



OFFICE OF THE OMBUDSMAN OF TRINIDAD & TOBAGO

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November 19, 2008

The Honourable Speaker
Parliament of Trinidad and Tobago
The Red House
Abercromby Street
PORT OF SPAIN.

Dear Mr. Speaker,

I have the honour to present the THIRTIETH ANNUAL REPORT of the Ombudsman for the period January 1, 2007 to December 31, 2007.

This Report is submitted pursuant to section 96 (5) of the Constitution of the Republic of Trinidad and Tobago.

Yours faithfully,

A handwritten signature in black ink that reads "L. Stephenson".

**Lynette Stephenson, S.C.
OMBUDSMAN
Republic of Trinidad and Tobago**





It is my view that the Office of the Ombudsman has a functional role in improving public administration and that it will continue to be an important oversight facility afforded to citizens in their dealings with major utilities and public services.

A handwritten signature in cursive script that reads "L. Stephenson". The signature is written in a dark ink on a light background.

Lynette Stephenson, S.C.
OMBUDSMAN OF TRINIDAD & TOBAGO



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By *Lynette Stephenson, S.C.*
Ombudsman

In 2007, the Office of the Ombudsman strove to ensure that the handling of complaints was customer-oriented in a manner which would take cognizance of the fact that civil rights must be protected. Therefore, in spite of the many challenges affecting the speedy and effective resolution of complaints from citizens of Trinidad and Tobago, public officers were constantly reminded and encouraged to improve the delivery of public services and to become true representatives of the people they served.

In this regard, I wish to express my sincere appreciation for the support given to my office by persons named below. Their willingness to assist and participate in the resolution process brought some measure of comfort to all.

- | | | |
|---|---|---|
| 1. Ms. Angela Orosco | - | Ministry of Health |
| 2. Mr. Rafiek Mohammed | - | Ministry of Health |
| 3. Ms. Giselle Bishop | - | D.P.A. |
| 4. Mr. Stephen Creese | - | Siparia Regional Corporation |
| 5. Mr. Harriram Ramdin | - | Comptroller of Accounts |
| 6. Ms. Shanta Narinesingh | - | Ministry of Legal Affairs (Registrar General) |
| 7. Deputy Commissioner of Police Winston Cooper | - | Ministry of National Security |
| 8. Mrs. Jacqueline Ganteaume-Farrell | - | Permanent Secretary, Ministry of Public Utilities |
| 9. Mr. Mohan Chadee | - | Regulated Industries Commission |
| 10. Ms. Nazra Jerome | - | Water & Sewerage Authority |
| 11. Mr. Noel Barry | - | Personnel Department |

It must be noted that the role of the Ombudsman is complementary to that of a judge. The Ombudsman cannot declare an administrative decision to be invalid as a judge can. He or she can only recommend and use persuasive power to effect change. Yet it is believed that individuals do have a right to complain against government institutions to an independent body without fear of reprisal. Citizens and non-citizens alike are valuable clients of the Ombudsman.

That being said, I know that there are many public authorities which consider the Ombudsman and her staff to be pesky mosquitoes singing in their ears and refusing to go away. However, since the establishment of the Office thirty (30) years ago, the number of complaints against government ministries, departments and statutory agencies has increased. Government accountability and the right to complain are not strange bedfellows.

It is my view that the Office of the Ombudsman has a functional role to play in improving public administration and that it will continue to be an important oversight facility afforded to individuals in their dealings with major utilities and public services. In fulfilling that mandate, over the past year I have had the invaluable support of a number of very special people.

In that regard, I say special thanks to my Executive Officer, Senior Investigators, Investigators, Head: Legal, Communications Specialist, Network Technician, Administrative, Clerical, Secretarial, Manipulative Staff and Security detail for their dedication to duty and commitment during the past year.



OMBUDSMAN LYNETTE STEPHENSON, S.C., WITH MEMBERS OF HER ADMINISTRATIVE AND TECHNICAL SUPPORT STAFF

CONFERENCES AND TRAINING PROGRAMMES



Ombudsman Stephenson pictured with members of her Investigative staff.
(left to right) standing: Ramesh Nanan, Marsha Samaroo-Calcut, Cheryl Kissoon, Anton Rampersad, Dhanmatie Rampersad, Beverly Kitson, Lee-Ann Steele and Dayne Gellineau (Investigators)

(left to right) seated: Leonie Bernier, Donna Mollineau-Hyndman(Snr. Investigators), Ombudsman Stephenson and Martina Phillip (Snr. Investigator)

I was accompanied by Mrs. Donna Mollineau Hyndman, Investigator, to the First Joint Meeting between the Caribbean Ombudsman Association (CAROA) and Consejo Centroamericano de Procuradores de Derechos Humanos (Central American Council of Human Rights Ombudsman or CCPDH) which was held in San Jose, Costa Rica from January 29 - 31, 2007. That meeting sought to formalize and strengthen mechanisms of cooperation between CAROA and CCPDH. Participants attended a public hearing of the Inter-American Court of Human rights where the case of Escué Zapata v Colombia was being tried.

A training programme "When Citizens Complain - The Role of the Ombudsman in Improving Public Services" was held in London, England, under the auspices of Public Administration International (PAI) from May 14, 2007 to May 25, 2007. I attended that programme along with Ms. Lee Anne Steele, Investigator.

I also attended the 5th International Conference of Information Commissioners, which was held in Wellington, New Zealand from November 26 - 29, 2007. I was accompanied by Ms. Jeanine Boodhai, the Head of our Legal Division. The Conference coincided with New Zealand's celebration of the 25th anniversary of the enactment of its Official Information Act.

During 2007, six (6) Investigators received basic training in Alternative Dispute Resolution (mediation, arbitration) conducted by representatives of Stitt Feld Handy in collaboration with Windsor University Law School (Canada). This programme is accredited by the Mediation Board of Trinidad and Tobago.

EDUCATIONAL OUTREACH ACTIVITIES

A series of seminars aimed at heightening awareness and knowledge about the office was held in Tobago in June, 2007. A team, comprising the Ombudsman, Senior Investigators, Communication Specialist, Network Technician, the Investigator resident in Tobago, and the Executive Officer, held a session with senior public sector officials in an effort to establish closer ties with their departments. Frank discussions were held with officials from the Tobago House of Assembly (THA), the Police and Fire Services, the Port Authority, the Public Transport Service Corporation, the Water and Sewerage Authority (WASA) and Telecommunications Services of Trinidad and Tobago (TSTT).

Attendees were reminded of the functions of the Ombudsman and were encouraged to foster a culture of cooperation with the Ombudsman within their organisations so that the investigative process would be better accommodated.

Another seminar was held for secondary school students and their teachers. This session sought to make the participants aware of the assistance which may be provided by the Ombudsman to citizens who were not satisfied in their dealings with government agencies.

A new documentary video programme on the Office of the Ombudsman was produced during the year under review and aired for the public's benefit on all national television stations. I also participated in a television talk show special during 2007, which provided the opportunity to highlight some issues pertinent to the work of the Office.



STATISTICAL OVERVIEW

In 2007, one thousand, two hundred and eighty-three (1,283) persons approached the Office of the Ombudsman for assistance. Two hundred and sixty-three (263) or 20.5% of the complaints received were against private organizations and were referred to the Authorities mandated to handle those concerns.

Investigations were commenced on the other one thousand and twenty (1,020) complaints which fell within the jurisdiction of the Ombudsman of Trinidad and Tobago. This figure represented 79.5% of the one thousand, two hundred and eighty-three (1,283) new complaints received. At the end of the year investigations were concluded on one hundred and sixty-eight (168) or 16.5% of the complaints and a total of eight hundred and fifty-two (852) or 83.5% remained under investigation.

Table I and Figure I show a breakdown of new complaints received in 2007.

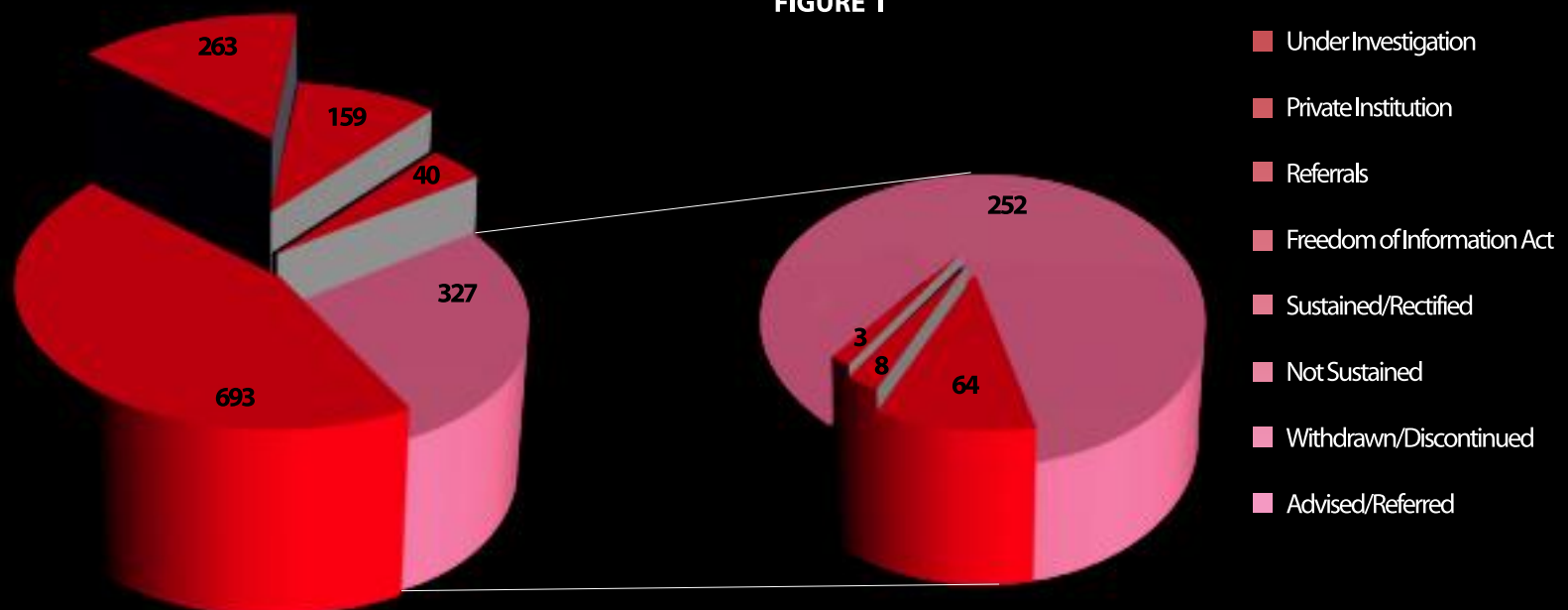
STATISTICAL OVERVIEW

TABLE I

STATISTICS ON NEW COMPLAINTS RECEIVED DURING THE PERIOD JANUARY - DECEMBER 2007

	NUMBERS	PERCENTAGE %
Total number of complaints received	1283	100
Freedom of Information Act	40	3.1
Referrals	159	12.4
Total number of complaints without jurisdiction	263	20.5
Total number proceeded with	1020	79.5
Total number concluded	327	32.1
Sustained/Rectified	64	6.2
Not Sustained	8	1.0
Withdrawn/Discontinued	3	0.2
Advised/Referred	252	24.7
Total Under Investigation	693	67.9

FIGURE I



STATISTICAL OVERVIEW

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

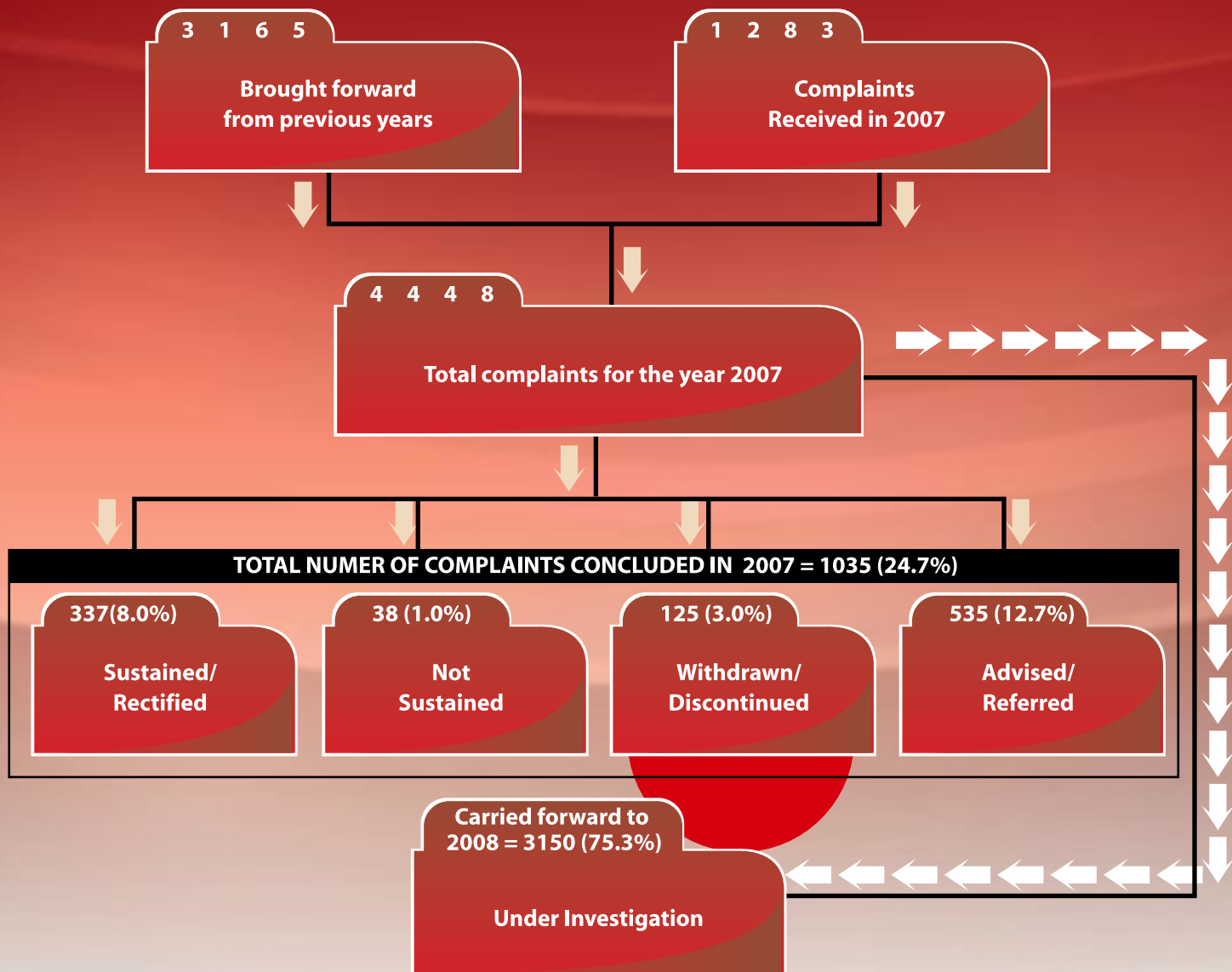
Table II and **Figure II** provide a graphic overview of the total caseload lodged at the Office of the Ombudsman in 2007. It is to be noted from **Table II** that the caseload for the period under review necessitated the investigation of three thousand, nine hundred and eighty-six (3,986) complaints.

This figure represented the eight hundred and twenty-one (821)* new complaints of which investigations were commenced in 2007 as well as three thousand, one hundred and sixty-five (3,165) matters which remained outstanding from previous years. At the end of 2007 investigations were concluded on a total of eight hundred and seventy-six (876) of the total number of complaints. Three thousand, one hundred and ten (3,110) complaints remained under investigation.

TABLE II

	NUMBERS	PERCENTAGE %
Total number of complaints brought forward from previous years	3165	
Total number of complaints received in 2007	1283	
Total Referrals	159	3.5
Freedom of Information Act	40	1.0
TOTAL	4448	
* (less total number of complaints without jurisdiction)	(263)	(5.9)
Total number of complaints proceeded with	4185	94.1
Total number of complaints concluded	1035	24.7
Sustained/Rectified	337	8.0
Not Sustained	38	1.0
Withdrawn/Discontinued	125	3.0
Advised/Referred	535	12.7
Under Investigation	3150	75.3

FIGURE II



The complaints received in 2007 covered a broad range of issues including several that involved complex aspects of public administration.

Statistics show that there was a significant drop in the complaints received against the public utilities i.e. Water and Sewerage Authority (WASA) and Trinidad and Tobago Electricity Commission (T&TEC). This may be attributed to the work of the Regulated Industries Commission (RIC) which was established to monitor the performance of the Public Utilities to ensure compliance with set standards and investigate complaints of consumers in relation to rates, billings and unsatisfactory service.

This office, however, has continued to receive and treat with complaints that are administrative in nature.

The highest number of complaints was recorded against the Ministry of Local Government and its Corporations. There were also high numbers of complaints recorded against the Ministries of Health, Public Utilities and Environment, Social Development, National Security and Works and Transport.

STATISTICAL OVERVIEW

TABLE III

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
Agriculture, Land, and Marine Resources	32	0	0	0	1	31
Attorney General	3	0	0	0	0	3
B.W.I.A.	1	0	0	0	1	0
CAST	1	0	0	0	0	1
Community Development, Culture and Gender Affairs	9	0	0	1	1	7
Education	30	2	1	0	2	25
Elections and Boundaries Commission	2	1	0	0	0	1
Energy and Energy Industries	5	0	0	0	1	4
Environmental Management Authority	5	0	1	0	0	4
Finance	33	4	0	0	3	26
Foreign Affairs	1	0	0	0	0	1
Health	65	4	2	1	6	52
Housing	50	1	0	0	10	39
Judiciary	4	0	1	0	1	2
Labour and Small and Micro Enterprise Development	6	1	0	0	1	4
Legal Affairs	19	6	1	0	1	11
Legal Aid and Advisory Authority	3	0	0	0	0	3
Local Government	4	0	0	0	0	4
Borough Corporations	18	0	0	0	3	15
City Corporations	18	3	0	0	0	15
Regional Corporations	107	4	0	1	16	86
Unemployment Relief Programme	1	0	0	0	0	1

STATISTICAL OVERVIEW

Ministry/Authority/Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
Magistracy	12	1	0	0	5	6
National Insurance Board	36	4	0	0	2	30
National Maintenance Training and Security Company (MTS)	3	0	0	0	1	2
National Security	5	0	0	0	2	3
Coast Guard	1	0	0	0	0	1
Defence Force	3	0	0	0	1	2
Fire Services	8	1	0	0	1	6
Immigration	4	1	0	0	0	3
Police	24	2	0	0	8	14
Prisons	12	0	0	0	0	12
Office of the Prime Minister	3	0	0	0	0	3
Petrotrin	1	0	0	0	0	1
Planning and Development	12	0	0	0	0	12
Port Authority	2	0	0	0	1	1
Public Administration and Information	0	0	0	0	0	0
TSTT	6	2	0	0	1	3
Public Transport Service Corporation	1	0	0	0	0	1
Public Utilities and Environment	8	0	0	0	1	7
Forestry, National Parks and Wild Life	5	1	0	0	0	4
T&TEC	14	1	0	0	2	11
TTPost	4	1	0	0	1	2
WASA	30	7	0	0	3	20
Science, Technology and Tertiary Education	2	0	0	0	0	2
Service Commissions Department	17	3	0	0	4	10
Social Development	56	4	0	0	5	47
Sport and Youth Affairs	6	1	0	0	0	5

STATISTICAL OVERVIEW

STATISTICAL OVERVIEW

Ministry/Authority/Agency	Total No. of Complaints	Sustained/ Rectified	Not Sustained	Withdrawn/ Discontinued	Advised/ Referred	Under Investigation
TOBAGO HOUSE OF ASSEMBLY						
Agriculture, Marine and the Environment Division	7	1	0	0	0	6
Community Development & Culture Division	1	0	0	0	0	1
Education, Youth Affairs & Sports Division	8	0	0	0	0	8
Finance and Planning Division	3	0	1	0	0	2
Health and Social Services Division	18	0	1	0	4	13
Infrastructure & Public Utilities Division	24	0	0	0	3	21
Land Management Agency	3	0	0	0	0	3
Public Administration	3	0	0	0	0	3
Tourism, Transportation, Enterprise Development and Settlements Division	3	0	0	0	0	3
Tourism	1	0	0	0	0	1
Trade and Industry	3	1	0	0	0	2
Works and Transport	55	7	0	0	1	47
Freedom of Information Act	40					40
Referrals	159				159	
TOTAL	1020	64	8	3	252	693
Private	263					
GRAND TOTAL	1283	64	8	3	252	693

TABLE IV

THE MINISTRIES WITH THE HIGHEST NUMBER OF COMPLAINTS

Local Government	-	148
Tobago House of Assembly	-	69
Health	-	65
Public Utilities and Environment	-	61
National Security	-	57
Social Development	-	56
Works and Transport	-	55
Housing	-	50
National Insurance Board	-	36
Finance	-	33

FIGURE III

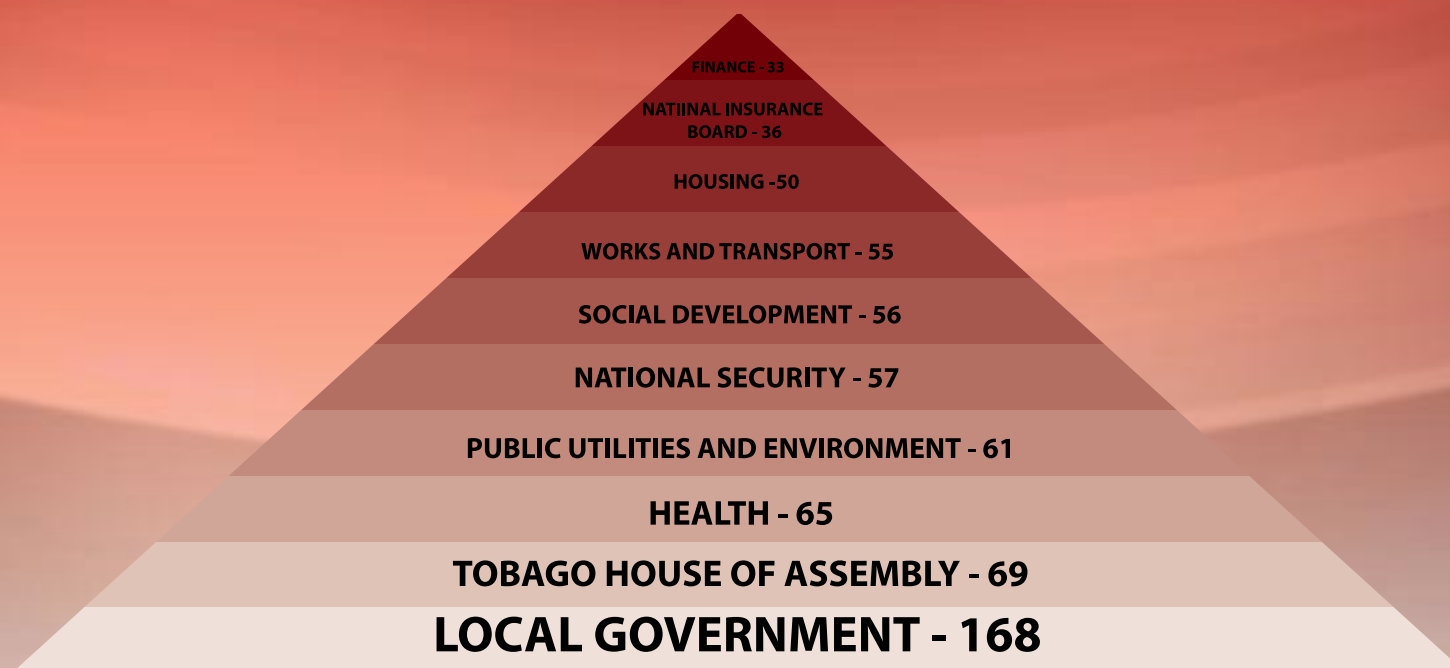


Table V and Figure IV show the breakdown of complaints received against the Local Government bodies over the period 2003-2007. An analysis of the new complaints received against these agencies, revealed that the main concerns were related to land use and environmental planning, failure to issue enforcement notices where and when necessary, maintenance of public roads and drains and other health related issues.

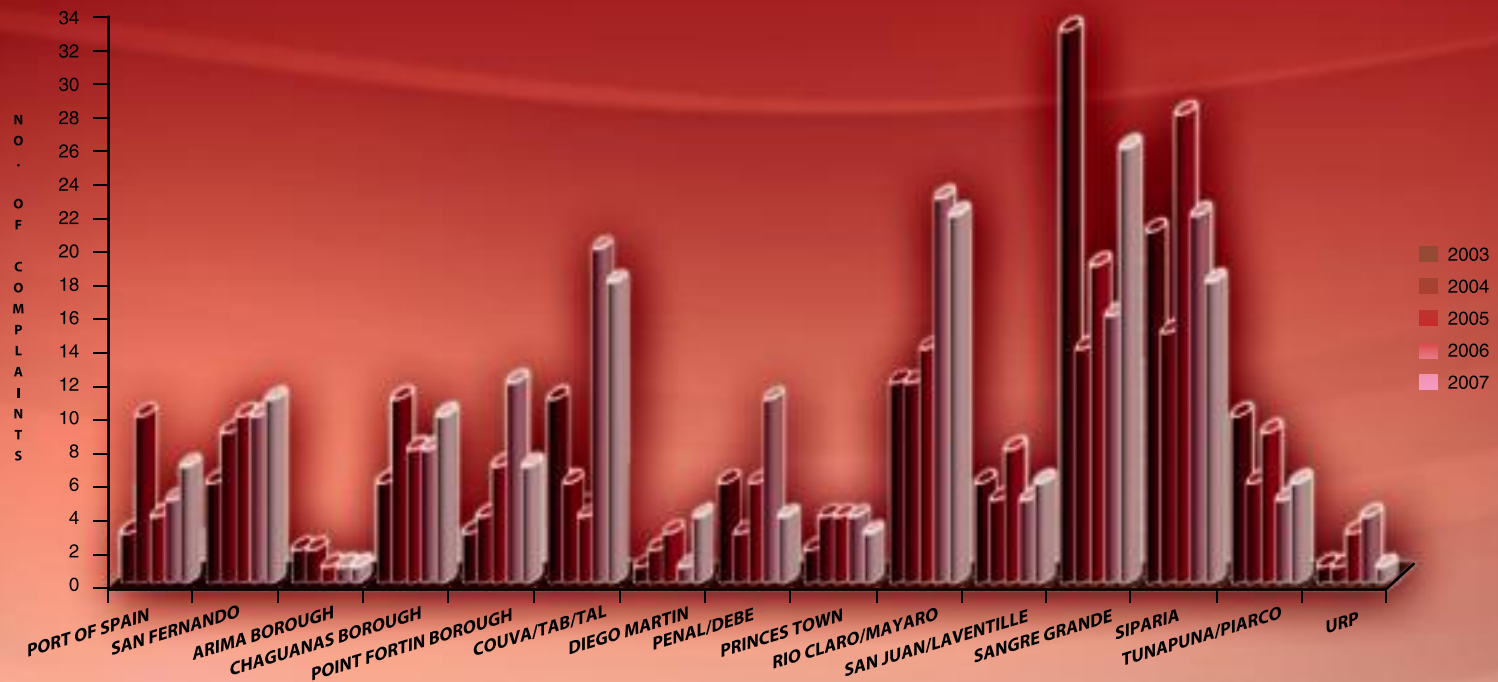
There were also a number of complaints that were related to claims of discrimination in employment practices.

TABLE V

LOCAL GOVERNMENT CITY BOROUGH AND REGIONAL CORPORATIONS

CORPORATION	TOTAL NUMBER OF COMPLAINTS RECEIVED				
	2003	2004	2005	2006	2007
PORT OF SPAIN	3	10	4	5	7
SAN FERNANDO	6	9	10	10	11
ARIMA BOROUGH	2	2	1	1	1
CHAGUANAS BOROUGH	6	11	8	8	10
POINT FORTIN BOROUGH	3	4	7	12	7
COUVA/TABAQUITE/TALPARO	11	6	4	20	18
DIEGO MARTIN	1	2	3	1	4
PENAL/DEBE	6	3	6	11	4
PRINCES TOWN	2	4	4	4	3
RIO CLARO/MAYARO	12	12	14	23	22
SAN JUAN/LAVENTILLE	6	5	8	5	6
SANGRE GRANDE	33	14	19	16	26
SIPARIA	21	15	28	22	18
TUNAPUNA/PIARCO	10	6	9	5	6
URP	1	1	3	4	1
TOTAL	123	104	128	147	144

FIGURE IV
COMPLAINTS AGAINST LOCAL GOVERNMENT BODIES FROM 2003-2007



OUTREACH SERVICES

Outreach services continue to be provided to the communities of Sangre Grande, Rio Claro/Mayaro, Chaguanas, San Fernando, Point Fortin, Siparia and Couva on a monthly basis. An outreach service is also provided to Roxborough on a quarterly basis. These scheduled visits allow citizens living in rural areas easier access to the services provided by the Office of the Ombudsman.

STATISTICAL OVERVIEW

TABLE VI

NUMBER OF PERSONS WHO VISITED THE REGIONAL OFFICES IN THE YEAR 2007

MONTHS	POINT FORTIN	RIO CLARO	SAN FERNANDO	CHAGUANAS	SANGRE GRANDE	SIPARIA	COUVA	*ROX-BOROUGH	TOTAL
JANUARY	5	9	23	7	8	8	5	3	68
FEBRUARY	4	22	14	6	10	15	5	0	76
MARCH	9	16	17	4	10	8	11	0	75
APRIL	7	10	16	23	16	9	2	8	91
MAY	7	16	14	8	12	11	7	0	75
JUNE	7	14	19	9	12	9	11	0	81
JULY	14	12	20	12	10	14	6	1	89
AUGUST	8	9	17	4	4	14	9	0	65
SEPTEMBER	9	12	11	2	11	13	8	0	66
OCTOBER	5	7	19	5	9	5	7	NO VISIT	57
NOVEMBER	7	14	17	5	9	8	2	0	62
DECEMBER	11	NOVISIT	15	7	NO VISIT	NOVISIT	NOVISIT	0	33
TOTAL	93	141	202	92	111	114	73	12	838

*Service to Roxborough on a quarterly basis



STAFF MEMBERS, OFFICE OF THE OMBUDSMAN, TOBAGO
(LEFT TO RIGHT): GILBERT GEORGE, NATARSHA BROWNE, CLAIRE DAVISON-WILLIAMSS (OFFICER-IN-CHARGE)
(MISSING: STEPHANIE FELIX-ALFRED)

TOBAGO OFFICE

In 2007, one hundred and thirty seven (137) complaints were lodged at the Tobago Regional Office which is located at No. 32, Wilson Road, Scarborough. Four (4) of these complaints were against private organizations. Table VI shows that in addition to the one hundred and thirty-three (133) cases which fell within the jurisdiction of the Ombudsman in the current reporting period two hundred and eighty-six (286) matters were brought forward from the preceding years. The Tobago Office's total workload for 2007 therefore comprised the investigation of four hundred and nineteen (419) complaints. Investigations were finalized on one hundred and sixty (160) or 38.2% of these matters and two hundred and fifty-nine (259) complaints or 61.8% remained pending under investigation at the close of the year.

TOBAGO REGIONAL OFFICE STATISTICAL OVERVIEW

TABLE VII

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

	NUMBERS	PERCENTAGE %
Total number of complaints brought forward from previous years	286	
Total number of complaints received in 2007	137	
TOTAL	423	100
Total number of complaints without jurisdiction	4	1
Total number of complaints proceeded with	419	99
Total number of complaints concluded	160	38
Sustained/Rectified	67	16
Not Sustained	21	5
Withdrawn/Discontinued	26	6
Advised/Referred	46	11
Under Investigation	259	61

TABLE VIII

DISTRIBUTION OF COMPLAINTS FROM TOBAGO FOR THE PERIOD JANUARY - DECEMBER 2007

Ministry/Authority/Agency	Total No. of Complaints	Sustained/Rectified	Not Sustained	Withdrawn/Discontinued	Advised/Referred	Under Investigation
TOBAGO HOUSE OF ASSEMBLY						
Agriculture, Marine and the Environment Division	7	1	0	0	0	6
Community Development & Culture Division	1	0	0	0	0	1
Education, Youth Affairs & Sports Division	8	0	0	0	0	8
Finance and Planning Division	3	0	1	0	0	2
Health and Social Services Division	17	0	1	0	4	12
Infrastructure & Public Utilities Division	24	0	0	0	3	21
Land Management Agency	3	0	0	0	0	3
Public Administration	3	0	0	0	0	3
Tourism, Transportation, Enterprise Development and Settlements Division	2	0	0	0	0	2

TOBAGO REGIONAL OFFICE STATISTICAL OVERVIEW

OTHER AGENCIES

CAST						
Education						
Health						
Housing	1	0	0	0	0	1
Finance - Inland Revenue	1	0	0	0	0	1
Judiciary	2	0	0	0	0	2
National Maintenance Training and Security Company (MTS)	3	0	0	0	1	2
Magistracy	4	1	0	0	0	3
National Insurance Board	1	0	1	0	0	0
National Security	3	0	0	0	1	2
Fire Services	3	0	0	0	1	2
Immigration	3	0	0	0	0	3
Police	1	0	0	0	1	0
Prisons	4	0	0	0	1	3
Planning and Development	1	0	0	0	0	1
Port Authority	2	0	0	0	1	1
Public Administration and Information	1	0	0	0	0	1
TSTT	1	0	0	0	0	1
Public Transport Service Corporation	1	0	0	0	0	1
Public Utilities and Environment	0	0	0	0	0	0
T&TEC	1	0	0	0	0	1
TTPost	1	0	0	0	0	1
WASA	0	0	0	0	0	0
Social Development	4	1	0	0	0	3
Sport and Youth Affairs	2	0	0	0	1	1
TOTAL	3	0	0	0	0	3
Private	3	0	0	0	1	2
Grand Total	1	0	0	0	0	1
	115	3	3	0	15	94
	22	0	0	0	0	0
	137	3	3	0	15	94

TOBAGO HOUSE OF ASSEMBLY DIVISION OF TOURISM & TRANSPORT

DENIED EMOLUMENTS BECAUSE OF BUREAUCRATIC MIX-UP

The Complainant was employed at the **Division of Tourism and Transport** as an Estate Constable and acted continuously in the higher post of Estate Corporal from **May 1989 to December 2000**. He had not been paid either acting allowances or increments earned in both the substantive and acting posts.

The Complainant claimed that he had made several requests for the outstanding payments; but his efforts proved futile. As a result, in 2002 he requested the assistance of the Ombudsman to expedite payment.

The Ombudsman wrote to the Administrator of the Division of Tourism and Transport highlighting the concerns of the Complainant. Investigations revealed that approval from the Director of Personnel Administration for the acting appointment in the post of Estate Corporal was still outstanding. Additionally, **Performance Appraisal Reports for the years 1998 to 2002 were never prepared.**

The Administrator initiated the necessary action to ensure that the provisions of the **Public Service Commission Circular No. I of 2004 dated July 1, 2004** were adhered to. This Circular states inter alia:

"to grant an Amnesty to Permanent Secretaries and Heads of Departments allowing them until March 31, 2005 to provide the Director of Personnel Administration with Honour Certificates attesting to the work, conduct and performance of officers under their supervision up to December 31, 2004 instead of the normal Performance Appraisal Reports".

Subsequently, all outstanding payments were made to the Complainant in 2007.

DEPARTMENT OF SETTLEMENT & LABOUR

URGENCY OF APPLICANT'S SITUATION IGNORED

In 2003, a pensioner applied for a Home Improvement Grant which was to be used to make her home more comfortable for her blind and wheelchair-bound husband.

The Complainant was subsequently informed by the Department of Settlements and Labour, Tobago House of Assembly (T.H.A.), that the first tranche of the Home Improvement Grant would be paid in one month's time. The initial payment was never received as promised and she pleaded continually for the Department's assistance, citing the numerous problems and risks she encountered on a daily basis while taking care of her husband.

The Complainant approached the Ombudsman in October 2007 for assistance to obtain the grant. She claimed that she was aware of other applicants who submitted applications after her and who were already in receipt of payments. In November 2007, the Ombudsman referred the complaint to the Administrator, Department of Settlements and Labour, outlining the Complainant's concerns.

In response, the Administrator made a commitment to the Ombudsman that an investigation would be conducted into the allegations. Additionally, he indicated that an apology had been issued to the Complainant.

By letter dated December 12, 2007, the Administrator advised the Ombudsman that the application had been processed for first payment and that the Complainant should shortly receive her cheque.

The Administrator further advised the Ombudsman, by letter dated December 27 2007, that a cheque for the first tranche was delivered to the Complainant at her home on December 24, 2007.

TOBAGO HOUSE OF ASSEMBLY DIVISION OF INFRASTRUCTURE AND PUBLIC UTILITIES

BREACH OF PROPERTY OWNER'S RIGHTS

The Division of Infrastructure and Public Utilities (the Division) removed the boundary marks at the Complainant's property during the conduct of a road improvement project. A drain which was being constructed was also left incomplete and the Complainant had attempted to have the Division rectify the matter, but to no avail.

The Complainant originally sought the assistance of the Ombudsman in 2000. The Administrator, Division of Works, Transport and Infrastructure, as the Division was then known, informed the Ombudsman in October 2000 that steps would be taken to replace the boundary marks and complete the fifteen (15) feet of drain that had been left unfinished.

Thereafter, in 2004 the Complainant again approached the Ombudsman and complained that despite the assurances of the Division of Works, Transport and Infrastructure, to date, no action had been taken to complete the drain and restore the boundary marks.

The matter was again brought to the attention of the Administrator, of the now named, Division of Infrastructure and Public Utilities and a site visit of the Complainant's premises was conducted by the Engineering Consultant of that Division. The Consultant determined that the Complainant's concerns were legitimate and recommended that the Division immediately replace the boundary marks. He also determined that the Complainant's privacy had been compromised when the embankment in front of her house had been removed to conduct the road improvement project. He therefore recommended that a wall be constructed beyond the pavement to restore the privacy to the premises.

Thereafter, in October 2004, the Administrator informed the Ombudsman that the boundary marks had been duly replaced. The Complainant however disputed this claim and advised that contrary to the Administrator's report the boundary marks to her property had not been replaced. The Complainant further advised that the Division's failure to restore the boundary marks was of great inconvenience to her since it had resulted in a situation that had become the source of conflict between her and her neighbours.

In February 2005, the Complainant's premises were again visited by officers of the Division of Infrastructure and Public Utilities and the Office of the Ombudsman. At that time it was confirmed by the officer from the Division that despite the Divisions claim, there was no physical evidence of the boundary marks being in place. Consequently, it was recommended that the site be revisited in order to re-establish the Complainant's boundary marks.

Thereafter, although several reminders were sent to the Division over the period 2005 to 2007, it has to date failed to take the necessary action to have the matter rectified.

The matter is being pursued.

REGISTRAR GENERAL'S DEPARTMENT

The **Registrar General's Department**, Ministry of Legal Affairs, is responsible for Civil Registration, which entails the collection, storage and dissemination of information on vital events which affect the life of citizens, such as births, deaths, marriages, divorces, adoptions and paternity orders.

The Department was granted approval by Cabinet to develop an electronic **Population Registration System**, the data embodied in which would form the nucleus of the **National Unique Identification System**, based on the **Personal Identification Number (PIN)** issued to every person at birth. This **PIN** would serve as a means of uniquely identifying each member of the population of the Republic of Trinidad and Tobago.

As a key part of this scenario, the Registrar General's Department introduced a Computer-Generated Birth Certificate, each with a PIN, and invited first time registrants and persons already in possession of a Trinidad and Tobago Birth Certificate to apply for a new Computer-Generated Birth Certificate, with the option of utilizing either the walk-in or mail-in application method. It was envisioned that the new approach would improve the accuracy and reliability of the data embodied in the national Population Registration System. Unfortunately, the new system has not been as efficient as expected.

With the introduction of the system, the Office of the Ombudsman has received numerous complaints from members of the public against the Registrar General's Department. In that context, the frequency of spelling errors has been noted with concern. These errors appeared to have been made by the Department's data entry personnel during the transcription process. Individuals complained that when they brought these errors to the attention of the Department and requested corrections, their requests were met with resistance, a marked lack of concern and with discourtesy.

Many persons were of the view that these errors could easily have been rectified, especially when they were able to provide the Division with an original or copy of their manually produced birth certificate; since such a document would have been produced from what had been originally recorded in the Department's Registers. It had been their experience, however, that officers of the Department demanded that individuals wait as long as six months to have errors corrected. They also complained that counter staff were discourteous, inordinately slow and treated them as though they were responsible for the errors which were evident. The following case serves to illustrate some of these concerns.

CASE NOTE

MINISTRY OF LEGAL AFFAIRS REGISTRAR GENERAL'S DEPARTMENT

Garbage.In.Garbage.out:

TRANSCRIPTION ERRORS CAUSE HORRORS FOR BIRTH CERTIFICATE APPLICANT

In March 2007 the Complainant applied for new Computer-Generated Birth Certificates on behalf of two relatives. On receipt of the documents she observed that there were spelling errors and consequently returned both certificates to the Registrar General's Department. She was, however, advised that **she would have to re-apply for the Birth Certificates at a fee of twenty-five dollars (\$25.00) each. She was further advised that there would be a waiting period of two months** to receive the corrected documents.

The policy of the Registrar General's Department is that **the first issue of the Computer-Generated Birth Certificate is free. If however, another Certificate is required, then the fee is twenty-five dollars (\$25.00).**

The Complainant was of the view that since the errors on the Certificates emanated from within the Registrar General's Department she should not have to re-apply or pay the twenty-five dollar (\$25.00) fee. She was also concerned about the lengthy delay involved in obtaining the corrected documents. As a result she sought the intervention of the Ombudsman.

A report was requested from the Registrar General's Department **by letter dated May 09, 2007.** That Department failed to respond, and it was only after the sustained persistence of this Office that a meeting was subsequently arranged between the Ombudsman and officials from the Registrar General's Department.

At this meeting it was determined that the spelling errors had occurred at the point of data entry. As a consequence, it was agreed that the Complainant would not have to re-apply or pay for the Birth Certificates and that the spelling errors would be corrected. In order to effect the necessary amendments the Registrar General requested additional documentation from the Complainant.

The documents were submitted and in **July, 2007** this Office was informed that the Complainant received the corrected Birth Certificates.

TOWN AND COUNTRY PLANNING DIVISION

In the Fifth Annual Report, the late Justice Mr. Evan Rees, the first Ombudsman of the Republic of Trinidad and Tobago, lamented the high number of complaints received against the Town & Country Planning Division (the Division). He also expressed grave concern about the inordinate delays the Office of the Ombudsman experienced in receiving responses from the Division, when queries were sent or reports were requested.

Twenty-five (25) years later, the situation remains the same. This Office has continued to receive numerous complaints against the Town & Country Planning Division and requests by the Ombudsman for reports on the issues raised by Complainants still go unheeded. Over the period 2005 to 2007, the Ombudsman received thirty-one (31) complaints of which only two (2) have been resolved.

The majority of complaints received against the Division were related to the extension of buildings by their owners beyond their own boundary lines, the unauthorized use of buildings located in residential areas for commercial purposes, the construction of buildings without proper planning approval or built contrary to the approved plans, the unauthorized change of use of land and other building violations.

Additionally, although the Squatter Regularization Act was enacted in an effort to curb the prevalence of squatting communities, it clearly has not had the desired effect. These squatter communities often mushroom in areas which were never intended for residential or commercial use; and as such, basic infrastructure is minimal or sometimes non-existent. In such circumstances, the State may be unable to maximize the development of those areas in the intended or desired manner.

It should be noted that under the Town and Country Planning Act Chapter 35:01, *the Minister has the authority to serve a notice on the offending party or on the owner/occupier of any unauthorized development, such authority extending for a period of up to four (4) years after the date of the violation.*

This notice may require the offending party to take steps to rectify the problem by demolition or alteration of the building and/or discontinuance of the unauthorized use of land.

Citizens however complain that when unauthorized development of any sort is observed and complaints are made to the Division, it fails to treat expeditiously with the matter and, more often than not, the four (4) year limitation period expires, leaving the Complainants without recourse. They have therefore, expressed the view that the Division's apparent inability or unwillingness to treat with complaints is deliberate and due to collusion between its Officers and the offending parties.

On the other hand, the Division has ascribed its inability to fulfill its constitutional mandate to an acute shortage of human and other resources. While a number of vacancies exist on the Division's Permanent Establishment, the Government Department charged with the responsibility for the filling of these positions has failed to complete promotional exercises in recent years.

Although it is clear that the Town and Country Planning Act has its own shortcomings, it should be emphasized that other pieces of legislation, *such as the Public Health Ordinance Chapter 12, No. 4 and the Public Health Act 1990, the Municipal Corporations Act 1990, the Environmental Management Act 2000 and the Water and Sewerage Authority (WASA) Act, Section 62* also make provision for the abatement of public nuisances caused by the contravention of these laws.

It is therefore apparent that together with suitable changes in the Town and Country Planning legislation, there should be a collaborative effort between that Division and other relevant Government Agencies such as Local Government bodies, the Ministries of Public Utilities and the Environment and Health and the Environmental Management Authority to ensure compliance with the governing legislation.

CASE NOTE

MINISTRY OF PLANNING AND DEVELOPMENT (Town and Country Planning Division)

LAXITY IN ENFORCING REGULATIONS BRINGS HURT TO THE LAW-ABIDING

The Complainant, who has been a resident of Diego Martin for over sixty (60) years, was concerned over an encroachment onto his property by the owner of the adjacent property.

According to the Complainant, his neighbour had built a retaining wall on the western side of the Complainant's house using the Complainant's wall as the base. He reported the matter to the *Town and Country Planning Division of the Ministry of Planning and Development in March 2004*.

The Complainant advised that when he made enquiries at the Town and Country Planning Division as to the status of his matter he was informed that an investigating officer had not yet been assigned. Subsequently, the wall of his home began to crack due to water seepage from the neighbour's property.

After several attempts to access information from the Town and Country Planning Division had proven futile, the Complainant, on June 14, 2004 sought the intervention of the Ombudsman.

Thereafter the Ombudsman, in July 2004, requested a report from the Director, Town and Country Planning Division. Several reminders later in May 2005, a response was received from the Acting Director, Town and Country Planning Division, which advised that a Letter of Advice had been sent to the offender because there appeared to be no application on file for the work being carried out at the subject premises. The Acting Director also advised that the matter was being further investigated with a view to pursuing Enforcement action.

In September 2005, the Acting Director reported that there had been no response to the Letter of Advice and that the matter had been referred to the Development Control Unit of the Division for further investigation and action.

In June 2006, the Complainant informed this Office that the situation with the wall had deteriorated to the point that he was fearful that it would collapse onto his roof. In addition, the neighbour had encroached further onto his property. This additional information was relayed to the Division.

The Acting Director responded to this information, by letter dated October 9, 2006, advising that a search had revealed that the offender had submitted an application for construction and had been granted permission. The building, however, had not been constructed in accordance with the approved plans, an action which would have nullified the application.

In *September 2006*, the offender was notified of the breaches of planning control effected on the land with instructions from the Minister that failure to bring the building into conformity would result in measures being taken to ensure compliance. After this reply, **fourteen (14) months elapsed** during which several reminders were sent by this Office to the Town and Country Planning Division without any response.

In *December 2007* the Acting Director advised that the Division was awaiting a response to Complainant's request to the Minister for the Division to proceed with Enforcement Action.

This matter as at December 2007 had not yet been resolved and *would become statute-barred by March 2008* under Section 3(1)(a) of the Limitations of Certain Actions Act No. 36 of 1997.

SERVICE COMMISSIONS DEPARTMENT

The Public, Police, Teaching and Judicial and Legal Service Commissions were established under the Constitution of Trinidad and Tobago, Chap. 1:01 Sections 120 and 121, 122 and 123, 124 and 125, and 110 and 111 respectively.

The Service Commissions Department, which is headed by the Director of Personnel Administration, serves as the Secretariat to the various Service Commissions. Its purpose is reflected in its Mission Statement:

"To deliver quality advisory and administrative services to the Service Commissions and to facilitate the effective practice of Human Resource Management in client Ministries and Departments."

One of the primary functions of the Service Commissions is to meet the manpower needs of the Public Service. This is done via recruitment either externally (outside of the Public Service), which would result in a first appointment or internally with the promotion of an already serving officer.

Persons are recruited for employment in several ways:

- An existing employment pool, in the form of unsolicited applications which are kept on files. Persons are then recruited on a first come first serve basis once they have met the relevant criteria.
- Applications received in response to an advertisement, within and/or outside of the Public Service.
- Established Order-of-Merit Lists, in the case where an examination or an interview was conducted. Candidates are given or supposed to be given an appointment based on their position on said List in order of Merit.
- Seniority Lists often found where there is a prescribed hierarchy of positions in the same stream e.g. a person may go from Clerk I to Clerk II then to Clerk III in order of seniority in the Public Service based on when they were appointed/promoted.
- Recommendations of the Permanent Secretary/Head of Department.

The Ombudsman has received numerous complaints of persons being overlooked for employment because, according to the officers of the Service Commissions Department, their applications for employment had been 'inadvertently overlooked'. In addition, serving officers have also complained of being bypassed in favour of junior officers, for acting appointments and or promotion even though their names were featured on Order of Merit/Seniority Lists. When this occurs their upward mobility, finances, seniority and superannuation benefits are negatively affected. In the period 2005-2007 the Ombudsman received sixty-seven (67) complaints of this nature. Despite our best efforts only twenty-five (25) of these have been resolved to date.

It is evident from the number of complaints received that the Commissions have been unable to fulfill their statutory mandate of delivering "quality advisory and administrative services". This situation has often resulted in disastrous repercussions to those affected.

The employees of the Service Commissions Department are also aware of the limitations of the Ombudsman's jurisdiction as stated in Chap 1:01 Section 94(4)(b), the Third Schedule Section 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."

This Section prohibits the Ombudsman from querying *decisions* made by the various Commissions. It should be noted, however, that it does not preclude the Ombudsman from investigating the *veracity* of the information provided, which may be used to influence the Commissions' decision.

The concern is that since the Ombudsman is not privy to the contents of a Note when it is submitted for the consideration of a Commission, one could not be certain that the case presented in the Note was a true representation of the facts and/or concerns expressed by the Complainant and the Ombudsman. This then makes it possible for officers of the Service Commissions Department to manipulate situations and/or the contents of the Note in order to achieve a particular desired outcome.

When a matter is decided upon by a Commission, should the Complainant disagree with the decision, the only alternative then open to them is that of Judicial Review. Judicial Review is not always a feasible option for many persons due to the cost involved and time limitations as prescribed by the law. In addition, Complainants often face inordinate delays or refusals when they attempt to garner information/documents from the Service Commissions Department. Their only option then is to request the information/documents under the Freedom of Information Act. This too has often proven to be an exercise in frustration and futility.

The Complainants then have twenty-one (21) days within which to seek the intervention of the Ombudsman as prescribed by Section 38 of the said Act. In many cases, the Service Commissions Department has been less than cooperative when the Ombudsman recommends the release of the relevant information/documents following her review of the case.

The following is a case which embodies several of the concerns raised:

CASE NOTE

SERVICE COMMISSIONS DEPARTMENT

A CLEAR CASE OF ADMINISTRATIVE INJUSTICE

On July 31st 1992, the Complainant, an appointed Clerk II, sat the Civil Service Entrance Examination for the position of Social Welfare Adviser I. She was informed of her success in the examination by Director of Personnel Administration's letter dated February 23, 1994.

The Complainant advised that she visited the *Service Commission Department* on several occasions in an attempt to ascertain when she could expect to be offered an acting appointment or be promoted to the position of Social Welfare Adviser I. She also requested information with respect to her position on the Seniority List for that office.

According to the Complainant, on each of her visits to the Service Commission Department, she was advised by a Schedule Clerk that acting appointments were being granted to persons in the order in which their name appeared on the Seniority List. She was further advised that she had not yet been considered for an acting appointment because of her position on that List.

The Complainant eventually wrote to the Director of Personnel Administration on March 15, 2004 enquiring why, after twelve years, she still had not been granted an acting appointment. *She got no response.* On April 5, 2005 she sought information from the Director of Personnel Administration under the FOI Act, 1999, to determine her position on the said Seniority List. Thereafter, she was informed that she was placed at number 240 on the List.

The Complainant again wrote to the Director of Personnel Administration in January 2006 advising that fourteen years had elapsed since she had first taken the Social Welfare Adviser I examination. She further advised that she was aware that there were a number of vacancies in that position and enquired when she would be granted an acting appointment. She was subsequently granted an acting appointment with effect from February 16, 2006.

The Complainant nevertheless brought the matter to the attention of the Ombudsman in July 2006 because she was of the opinion that she had been treated unfairly.

AREAS OF CONCERN

The Ombudsman accordingly requested reports from *the Permanent Secretary, Ministry of Social Development and Social Services Delivery* and the *Director of Personnel Administration*. In response, the Permanent Secretary, Social Development and Social Services Delivery advised that in **2003**, the Ministry had been informed by the Director of Personnel Administration that the *Order of Merit List established in 1992 was exhausted*. As a result the Ministry had been given the authority by the Service Commissions Department to recommend for the approval of the Public Service Commission, senior clerks who were attached to the Social Welfare Boards and who were familiar with the relevant duties to act as Social Welfare Advisers I. The Ministry further advised that in **2005**, the Service Commissions Department informed the Ministry that there were still a few people on the order of Merit List to be placed. The Complainant was then appointed to act as Social Welfare Adviser I, Ministry of Social Development. The Ministry was very careful to indicate that it had no authority to appoint officers to act as Social Welfare Adviser I and that such authority rested solely with the Director of Personnel Administration and the Service Commissions Department.

The Ombudsman was later informed by the Director of Personnel Administration that the Public Service Commission had considered her representations on behalf of the Complainant. She advised that the Complainant had been considered for an acting appointment as Social Welfare Adviser I based on her position on the 1992 Examination Pass List and that none of the candidates who were placed lower than the Complainant on the Pass List had been recommended for an acting or temporary appointment ahead of her. In the exigencies of the Service, however, the Permanent Secretary, Ministry of Social Development had placed officers of the Ministry, who were not candidates on the Examination Pass List, to act as Social Welfare Adviser I.

Further investigations however revealed that *several officers who were junior to the Complainant; some, who had not taken the Entrance Examination for the position of Social Welfare Adviser I and who were therefore not on the Pass List; some, who were Temporary Clerks 1, who had never been attached to Social Welfare Boards; some of whom, had not even previously applied for the position were allowed to act for extended periods of time while the Complainant continued to be overlooked*.

In addition, it was noted that the response of the Service Commissions Department to the queries of the Ombudsman in this instance had been cleverly couched in terms that would have absolved that Department from any perceived fault in administration. It is evident that the Service Commissions Department, from its own response, gave the Public Service Commission the impression that the Ombudsman's query was strictly related to the reasons why the Complainant had been overlooked for an acting or temporary appointment as Social Welfare Adviser I, in favour of persons who were placed lower than she was on the Pass List.

In reality, the Ombudsman queried why the Complainant, having met the criteria of being successful in the Entrance examination for the position of Social Welfare Adviser I and being placed on the Pass List, *had, for fourteen years, been overlooked* when arrangements were being made for acting/temporary appointments in that position. Clarification was also sought with reference to the reason why the Complainant's verbal and written queries over a *fourteen* year period had been addressed only by a Schedule Clerk of the Service Commissions Department, who told her that "her turn had not yet reached". Also at issue, was why some junior officers; some of whom had not even applied for the post of Social Welfare Adviser I and some who had not sat the relevant examinations had been allowed to act, in some instances for periods in excess of two years. In light of all that obtained, the Ministry's and Service Commissions Department's claim that this was done to satisfy the exigencies within the Ministry of Social Development appeared questionable.

The concern therefore that arose was, whether this situation was in fact just an oversight on the part of the relevant Authorities and their agents or a deliberate attempt to facilitate unqualified or ineligible officers by excluding the Complainant and other officers who appeared on the Pass List from obtaining the acting/temporary appointments, when they became available.

In addition, it is apparent that both the Ministry and Director of Personnel Administration failed to take into consideration the likely effect their actions would have had on the Complainant and the other officers on the Pass List. The earning capacity of these officials would have been affected since those junior officers who were acting would have in all likelihood earned increments in the acting position of Social Welfare Adviser I and would as a result be earning a higher wage. Such a situation would have given rise to the junior officers having a legitimate expectation, that in the event of the filling of the posts they would be senior to the Complainant on the basis of experience and having been appointed to act prior to the Complainant.

The matter is still being pursued.

CASE NOTES

FROM THE OMBUDSMAN'S FILES



MINISTRY OF FINANCE

(Cedros District Revenue Office)

CITIZEN'S RIGHTS LOST IN THE BUREAUCRATIC MAZE

In 1999, the Complainant approached the *Cedros District Revenue Office, Ministry of Finance* to have his property re-assessed. This was because one of the buildings on his property, for which he was paying taxes, had been unoccupied since the 1960s and was in a dilapidated condition. He was told that he was required to complete a Return Form which necessitated that he list all buildings located on his property.

The Complainant complied, including on the Form a building constructed and owned by an individual who had encroached onto the Complainant's property.

The Complainant was then informed that a building owned by someone else could not be included on his form since that individual's property would have been assessed on a separate assessment roll. The Complainant sought to have various Government agencies rectify the matter but was unsuccessful.

In 2006, the Complainant approached the Ombudsman seeking assistance to have his property re-assessed because he felt that he had exhausted all other avenues available to him. The matter was referred to the *District Revenue Officer V, St. George West*, Port of Spain, who later advised that the Complainant should revisit the Cedros District Revenue Office with his supporting documents to have the matter resolved.

Although the Complainant complied with this advice, he nonetheless spent all of 2007 attempting unsuccessfully to achieve a resolution to his problem - the officials at the Cedros District Revenue Office maintaining their position that the Complainant could not include on his Return Form the building which was constructed on his property without his permission.

NOTE

It should be noted that although supervisors provide junior officers with instructions meant to guide them in the performance of their duties, some junior officers often fail to heed such instructions, to the detriment of the citizens whom they are mandated to serve.

I intend to visit the Cedros District Revenue Office to ensure that steps are taken to comply with the instructions given by the District Revenue Officer V in order to bring about a resolution to this long outstanding matter.

MINISTRY OF AGRICULTURE, LAND AND MARINE RESOURCES

TIME LAGS IN IMPLEMENTATION OF CABINET DIRECTIVES OFTEN HARM CITIZENS' INTERESTS

The Complainant, an Animal Health Assistant I since 1979, was dissatisfied with his effective date of promotion to the position of Animal Health Assistant II.

Cabinet by *Minute No. 1000 of April 25, 1996* agreed to the abolition of eight (8) positions of Animal Health Assistant I and to the creation, subject to classification by the Chief Personnel Officer, of six (6) positions of Animal Health Assistant II and two (2) positions of Animal Health Assistant III. Cabinet further agreed that funds provided in the budgetary allocation of the Ministry of Agriculture, Land and Marine Resources for the eight (8) positions of Animal Health Assistant I that were being abolished should be utilized to offset expenditure to be incurred with respect to the filling of the newly created positions. The additional expenditure to be incurred in 1996 would be met from funds under Head 25 - Ministry of Agriculture, Land and Marine Resources, Sub-Head 01 - Personnel Expenditure, Item 004 - Animal Production and Health, Sub-Item 01 - Salaries and Cost of Living Allowance.

Approximately three and one half years later, the Chief Personnel Officer advised the Director of Personnel Administration that in accordance with the authority delegated by Cabinet to the Minister of Public Administration by *Minute No. 1605 dated June 24, 1999*, the Honourable Minister of Public Administration *agreed* that the offices of Animal Health Assistant II and Animal Health Assistant III on the staff establishment of the Animal Production and Health Division, Ministry of Agriculture, Land and Marine Resources be classified in salary ranges 36F and 40G respectively with effect from *June 1, 1996*. The Director of Personnel Administration was requested to take the necessary steps to implement this decision. He subsequently wrote the Complainant on *October 31, 2001* informing him of his promotion as an Animal Health Assistant II with effect from *October 12, 2001*.

As a consequence the Complainant, together with his co-workers who were similarly affected, wrote to the Permanent Secretary, Ministry of Agriculture, Land and Marine Resources querying *the disparity between the effective date of promotion approved by Cabinet and the Chief Personnel Officer and the date which they had eventually been given by the Public Service Commission*. The Ministry directed the officers to take their concerns directly to the Director of Personnel Administration, and this was done by letter dated *January 21, 2002*. When approximately one year and six months had elapsed without a reply from the Director of Personnel Administration, the matter was brought to the attention of the Ombudsman.

The Ministry of Agriculture, Land and Marine Resources in response to the Ombudsman's query advised that subsequent to the creation of the positions of Animal Health Assistant II and III, a submission had been sent by the Ministry to the Chief Personnel Officer regarding classification of the posts. Approval was only received from the Chief Personnel Officer via memorandum reference PD (c/c): 7/1/13 Vol. II dated *October 12, 1999*. In addition the Ministry of Finance had also indicated that funds had not been allocated for the filling of those positions in the 1999/2000 Estimates of Recurrent Expenditure.

CASE NOTES

The Ministry also noted that the Chief Personnel Officer's approval for classification of the posts of Animal Health Assistant II and Animal Health Assistant III in salary ranges 36F and 40G respectively had been given in October, 1999, even though the approval of Cabinet for the creation of the posts had been given in April 1996, some three years earlier. *There was notably no explanation for the Ministry's own delay in requesting the filling of the vacancies, which was done in March 2001, one year and five months after approval had been received from the Chief Personnel Officer.*

The Director of Personnel Administration to whom the matter had also been referred, subsequently advised in July, 2007 that the Public Service Commission had backdated the promotion of the Complainant, from Animal Health Assistant I to Animal Health Assistant II, Ministry of Agriculture, Land and Marine Resources from *October 12, 2001 to June 1, 1996.*

Note: The above Case note illustrates the length of time Government Departments take to resolve matters. In this case Cabinet approval was given in April 1996. The Chief Personnel Officer advised Ministry of Agriculture, Land and Marine Resources of its classification of the posts some three and a half years later on October 12, 1999.

The Ministry of Agriculture, Land and Marine Resources requested the filling of the vacancies on March 27, 2001 one and a half years later, and the Officers were appointed with effect from October 12, 2001.

NOTE

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DIRECTOR OF PERSONNEL ADMINISTRATION

UNCLEAR POLICY DIRECTIVES CAN LEAD TO UNWARRANTED HARDSHIP FOR EMPLOYEES

The Complainant was appointed a Technical Assistant in the Telecommunications Division, *Ministry of Public Administration and Information* by the *Public Service Commission* with effect from 4th January, 1982. Subsequently the Telecommunications Division was dissolved and the *Telecommunications Authority of Trinidad and Tobago* was established by the Telecommunications Act 2001. Cabinet by Minute No. 486 dated 24th February, 2005 agreed to the rationalization of the staff as well as the abolition of several offices of the former Telecommunications Division.

The incumbents in the positions that were being abolished were to be redeployed within the Public Service. Where redeployment was neither possible nor acceptable, abolition terms would then apply. The abolition of the offices was to be effective six months from the date of the Cabinet Minute, which would have been 24th August, 2005. The said Minute also stated that the Chief Personnel Officer should consult and negotiate with the Public Services Association on the terms of abolition.

The Permanent Secretary, *Ministry of Public Administration and Information*, by letter dated 5th April, 2005, informed the Complainant that the *Director of Personnel Administration* (DPA) had been requested to seek his redeployment, but the DPA had advised that there was no available position. Thereafter, the Permanent Secretary notified the Complainant by letter dated 19th August, 2005 that he was not required to report for duty with effect from 24th August, 2005 the date on which Cabinet Minute No. 486 was to take effect.

It should be noted that the Complainant was not consulted with respect to his redeployment but was informed of decisions taken on his behalf in letters addressed to him by the Permanent Secretary, Ministry of Public Administration and Information.

In January, 2007, the Complainant approached the Ombudsman since he felt that he had been unfairly treated because he had not been consulted as to whether he would accept another position commensurate with his qualifications or one that was lower than his substantive office. The Complainant had also been unable to access the separation package arrived at by the Chief Personnel Officer and the Public Services Association because in order to effect payment, the Comptroller of Accounts required a letter from the Director of Personnel Administration stating that the Complainant had accepted the terms of abolition. Additionally, the Complainant wanted to return to work in the Public Service and be compensated for the period of his unemployment from 24th August, 2005.

When the contents of Cabinet Minute No. 486 were examined it appeared that the statements therein regarding when the offices with incumbents were to be abolished were contradictory. On the one hand it was stated that the positions with incumbents were to be abolished only when vacant; and on the other abolition was to be effected six months from the date of Cabinet Minute No. 486.

CASE NOTES

It was further noted that the Permanent Secretary, Ministry of Public Administration and Information was the official who notified the Complainant (by letter dated 19th August, 2005) that he was not required to report for duty with effect from 24th August, 2005. *In so doing, the Permanent Secretary performed a function which lies within the province of the Public Service Commission.*

Several functions have been delegated to Permanent Secretaries and Heads of Departments, as stated in the Delegation of Powers (Amendment) Order, 2006 Legal Notice No. 105 dated May 24, 2006. This document outlines the additional functions delegated to Permanent Secretaries and Heads of Departments by the Public Service Commission as follows:-

- Further Temporary Appointment
- Acting Appointment
- Confirmation of Appointment
- Transfer
- Discipline

*It is pertinent to note that the Complainant had, at the time of the preparation of this report, not yet received an official letter of termination from the Public Service Commission.
The matter remains unresolved.*

CASE NOTE

MINISTRY OF PUBLIC UTILITIES AND THE ENVIRONMENT

FREQUENT SHIFTING OF PORTFOLIOS AMONG MINISTRIES CONTRIBUTES TO DENIAL OF JUSTLY-EARNED BENEFITS

The Complainants were former daily rated employees of the Forestry Division, *Ministry of Agriculture, Land and Marine Resources*, a Division which was transferred in 2002 to the *Ministry of Public Utilities and the Environment*.

The Complainants held the substantive offices of Lorry Loader and Propagator but had been acting in the higher office of Agricultural Foreman since 1994.

Upon their retirement in 2005 and 2006, respectively, although they had been acting in the position of Agricultural Foreman for over ten (10) years, the Complainants' retirement benefits were calculated at the rate prescribed for their substantive positions. Naturally, they were of the opinion that, since they had acted in the higher position with effect from July 25, 1994, *their retirement benefits should have been calculated at the rate prescribed for the position of Agricultural Foreman.*

The Complainants brought this perceived discrepancy to the attention of the Human Resource Department of the Ministry of Public Utilities and the Environment. They were told that while the Ministry was aware that this problem existed, it was awaiting complaints from other persons who were similarly affected in order that everyone's concerns could be addressed at the same time.

The Complainants then sought the intervention of the Ombudsman in 2007 after discussions with the Ministry yielded no results.

Upon investigation it was discovered that the posts in which the Complainants had acted were vacant, and therefore the provisions of Section 19.4 of the Collective Agreement for Hourly, Daily and Weekly rated should apply.

"A worker who has been acting in a vacant position for a period of at least one year shall be confirmed in the position."

At a meeting held on *September 19, 2007* with representatives of the Ministry of Public Utilities and the Environment (the Ministry of Agriculture, Land and Marine Resources was invited but did not attend) it was agreed that both parties had acted in vacant posts for a continuous period and that they should have been promoted to the position. *It should be noted that no permanent lists had been signed since 1981.* It was also revealed that there were ongoing talks with the Ministry of Public Utilities and the Environment, the Chief Personnel Officer and the National Union of Government and Federated Workers for the filling of vacant positions in the Forestry Division, two of which had been occupied by the Complainants.

Concerns were then raised as to whether these appointments to the position of Agricultural Foreman were to be effected retroactively thus displacing the Complainants, who had been acting in the position. It was later revealed that the said posts were eventually filled on *November 27, 2007.*

A recommendation was made to the Ministry that appropriate action should be taken to rectify the situation by promoting the Complainants retroactively in accordance with Section 19.4 of the Collective Agreement referred to above, so that their superannuation benefits could be enhanced. Appropriate action should also be taken to satisfy the claims of other officers who may have been similarly circumstanced.

At the end of 2007, the recommended course of action had not yet been taken. It is pertinent to note that with effect from December 18, 2007 the Forestry Division, Ministry of Public Utilities and the Environment was transferred to the Ministry of Agriculture, Land and Marine Resources.

NOTE

In many cases the constant movement of Divisions among Ministries contributes to inordinate delays in fulfilling statutory mandates. This often has a detrimental effect on the efficiency of the Public Service.

MINISTRY OF LOCAL GOVERNMENT POINT FORTIN BOROUGH CORPORATION

LACK OF INTER-AGENCY COORDINATION THE SOURCE OF EMPLOYEE WOES

The Complainant had been employed at the *Point Fortin Borough Council* (now Borough Corporation) with effect from 1983 where he worked on a temporary basis both as a Labourer and a Painter. He sought to have his position regularized through a permanent appointment but was never successful.

In 1997 when the Complainant realized that less frequent employment was available to him in the capacity as Painter, he sought to have his classification permanently changed to that of Labourer. He was, however, informed that his request could not be entertained.

The Complainant brought the matter to the attention of the Ombudsman when he became aware that changes to the classification of other employees had been allowed. He was also concerned that persons who were his juniors by virtue of their length of service were receiving employment on a regular basis, while he was being bypassed. The matter was referred to the Point Fortin Borough Corporation.

The Corporation responded by referring to Section 1.13 of the Collective Agreement that governs Daily Rated Workers. The subject Agreement states that "a seniority list shall be drawn up on the basis of classification, showing the service record of each employee in the various work classifications in which he may have worked during his entire period of employment."

In the Complainant's case, therefore, the Point Fortin Borough Corporation was of the opinion that since he had been employed in two classifications, that of Painter as well as that of Labourer, his overall service would have been divided accordingly and this would be his classification seniority. His service seniority would be based on his total service, that of both Painter and Labourer. In their estimation, therefore, it was possible that even though someone was employed either as a Labourer or Painter after the Complainant, that individual could have accumulated more service than him, had that person worked in only in one classification.

The Corporation further stated that three (3) consecutive non-effective years of one hundred and fifty-six days (156 days) or less would cancel previous service i.e. it would constitute a break in service. As such, the Complainant's previous service up to 1997, the year in which he was last employed, would have been cancelled and he would have been treated as a new employee.

The Ministry of Local Government, however, provided a totally different point of view from the one presented by the Corporation. Reference was made to the Chief Personnel Officer's memorandum PD:JNC 36/1/62 dated *September 10, 1998* which indicated that a *three year period of no service* constituted a break for the purpose of seniority. Therefore, in accordance with the Chief Personnel Officer's Circular, the Complainant did not have a break in service up to *December 31, 1993* and should have been afforded employment over a number of workers whose names were reflected on the Corporation's 2005 Seniority List.

The Ministry refuted the statement of the Corporation that in accordance with Article 6.2, three (3) consecutive non-effective years of 156 days would cancel previous service and advised that the said Article *only relates to cancellation of service for the purpose of vacation leave and not seniority/employment.*

Further, the Ministry disputed the Corporation's claim that "there are no records at the Corporation to indicate whether workers presented themselves for employment at that time," and advised that, since the Complainant worked consecutive years with effect from 1981 to 1991, it is evident that he was available for employment (Trade Dispute #56 of 1998 was referred for the Corporation's guidance in this respect). During this period a number of junior workers were afforded continuous work as Labourers over the Complainant.

The Ministry of Local Government having considered the circumstances surrounding this issue, felt that it was evident that the Complainant was overlooked for employment as a Labourer and advised the Corporation to regularize the Complainant's employment status by granting him employment as soon as possible.

The Ministry directed that the Corporation, when preparing the Seniority List, ensure that the three year break in service conforms with Chief Personnel Officer Circular 36/1/62 dated September 10, 1998 and additionally, that no persons are overlooked for employment as a result of the erroneous interpretation in respect of cancellation of workers' service.

The matter is being pursued to ensure that the Corporation complies with the recommendations of the Ministry of Local Government.

NATIONAL INSURANCE BOARD

OMISSION OF IMPORTANT DATA LEADS TO RETIREE GETTING LESS THAN HIS DUE

The Complainant, from South Trinidad, approached this Office seeking assistance to have his National Insurance Contributions Statement amended. He stated that upon retirement, officials from the *National Insurance Board* (the Board) told him that he was not eligible to qualify for a pension. As a result, he was paid the sum of twenty nine thousand and eleven dollars and ninety-five cents, **(\$29,011.95)** as a Retirement Grant. The Complainant reviewed his Contributions Statement against his TD4 slips, and realized that the Board had not entered some of his contributions. He presented the TD4 slips to the Board and requested a review of his matter.

In January, 2007 when the Complainant realized that the Board had not responded he sought the assistance of the Ombudsman. The matter was pursued with the South Regional Office of the Board which later advised that the matter had been referred to its Executive Director.

CASE NOTES

The Executive Director later reported that the Complainant's claim had been processed as a Retirement Grant and not a Retirement Pension since the Complainant had only made a total of 655 contributions. He explained that in order to qualify for a Retirement Pension, persons should have made at least 750 contributions. In light of the information gleaned from records that were available at that time, the Complainant only qualified for a Retirement Grant and was paid the sum of twenty-nine thousand, eleven dollars and ninety-five cents (\$29,011.95).

The Board subsequently reviewed the Complainant's claim using the additional information provided and it was established that he had in fact made 743 contributions and not the 655 that the Board had initially stated.

Consequently, the quantum of the Retirement Grant was revised and the Complainant was paid an additional sum of four thousand, nine hundred and thirty-nine dollars and twenty cents (\$4,939.20).

CASE NOTES

MINISTRY OF FOREIGN AFFAIRS

A MATTER OF LEGAL INTERPRETATION

The Complainants, non-diplomatic officers of the *Ministry of Foreign Affairs* who had several tours of duty at Overseas Missions, sought the intervention of the Ombudsman because they were unable to obtain a travel allowance to which they felt they were entitled, under Regulation 18 of the *Civil Service (External Affairs) Regulations 1977*.

Regulation 18 states that, "an officer posted at a Mission shall be paid a travelling allowance at an approved rate." The allowance had never been paid to the non-diplomatic staff because Regulation 18 had always previously been interpreted and applied by the Ministry of Foreign Affairs in a manner that only benefited Foreign Service Officers.

The Chief Personnel Officer, to whom the matter was referred, advised that since it was not established that there was a need for non-diplomatic staff to travel on official duty, no case existed for the payment of a travel allowance to be paid to the affected officers.

Accordingly, a directive was given that only Foreign Service Officers posted at Missions abroad were to continue to be assigned to scheduled travelling offices and be required to keep and use a motor vehicle in the performance of their official duties.

It was further determined that non-diplomatic officers who may be authorized to travel on any occasion, in the performance of their official duties should be refunded reasonable for expenses incurred.

The Ministry of Foreign Affairs however, re-examined the claims of the affected officers and concluded that while there was no authority to pay these officers upkeep and mileage as currently administered for public officers performing their duties in Trinidad and Tobago, there was an obligation grounded in Regulation 18 to pay *all* officers a travelling allowance based solely on the fact that they had been posted to a Mission.

Accordingly, in an effort to clarify the issue, the Ministry sought the opinion of the *Solicitor General* with specific reference to three main issues:

1. Do the words "an officer" in Regulation 18 of the Civil Service (External Affairs) Regulations, 1977, refer to all home-based staff at a Mission, whether Foreign Service Officers or non-diplomatic staff?
2. Is there an obligation grounded in Regulation 18 to pay officers at a Mission a traveling allowance based solely on the fact of having been posted to a Mission?
3. Is the legal, regulatory and administrative framework that now governs the payment of traveling allowances to officers of the Public Service performing their duties in Trinidad and Tobago an appropriate one for determining the validity of their claim and for giving effect to Regulation 18?

The Solicitor General in her memorandum dated April 16, 1997 provided a detailed opinion on the question of the payment of a Travel Allowance which in summary stated;

1. The words "an officer" used in Regulation 18 of the Civil Service (External Affairs) Regulations, 1977 refer to all home-based members of staff at a Mission, whether Foreign Service Officers or non-diplomatic staff.
2. Every officer posted to a Mission shall be paid, without more, a traveling allowance at the approved rate, regardless of the office occupied.
3. The travelling allowance under Regulation 18 *ought to be developed independently* of the Travelling Allowance Act Regulations. The Travelling Allowance Act of the Civil Service Regulations cannot provide any guidance as to the interpretation or application of Regulation 18 of the Civil Service (External Affairs) Regulations, 1977.

The Solicitor General opined that there was no statutory exception with regard to non-diplomatic staff where the payment of the subject allowance was concerned. The issue therefore seemed to be more that of what the "approved rate" should be when applied to non-diplomatic staff.

The Chief Personnel Officer has the discretionary power to determine the amount of the rates payable and therefore *the matter for consideration in this case was whether the quantum of payment to Foreign Service Officers (diplomatic) and to non-diplomatic officers ought to differ*. However, when the matter was referred to the *Chief Personnel Officer*, that office requested the Ministry of Foreign Affairs to establish the factors that should be taken into account in order to deal with the question of the traveling allowance for Foreign Service personnel.

Since four (4) years had elapsed from the date on which the Ministry of Foreign Affairs had received the Solicitor General's opinion, the non-diplomatic officers complained that both the Chief Personnel Officer and the Ministry of Foreign Affairs were deliberately delaying the payment of the allowance and sought the intervention of the Ombudsman.

CASE NOTES

In an effort to resolve the matter a meeting was convened by the previous Ombudsman with all the concerned parties, i.e. the Chief Personnel Officer, the Ministry of Foreign Affairs and a representative member of the affected officers. There was consensus then that Regulation 18 imposed on the Government of Trinidad and Tobago, a legal obligation that was still to be fully satisfied in favour of all officers posted to Missions. The area of disagreement, however, pertained to the formula to be used in determining the quantum of the allowance to be paid to the non-diplomatic officers.

The Chief Personnel Officer accordingly referred the matter of the determination of the quantum of the travel allowance to be paid, to the Ministry of Foreign Affairs. The Ministry of Foreign Affairs subsequently recommended that the travel allowance for the non-diplomatic officers be calculated at eighty percent (80%) of the upkeep allowance payable to Foreign Service Officers who did not receive travel allowance and did not own a motor vehicle. It was further recommended that one hundred percent (100%) be paid to Foreign Service Officers who travelled and owned a vehicle. A proposal for payment to non-diplomatic officers who owned vehicles was notably absent.

The non-diplomatic officers rejected this proposal as discriminatory. They were of the view that Regulation 19 provided that the allowance payable under Regulation 18 be paid from the day on which an officer assumed duty and ceased on the day he/she relinquished duty. There was, as a consequence, no linkage between the payment of the travelling allowance under Regulation 18 and any requirement to actually own a motor vehicle or to have travelled in the performance of duties. Therefore, the proposal by the Ministry to afford a higher rate of payment to Foreign Service Officers who owned vehicles implied that it had still applied in part, the regime which governs the payment of travelling allowances under Regulation 17 of the Travelling Allowances Act Chapter 23:50.

Subsequently, in January 2004, the Ministry sought a further meeting with the Chief Personnel Officer but was informed that due to continuing negotiations with the Public Service Association and other demands, a meeting would not be possible until May of that year.

Despite several verbal and written reminders thereafter, the matter to date remains unresolved.

MINISTRY OF LOCAL GOVERNMENT SIPARIA REGIONAL CORPORATION

**BUREAUCRATIC BUNGLING LEADS TO
DELAY IN ACCESSING PENSION BENEFITS**

A Clerk II, employed with the then *St. Patrick County Council, Ministry of Works, Infrastructure and Decentralization*, now *Siparia Regional Corporation*, (the Corporation) *Ministry of Local Government*, applied in March 1991 to terminate her service under Voluntary Termination of Employment Package (VTEP). She submitted her original documents so that her application would be processed. Five (5) months later, she submitted another application to retire from the Public Service, on grounds of marriage.

Five (5) years later, in February 1996, the Ministry of Local Government contacted the Complainant and requested that she re-submit her original documents for submission to the Director of Personnel Administration for processing of her application to retire on grounds of marriage.

The Complainant complied and in January 1997, the Public Service Commission informed her that it had considered her request to retire on grounds of marriage. The Commission, however, noted that her Marriage Certificate had only been submitted in February 1996. She was required to submit the Marriage Certificate within six (6) months of her separation from the Public Service in accordance with *Director of Personnel Administration Circular P30/3/1* dated July 23, 1991. Retirement on Grounds of Marriage (Female Public Officers). The Commission therefore decided that as a result, the Complainant was ineligible to retire from the Public Service on grounds of marriage. It however accepted her resignation from the Public Service with effect from September 1, 1991.

The Complainant then sought the Ombudsman's assistance to have her application to retire on grounds of marriage reviewed by the *Public Service Commission*.

The Ombudsman queried the inordinate delay by the Ministry of Local Government in submitting the Complainant's Marriage Certificate to the Public Service Commission, which had resulted in the denial of her request to retire on grounds of marriage.

In response the Permanent Secretary, Ministry of Local Government informed the Ombudsman that the Complainant's application in 1991 to terminate her services under Voluntary Termination of Employment Package was accompanied by both her original Birth and Marriage Certificates. When the Complainant subsequently tendered her application for retirement on grounds of marriage, it was not accompanied by those documents because the Ministry was already in possession of the Birth and Marriage Certificates.

It would appear that since the Complainant's requests were being addressed by separate units, the section handling her Voluntary Termination of Employment Package (VTEP) request had not forwarded the documents to the section handling her request for retirement on grounds of marriage. The evidence further suggested that no request was made at that time for the Complainant to re-submit her original documents to process her request to retire on grounds of marriage.

The Ministry of Local Government has since reviewed the matter and approached the Public Service Commission to reconsider the Complainant's application to retire on grounds of marriage with effect from September 1, 1991.

The Ombudsman is anticipating a favourable response.

MINISTRY OF LOCAL GOVERNMENT SIPARIA REGIONAL CORPORATION

HEALTH HAZARD CAUSED BY UNFINISHED DRAIN

In August 2007, the residents of Sumanie Trace, Rochard Douglas Road, Barrackpore complained to the Ombudsman that a resident had blocked the natural water course in their area. This situation had resulted in severe flooding and the formation of pools of stagnant water which in turn had created a health hazard.



The Ombudsman contacted the *Penal/Debe Regional Corporation* and was informed that the Corporation was in the process of building a box drain in the area. The resident who had blocked the watercourse had backfilled his property while the drain was being constructed. As a result, this had hindered the completion of the drain, which would have channeled the water into an outfall drain. The Corporation then attempted to negotiate with that resident to have the drain re-opened, but this proved futile.

In an effort to bring relief to the other residents, the Corporation then decided to direct the water from the box drain through a road reserve which separated the properties of the Complainants and the offending resident. This entailed the excavation of an area of land on the road reserve close to the boundary of the offending resident. When the Corporation proceeded to execute the project, the offending resident attempted to prevent the process by claiming that the road reserve was part of his private property. The Corporation was, however, able to establish that the area for the road reserve was clearly demarcated as such on the Cadastral Sheet and was not part of the resident's private property.

The Ombudsman met with all the parties and through process of mediation, continued dialogue and communication, the matter is close to being resolved.

MINISTRY OF HOUSING URBAN DEVELOPMENT CORPORATION OF TRINIDAD AND TOBAGO

PROJECT DELAYS PROLONG DISCOMFORT FOR VISUALLY IMPAIRED

The Government promised members of a State supported Association a permanent home in which to carry out their daily functions. The building was supposed to be ready for occupation by February 2006.

The Complainants, who are visually impaired, were informed by the Urban Development Corporation of Trinidad and Tobago (UDECOTT), acting on behalf of the Government, that a property had been purchased for leasing to their Association. The property of choice however required refurbishment and a contractor was hired to complete the necessary work.

In the interim, temporary accommodation was provided at another location until the chosen building was ready for occupation. The Complainants, however, sought the assistance of the Ombudsman because the building in which they were temporarily housed was inadequate and uncomfortable. In addition, the Public Service Association, the representative Union of the Complainants, advised that in order the building to be acceptable for occupancy the following corrective measures should be immediately undertaken:-

- (a) Installation of Air Conditioning Units
- (b) Replacement of existing flooring
- (c) Rails to be placed at the back entrance
- (d) Adequate Lunch Room and Sick Bay Facilities
- (e) Employment of a Crossing guide.



In November 2006, the Ombudsman made a site visit in order to assess the inadequacy of the accommodation. She was accompanied by representatives of UDECOTT, the private contractor and members of the Association. It was subsequently agreed by all that immediate action should be taken to improve the working conditions of the Complainants through, among other things, the installation of air-condition units, sealing of vents and improvement to lighting and plumbing facilities. It was also agreed that additional storage space would be provided and the entire building sanitized.

CASE NOTES

A year has elapsed since the site visit. Only some of the repairs to the temporary location were effected and relocation to the promised permanent building has not yet taken place. In October 2007, the Association again wrote to UDECOTT because there was still unfinished work, the completion of which was of paramount importance to the safety of the members of the Association who were to occupy the building.

The Ombudsman has been advised that a resolution to this matter will be forthcoming early in 2008.



MINISTRY OF LOCAL GOVERNMENT UNEMPLOYMENT RELIEF PROGRAMME

INORDINATE DELAY TO PAY WAGES EARNED

The Complainant was employed as a Daily Paid Foreman with the Couva Region of the Unemployment Relief Programme (URP) Ministry of Local Government for several periods during the year 2006. He complained that he had not been paid for the month of June, 2006.

The Complainant advised that, during that month, he informed the Couva Regional Office of the URP that he would have been out of the country on the designated pay day for that month.

On November 21, 2006 he returned to the country and visited the Couva Regional URP office to collect his wages, but was informed that there was no cheque available to him.

After several unsuccessful attempts to obtain his outstanding wages he sought the assistance of the Ombudsman on April 13, 2007. On April 20, 2007 the matter was brought to the attention of the Permanent Secretary, Ministry of Local Government, under whose purview the URP then fell. Several reminders were issued and discussions were held with officials of both the Ministry of Local Government and the Couva Regional URP Office. The Deputy Programme Manager of the URP later responded that relevant information had been received from the Couva Regional Office of the URP with respect to the Complaint and that the Accounting Executive II would confirm whether the Complainant had been paid. The Deputy Programme Manager further advised that as soon as this information was received, the Office of the Ombudsman would be informed.

Although eight months have elapsed since the matter was brought to the attention of the Ministry of local Government and despite the assurances of the Deputy Programme Manager, the Complainant has not received his outstanding wages to date. The matter is still being pursued.

MINISTRY OF PUBLIC UTILITIES AND THE ENVIRONMENT
WATER AND SEWERAGE AUTHORITY

UNATTENDED LEAK IN MAINS EQUALS INADEQUATE SUPPLY FOR CONSUMER

The Complainant who resides at Durant Street, Upper Belmont Valley Road, Belmont complained that a very old and corroded water line located on the street on which he lived was frequently leaking. He claimed that he had made numerous reports to The *Water and Sewerage Authority* (WASA) and was promised that the old line would be replaced thus allowing him to enjoy a reliable water supply. The promise was however not fulfilled.

After several more reports were made to WASA, he sought the assistance of the Ombudsman in December 2006. The matter which was brought to the attention of the Permanent Secretary, Ministry of Public Utilities and the Environment by letter dated January 2, 2007 was referred by that Ministry to WASA. On March 5, 2007 WASA responded advising that the Regional Manager, North had been mandated to investigate the matter.

Further investigations by the Office of the Ombudsman revealed that the Acting Manager, Water Delivery (North) had informed the Regional Manager North by Memorandum dated August 21, 2007 as follows:

"The process for the laying of water mains on Durant Street has begun; the estimate having already been completed and materials are now to be sourced. The Special Projects Team managed by will undertake the project replacing 'long service' connections with a new distribution main, thereby reducing the burst frequency of those vulnerable lines. The project requires inter alia, the installation of:.....270 m of 100mm (4") diameter PVC main and 14 house connections. Commencement of the project is expected within the next six (6) weeks and continues for the duration of six (6) days."

The Ombudsman has noted that despite the claim of the Acting Manager, Water Delivery (North) as stated above, at the end of 2007 the project had not yet commenced. Additionally, despite reminders from this office, neither WASA nor the Ministry of Public Utilities and the Environment had communicated with the Ombudsman on this matter.

Frequent leaks on the water line still occur and the Complainant continues to receive an inadequate water supply. The matter is still being pursued.

SERVICE COMMISSIONS DEPARTMENT

SICK LEAVE WOES

The Complainant was employed as an Assistant Teacher with effect from September 4, 1995. On April 27, 2001 he was injured in a sporting accident at the Tortuga Government Primary School, where he was employed. He sought medical attention at the General Hospital, San Fernando.

The District Medical Officer, Chaguanas recommended that he be confined to bed and granted ninety (90) days sick leave with effect from the date of the injury to July 25, 2001. The Complainant claimed to have posted his medical certificate to the Principal of the Tortuga Government Primary School.

On July 26 2001, the date on which the Complainant was due to resume duties, he claimed that he visited the *Ministry of Education* where he was informed that someone else had been appointed to the position he previously held and that he was no longer employed by that Ministry.

Thereafter, the Complainant received a letter dated August 27, 2002 in which he was advised by the *Director of Personnel Administration* that the *Teaching Service Commission* had noted that he had been absent from duty without permission with effect from April 26, 2001. The letter also stated inter alia

"the Commission therefore proposes to declare you to have resigned your office with effect from April 26, 2001 in accordance with the provisions of Regulation 49 of the Public Service Commission Regulations, Chapter 1:01 of the Laws of the Republic of Trinidad and Tobago, as adopted by the Teaching Service Commission and is inviting you to submit by October 15, 2002 any representations you may wish to make in the matter."

He was also advised that his reply should be submitted through the Permanent Secretary, Ministry of Education.

The Complainant indicated that by letter dated October 6, 2002 he submitted a response to the Permanent Secretary, Ministry of Education outlining the circumstances surrounding his absence from duty and requesting to be reinstated as an Assistant Teacher. He also indicated that up to April 12, 2007, the date on which the matter was brought to the attention of the Ombudsman, he had not received any communication from either the Permanent Secretary or the Director of Personnel Administration.

The Ombudsman brought the matter to the attention of the Director of Personnel Administration by letter dated April 17, 2007. In response, by letter dated May 8, 2007 the Director of Personnel Administration advised that the matter was being referred to the Teaching Service Commission for consideration and that the Ombudsman would be notified of the outcome of its deliberations.

Consecutive reminders were sent to the Director of Personnel Administration and by letter dated October 4, 2007 she responded that the matter would be placed before the Teaching Service Commission for consideration.

The matter is being pursued.

NOTE

It should be noted that despite the Director of Personnel Administration's repeated promises to bring this matter to the attention of the Teaching Service Commission, it would appear that this has not been done

MINISTRY OF EDUCATION

UNWARRANTED WOES FOR WATCHMAN'S WIDOW

The Complainant's deceased husband was employed as a Watchman with the Ministry of Education up to the time of his death. A death gratuity of thirty four thousand and eighty dollars (**\$34,080.00**) was approved for his widow, who was his Legal Personal Representative. She was advised in writing that the death gratuity was payable, subject to the recovery of all indebtedness to Government. She was invited to contact the Ministry to facilitate the early processing of the death gratuity.

When the Complainant contacted the Ministry, she was informed that her husband had been overpaid the sum of **\$2,591.72** which had to be deducted from his death gratuity. The overpayments occurred when he received full salary for periods of extended sick leave which had been classified as leave with half pay. In addition, the Complainant's husband died on January 22, 2003 but full salary had been paid to him up to January 31, 2003. He was therefore not entitled to salary for the period January 22-31, 2003. The Complainant felt that it was unfair to deduct this sum from her husband's gratuity and sought the Ombudsman's assistance.

Representations were made on her behalf to the Ministry of Education and the **Treasury Division**, Financial Management Branch, **Ministry of Finance** to have the overpayment written off and the Complainant reimbursed.

In February 2007, the Financial Management Branch requested additional information from the Pensions Management Branch and the Ministry of Education in order to consider the write-off. Although that Financial Management Branch has since sent several requests and reminders to the Ministry of Education, the information/documents requested remain outstanding. The matter is being pursued.

MINISTRY OF COMMUNITY DEVELOPMENT, CULTURE AND GENDER AFFAIRS

**DENIED PAYMENTS DUE FOR SERVING ON
CABINET-APPOINTED COMMITTEE**

In February 2006 the Complainant, Secretary to a Cabinet-appointed Committee (herein after referred to as "the Committee") under the aegis of the *Ministry of Community Development, Culture and Gender Affairs*, sought the assistance of the Ombudsman in obtaining outstanding honoraria owed to the Committee members since 1998; but has been unsuccessful in obtaining same.

The Complainant claimed that he made representations to the Permanent Secretary, the Deputy Permanent Secretary and the Director of Culture of the Ministry of Community Development, Culture and Gender Affairs. He further claimed that efforts to arrange a meeting with these officials had also proven futile.

The Permanent Secretary, in response to the Ombudsman's request for a report on the status of the matter, advised in April 2006 that the issue of honoraria to be paid to members of the Committee had been forwarded to the *Ministry of Finance, Investment Division* for consideration.

Although several reminders were sent to the Ministry of Community Development, Culture and Gender Affairs requesting an update on when the payment would be effected, it was only in May 2007 that the Permanent Secretary again informed the Ombudsman inter alia, that "the matter of honorarium for committees is addressed by the Ministry of Finance, Investment Division only after Cabinet approval is obtained for the appointment of such committees. In this regard and pursuant to such advice from the Ministry of Finance, an approach is being made to Cabinet with the view of having this matter finalized."

It should be noted that *Cabinet Minute No.2388* of September 10, 1998 approved the policy for the classification of Committees appointed by Cabinet as well as the criteria to be used for determining the level of honoraria to be paid. Cabinet further agreed that the policies contained in Cabinet Minute No. 2388 be implemented retroactively for Committees which were appointed or which reported to Cabinet after January 1, 1998.

To date, this matter remains unresolved.

PERSONNEL DEPARTMENT MINISTRY OF PUBLIC ADMINISTRATION

EMPLOYMENT STATUS JEOPARDISED BY UNCLEAR OFFICIAL ADVICE

The Complainant was a daily paid 'Checker' with the *Ministry of Infrastructure, Development and Local Government* between the period 1979 and 2000 in the districts of Nariva/Mayaro and Victoria West.

The Complainant advised that, from around September 1989, he became ill and sought medical attention. He submitted medical certificates on several occasions to cover his periods of absence on sick leave.

In *January 2000*, he sought the advice of the Personnel and Industrial Relations Officer (the PIRO) on the possibility of him retiring on medical grounds. The Personnel and Industrial Relations Officer subsequently informed the Complainant that all his documents had been forwarded to the *Ministry of Health* so that he could be medically assessed and allowed to retire on grounds of ill-health. The Personnel and Industrial Relations Officer (PIRO) further advised the complainant that no additional medical certificates would be entertained after January 2000.

In June 2000, the Complainant received a letter informing him that his service had been terminated because he had abandoned his job. At this point, the Complainant sought the Ombudsman's assistance in obtaining benefits which he felt were due to him for his twenty-one (21) years of service.

The matter was brought to the attention of the Permanent Secretary Ministry of Infrastructure, Development and Local Government, whose response was that the Complainant had abandoned the job with effect from 27th January 2000, the date on which the last medical certificate he had submitted expired. As a result, the request to the Ministry of Health for his examination by a Medical Board had been cancelled.

Thereafter, this matter was referred to the Personnel Department, which falls under the Ministry of Public Administration in November 2001 for further investigation and determination. The Complainant has had a history of anxiety and depression among other stress related illnesses. It was therefore reasonable to conclude that there may have been a misunderstanding of the advice given to him by the Personnel and Industrial Relations Officer.

Six years later and after several reminders, and telephone discussions the Chief Personnel Officer has not responded and the matter remains outstanding.

The Ombudsman is pursuing this matter with the expectation that a resolution will be forthcoming.

MINISTRY OF FINANCE - CENTRAL STATISTICAL OFFICE

PENSION WITHHELD DUE TO UNCLEAR POLICY DIRECTIVE

The Complainant, a retired Statistical Officer II, who had completed thirty-three (33) years in the Public Service, discovered on receipt of his retirement benefit that he had been remunerated for only twenty-seven (27) years.

When the Complainant enquired why approximately twenty-seven thousand (\$27,000) of his gratuity and \$600.00 of his monthly pension benefits had been withheld, he was informed that *his period of employment as a Clerical Assistant from 21st May 1979 to 31st December 1983 had not been considered*. He was told that his employment for that period was under the delegated authority of the Director of Statistics and as such the service could not be counted for pension purposes.

The Complainant therefore made representations to the Ombudsman to have his full retirement benefit paid to him. Investigations revealed that in a memorandum dated 30th April 1968, the Director of Personnel Administration delegated authority to the Director of Statistics, to appoint persons to the temporary posts of Field Interviewer I, Clerical Assistant and Statistical Assistant.

As a consequence, when the Complainant joined the Central Statistical Office in May 1979 it was under this delegated authority. He was employed there up to the time of his retirement in October 2006.

Representations were made on the Complainant's behalf to the Permanent Secretary, Ministry of Planning, Housing and the Environment and to the Director of Statistics, Central Statistical Office to have the entire period of the Complainant's employment count for pension purposes.

The Director of Statistics reported that an approach had been made by the Comptroller of Accounts to the Auditor General to have the Complainant's six and a half years service as a temporary Clerical Assistant taken into account in the calculation of his retirement benefits.

In response the Auditor General requested the Comptroller of Accounts to provide the "Authority" which would enable the Department to sanction such payment. This was due to the fact that there was no clear documentation on how to deal effectively with service under delegated authority with regard to retirement benefits.

Subsequently the Director of Pensions advised the Director of Statistics inter alia, "Cabinet must be approached for approval of service as a Clerical Assistant to be deemed reckonable for pension purposes".

The Director of Statistics further advised that that Office was conducting a survey of its personnel records to establish the number of persons similarly affected and thereafter an approach would be made to Cabinet for approval for service under delegated authority to count for pension purposes.

The matter has not been resolved and is being actively pursued.

MINISTRY OF AGRICULTURE

POULTRY FARMER FACES LENGTHY DELAYS IN PROCESSING APPLICATION FOR STATE LANDS

In 1975 the Complainant applied to the then Ministry of Agriculture, Lands and Food Production for the lease of a parcel of State Land situated at the 1 mile mark, Valencia Road, Valencia. At the time of the application, the land was designated as Forest Reserve. In light of this, the Complainant also applied to the Conservator of Forests for permission to establish a chicken farm on the said parcel of land.

In response, the Conservator of Forests advised that the Forestry Division had no objection to the land being given over for agricultural purposes. Subsequent attempts, however, to obtain the requested lease from the Ministry of Agriculture, Land and Food Production proved futile. As a result, in 1983 the Complainant then sought the assistance of the Ombudsman.

Accordingly, a status report on the Complainant's application for the lease was requested from the Ministry of Agriculture, Lands and Food Production. It was revealed that there were two previous applications for the said parcel of land situated in the Guaico/Valencia Demarcated Forest Reserve and several other applications had been received for land in the same general area. Additionally, the question of whether lands within the Forest Reserve would be distributed for agricultural purposes was under consideration, and as such, all applications for land in the area would be duly assessed.

The Complainant, however, advised that the question of distribution had already been addressed as there were parcels of land in the area leased to other farmers. A copy of a plan for the area which showed the tenanted plots was submitted as evidence in support of this claim.

In light of this, the now re-named Ministry of Food Production, Marine Exploitation, Forestry and the Environment was requested to comment on this development. The Ministry responded by letter dated June 30, 1987 and advised that the matter was being investigated in order to determine whether the said parcel of land fell within the area released by the Forestry Division.

In 1988, further investigations revealed that the Director of Extensions, Training and Information Services of the Ministry of Food Production, Marine Exploitation, Forestry and the Environment by memorandum dated March 02, 1988 had advised the Permanent Secretary that *a decision had been reached to de-reserve parts of the Guaico/Valencia Forest Reserve for distribution for agricultural purposes*. As a result, the Director of Surveys had been requested to survey the area to be de-reserved in consultation with the Conservator of Forests.

Over the period 1988-1994 eight reminders requesting an update on the matter had been forwarded to the Director of Surveys and to the Ministry which in 1989 was designated the *Ministry of Food Production and Marine Exploitation* and then in 1994 the *Ministry of Agriculture, Land and Marine Resources*.

Eventually, the Acting Director of Surveys by letter dated July 20, 1994 indicated that the relevant Survey Plans had been prepared. A copy of the Cabinet Minute concerning the de-reservation and subsequent preparation of a lease for the said parcel of land was requested by the Acting Director of Surveys from the Ministry of Agriculture, Land and Marine Resources.

A further five reminders were sent over the period 1994 to 1998. The Ministry, by letter dated February 04, 1998, finally indicated that the Director, Regional Administration (North) had advised that the Director of Surveys in collaboration with the Conservator of Forests had been mandated to initiate and bring to a conclusion the de-reservation of the relevant portions of the land block. It should be noted that the Ministry conveyed this information *approximately four years after the Director of Surveys had initially indicated that the Survey Plans were prepared* and that he was awaiting a copy of the relevant Cabinet Minute from the Ministry.

The Ministry subsequently reported that information received from the *Director of Forestry indicated that no approval was actually obtained for the de-reservation of any area of the Guaico/Valencia Forest Reserve.* In fact it appeared that no action had been taken to de-reserve the said lands and by extension no lease was being contemplated for the parcel of land for which the Complainant had applied. This new information, however, contradicted the March 02, 1988 report from the Director of Extensions, Training and Information Services, Ministry of Food Production, Marine Exploitation, Forestry and the Environment, which stated that *a decision had been reached to de-reserve parts of the Guaico/Valencia Forest Reserve for distribution for agricultural purposes.*

In light of this development, the Ministry advised that the matter should be pursued with the Director of Surveys, whose Division was now part of the *Ministry of Housing and Settlements.*

Five years later, the Director of Surveys by letter dated September 04, 2003 confirmed that *no approvals were given for the de-reservation of any area in the Guaico/Valencia Forest Reserve.* He further indicated that the Director, Land Administration Division, who was now responsible for the administration of land matters, was unable to locate a copy of the Cabinet Minute relevant to this matter. A request had also been forwarded by the Director of Surveys to the Director, Town and Country Planning Division for information regarding whether approval had been given for the change of land use from Reserve Forest to agricultural purposes in the Guaico/Valencia Forest Reserve.

A further thirteen reminders over the period 2004 to 2007 were forwarded to the Permanent Secretary, Ministry of Agriculture, Land and Marine Resources, the Commissioner of State Lands, the Director, Land Administration Division, the Permanent Secretary, Ministry of Planning and Development, and the Director, Town and Country Planning Division. The Ombudsman was of the view that had each of these Departments taken the appropriate action to have this matter resolved in a timely manner, the inordinate delay in making a decision on the Complainant's request for a lease would not have occurred.

Eventually, a response by letter dated May 02, 2007 was received from the Permanent Secretary, Ministry of Agriculture, Land and Marine Resources. This office was informed that a copy of Cabinet Minute No. 1175 dated May 05, 2005, which was relevant to this matter, was dispatched to the Director of Surveys for necessary action. The Ombudsman was not, however, informed of the contents of the Minute.

To date, twenty-four years after the Complainant first approached this Office for assistance, this complaint is still being pursued due to the inability and/or unwillingness of the relevant Departments to effectively treat with this matter to ensure its resolution.

MINISTRY OF PUBLIC ADMINISTRATION
PERSONNEL DEPARTMENT

SIX (6) MONTHS WITHOUT PAY

The Complainant was employed as a Temporary Branch Library Assistant with effect from 1989 at the Central Library Services, *Ministry of Human Development, Youth and Culture*.

In June 1998, she became ill and proceeded on several extended periods of sick leave. The Chief Personnel Officer classified the period June to August 1998 as leave without pay. Thereafter by Act No.18 of 1998 the National Library Services became a separate entity known as the *National Library and Information System Authority* (NALIS), with the jurisdictional responsibility to determine terms and conditions for persons within its employ. Subsequent requests for sick leave by the Complainant were classified by the Executive Director, NALIS, who deemed the period September 1998 to June 2000 as leave without pay.

In June 2000, the Complainant was referred for examination by a Medical Board which recommended that she was unfit for further service. This information was submitted to the Director of Personnel Administration on **August 7, 2000** and thereafter, the Service Commissions Department informed the Complainant of the termination of her temporary appointment as Branch Library Assistant, on grounds of ill health with effect from **16th August 2000**.

The Complainant made representations to NALIS to have the six (6) month period immediately preceding the date on which she was notified of her unfitness for further duty reclassified as leave with full pay.

In 2006, at a meeting with the Ombudsman, officials from the Personnel Department, Ministry of Public Administration agreed to review the Complainant's case in accordance with Regulation 86 of the Civil Service Regulations Chapter 23:01 and the Personnel Department's Guidelines for the Administration of Devolved Functions, Extension of Sick Leave, G.11 which states as follows:

" Where an officer is found unfit, the Permanent Secretary or Head of Department/Statutory Authority may reclassify as an extension of sick leave with full pay, such period, not exceeding six (6) months, which immediately precedes the date on which the officer is notified of his unfitness for further duty, and which had earlier been classified as an extension of sick leave without pay or on partial pay

To date the Chief Personnel Officer still has not taken the promised action and the matter remains unresolved.

A P P E N D I X

About The Office of the Ombudsman

Why does the Office exist?

- The Office of Ombudsman was established under Section 91(1) of the Constitution of Trinidad & Tobago.

Sec. 93 of the Constitution sets out in general terms the principal functions of the Ombudsman, that is, “to investigate any decision and recommendation made, including any advice to a Minister, or any act done or omitted by any department of government or any authority, being action taken in the exercise of the administrative functions of that department or authority.”

The “Ombudsman Act”

The Ombudsman Act Chap. 2:52, assented to on 24th May, 1977, made provision for giving effect to the Office of the Ombudsman. It sets out in clear detail the procedure to be followed in respect of investigations, which are to be undertaken primarily for the purpose of giving assistance to persons who believe that they have suffered injustices at the hands of public officers employed by Government agencies and departments .

To Whom does the Ombudsman report?

The Ombudsman is responsible only to Parliament, to which annual reports are made on the performance of the Office, including statistics of the complaints received and the results of investigations. Special reports may be made to Parliament on matters of public importance and on what are considered areas of concern.

A P P E N D I X

About The Office of the Ombudsman

VISION

Committed to ensuring the protection of the individual against bureaucratic injustice

MISSION

1. To investigate complaints against Government departments, agencies and authorities.
2. To provide an impartial, informal and expeditious service to the public.
3. To educate the public as to their rights and duties in a free and democratic society vis-à-vis the responsibility and accountability of public officers.
4. To promote an effective and efficient public service that is responsive to the needs of the citizenry.

Limits to the Ombudsman's Jurisdiction

- Whereas Section 93 of the Constitution of Trinidad & Tobago sets out the jurisdiction of the Ombudsman, Section 94 outlines restrictions on matters of investigation.
- One important restriction, among others listed in that Section, concerns matters in respect of which a complainant has or had a remedy by way of proceedings in a court or in respect of which there is a right of appeal, reference or review.

Matters Not Subject to Investigation

- And whereas Section 94 of the Constitution outlines restrictions, the Third Schedule stipulates matters that are altogether not subject to investigation by the Ombudsman.
- These include the commencement or conduct of civil or criminal proceedings before any court in T & T or before any international court or tribunal.

A P P E N D I X

About The Office of the Ombudsman

FREEDOM OF INFORMATION ACT, 1999

The Freedom of Information Act, 1999 provides individuals with a legal right, subject to certain exceptions to access information held by public bodies. In cases where access to information is refused or there is a delay in providing same, aggrieved persons may have recourse by bringing the matter to the attention of the Ombudsman. The Ombudsman is authorized to review the required documents and make suitable recommendations. Forty (40) complaints were lodged at the Office of the Ombudsman under the Freedom of Information Act in 2007.

Modus Operandi

In the process of fulfilling its statutory mandate, the Office:

- Responds to enquiries from the public.
- Conducts thorough, impartial and independent investigation of complaints.
- Resolves complaints.

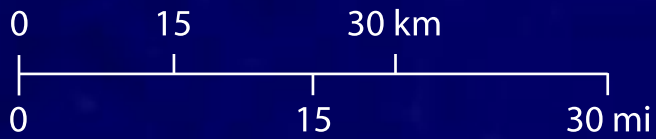
An important added benefit...

By doing the job well, the Office hopes to ensure improvements in the quality of administration throughout the public service



Atlantic Ocean

Caribbean Sea



TOBAGO



Caribbean Sea



Gulf
of
Paria

North
Atlantic
Ocean

