, due to a critical shortage of professional valuers, these assessments are not undertaken on a timely basis. As a consequence, for a number of past years the annual rateable values on the assessment rolls did not reflect real market values of properties. The result is that there is a wide disparity of rateable values in any given area. The obvious injustice which is caused to customers by using these rates without determining the extent of consumption is all too apparent.

In 1996 some assessment rolls were updated and property owners were issued with assessment notices for increases in the annual rateable values of their premises. The increases had retroactive effect ranging from two to seven years.

This gave rise to sudden and sharp increases in the water rate bills to owners and occupiers of these premises. Since the Water and Sewerage Act does not specify a time limit on retroactive billing, customers were billed retroactively as from the date when the property rates were increased by the rating authorities.



I have received several complaints from persons whose accounts were billed retroactively in sums ranging from \$2,000. - \$12,000. These bills were particularly onerous to pensioners who, because of their fixed income, were unable to meet payment of this unplanned expense.

In response to citizens complaints the Minister of Public Utilities has issued a directive limiting charges to a period of one year commencing on the last day of the period for which such billing applies. The Authority is expected to review the accounts of all affected customers in accordance with this directive and make necessary adjustments.

### **Delays In The Repair Of Leaking Water Mains.**

Many complaints were received from distressed citizens about the intolerable delays they encountered in having the Authority repair broken or leaking water mains in the vicinity of their homes. Invariably, reports to the Authority about the leaks remained unheeded for several months.

In one particular case the complaint was made that a leaking main was left unattended for over a period of three (3) years.

Complainants were, in many instances, seriously concerned about the damage to their properties arising from the continuous seepage of water which affected the foundations of their properties due to fractured or defective water mains. In fact, I have received several complaints of damage to properties as a result of fractured or leaking mains.

### **Non Delivery Of A Regular Supply Of Pipeborne Water.**

I receive on a regular basis complaints from citizens who express deep dissatisfaction about the failure of the Authority to provide them with a continuous supply of water with adequate pressure. They complain strenuously about the inequity of having to pay water rates for a service they do not receive.

My investigations revealed that the pipelines and service connections in a number of residential areas in towns and close environs are heavily corroded and encrusted. Frequent water shortages are experienced in these areas. Due to financial constraints, however, the Authority is unable to undertake the required infrastructural overhaul.

Through my Office's intervention, complainants who received a poor supply for extended periods were granted rebates in accordance with Public Utilities Commission's Order No.83. The rebate system allows for the application of credits to the accounts of customers whose supplies are continuously interrupted for five (5) or more days.

Complaints were also received from residents who live in areas where no pipeborne water was available and where truck borne supplies were not available due to inaccessibility. The Authority is however unable to expand its transmission and distribution services to these areas because of limited funds.

## **The Use Of Value Added Tax Registration As The Criterion For Charging Commercial Rates.**

I continue to receive complaints from owners of small businesses against the use of value added tax registration by the Authority as the criterion to determine whether they should pay commercial rates for the supply of water to their premises. The criterion was set by the Public Utilities Commission in its Order No.78. The Commission held the view that any premises on which a value added tax registered business was conducted should be classified as non-domestic and be charged a flat monthly commercial rate of \$711.00 for water and sewage services.

Complainants continue to complain, however, that they use very little water in their business operations and that the rates they are compelled to pay are too high for the level of service provided. They have, however, been unable to persuade the Authority to install meters on their premises as a more equitable system for charging rates.

Lotto machine operators are similarly affected. They complain that they are billed commercial rates although the small kiosks from which they operate are not fitted with any service connections.

In the Twentieth Annual Report, I drew attention to the complaint of the owner of a small business enterprise whose unmetered premises attracted a monthly rate of \$711.00 per month for water and sewage services. In support of his claim of discrimination and unfair treatment on the part of the Authority, he submitted a table which showed a comparison in billings and service consumption as it related to his property and to the value added tax registered properties which were metered. This showed a wide disparity in billing as between his unmetered premises and those which were metered. This situation is prevalent throughout the country.

I envisage that I will continue to receive complaints against the Authority with respect to matters which I have described above unless the law is amended and some proper regime is instituted to regulate the supply and cost to the consumer of water and sewage services.

## NATIONAL PUBLIC SERVICE WEEK

National Public Service Week is an annual event which is celebrated by employees of government ministries and departments. The week is observed in the form of activities which are geared towards achieving the following objectives:

- ☞ To promote pride and recognition among public officers.
- ☞ To showcase (and obtain feedback on) the services provided by government to target audiences which include public officers, private sector customers of governmental services and secondary and tertiary school students.
- ☞ To provide an opportunity for fostering an enhanced sense of alliance between the public and private sectors.
- ☞ To develop a consciousness among senior public officers and managers of the current and emerging challenges in the field of public management.

The core activities for 1998 were designed in keeping with the theme **“Building alliances and creating the future together”** and were aimed at presenting the public service as an organization of value: current in terms of public management issues, forming and building on private sector and regional relationships.

My Office participated in these events and mounted a public information booth as part of an “Open House” activity at the Parliament Building which ran from 9th to 13th November, 1998.

During the course of the week, members of the public who visited the booth were provided with information about the services we offer and how they can be accessed. Staff interaction with the public was supported by brochures and pamphlets which detailed requisite information which should be provided by citizens when making complaints. A video presentation was also shown which illustrated the office’s operations and delivery of service.

I believe that the exercise was useful in terms of raising public awareness and understanding of the work of the Office.



## **REPORT OF PUBLIC SERVICE REFORM**

The Office of the Ombudsman is mandated in the Constitution to investigate maladministration in Government departments and authorities and seeks by recommendation 'inter alia' the correction of injustices which arise therefrom.

The Ombudsman, therefore, has an ever-abiding interest in public service reform and in the education and training of public officers so that they can render services to the public more efficiently and competently.

In a report entitled '**Public Service Reform**', **Mrs. Hazel Anne Martin, Acting Administrative Officer II, Office of the Ombudsman**, has sought to review the steps taken by previous Governments and the present Government in bringing about such reforms. The report forms an appendix to this Report.



## *PART II*

### *AREAS OF CONCERN*

## **AREAS OF CONCERN**

### NATIONAL HOUSING AUTHORITY

For many years, I have been receiving complaints from owners of properties in national housing estates who, having paid off their mortgage loans, were unable to obtain deeds of ownership vesting title in them. Some of these loans have been paid off more than ten (10) years ago. The result is that these complainants are subject to much hardship, for example, they cannot pass title to purchasers or raise loans on their properties because of lack of title.

The National Housing Authority was established in 1962 under the Housing Act Chap. 33:01 and was designed to replace existing statutory bodies dealing with housing. The Act also sought to revive, consolidate and extend the laws relating to the encouragement of construction of dwelling houses and home ownership.

My investigations have revealed that between the years 1962 to 1972, the work of the Authority in relation to State funded housing remained administrative in nature in that it acted as an agent of the State in processing applications for State-aided housing.

The modus operandi was one where the Authority instructed the Director of Surveys as to the identity of the beneficiary and the terms and conditions of the lease or mortgage. The Director of Surveys was responsible for the verification of surveys, and for ensuring that State lands policy was adhered to, before passing instructions to the Chief State Solicitor for the preparation of the legal documents, that is, the lease and mortgage. After 1972, the Authority was charged with the responsibility for preparing the mortgages and the Director of Surveys was responsible for the preparation of the deeds of lease. This situation was formalized and sanctioned by Cabinet Minutes in 1987 and 1989.

The Authority, during this period was responsible for the Direct Loans portfolio whereby loans were made for the purpose of acquisition of house and land and for the erection and improvement of houses.

This administrative arrangement involving the Authority, the department of the Director of Surveys and the department of the Chief State Solicitor became cumbersome as the work load increased giving rise to bureaucratic obstacles and bottlenecks. A backlog with respect to the preparation of legal documents became unavoidable. Delay for twenty years and more was not uncommon.

Part of the problem lay in the fact that lands in respect of which leases were sought were not vested in the Authority. This was remedied by Cabinet Minutes in 1987, 1988 and 1989 as a result of which the lands of a number of housing estates were vested in the Authority and leases had been granted to the occupants of these housing estates for terms of 99 years.

However, lands on which sixteen (16) of these housing estates stand have not been vested in the Authority to date and leases have not been prepared for the tenants or occupants of lots on these estates.

There was a further problem with respect to the provision of freehold title which was one of the conditions required under the terms of an International Development Bank loan. Since it had been the policy of the State not to alienate the freehold, a major problem arose for successive governments and administrators which led to uncertainty, inaction and inordinate delay in providing title.

This was characteristic of the Coconut Drive Malick Housing Project. This housing estate comprised first apartment or condominium type units. The lands on which the housing project stood, were never vested in the Authority but remained State lands. The absence of condominium legislation contributed to uncertainty and delay and the fact that title was to be by way of State Grant under the Real Property Ordinance was another factor which contributed to the delay. Early preparation of title documents was not feasible.

Of greater consequence, however, is the problem relating to the more efficient and timely preparation of title documents. The Director of Surveys in accordance with a policy requirement has directed that all State lands with lotification plans over ten (10) years old were to be resurveyed before title documents can be prepared. Most of the Authority's housing estates are over ten (10) years old.

There can be little doubt that the tripartite arrangement involving the Authority, the departments of the Director of Surveys and the Chief State Solicitor in the existing administrative arrangements and in the preparation of the title documents have been the major cause of delay resulting in consequent hardship to the owners of properties on national housing estates.

There is no reason why the Authority which has a functioning legal department should not be given the responsibility for the administrative arrangements and the preparation of all title documents. The owners of properties in national housing estates are entitled to early relief by having their properties legally vested in them.

#### AUXILIARY FIREMEN

Within recent times I have been in receipt of a number of complaints from retired firemen who, upon their retirement, had not received superannuation benefits. These firemen were all employed as fire auxiliaries for periods in excess of seventeen (17) years. In most cases they were only given permanent appointment as firemen two (2) years prior to their retirement from the Service as firemen.

Enquiries have revealed that the post of auxiliary fireman is not a pensionable post. These officers having not served the qualifying period of ten (10) years in the pensionable post of Fireman and so do not qualify for benefits under the Pensions Act.

These cases constitute genuine hardship to workers who have given in many cases more than twenty (20) years of dedicated service to the Government.

Although the Ministry of National Security is in the process of seeking Cabinet's approval for the payment of ex-gratia awards to these retired firemen, it is recognized that many of these matters take too long to be forwarded to Cabinet for resolution.

Auxiliary firemen perform the same duties as regular firemen and it is an injustice for them to be treated, for retirement benefit purposes, differently from regular firemen.

## *PART III*

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



## **STATISTICAL OVERVIEW**

In 1998 a total of 1016 new complaints were received; of these 194 or 19% were made against private organizations. In all instances where the 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 their complaints resolved.

I commenced investigation on 822 complaints which fell within my jurisdiction. This represents 81% of the new complaints received. At the close of the year investigation was concluded on 340 or 41% of these complaints. A total of 482 or 59% 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 JANUARY - DECEMBER 1998**

Total number of complaints received	1016	%
Total number of complaints against Private Institutions	194	19
Total number of complaints proceeded with	822	81
Total number of complaints concluded	340	41
Sustained/Rectified	82	10
Not Sustained	53	6
Withdrawn/Discontinued	18	2
Advised/Referred	187	23
Total number under investigation	482	59

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

Ministry /Authority/ Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
1. Agricultural Development Bank	3	0	0	0	1	2
2. BWIA	2	0	1	0	1	0
3. Chaguaramas Development Authority	1	0	0	0	0	1
4. Cocoa & Coffee Industry Board	1	0	0	0	0	1
5. Judiciary	28	1	0	2	19	6
6. Magistracy	29	5	1	1	5	17
7. Ministry of Agriculture, Land & Marine Resources	30	1	1	0	1	27
Caroni (1975) Ltd	2	1	0	0	1	1
8. Ministry of the Attorney General	1	0	1	0	0	0
9. Ministry of Community Development, Culture & Women's Affairs	1	0	0	0	0	1
10. Ministry of Consumer Affairs	2	1	0	0	0	1
11. Ministry of Education	19	1	0	0	6	12
12. Ministry of Finance	33	4	2	0	7	20
13. Ministry of Foreign Affairs	6	0	0	0	2	4
14. Ministry of Health	32	2	2	0	6	22
15. Ministry of Housing & Settlements	27	1	0	0	12	14
16. Ministry of Labour & Co-operatives	25	3	1	1	12	8
17. Ministry of Legal Affairs	20	0	0	0	7	13
18. Ministry of Local Government	75	1	11	1	8	54
19. Ministry of National Security	4	0	0	0	2	2
Defence Force	6	0	0	0	0	6
Fire Services	9	1	0	0	1	7
Forensic Centre	1	1	0	0	0	0
Immigration	3	1	0	0	1	1
Police	56	9	0	5	16	26
Prison	58	2	2	3	13	38
20. Ministry of Planning & Development	2	0	0	0	0	2

Ministry /Authority/ Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
21. Ministry of Public Utilities	1	0	0	0	0	1
Government Printery	1	0	0	0	0	1
Postal Services	5	0	0	0	1	4
T.S.T.T.	6	2	2	1	0	1
T.&T.E.C.	36	6	2	0	9	19
W.A.S.A.	86	21	3	0	14	48
22. Ministry of Social Development	43	8	1	0	17	17
23. Ministry of Sport & Youth Affairs	1	0	0	0	0	1
24. Ministry of Trade & Industry	3	0	2	0	1	0
25. Ministry of Works & Transport	60	5	15	0	1	39
Airports Authority	1	0	0	0	1	0
Public Transport Service Corporation	8	1	0	0	0	7
26. National Insurance Board	27	2	1	0	9	15
27. Office of the Prime Minister	2	0	0	0	1	1
28. Petrotrin	2	0	0	0	1	1
29. Port Authority	5	0	0	1	3	1
30. Public Administration and Information	1	1	0	0	0	0
31. Service Commissions Department	22	0	1	2	6	13
32. Statutory Authorities Service Commission	1	0	0	0	0	1
33. Teaching Service Commission	1	0	0	0	1	0
34. Tobago House of Assembly	33	1	3	1	1	27
35. Unit Trust Corporation	1	0	1	0	0	0
TOTAL	822	82	53	18	187	482
Private	194					
Grand Total	1016					

**Table III** shows the number of complaints received in 1997 and 1998 against Ministries and Agencies. The agency which recorded the highest number of complaints in 1998 was the Water and Sewerage Authority with a total of 86 complaints.

**TABLE III**  
**MINISTRIES/DEPARTMENTS WHICH RECORDED**  
**THE HIGHEST NUMBER OF COMPLAINTS**  
**FOR 1998**

MINISTRIES/AGENCIES	1997	1998	MINISTRIES/AGENCIES	1997	1998
1. Judiciary	39	28	Immigration	7	3
2. Magistracy	18	29	Police	67	56
3. Ministry of Agriculture, Land and Marine Resources	54	30	Prison	105	58
Caroni (1975) Limited	5	2	17. Ministry of Planning and Development	11	2
4. Ministry of the Attorney General	18	1	18. Ministry of Public Utilities	1	1
5. Ministry of Community Development, Culture and			Postal Services	4	5
Women's Affairs	3	1	T.S.T.T.	19	6
6. Ministry of Consumer Affairs	1	2	T.&T.E.C.	90	36
7. Ministry of Education	20	19	W.A.S.A.	81	86
8. Ministry of Energy and Energy Based Industries	1	0	19. Ministry of Social Development	41	43
9. Ministry of Finance	49	33	20. Ministry of Sport and Youth Affairs	1	1
10. Ministry of Foreign Affairs	3	6	21. Ministry of Trade and Industry	2	3
11. Ministry of Health	48	32	22. Ministry of Works and Transport	41	60
12. Ministry of Housing and Settlements	30	27	P.T.S.C.	7	8
13. Ministry of Labour and Co-operatives	35	25	23. National Insurance Board	20	27
14. Ministry of Legal Affairs	7	20	24. Port Authority	8	5
15. Ministry of Local Government	73	75	25. Service Commissions Department	18	22
16. Ministry of National Security	7	4	26. Tobago House of Assembly	51	33
Defence Force	5	6			
Fire Services	12	9			



During 1996 and 1997 there were substantial increases in the number of complaints received against the Water and Sewerage Authority and the Trinidad and Tobago Electricity Commission. However, in 1998 it is noted that while complaints against the Water and Sewerage Authority remained high there was a marked drop in the number of complaints received against the Trinidad and Tobago Electricity Commission.

The decline in the number of complaints against the Trinidad and Tobago Electricity Commission can be attributed to the fact that a new billing policy which limits retroactive billing of residential/consumer accounts was introduced by the Commission in 1998. The policy limits retroactive billing to one (1) year. Previously the Commission had embarked on a drive to collect payments for energy consumed in the past for periods ranging from 1 - 4 years which resulted in the escalation of complaints.

Another notable trend which has been observed is the continued reduction in the number of complaints against the Police Service. This decline can be attributed to the fact of establishment of the Police Complaints Authority which receives complaints directly from the public. The Office of the Ombudsman continues to receive and investigate complaints in administrative matters.

The Ministries which recorded a significant number of complaints during the period under review were the Ministries of Local Government, Works and Transport, Social Development, Finance, Health and Agriculture.

Eight hundred and ninety-six complaints were brought forward from the previous year. Investigations were concluded in 598 of these matters during the year. Of these, a total number of 298 complaints remained under investigation at the end of the year. **Table IV** shows the manner of their disposal.

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

Total number of complaints brought forward from previous years		896
Total number of complaints concluded		598
Sustained/Rectified	182	
Not Sustained	121	
Withdrawn/Discontinued	99	
Advised/Referred	196	
Number of complaints still under investigation		298

The total workload of the office for the year 1998 was 1912 which represents 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	896	%
Total number of complaints received in 1998	1016	
Total	1912	
Total number of complaints without jurisdiction	194	10%
Total number of complaints proceeded with	1718	90%
Total number of complaints concluded	938	55%
Sustained/Rectified	264	16%
Not Sustained	174	10%
Withdrawn/Discontinued	117	7%
Advised/Referred	383	22%
Total number of complaints under investigation	780	45%

**Ref.OMB:1164/87**  
**785/88**

## **MINISTRY OF AGRICULTURE**

Two complaints were received with respect to the same subject viz, a parcel of land comprising 1 acre, 1 rood and 2 perches situated at 4 ½ m.m. Cumuto Main Road in the County of St. David.

By Cabinet Minute No. 79 dated 14th January, 1982, Z.B. was granted a Probationary Tenancy Agreement which was to be followed by a Standard Agricultural Lease for a period of three (3) years. However, Z.B. did not commence his agricultural programme due to the fact that a squatter had occupied part of the land leased to him.

Efforts were made to have Z.B. relocated as the Ministry was experiencing difficulty in removing the squatter. He was asked to consider the allotment of an alternative parcel but the offer was refused as he considered the alternative parcel also to be occupied by a squatter. Z.B. has since rejected all alternative parcels shown to him.

Subsequently I received another complaint from M.G. who informed me that he had occupied and had been cultivating a parcel of State land since 1960. In 1961 he had applied to the Sub-Intendant of Crown Lands for a lease of the land. He had in his possession a letter from the Chief Technical Officer, Ministry of Agriculture, Land and Marine Resources dated February 14, 1961 which advised him to visit the El Reposo Agricultural Station at Sangre Grande for an interview with reference to his application. He claimed that after his interview, the Agricultural Officer who had accompanied him to view the parcel of land, advised him to proceed with his stated programme of work pending the processing of the necessary documentation by the Ministry. After cultivating the said allotment for approximately twenty six (26) years, M.G. received a notice from the Director of Surveys to vacate the land in July, 1987, advising him that he was in illegal occupation of the land.

On investigation of the matter, it was revealed that these two complaints referred to the same parcel of land. It was the view of the Ministry that M.G. was in illegal occupation since Z.B. held a probationary tenancy agreement. However, M.G. informed me that he had held discussions with the technical officers of the Ministry and their legal adviser as well as the Director of Surveys who confirmed that the confusion may have arisen due to a lack of proper record-keeping and inadequate communication between the Ministry and its district offices.

M.G. offered the Ministry the option of either granting him a lease for the parcel upon which he would reimburse Z.B. in respect of all reasonable expenses incurred by the latter since 1987 or that the Ministry would reimburse him (M.G.) for expenses incurred in the development of the land to date and for the crops on the land on condition that he vacate the said parcel.

I have been advised by the Director, Land Administration that the Honourable Minister had directed that M.G. be removed from the property. However, the Director, Lands and Surveys Division, has not taken any such action.

The matter is being pursued.



**Ref.OMB: 388/96**

## **MINISTRY OF EDUCATION**

The complainant was employed in 1994 by the National Training Board, Tobago to perform duties as a Trainee Clerk Typist with the Customs Department for a period of three (3) months. A cheque in the sum of Three Hundred Dollars, [\$300.00], being payment for her services was issued to her in December, 1994.

In March, 1995 she reported the loss of the cheque to the Ministry of Education and requested the issue to her of a replacement cheque. Her several attempts in this connection having proved futile, she sought my assistance in the matter.

After repeated attempts to have the matter resolved, I received a reply from the Comptroller of Accounts to the effect that the matter of replacement of cheques fell under a new system (the Void Cheques System) which requires complete reconciliation of all cheques issued and paid by Government ministries and departments. The Ministry of Education having been delinquent in effecting the necessary reconciliation for very many years past, a replacement cheque could not be issued until the problem is resolved by the Ministry.

**Note:**

**I have been informed that several replacement cheques cannot be issued as a result of this directive from the Ministry of Finance. It is very unfair to recipients of cheques to have to await the reconciliation of all cheques by a Ministry or department for such long periods of time. Through no fault of their own recipients are deprived of earnings to which they are legitimately entitled. It is approaching five (5) years since the cheque to the complainant was issued.**

**Ref. OMB: 227/97**

The complainant was employed by a denominational Board as a Cleaner and at the time of her retirement had completed thirty nine (39) years of service. Persons so employed are not members on the Public Service establishment and are not eligible for retirement benefits under the Pensions Act.

Representations were been made on her behalf to the denominational Board by the Public Service Association for the payment of an ex-gratia award related to her years of service but at the time of her complaint, the matter was undecided.

On investigation of the matter, I was informed by the Ministry of Education that the Ministry was in the process of preparing a draft Cabinet Note re "Severance Benefits for workers previously attached to the schools built under the **IDB** funded Primary Education Programme".

It appears that the complainant was employed in a School which was funded under the **IDB** programme and so became eligible for the payment of retirement benefits.

The matter is being pursued.

**Note:**

Cleaners employed by denominational boards are paid salaries equivalent to salaries paid to cleaners employed in Government schools. While provision is made for the payment of retirement benefits to cleaners employed in Government schools, no such provision is made for those employed by the denominational boards. The boards have, in a few instances, made 'ex gratia' payments to cleaners on retirement.

**Ref.OMB:0643/97**

**MINISTRY OF FINANCE**  
INLAND REVENUE

The complainant and his wife returned to Trinidad in 1994 having resided in Canada for the previous twenty four (24) years. They brought with them, as part of their personal effects, a motor vehicle which was registered in the name of his wife.

In his letter of complaint, he referred to the fact that prior to leaving Canada, they had consulted with the Trinidad and Tobago High Commission in Canada and were informed that no penalty, tax or duty would be charged on their personal belongings including the motor vehicle which was then eight (8) years old. Duties in the sum of Thirty Two Thousand Dollars [\$32,000.] were imposed by the Customs and Excise Division on their return. Due to ill-health, they were unable to register the vehicle immediately. In fact the complainant's wife died in December 1994.

When the complainant approached the Licensing Department in 1995 in order to have the vehicle registered, he was told that he had to pay motor vehicle taxes amounting to Two Hundred Thousand Dollars [\$200,000.].

He was subsequently advised to apply to the Minister of Finance for a partial waiver of the taxes imposed having regard to the age and value of the vehicle. At the time of application the car was eight (8) years old and bore a value of Thirty Two Thousand Dollars [\$32,000.]. This he did and having had no response from the Ministry of Finance, he sought my assistance in 1997.

In response to my investigation of the matter, the Permanent Secretary, Ministry of Finance by letter dated September 05 1997, stated that the matter had been referred to the Chairman, Board of Inland Revenue who made the following decision:

**Cabinet Minute 1946 dated January 01, 1990, exempted vehicles imported by returning nationals from motor vehicle tax provided certain conditions were satisfied.**

**From documents seen by the Board it appeared that the complainants had satisfied all the requirements of the Cabinet Minute and therefore qualified for exemption from Motor Vehicle Tax on the vehicle they had imported - i.e.:**

**They had resided abroad for a continuous period of more than five (5) years and had owned the vehicle for more than two (2) years preceding the date of application to import in Trinidad and Tobago.**

After a period of one (1) year had elapsed without any further communication from the Permanent Secretary, I wrote to the Minister of Finance to point out that the complainant was experiencing tremendous hardship due to the deprivation of the use of his vehicle which was now ten (10) years old and which had deteriorated from lack of use. It was pointed out that he was unable to afford the purchase of a replacement vehicle as his pension was his sole means of income.

I requested the Minister to exercise his delegated authority to remit the taxes in this instance and that an early decision be taken on the matter.

A week later, I was advised by the Permanent Secretary that Cabinet had agreed to a remission of the total motor vehicle tax due.

**Ref. OMB: 0023/97**

**MINISTRY OF FINANCE**  
**COMPTROLLER OF ACCOUNTS**

The complainant, a retired employee of the Ministry of Works, had retired in 1967 and had from that time, been in receipt of a pension. In 1969, he migrated to Canada and his pension was remitted to him at his address there. When the cost of living allowance was introduced and added to pensions of pensionable employees, this was not remitted to him in Canada as a result of a policy decision taken by the then Minister of Finance in his 1986 Budget speech to terminate cost of living allowances to pensioners residing abroad.

In 1986 the complainant returned to Trinidad and took up permanent residence but the Pensions Division of the Ministry of Finance continued to remit his pension to Canada without the payment of cost of living allowance.



On investigation of the matter, the Accounting Executive of the Ministry of Works advised that the complainant should submit proof to the Accounting Unit that he was resident in Trinidad and Tobago from the year 1987, upon which proof, he would be paid the arrears of cost of living allowances due to him. The assistance of the Chief Immigration Officer was enlisted in this respect. He confirmed that the complainant had returned to Trinidad on 7th May, 1986 and had been resident here since then.

**Note:** Cost of Living Allowances have been denied to pensioners residing abroad since 1986 as a result of the policy decision of the then Minister of Finance. The deprivation of such allowance continues to the present time. Failure to translate such policy into law has resulted in the deprivation of property of such pensioners without due process of law. The Pensions Division of the Ministry of Finance has established a policy in its operations to regard 'residence abroad' as constituting any period of six months continuous residence abroad. This, it considers, to be based on a 'general relation' to the provisions of the Income Tax Ordinance.

The right to the use and enjoyment of property is a right guaranteed to the individual under the Fundamental Rights provision of the Constitution. Such a right can only be taken away by the enactment of legislation. The position has been further aggravated by successive devaluations of the Trinidad and Tobago currency in recent years with the result that pensioners residing abroad have been receiving a fraction of the pensions due to them without the addition of cost of living allowance. The injustice is most apparent when such pensions are converted into a foreign currency.

**Ref. OMB:0837/97**

**MINISTRY OF FINANCE**  
**COMPTROLLER OF ACCOUNTS**

The complainant, a former wardsmaid, employed by the Ministry of Health, retired in 1992, after 13 years of service, with the approval of the Public Service Commission on the grounds of marriage. In the memorandum conveying such approval, it was stated "This approval does not automatically qualify you for payment of a marriage gratuity which is a matter for consideration by the Comptroller of Accounts."

The complainant thereafter made an application to the Comptroller of Accounts under the provisions of the Pensions Act Ch. 23:52 Section 15 of which provides for the payment of a gratuity to a female officer who retires for the reason that she is married or is about to marry notwithstanding that she is not otherwise eligible under the section for the grant of any pension, gratuity or other allowance.



The complaint, brought through her attorney, was filed in August, 1997. In a reply received on 26th July, 1998, the Comptroller of Accounts gave the reason for the refusal of the grant in 1992 as follows:

“because at the time of her marriage in 1978, she held a Leave Relief position and that service was not counted for pension purposes. In the light of Act 20 of 1997, that service can now be counted.” The Act provides ‘inter alia’ for the preservation and linking of pensionable service in the Public Service and the payment of superannuation benefits to temporary employees.”

The complainant was asked to produce her birth and marriage certificates so that her application may be processed.

The matter is being pursued.

**Ref.OMB:0257/98**

**MINISTRY OF FINANCE**  
DISTRICT REVENUE SERVICES

The complainant, a resident of Trinidad, effected payment of her 1997 land and building taxes in respect of her property at Crown Point, Tobago, by way of a postal money order in the sum of one hundred and eighty nine dollars and seventy cents [\$189.70], which was remitted by post to the District Revenue Services, Scarborough, Tobago.

Not having received any receipts in respect of the payment and having regard to a like occurrence in 1995 and having ascertained that the payments were not reflected in the accounts of the District Revenue Services, she complained to the Revenue Officer, Tobago.

She subsequently sought the assistance of the Ombudsman seeking a correction of the records and the issue of the relevant receipts to her.

Enquiries revealed that the money had been received and encashed and an envelope containing the cash was unearthed in the Office of the District Revenue Services. The Revenue Officer laid the blame on the frequent changes of junior staff/cashier. He also indicated that because of the overlapping period which had occurred between the date of receipt and the date of bringing the amount into account, the amount of taxes due increased to the sum of two hundred and thirty eight dollars and sixty seven cents [\$238.67], by the addition of interest. Such liability was shared with the complainant and the relevant receipts were posted to her.

**Ref. OMB:0372/97**

## **MINISTRY OF HEALTH**

The complaint in this matter was brought by the complainant's daughter on her behalf due to the state of the complainant's health.

The complainant was appointed Nursing Assistant Trainee on 19th September, 1983 and subsequently promoted to the post of Nursing Assistant on the 1st February, 1989. In 1993, she became mentally ill and was unable to work. On the advice of officers at the Ministry, she took various forms of leave including Vacation Leave, Special Compensatory Time and Extended Sick Leave. On 28th October, 1984, again on advice of officers in the Ministry, she tendered her resignation. As a result, she did not receive any terminal benefits although she had served for a period of more than ten (10) years in the Public Service.

It was obvious that had she been properly advised and steps taken to preserve her retirement benefits, she would have been placed before a Medical Board. These facts were placed before the Ministry. The Ministry subsequently made representations to the Comptroller of Accounts and noted that had the complainant been medically boarded she would have qualified for a pension and gratuity under Section 4 of the Law Reform (Pensions) Act, 1997, sub-section (1) of which preserves the service of a person who holds, on or after 1st December, 1991, a pensionable office in the Public Service and who has completed not less than five years of unbroken service.

The complainant died before steps could have been taken to finalize payment of retirement benefits to her. However, the matter is being pursued in order to secure such benefits on behalf of her estate.

**Ref. OMB:0548/97**

The complainant, a house officer, employed by the Ministry of Health was attached to the Queen's Park Counselling Centre in 1994 and assigned to the Roy Joseph Street Health Centre, San Fernando. She had previously claimed and was paid travelling allowances in the post. In 1994, she applied to the Chief Personnel Officer (CPO) for permission to use a light grade car instead of a standard grade car but permission had not been granted.

The CPO had informed the Ministry of Health that the complainant's post was not included under part one of the Third Schedule to the Travelling Allowances Regulations. It appears that only those officers who were attached to Institutions were included under Part I of the Third Schedule to the Travelling Allowances Regulations requiring them to keep and use standard grade motor vehicles in the performance of their duties as a result of a Cabinet Minute No 501 of 1971.

It appears that this only came to light when the complainant applied for permission to use a light grade car instead of a standard grade car. Previous holders of the post had been paid travelling allowances without question.

At a meeting held at the Office of the Ombudsman at which representatives of the Ministry and CPO were present, it was agreed that in view of the precedent set and the inequity of the situation, that the complainant should not be deprived of her travelling allowances for the period while she held the post of House Officer at Queen's Park Counselling Centre. Authorization, however, was required from the CPO in accordance with the Travelling Allowances Regulations.

It was also agreed that the Ministry of Health should submit a recommendation to the Chief Personnel Officer for other offices, including that of House Officer, Health Centres to be included in the Third Schedule.

The matter is being pursued.

**Ref.OMB:0181/96**

**MINISTRY OF LABOUR AND CO-OPERATIVES**  
**CO-OPERATIVE DEVELOPMENT DIVISION**

The complainant held shares in the County Council Employees Credit Union to the extent of Forty Thousand, Two Hundred and Eighty-nine Dollars and Five Cents, {\$40,289.05}. Her shares had accumulated to this amount since she started investing in the Credit Union in 1988. One of the accounts was in her name and the other account was in the name of a limited liability company of which she was a member. In 1993 she sought a refund of her share value and was informed by the Manager that she would receive payment shortly from the proceeds expected from the sale of one of the Credit Union's buildings.

This promise, however, was never kept. Her complaint was made in 1996. In 1997, she entered into an agreement with the Union for the liquidation of the debt by quarterly instalments of Eight Hundred and Eighty-one Dollars and Thirty-two Cents, {\$881.32} commencing on 23rd January, 1997. On reflection, she found this to be very unsatisfactory since the repayment of the entire debt would have taken nine (9) years to be completed.



The complainant's fears were conveyed to the Credit Union which, in a reply stated that an agreement was made in respect of both accounts. The account in the name of the complainant had been fully liquidated while that in the name of the Company was being liquidated in accordance with the agreement of 1996.

**Note:** I have received a number of complaints against the County Council Employees Credit Union Co-operative Society Limited, in particular. Most of the complaints are of the same nature, namely that the Credit Union was unable to meet their commitments in liquidating its obligatory debts to its members. There is no legislation protecting the assets or property of credit union members. The legislation which exists i.e. The Co-operative Societies Act Chap.81:03 is concerned inter alia with settling disputes by arbitration between the credit union and its members.

**Ref.OMB:0799/97**

**MINISTRY OF LOCAL GOVERNMENT**  
SAN JUAN/LAVENTILLE REGIONAL CORPORATION

The complainant, a resident of Homestead Gardens Development, Upper Santa Cruz, complained to me about a delay by the Public Health Department to remedy a public health nuisance which affected his health and that of his family. It appears that residents of Providence and Homestead Gardens who were also affected, had formed themselves into an association and were actively pursuing the matter.

The complainant's premises were located next to a lift system and sewer treatment plant. Investigations carried out by the County Health Administration of the San Juan/Laventille Regional Corporation revealed that the plant was dissected by a natural water course, on one bank of which was a wet well and lift-pump and on the other was the aeration chamber and beds.

The development was carried out by a company which had gone into liquidation without putting into place adequate arrangements for the maintenance of the facility. The plant continued to malfunction and posed a public health threat to the community and its environs. Attempts by the Administration for remedial action by the Water and Sewerage Authority as well as by individual members of the defunct company had proved futile. Maintenance work was, however, being undertaken by the Corporation subject to the availability of funds.

In their continuing efforts to resolve the problem visits were paid by various agencies, the last joint visit to the plant having been made on 11th June, 1997, by representatives from: The Environmental Management Authority, the Water and Sewerage Authority, the Residents' Association and two public health inspectors. Following the site visit, the Water and Sewerage Authority had made comprehensive recommendations to the Residents' Association in order to have the plant function effectively.



On 3rd March, 1998, the matter was aired at the Corporation's Public Health Committee meeting and it was resolved that assistance should be sought from the Water and Sewerage Authority and the Ministry of Public Utilities.

The Office continues to monitor the situation in order to bring relief to the residents of the area.

**Note:** I have received similar complaints from residents of other private housing developments. The problem has existed for many years. My predecessor had, in the Thirteenth Annual Report, made the following observations:

"The duty of WASA is to inspect the facilities and issue a Completion Certificate. A Certificate of Completion was issued in this case but WASA is not responsible for the maintenance of the plant after the issue of the Completion Certificate. There seems to me to be an apparent lack of policy/guidelines on the part of WASA after these facilities are taken over by the Developers of the housing estate. There are statutory provisions for the Local Authority to prosecute persons responsible for a nuisance, that is, in this case the Developers; but many of the developers of housing estates, particularly in the east-west corridor and in the county of St. George, have either gone into receivership, abandoned the projects or have had the electricity to their plants disconnected by the Trinidad and Tobago Electricity Commission due to arrears of payment of rates.

This is a case that the question is basically one of making quick money by putting up houses for prospective home owners, getting in as much money as one can and abandoning the projects to the detriment of these citizens, who in some cases, have used their life savings to obtain a house. In most of these money making developments the problem of malfunctioning sewage treatment plants and the threat to the Community has now become a national issue.

It is for that reason that I think that the whole question of sewage treatment plants, creating a health hazard to the community should be taken up by the appropriate authority to formulate proposals with a view to WASA taking over these facilities.

As this complaint stemmed essentially from the absence of policy governing the maintenance and operation of sewage treatment plants in private developments, I submitted my recommendations to Parliament under Section 96(2) of the Constitution."

The problem has exacerbated over the years since this Report was published. It is therefore incumbent upon the Authorities to devise a proper policy and put into practice such safeguards as will prevent a recurrence of these problems so that the health of the residents of these housing developments and environs be protected.

**MINISTRY OF NATIONAL SECURITY**  
FIRE SERVICES DIVISION

The complainant was employed by the Fire Services Division of the Ministry of National Security as Auxiliary Fireman with effect from 1st April, 1978. After completing approximately seventeen (17) years of service as an auxiliary fireman, he was appointed to the permanent establishment as Fireman on 1st January, 1995. He reached the compulsory retirement age of fifty five (55) on 6th June, 1997, by which date he had completed approximately two and a half years of service as Fireman.

He was unsuccessful in obtaining retirement benefits for the entire period of his service and filed his complaint with me on 21st April, 1998.

Investigation of the complaint revealed that:

- {a} No statutory terms and conditions of service including eligibility for retirement benefits had been enacted in respect of auxiliary firemen.
- {b} The complainant did not serve the qualifying period of ten (10) years on the permanent establishment which would have entitled him to retirement benefits under the Pensions Act.

The Permanent Secretary of the Ministry of National Security has informed me that the Ministry proposes to approach Cabinet for approval for the payment of compassionate gratuities to the complainant and other officers similarly circumstanced.

In order to ensure that they receive such benefits, the Chief Fire Officer had been instructed to submit a recommendation to the Ministry with respect to their periods of service prior to permanent appointment which were to be treated in accordance with Section 10(2)(a) of the Pensions Act, Chapter 23:52 of the Laws of Trinidad and Tobago.

Section 10(2)(a) provides that:

"where a period of service in a civil capacity otherwise than in a pensionable office is immediately followed by service in a pensionable office, such period may with the approval of the President be so taken into account."

At the time of writing of this Report the Ministry had not yet submitted the proposed Note to Cabinet.

The matter is being pursued.

**MINISTRY OF NATIONAL SECURITY**  
NATIONAL EMERGENCY MANAGEMENT AGENCY

The complainant was employed with the National Emergency Management Agency (N.E.M.A) from 1989 until his retirement on 20th May, 1996. On several occasions over the period 1990 to 1995, he performed the duties of Director/Coordinator N.E.M.A. during absences on post contract leave of the substantive holder of the post.

The complainant first performed the duties of the post from 5th February, 1990 to 20th February, 1990. In July 1991, the Director/Coordinator sought and obtained the approval of the Honourable Prime Minister under whose portfolio N.E.M.A. then fell, for the complainant to act as Director/Coordinator during his absence from the country for the period 14th July, 1991 to 24th August, 1991. Thereafter the complainant continued to perform the duties of the post during absences of the Director/Coordinator.

In 1992 the Director/Coordinator sought the approval of the Permanent Secretary, Ministry of National Security under whose portfolio N.E.M.A. then fell, for the period 4th May, 1992 to 12th July, 1992. He also sought the advice of the Chief Personnel Officer in regard to the quantum of acting allowance to be paid to the complainant. The Permanent Secretary, Ministry of National Security forwarded the Director/Coordinator's recommendation for the complainant to act to the Director of Personnel Administration for approval. Subsequently in December 1992, the Director/Coordinator again recommended the complainant to act in his absence for the period 1st January, 1993 to 23rd February, 1993.

On 8th January, 1993 the Permanent Secretary, Ministry of National Security informed the Director/Coordinator that the Director of Personnel Administration could not treat with the Ministry's recommendation for the complainant to perform his duties as an acting appointment, in view of the fact that the position of Director/Coordinator, N.E.M.A., was a contract position and therefore did not fall under the purview of the Public Service Commission. It was then recommended that during the absence of the Director/Coordinator his duties should be performed departmentally. Nevertheless, the Director/Coordinator proceeded on leave and the complainant was appointed to perform his duties then and during subsequent periods of absence. In 1995 the Ministry sought the advice of the Chief Personnel Officer with regard to the quantum of the allowance to be paid.

In 1996, more than a year after the complainant had retired, the Ministry still had not settled his claim for acting allowances. His complaint to the Ombudsman was filed on 7th August, 1996. During my investigations I ascertained that the Ministry had eventually sought and obtained approval for payment of allowances in relation to three periods only, in spite of the fact that the complainant had performed duties in relation to six periods.

This was confirmed by the Director/Coordinator who also confirmed that N.E.M.A. then had the necessary funds for the payment of such allowances.



It was the Ministry's contention that the complainant was not paid for the other three periods because he had not received the Ministry's prior approval to perform the duties of the post of Director/Coordinator. Ironically, correspondence from the Ministry addressed to the complainant during one of the subject periods referred to him as "Acting Director 'Ad Interim'."

At a meeting held at the Office of the Ombudsman on 6th July, 1998 to resolve the issue, which was attended by representatives of N.E.M.A. and the Ministry of National Security, it was agreed that the approval of Cabinet be obtained for the payment of an acting allowance to the complainant for the other three periods in relation to which no representation had been made.

The matter is still to be resolved.

**Ref.OMB:0381/98**

**MINISTRY OF PUBLIC UTILITIES**  
TRINIDAD AND TOBAGO ELECTRICITY COMMISSION

The complainant sought my assistance in having electricity charges which were transferred from a previous account to his current account by the Trinidad and Tobago Electricity Commission written-off.

He stated that he was usually charged the sum of Two Hundred Dollars [\$200.] per billing period and was surprised when he received a bill in the sum of Two Thousand, Two Hundred And Fifty Two Dollars And Seventeen Cents [\$2252.17]. When he queried the bill, he was informed that the bill represented charges which were transferred from an account in respect of premises which he had vacated four (4) years earlier at the landlord's request. Although he pointed out to the Commission that the charges were incurred by a succeeding tenant, no action was taken to have the bill adjusted.

Investigations revealed that no attempt had been made by the landlord to close the account which was still in the complainant's name. Payments were made to the account up to 1996. Service was however only disconnected one (1) year later in December, 1997. The Commission was of the view that since no change in the tenancy had been notified to them, they had no alternative but to transfer the charges to the complainant's current account.

I have received similar complaints from other consumers which led me to the conclusion that the general public was unaware of the potential liability they faced when steps were not taken to close electricity accounts upon a change of residence. I subsequently wrote to the Commission recommending that in the interest of good customer relations, an appropriate notice should be published in the daily newspapers so as to avoid the recurrence of such complaints in the future.

In response, I was advised by the Commission's Commercial Manager that the department was in the process of finalizing a document entitled "**What Documents Do I need when....**" which should go a long way towards minimizing the problem.



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

The complainant sought my assistance after he had made an unsuccessful bid to persuade the Water and Sewerage Authority to withdraw retroactive charges which had been applied to his account for a period of five (5) years.

He informed me that he operated a retail outlet for automotive products from his home. The operation of the business entailed minimal use of water. In 1997, he received a bill in the sum of twenty one thousand, four hundred and fifty five dollars [\$21,455.] which, he queried. He was told that the Authority had to levy retroactive rates to reflect the commercial status of his account for the period 13th August, 1992 to 31st May, 1993 and cottage status with effect from 1st July, 1993. The following information was provided to explain the billing:

A flat rate for non-domestic customers was introduced by the Public Utilities Commission under Orders Nos. 78 and 79 dated 13th August, 1992 based on the fact of registration for value added tax purposes.

On 1st July, 1993, based on Public Utilities Commission Order No. 83, a flat rate was introduced for un-metered cottage service customers. This service was defined as:

"all businesses that are classified as non-domestic and are conducted on domestic premises or in a structure of which more than 50% is used as domestic premises."

Because of the wide disparity which exists in the cost of water to unmetered customers as against metered customers, I had occasion to write to the Chairman of the Authority in the following terms:

I have, in previous correspondence, directed to the Public Utilities Commission (PUC) and to the Authority, drawn attention to the inequity which has existed as a result of the Commission's orders in the adoption of criteria other than the criteria laid down in the Water and Sewerage Act for the determination of rates and charges. (See Section 16(1) of the Fourth Schedule).

The Public Utilities Commission has adopted a criterion based on the registration of business premises for the payment of Value Added Tax. This had no relation or relevance to the supply of water by the Authority and the consumption by the customer.

The only customers who are treated, in the present situation with some measure of equity are those who are furnished with meters. The great disparity which exists in the charges imposed upon those who are furnished with meters as against those who are not, has given rise to a great number of complaints.

I concede that until the rates fixed by the Public Utilities Commission are set aside by a Court of competent authority, they are legally binding and enforceable by the Authority. However, as a public authority, I believe that it is incumbent upon the Authority to bring about some equity between those who are furnished with meters and those who are not. The latter are crying out for relief as the instant complaint illustrates.

In this context, I have to refer to a policy decision taken by the Authority and headed "Billing Charging Policies and Practices of the Utilities", paragraph 5, of which limits retroactivity to customers who are furnished with meters to twelve (12) months in cases where the customer is not culpable.

Paragraph 4 of the Policy Statement makes no concession to those whose rates are based on rateable values fixed by the rating authorities nor of unmetered commercial customers, a category within which, the complainant falls.

The inequity of this policy is obvious. Furthermore, it violates the clear provision of Section 31(3) of the Water and Sewerage Act as to undue preference and the exercise of undue discrimination by the Authority.

I believe that the policy decision limiting retroactivity to one (1) year should be applied to all customers irrespective of whether the customer has been furnished with a meter or not and whether or not he is a domestic consumer or a commercial customer so that some degree of parity may be achieved.

In the instant, complaint, I urge the Board to arrive at a decision to limit retroactivity to one (1) year and to furnish the complainant with a metered supply.

The matter is being pursued.

**Ref.OMB:0001/98**

## **MINISTRY OF WORKS AND TRANSPORT**

The complainant was contracted by the Ministry of Works and Transport (Unemployment Relief Programme) to supply material for their construction programmes. He complained that the Ministry had failed to remunerate him in the sum of four hundred and eleven thousand dollars [\$411,000.] for goods and services rendered during the period 1993-1995. He complained that the inordinate delay in payment caused severe hardship to him as he had been unable to meet his commitment to his creditors.

The Ministry acknowledged its debt to the complainant. My investigations revealed that delay had been caused because the vouchers in respect of his claims had been submitted to the Commissioner of Police on suspicion of fraud and no timely response had been received.



I pointed out that it was unfair to withhold payment to the complainant for goods and services which he had rendered and which had been outstanding for such a long period of time, and recommended that payment be made immediately.

The Ministry agreed with my recommendation and payment of the outstanding bills was made to the complainant upon the release of funds from the Ministry of Finance soon thereafter.

**Ref.OMB:0086/97**

### **TOBAGO HOUSE OF ASSEMBLY** HEALTH DIVISION

The complainant returned from England as a Registered Nurse, Licensed Midwife and Operating Room Nurse. She sought and was granted employment at the Tobago County Hospital (now the Tobago Regional Hospital) where she commenced work on 1st September, 1974. She later received a letter of temporary appointment dated 6th September, 1974 from the Service Commissions Department, advising of her employment as a temporary Nurse with the then Ministry of Tobago Affairs, with effect from the date of her assumption of duty and continuing until further notice.

In 1996 while attempting to have her pension and leave record brought up to date, the complainant discovered that although she had been continuously employed with effect from the date of her assumption of duty in 1974, she had never been permanently appointed to the post of Nurse. She then wrote to the Permanent Secretary, Ministry of Health, copying the letter to the Director of Personnel Administration and the Tobago House of Assembly, querying her status. She indicated that persons who had gained employment at the same time as she had, and others who had been employed afterwards, had since been permanently appointed, while her status remained temporary.

The Tobago House of Assembly wrote to the Director of Personnel Administration advising of the complainant's queries and recommending that she be appointed with effect from 17th February, 1990 in a vacancy occasioned by the resignation of another nurse.

It was at this point that the complainant sought my intervention as she felt that the Tobago House of Assembly's proposal to have her appointed with effect from 17th February, 1990 was grossly unfair since she had entered the Public Service as a qualified nurse and had given excellent service for over a period of twenty-two (22) years.

I held discussions with the Chief Administrator, who admitted that failure to appoint the complainant may have been as a result of an administrative oversight due to the fact that many different departments oversaw the administration of health services in Tobago over the subject period, viz the Ministry of Tobago Affairs, the Ministry of Health, the Central Administrative Services Tobago, and lately the Tobago House of Assembly. He stated that his recommendation to the Director of Personnel Administration for the complainant to be appointed with effect from 17th February, 1990 was due to the fact that the department could find no other vacancy at the time to which the complainant could be appointed.

I pointed out that such a recommendation would cause the complainant grave injustice since her seniority, promotion and pension rights would be adversely affected.

Thereafter I was advised by the Director of Personnel Administration that in the course of their own investigations and through discussions with the Tobago House of Assembly, it had been ascertained that the post against which the complainant was being paid with effect from 1st September, 1974 was indeed a vacant post.

Consequently the Tobago House of Assembly recommended the appointment of the complainant to the vacant post and the Public Service Commission vide Director of Personnel Administration memorandum P:9/91/142 Vol. I dated 12th August, 1998, appointed and confirmed the complainant as Nurse, Tobago House of Assembly with effect from 1st September, 1974.



## SUMMARY OF OTHER COMPLAINTS RECEIVED DURING 1998

- |   |   |
|---|---|
| <p>➤ Claim of discrimination against the Ministry of Education with respect to the selection of candidates for scholarships awards to pursue Bachelor Programme at the University of the West Indies.</p> | <p>➤ Failure of the Public Health Department of the Regional Corporation to take appropriate steps in eradicating health nuisances created by poor drainage system on neighbour's property.</p> |
| <p>➤ Dissatisfaction about the performance of an Attorney-at-law selected by the Legal Aid Authority in handling a court matter.</p>  | <p>➤ Unfair denial of a contract by Public Transport Service Corporation to transport school children although maxi taxi had passed the required inspection tests.</p>                          |
| <p>➤ Duplicate billing with respect to water rates charged by the Water and Sewerage Authority in respect of the same property.</p>   | <p>➤ The failure of a friendly society to remit benefits due upon death of complainant's daughter.</p>  |
| <p>➤ Denial of electricity supply by the Trinidad and Tobago Electricity Commission although premises had passed inspection by the Electrical Inspectorate's Department.</p>                              | <p>➤ Failure of the Ministry of Works Department to take necessary action to minimize damage caused by landslide and take remedial action to improve drainage system of roadway.</p>            |
| <p>➤ Failure of the Ministry of Works to pay compensation for injuries sustained from a fall through an open manhole.</p>   | <p>➤ Assistance requested in having the Teaching Service Commission review placement on the Seniority List for teachers at school.</p>  |
| <p>➤ Demand Notice from Ministry for recovery of overpayment of salary.</p>   | <p>➤ Assistance in having Credit Union refund outstanding share balance.</p>  |

- |   |   |
|---|---|
| <p>➤ Failure of the Trinidad and Tobago Electricity Commission to pay compensation for damaged household appliances as a result of an electrical power surge.</p> | <p>➤ Assistance to obtain Probationary Tenancy Agreement of State land for agricultural purposes.</p>   |
| <p>➤ Failure of Regional Corporation to clear drains and maintain and repair roads.</p>   | <p>➤ Allegation of wrongful arrest.</p>   |
| <p>➤ Delay on the part of the Registrar General's Department in having land registered under the Real Property Ordinance.</p>                                     | <p>➤ Failure of Public Health Department to address complaint of noise and dust pollution and the erosion of property arising from road construction.</p> |
| <p>➤ Failure of Ministry of Works to pay compensation for damage to property caused by the diversion of a river.</p>  | <p>➤ Failure of Ministry of Works to build retaining wall to prevent further erosion of property.</p>   |
| <p>➤ Demand from TSTT for payment of bills related to overseas calls which complainant denied making.</p>   | <p>➤ Failure of the Police Service to execute warrants in matters related to the payment of maintenance.</p>  |
| <p>➤ Disappearance of records of certain matters in Magistrate's Court.</p>   | <p>➤ Delay on the part of Government to pay compensation for land acquired by the State.</p>  |
| <p>➤ Denied payment of compensation by BWIA for lost luggage.</p>   | <p>➤ Demand by Magistrate's Court for the submission of a certificate of good character before granting licences to jewellery pawn brokers.</p>           |
| <p>➤ Discrimination in employment practices by Regional Corporations.</p>   |   |

**[This list is not exhaustive of the complaints received during the year 1998].**

# *PART IV*

## *APPENDICES*

## **THE OMBUDSMAN AND HIS SOCIETY THE CASE OF TRINIDAD AND TOBAGO**

by

**Joy Henry B.Sc. (Hons) Sociology  
Investigator, Office of the Ombudsman**

The Ombudsman is defined by the International Bar Association as:

**“An Office provided for by the Constitution or by an action of Legislature or Parliament, and headed by an independent, high-level public official who is responsible to the legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action and issue reports.”**

The principal characteristics to be derived from this definition are as follows:

1. The Office of the Ombudsman is a legal, formal institution. Its existence, functions, privileges and obligations are defined by statute, that is, it is not just another complaint handling device, such as a citizen's advice bureau, a newspaper column or a call-in radio program.
2. The Office is a personalized one inseparable from the person of the Ombudsman, in whom is vested all its powers. The Ombudsman is a figure of authority and respect in his society. As Larry Hill puts it:

**“The Ombudsman is a high ranking official, especially so at the national level. In Sweden, senior judges are appointed... Usually the choices are people who have already achieved prominence in such fields as law, higher education, diplomacy or other Government Services. Their personal status thus builds upon the office's formal legally established rank. The authority figure of the Ombudsman is further enhanced by his independence, as he is responsible only to Parliament.”<sup>1</sup>**

3. The Ombudsman's powers to investigate are extensive. In the case of Trinidad and Tobago, as in other jurisdictions, he has power to enter and inspect any premises over which he has jurisdiction and can call for, examine and, if necessary, retain any document kept on such premises and carry out any investigation in pursuance of his function. He is also vested with the powers of a High Court Judge to summon witnesses to appear before him, compel them to give evidence on oath and produce documents relevant to the proceedings before him.

This power is further enhanced as the Ombudsman can act on his own motion and initiate an investigation. It is to be noted that all information obtained by the Ombudsman in the course of investigations are privileged information and can only be used for the purpose of his investigation. This provision is an additional safeguard for the protection of the public.



4. Finally, the Ombudsman recommends corrective action and publishes reports. The impunitive nature of the Institution is often regarded as an anticlimax to the overall power of the Ombudsman and this concept raises questions in regard to his effectiveness. This is particularly so in societies such as ours in which coercive power has had a significant role in our history.

However, the absence of coercion is an essential element of Ombudsmanship and rests on the expectation that the prestige and status of the Ombudsman and his Office in the society would be sufficient to ensure the acceptance of his recommendations.

The classic example of this relationship between the Ombudsman and the bureaucracy is illustrated in the Saachen Hausen case in which the British Foreign Minister accepted the recommendations of the newly established Parliamentary Commissioner for Administration even though he disagreed with such recommendations.

In Trinidad and Tobago, the Ombudsman reports to Parliament both in the form of Special Reports in cases where his recommendations have not been accepted or implemented by the bureaucracy and also where in his opinion, a matter is of sufficient public importance. He is also required to submit Annual Reports on the performance of his Office. The Ombudsman is also empowered by legislation to publish reports relating to the exercise of his functions or to a particular case in the public interest from time to time. Parliament therefore represents the final power of the Ombudsman as well as the reason for his existence - he belongs to it; his entire operation is in its interest and, in the final analysis, the life and relevance of the Institution depends on Parliament.

While the Ombudsman is a comparatively new institution originating in Sweden in 1809, it has spread throughout most of the democratic world. A similar figure of authority and respect can be traced in most traditional societies. In these societies, justice is based on the mutual understanding of right and wrong, between individuals rather than on formalized law. Modern democratic society in its attempt to ensure the rights of an individual against injustices by Government agencies has formalized and legalized this historical figure and invested him with powers over the executive as described above.

Traditional societies are generally described as being small and homogeneous exhibiting widespread consensus. Undoubtedly, because of this it was commonly believed that Ombudsmanship could be effective only in similar societies. This idea has been successfully refuted as Bernard Frank mentions in his "**Ombudsman and Human Rights Revisited.**"

He has noted that one of the most commendable features of the institution of the Ombudsman is its adaptability.<sup>2</sup>

Ombudsman Offices can be found in the most divided societies and, in fact, the Institution is deliberately used as a means of protecting minority groups as has been reported in Mauritius and Israel. Modern democratic societies are highly stratified. Groups can be divided along lines of socio-economic status, race, ethnicity/culture, religion, gender, age and even health. The broad principle underlying the idea of Ombudsmanship is reflected in the State's commitment to the ideals of democracy.

One of the ideals of democracy is its tendency towards participation. Democracy tends to rely on compromise rather than on consensus and on persuasion rather than on coercion.

As societies differ in their structure and historical experiences, it is expected that new institutions would be affected and even be determined by such structures and experiences, a fact which was recognized by the Ombudsman of Trinidad and Tobago when the Office was established in 1977. (Sudama 1980)<sup>3</sup> Professor Harold Lutchman, in accounting for the failure of the Office of the Ombudsman in Guyana to function effectively in its first two years, stated:

**"The slow growth of the office 'in Guyana' during its first two years of operation was due to political conflict between the Government and the Opposition. The conflict was based on racial differences which had expressed itself in the violence in 1962, 1963 and 1964. The fact that it was born in a racially divided society, the aftermath of violent happenings had not lost its sting and it seems that social cleavage will die a hard slow death."**

The social history of the people of Trinidad and Tobago has been one of rapid transformation in its legal and political structures from the 1930's to the 1970's. In 1946, we attained universal adult suffrage; in 1959 we obtained full internal self government; in 1962 independence was granted, and in 1976 we became a republic. In less than four decades we have been transformed from a people with few legal and political rights to a people who subscribe to the Vienna Conventions on political, social and economic rights.

While political and legal changes have been significant, other institutional structures retain their basic characteristics. Their response to change continues to be slow. In particular, the bureaucracy is anachronistic in its forms. Contrary to the ideal of modern open bureaucracy it retains its secrecy and overcentralization (Mills) of the colonial past. On this is superimposed practices of political patronage, nepotism and other forms of discrimination. (La Guerre).<sup>4</sup>

The secretive nature of Governmental administration is reflected in several complaints from members of the public that on enquiring about their matters, 'they are being given the run around', or served with letters stating that the matter is receiving attention while their requests to see senior officers are constantly denied.

Overcentralisation has resulted in cumbersome, protracted processes and in failure to make decisions except by top management in the smallest of matters. The obvious corollary of such practices is delay in decision-making.



It is noteworthy that the majority of complaints received by this Office are about delay. In spite of Government efforts of decentralisation, little progress has been made.

The many complaints of discrimination in selection for employment that are received in this Office attest to the fact that discriminatory practices are a part of our bureaucratic culture.

From the foregoing it is evident that there is an absence of communication between the bureaucracy and the public, a view which was expressed by Professor Selwyn Ryan as a member of the Constitution Commission of 1972.<sup>5</sup>

The mere description of the structure and practices of the bureaucracy in Trinidad and Tobago and the relationship which exists between it and the public, tells us that the Ombudsman has a significant role to play in improving such relationship more in keeping with the democratic ideals of participation and accountability. The Ombudsman has the potential to be an important agent for effecting social change. He not only investigates but mediates, advises and guides.

In the exercise of his functions in any jurisdiction, the Ombudsman has four (4) main goals to achieve in the society: first, public awareness of the existence of his Office; second, making his services available and accessible to the public; third, gaining the confidence of the public and fourth, resolving complaints to the satisfaction of both the complainants and the bureaucracy.

The social history of the Commonwealth Caribbean is indicative of the fact that people are willing to demand their rights. In the first year of operation, the Office of the Ombudsman of Trinidad and Tobago received a total of 1,098 complaints, a figure which is comparatively high given the amount of population as compared with the standards of the Ombudsman in any other jurisdiction. This indicates that public awareness of the existence of the Office was high at its very inception.

The Ombudsman generally seeks to increase public awareness. The media has always been regarded as one of the most effective means of disseminating information and influencing public opinion. In Trinidad and Tobago, the media has been heavily criticized. Trevor Sudama, in assessing the role of the media in relation to the Ombudsman, has referred to the press as 'weak and supine.' It is generally agreed that the media in Trinidad and Tobago thrives on sensationalism. Information appearing in even the most prestigious newspapers is viewed warily. In the Ombudsman's experience, however, the media has been helpful in disseminating information relevant to the performance of the Office.

Even so, the best medium for informing the public about the Office of the Ombudsman has been the public itself. Many complainants seek the assistance of the Ombudsman on the advice of persons who are aware of the existence of the Office and its functions. This method of spreading information is a part of our cultural heritage. People engage in conversations everywhere they meet; in the bus, in the marketplace or on the hospital bench.

From the inception of the Office, the Ombudsman has sought to make the public aware of his services through lectures at various fora and by way of publications. Such efforts have received positive responses.

In seeking to make their services available and accessible to the public, most Ombudsmen agree that the majority of their clients come from the lower socio-economic strata of society. Mr. Maloney, former Ombudsman of Ontario, has commented that the majority of complainants are the "poor and disadvantaged."<sup>6</sup> However, the Ombudsman's clients are by no means restricted to these classes.

The Ombudsman of Fiji visits the different islands that comprise the State; and Ombudsmen in large jurisdictions create permanent branch offices or operate "mobile clinics." In this country, the Ombudsman has adopted the practice of making himself accessible and available to the public in general.

In fact, complainants visiting the Office for the first time are always interviewed by the Ombudsman and, in his absence, by the next senior member of staff. Office is held once a month in Tobago and in the three other main towns in Trinidad, San Fernando, Sangre Grande and Rio Claro. The Ombudsman and his Investigators also make visits to sites where necessary. Visits are also made to prisons and other institutions.

Finally, accessibility may be nullified by the legal requirement under the Ombudsman Act that all complaints to the Ombudsman be made in writing. The Ombudsman has delegated a member of staff to assist complainants in reducing their complaints into writing.

Racial differences are sometimes regarded as a possible impairment of the independence and representativeness of the Ombudsman and his Office and this could erode the confidence of the public in the Ombudsman himself. In considering the creation of the Office of the Ombudsman in Trinidad and Tobago, the question of racial differences was highly stressed and the proposal that three Ombudsmen be appointed to represent the three major races was debated. This was rejected by the Wooding Constitution Commission 1976 which felt that it could place its faith in one man who could straddle the different racial groups. The Commission stated:

**'experience has shown that the society has been able to produce men of unquestionable integrity and proven impartiality. We do not think it has ceased to do so. We confidently expect that an individual can be found who is obviously capable of filling the Office.'**

This question was again considered by the Constitution Commission which was headed by Sir Isaac Hyatali in 1987.

The issue centres on two questions. Firstly, whether a single Ombudsman can be sufficiently independent to decide or adjudicate on a matter involving a person of his own race and that of another. Secondly, as expressed by Ryan, whether symbolic representation is often just as important as effective representation.

The record shows that there have been no allegations of racial bias against the Ombudsman. In addition, the services of the Office are used by all races, as it is by all classes and genders.

The final goal of the Ombudsman is to have the respect of the bureaucrat and the Parliament. The Constitution Commission of 1976 noted that where the institution of the Ombudsman proved to be successful as in Sweden and New Zealand, it was due to the energies of the first Ombudsman.



The energy of the Ombudsman contributes to the success of his Office mainly in his dealing with the public - creating awareness of the Office et cetera.

His success with the bureaucracy and Parliament, however, depends mainly on the attitude of the officials of these institutions to the Office. In this connection, it is useful to recall the words of the Ombudsman of Trinidad and Tobago, as recorded in his Tenth Annual report at pages 13 and 14:

**"Most of the complaints I have investigated which have been sustained are resolved before the stage of recommendation to the department concerned. However, there are instances in which I have made recommendations and government administrators generally have shown their respect for my Office by adopting my recommendations.**

**There are instances, however, where the administration has not accepted my recommendations and I am under a legal obligation to refer the matter to Parliament under Section 96 (4) of the Constitution. During my second year in office, I laid my first Special Report before Parliament. The matter related to a widow whose gravel was won from her land without her permission. It was a clear case of trespass. Nothing has been done so far by Parliament in this matter. This experience of the inaction and indifference by Parliament has left me hesitant to lay Special Reports. It demonstrates the lack of respect for the institution and the difficulty of Ombudsmanship in this country. A far cry from the respect and regard that is given to its counterpart in places such as New Zealand, England and Scandinavia."**

The words of a member of Parliament as recorded in the 13th Annual Report of the Ombudsman are equally important:

**"As you know, Mr. Speaker, under this administration, the reports of the Ombudsman were debated for the first time in the history of this country and that is principally because we had indicated to the country in our manifesto, that we considered this institution and this Office, a vital and significant one and we made a commitment there to strengthen that institution during our term of office. Not only did we debate the reports of the Ombudsman in 1987, 1988 and 1989, but under your guidance, Mr. Speaker, we were able to establish a parliamentary committee under the Chairmanship of the President of the Senate, in fact, looking at the Office of the Ombudsman with a view to strengthening it in keeping with the manifesto commitment and pledge."**

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The author having attained the rank of Senior Investigator,  
died on 17th April, 1998]

**REPORT OF  
PUBLIC SERVICE REFORM**

by  
Mrs. Hazel Anne Martin, C.P.A.; B.Sc (Hons) (Government)  
Ag. Administrative Officer II,  
Office of the Ombudsman.

In his Sixteenth Annual Report, **January 01, 1993 to December 31st, 1993**, the Ombudsman of Trinidad and Tobago referred to the activities and projects of his Office in the era of public service reform.

In the appendix to the report under reference, Mrs. Yvette Crichlow, Investigator, now acting Senior Investigator, in her article entitled **"Public Service Reform and the role of the Ombudsman in Trinidad and Tobago"**, provided a critical assessment of the potential impact of the goals of public service reform and the role of the Ombudsman. But, how have these concepts impacted on the Office of the Ombudsman, to date?

In the debate on the Fourteenth Annual Report of the Ombudsman, the then Minister of Public Administration commented that the reform would ultimately lead to a situation where many of the criticisms and complaints cited by the Ombudsman in that report would become a thing of the past. He further added that the reform process emphasized the importance of customer service.

The responsibility of the Public Service is to ensure that Government's priorities, policies, plans and programs are operationalized and translated into direct services for the benefit of the national community.

One is reminded of the fact that the Office of the Ombudsman arose from a discerned need to protect the ordinary citizen from injustices incurred by reason of this abuse of delegated power by general maladministration. The Ombudsman is one of the critical institutions that can prevent deterioration in the Public Service and detect failure and deficiencies.

Public service reform began in Trinidad and Tobago in 1991, when a Minister was assigned the responsibility for public administration. The Public Service adopted systems which had been in operation in the private sector for many years past.

There was a shift in focus in the Public Service which included the devolution of management controls and the development of new reporting, monitoring and accountability mechanisms. Emphasis was placed, 'inter alia', on policy training activities and the introduction of an information technology policy, systems of strategic planning, cost efficiency, effectiveness and customer orientation.

Indeed, this signaled the introduction of what became the "New Management Philosophy." The traditional methods and procedures had to give way to the new techniques of the private sector whose values and strategies became the driving forces behind public service reform.

A number of changes within the Public Service were proposed. Among the more critical areas identified, included a comprehensive management training program which targeted senior public service managers and the introduction of new performance management and appraisal systems to replace the previous reporting system.

In addition, it was necessary for a proper monitoring, evaluating and rewarding system to be instituted. These functions were delegated to line ministries which constituted a shift from the system of personnel management to that of human resource management. Ministries and Departments were expected to manage all policies as they pertained to human resource management systems - such as the functions of recruitment, promotion, training, career pathing and manpower planning.

Research has indicated that training played a crucial role in the reform effort among the departments and ministries. A training policy was designed to provide guidelines for all the initiatives to be undertaken by ministries, departments and other Public Service agencies in training and developing their human resources with a view to enhancing job performance so that organizational goals and national objectives would be achieved.

By Minute No. 2470 of September 25, 1997, Cabinet approved a training policy for the Public Service of Trinidad and Tobago. This policy document requested ministries and departments to develop training plans to be included in their annual Estimates of Expenditure and to ensure that training plans are part of their human resource planning processes.

The Office of the Ombudsman submitted its training plan to the Central Training Unit - Employee Development Division of the Personnel Department on 12th August, 1998, which received favourable comments.

The data indicated that ministries and departments were at various stages in the preparation of their training plans. Of the thirty-six [36] public service agencies surveyed it was revealed:-

- ▶ Seven [7] had completed their training plan.
- ▶ Twelve [12] were still developing a plan.
- ▶ Seventeen [17] had not yet prepared a training plan.

A pilot project was agreed to by Cabinet Minute 1200 dated May 1998, for customer service improvement. Seven ministries and departments participated in this pilot project viz:

- [1] Customs and Excise Division.
- [2] Manpower Unit, Ministry of Labour.
- [3] Inland Revenue Division.
- [4] Immigration Division.
- [5] Transport Division, Ministry of Works and Transport.
- [6] Registrar General's Department.
- [7] Social Welfare Division of the Ministry of Social Services.



There were programs designed for all levels of employees in the following areas:

- ▶ Measurable improvements in the turn-around time on targeted transactions.
- ▶ Staff training and development.
- ▶ Application of information technology.
- ▶ A holistic approach that included physical as well as behavioural management enhancements within the respective ministries and departments.

The Ministry of Public Administration in continued support of strategies for internal/external service excellence, facilitated the Excellent Service Customer Care and Dependability Project [EXCCD]. This program clearly outlined the requirements for excellent service delivery - the required activities; its objectives; philosophy; and policy for the Public Service.

It is anticipated that EXCCD would demonstrate an understanding and a willingness to meet the needs and the pressures from the citizens of Trinidad and Tobago for quality services. It is an opportunity for the Public Service to demonstrate that there is an understanding with respect to the concept of service, and that it can deliver excellent service adequately and with dependability.

The Office of the Ombudsman in accordance with its tradition had, from its inception, provided proper services to the public. Nevertheless, all levels of staff of the Ombudsman's Office were exposed to seminars and courses promoted by the Ministry of Public Administration during the year, 1998.

These included:-

- ▶ "Managing Human Resource Training and Development."
- ▶ "The Orientation to Court Processes."
- ▶ "Trinidad and Tobago's Public Management and Administration Excelling in the 21st Century."
- ▶ "Developing Training Plans."
- ▶ "From Secretary to Administrative Assistant 2000 - 1."
- ▶ Central Training Unit, Training Division seminars on -
  1. The devolution of functions to be performed by the Department;
  2. The Training Policy for the Public Service and supporting guidelines;
  3. The role that Permanent Secretaries and Heads of Departments will be required to play in managing the functions to be devolved in implementing the Training Policy; and
  4. Operationalizing of the new Appraisal System.
- ▶ Training sessions for Permanent Secretaries and senior members of staff in the Ministries and Departments with respect to the devolution of functions of the Service Commissions Department.

An information technology policy [IT] was introduced in the Office of the Ombudsman in 1995, with the installation of a computerization system. The system was expected to support the various functions of the Office of the Ombudsman and to enhance its capability of delivery of service to the complainants.

Information technology has also assisted with the development and implementation of effective IT-related solutions that impact positively on the delivery of its services, for example, the input of data, that is complaints into the system for easy access and retrieving of statistical information.

The staff attended training sessions and meetings with the continued effort to upgrade computer literacy skills at the National Information Systems Centre [NISC]. The NISC is the collaborator on the computerization process and served as a strategic guide throughout the effort. During the course of December 1998, NISC conducted a series of interviews with officers of the Office with a view to updating the Strategic IT Plan.

The Ombudsman also sought to source training for his staff through requests/project proposals submitted to the Commonwealth Secretariat Management Training Services Division Support and Funding.

Findings revealed that the anticipated goals of the reform process of the public service by year-end, 1998 did not reach the level targeted. This was mainly due to financial constraints. However, most of the programs began in the latter part of the year and feedback is yet forthcoming.

**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 recognized 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 recognized and declared.
- (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not -
- (a) authorise or effect the arbitrary detention, imprisonment, or exile of any person;
  - (b) impose or authorise the imposition of cruel and unusual treatment or punishment;
  - (c) deprive a person who has been arrested or detained;
    - (i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;
    - (ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;
    - (iii) of the right to be brought promptly before an appropriate judicial authority;
    - (iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;
  - (d) authorise a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;
  - (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

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

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

**OMBUDSMAN**

**Appointment  
and conditions  
of office**

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

		(4)	Subject to subsection (3) the Ombudsman shall hold office in accordance with section 136.
		(5)	Before entering upon the duties of his Office, the Ombudsman shall take and subscribe the oath of office before the Speaker of the House of Representatives.
<b>Appointment of staff of Ombudsman</b>	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).
<b>Functions of Ombudsman</b>	93.	(1)	Subject to this section and to sections 94 and 95, the principal function of the Ombudsman shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.
		(2)	The Ombudsman may investigate any such matter in any of the following circumstances -
		(a)	where a complaint is duly made to the Ombudsman by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;
		(b)	where a member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice;
		(c)	in any other circumstances in which the Ombudsman considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.



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

**Restrictions  
on matters  
for investigation**

- 94. (1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.
- (2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.
- (3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.

- (4) The Ombudsman shall not investigate -
    - (a) any action in respect of which the Complainant has or had
      - (i) a remedy by way of proceedings in a court; or
      - (ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than a court; or
    - (b) any such action, or actions taken with respect to any matter, as is described in the Third Schedule.
  - (5) Notwithstanding subsection (4) the Ombudsman
    - (a) may investigate a matter notwithstanding that the Complainant has or had a remedy by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;
    - (b) is not in any case precluded from investigating any matter by reason only that it is open to the Complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the provisions for the protection of fundamental rights).
95. In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to sections 93 and 94, act in his discretion, the Ombudsman may refuse to initiate or may discontinue an investigation where it appears to him that -
- (a) a complaint relates to action of which the Complainant has knowledge for more than twelve months before the complain was received by the Ombudsman.
  - (b) the subject matter of the complaint is trivial;
  - (c) the complaint is frivolous or vexatious or is not made in good faith; or
  - (d) the Complainant has not a sufficient interest in the subject matter of the complaint.

**Third  
Schedule**

**Discretion  
of  
Ombudsman**

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



**Prescribed  
matters  
concerning  
Ombudsman**

- (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.

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

- (6) The Ombudsman, and any person holding office or appointment under him may not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.
- (7) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any enquiry by or proceedings before an Ombudsman under this Constitution is privileged in the same manner as if the enquiry or proceedings were proceedings in a Court.
- (8) No proceedings of the Ombudsman may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of an Ombudsman is liable to be challenged, reviewed, quashed or called in question in any Court.

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

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

- (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.
- 8. Actions taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.
- 9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to -
  - (a) the terms and conditions of service as such member; or
  - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
- 10. Any action which by virtue of any provision of this Constitution may not be enquired into by any Court.

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

**An Act to make 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**

3. (1) Where the Ombudsman proposes to conduct an investigation under section 93 (1) of the Constitution he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make 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 of any department or authority to which section 93. of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate.
- (5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.
- (6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person out of 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, so, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this sub-section, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.

- (7) For the purposes of section 93 (2) 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 or authority to which section 93 of the Constitution applies or any authority referred to in the Schedule to this Act and who in the Ombudsman's opinion is able to give any relevant information;
  - (b) any complainant; or
  - (c) any other person who in the Ombudsman's opinion is able to give any relevant information,
- and for that purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of the Perjury 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 Act in respect of his sworn testimony, or for an offence under section 10, no statement made or answer given by that or any other person in the course of any inquiry or any proceedings before the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.
  - (6) No person shall be liable to prosecution for an offence against the Official Secrets Act, 1911, to 1939 of the United Kingdom, or any written law other than this Act by reason of his compliance with any requirement of the Ombudsman under this section.
5. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing -
- (a) might prejudice the security, defence or international relations of Trinidad and Tobago (including Trinidad and Tobago relations with the Government of any other country or with any international organizations);
  - (b) will involve the disclosure of the deliberations of Cabinet; or
  - (c) will involve the disclosure of proceedings of Cabinet or any Committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest,



the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper, or thing to be produced.

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

**Secrecy of information**

- 6. A person who performs the functions appertaining to the Office of the Ombudsman or any office or employment thereunder -
  - (a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any 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 of section 3 (4) or section 9, shall be deemed inconsistent with any duty imposed by this paragraph; and
  - (b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the exception to paragraph (a).

**Notice of entry on premises**

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

**Delegation of powers**

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

- (2) No such delegation shall prevent the exercise of any power by the Ombudsman.
- (3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.
- (4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

## **Reports**

- 9.
  - (1) The Ombudsman may from time to time in the public interest publish reports relating generally to the exercise of his functions or to a particular case or cases investigated by him, whether or not the matters to be dealt with in such reports may have been the subject of a report to Parliament.
  - (2) The form of statistics of complaints received by the Ombudsman and the results of his investigation required by section 96 (5) of the Constitution to be included in the annual report to Parliament by the Ombudsman on the performance of his functions shall be prescribed by regulations made under section 12.
- 10. A person is liable on summary conviction to a fine of one thousand dollars or to imprisonment for six months who -
  - (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;
  - (b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;
  - (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or
  - (d) in a manner inconsistent with his duty under section 6 (a), deals with any documents, information or things mentioned in that paragraph.

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

11. (1) The authorities mentioned in the Schedule are authorities to which section 93 (3) (d) of the Constitution applies.
- (2) The President may, by Order, amend the Schedule by the addition thereto or deletion therefrom of any authorities or the substitution therein, for any authorities of other authorities.

**Regulations**

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



