

TRINIDAD Y TOBAGO

Extract from the Constitution of Trinidad and Tobago

Act No. 4 of 1976

Part 2

Ombudsman

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

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

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

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

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

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

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

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

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

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

(b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose

revenue consist wholly or mainly of moneys provided out of public funds;

(c) any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of Government;

(d) such other authorities as may be prescribed.

94. (1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

(2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.

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

(4) The Ombudsman shall not investigate

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

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

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

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

(5) Notwithstanding subsection (4) the Ombudsman

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

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

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

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

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

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

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

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

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

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

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

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

97. (1) The Ombudsman shall have the powers of the High Court to summon witnesses to appear before him and to compel them to give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as in the High Court.

(2) The Ombudsman shall have power to enter and inspect the premises of any department of government or any authority to which section 93 applies, to call for, examine

and where necessary retain any document kept on such premises and there to carry out any investigation in pursuance of his functions.

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

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

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

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

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

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

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

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

(6) The Ombudsman, and any person holding office or appointment under him may not be called to give evidence

in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

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

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

Third Schedule

Matters not subject to investigation

1. Action taken in matters certified by the Attorney General to affect relations or dealings between the Government of Trinidad and Tobago and any other Government or any international Organization.
2. Action taken in any country or territory outside Trinidad and Tobago by or on behalf of any officer representing or acting under the authority of the Government of Trinidad and Tobago.
3. Action taken under any law relating to extradition or fugitive offenders.
4. Action taken for the purposes of investigating crime or of protecting the security of the State.
5. The commencement or conduct of civil or criminal proceedings before any court in Trinidad and Tobago or before any international court or tribunal.

6. Any exercise of the power of pardon.
7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 93 applies not being transactions for or relating to
 - (a) the acquisition of land compulsorily or in circumstances in which it could be required compulsorily;
 - (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.
8. Actions taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.
9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to
 - (a) the terms and conditions of service as such member; or
 - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
10. Any action which by virtue of any provision of this Constitution may not be enquired into by any court.

Laws of Trinidad and Tobago
Chapter 2:52
Ombudsman Act

*An Act to make provision for giving effect to Part 2
of Chapter 6 of the Constitution
(Assented to 24th May, 1977)*

Enacted by the Parliament of Trinidad and Tobago as follows:

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

(2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the Ombudsman by the person for the time being in charge of the place where the writer is detained.
3. (1) Where the Ombudsman proposes to conduct an investigation under section 93 (1) of the Constitution set out in the Schedule to the Constitution of Trinidad and Tobago Act, 1976 (in this Act referred to as "the Constitution") he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make such representations.

(2) Every such investigation shall be conducted in private.

(3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries as he thinks fit.

(4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee or any department or authority to which section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such

disciplinary or other proceedings against him as may be appropriate.

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

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

(7) For the purposes of section 93 (2)(a) of the Constitution a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorized to represent him

(8) Any question whether a complaint or a request for an investigation is duly made under this Act or under Part 2 of Chapter 6 of the Constitution shall be determined by the Ombudsman.

4. (1) The power of the Ombudsman under Section 97 of the Constitution to summon witnesses and to compel them to give evidence on oath and to produce documents shall apply whether or not the person is an officer; employee or member of any department or authority and whether or not such documents are in the custody or under the control of any department or authority.

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

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

(b) any Complainant; or

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

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

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

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

proceedings before the Ombudsman shall be given against any person.

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

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

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

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

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

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

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

(a) shall regard as secret and confidential all documents, information and things which have been disclosed to any

such person in the execution of any provisions of sections 93 and 96 of the Constitution, so, however, that no disclosure made by any such person in proceedings for an offence, under section 10, or under the Perjury Ordinance by virtue of section 4(2) or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or the provisions of section 3 (4) or section 9, shall be deemed inconsistent with any duty imposed by this paragraph; and

(b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the proviso to paragraph (a)

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

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

(2) No such delegation shall prevent the exercise of any power by the Ombudsman.

(3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

9. (1) The Ombudsman may from time to time in the public interest publish reports relating generally to the exercise of

his functions or to a particular case or cases investigated by him, whether or not the matters to be dealt with in such reports may have been the subject of a report to Parliament.

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

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

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

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

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

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

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

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

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