



Environmental Commission
of Trinidad and Tobago

Report on Performance and Activities

2000 to 2003



**THE ENVIRONMENTAL COMMISSION
OF TRINIDAD AND TOBAGO**

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2 September 2003

His Excellency George Maxwell Richards,
President of the Republic of Trinidad and Tobago,
President's House,
St. Anns

Your Excellency,

Re: Environmental Commission - Report on Performance and Activities – 2000 - 2003

We respectfully submit the report on the Performance and Activities of the Environmental Commission of Trinidad and Tobago for the period covering October 30, 2000 to August 31, 2003.

Sincerely,

Justice Zainool Hosein
Chairman

Dr. Judith Gobin
Commissioner

Dr. Eugene Laurent
Commissioner

Ms. Sandra Paul
Deputy Chairman

Ms. Anne-Marie Sirju
Commissioner

Mr. Andrew Dalip, Jr.
Registrar

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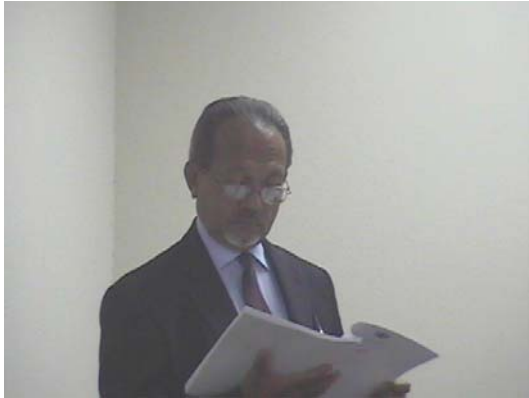
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1. MESSAGE FROM THE CHAIRMAN

The importance of the environment has fluctuated in relation to other social and economic issues. Yet environmental deterioration is widely apparent and in consequence the need for strategies to arrest it became imperative. A consequential flurry of activity by agencies of Government, non-governmental organisations (NGOs) and other national and local bodies serves to recognise both the need for and efficacy of concerted action, as well as a reliance upon the law as one of the tools essential to environmental protection.



While environmental law itself as a specific subject, is of recent vintage, various statutes and legal provisions pertaining to the environment have existed for a long time, and are to be found in more than one hundred pieces of local legislation, the responsibilities for the enforcement of which, have vested in disparate Governmental agencies. A more structured approach to environmental protection was therefore lacking and the Environmental Management Act of 1995

sought to introduce an orderly regime, for the protection of the environment, and, inter alia, sought through the Environmental Management Authority an Administrative Authority, to co-ordinate the activities of the various agencies with the ultimate intent of preventing degradation of the national environment, while, at the same time, playing an important role in the international effort to leave *urbem et orbem* in a better condition for successive generations.

With the creation of an administrative authority to carry out its statutory functions, there arose a need for a specialised judicial body (the Environmental Commission – A superior Court of Record), to which the decisions and actions of the Administrative Authority may be challenged on appeal. Original jurisdiction was also given to it in respect of complaints brought by persons pursuant to section 69 of the Act, known as Direct Private Party Actions.

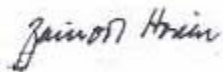
In view of the scientific, engineering and other specialized issues which would necessarily be ventilated before the Commission, experts with qualifications, training and experience in Environmental science, engineering natural sciences or the social sciences, are included among the panel of the Commissioners, to enhance the capability of the Court to resolve environmental disputes involving legal and scientific issues.

The establishment of the Environmental Commission on 30th October, 2000 under the Environmental Management Act, 2000 brought into being the first Environmental Court in the region, and one of the few in the world. Since its inception, its infra-structural, personnel, fiscal, procedural, and other needs have had to be addressed, in order that the

Commission could properly function as a Superior Court of Record, in the performance of its jurisdiction.

The attached report fully details the flora, fauna and some thorns in the life of the Commission to date. Already one is able to perceive the early growth of an environmental legal practice, and a nascent Caribbean environmental jurisprudence. Since the Court (as it is mandated to do) will continue to resort to Alternative Dispute Resolution (including mediation) measures to resolve environmental disputes, it is anticipated that a proportion of matters coming before it will be resolved by ADR methods, for the simple reasons that such resolution is that of the parties themselves and provides a welcome opportunity to save costs. However, matters of greater legal and scientific complexity and probably involving large monetary stakes will continue to require an adjudication in court proceedings.

The report is respectfully submitted as at August 31, 2003, and in brief contains the infrastructural prerequisites attended to, as well as the jurisdictional functions performed.



Justice Zainool Hosein
Chairman

2. INTRODUCTION

The Environmental Commission of Trinidad and Tobago, as a Superior Court of Record and by virtue of the Constitutional doctrine of Separation of Powers, is an arm of the State separate and apart from the Executive and Legislature. The Commission is however cognizant of the fact that the exercise of any public office, including the administration of a Court, must be done in a transparent manner so as to afford greater accountability to the people of the Republic of Trinidad and Tobago, to whom we owe the highest duty. With this in mind, it is the intention of the Commission to routinely prepare reports on its administration, conduct and activities to be submitted to His Excellency the President for his information and the information of the Republic.

The 2003 Report is the first such report of the Environmental Commission since its inauguration on October 30, 2000. As such it covers the period October 30, 2000 to August 31, 2003, and includes an overview of the Environmental Commission, the procedure for the exercise of the Commission's original and appellate jurisdictions, statistics on matters filed, and a financial overview.

3. BACKGROUND

3.1 History

By the Environmental Management Act, 1995 ("EM Act, 1995") the Republic of Trinidad and Tobago sought to create a legal framework for ensuring sustainable development, being the balance of economic growth with environmentally sound practices. The EM Act, 1995 was an umbrella piece of legislation incorporating important environmental policy statements of the Government of Trinidad and Tobago; a blue print for the further development of environmental policy and legislation; and a monitoring and enforcement mechanism. One key component of this system was the Environmental Management Authority, an independent administrative body tasked with co-ordinating, facilitating and overseeing execution of the national environmental strategy and programmes, promoting public awareness of environmental concerns, and establishing an effective regulatory

regime to protect, enhance and conserve the environment. The other key institutional component sought to be established by the EM Act, 1995 was the Environmental Commission, a Superior Court of Record, in order to provide an avenue by which the decisions and actions of the EMA may be challenged by aggrieved persons.



Nariva, Trinidad

The EM Act, 1995 was repealed and replaced by the Environmental Management Act, 2000 (“EM Act, 2000”) which was enacted by a two-thirds majority of both the Senate and the House of Representatives, thereby addressing any constitutional considerations with respect to the creation of the Environmental Commission.

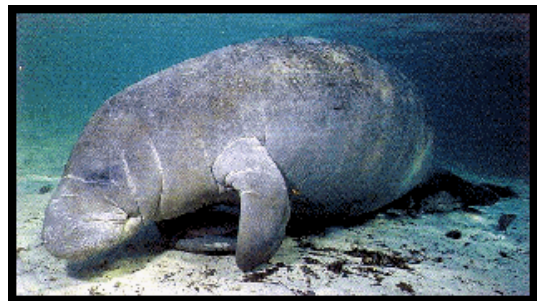
3.2 Establishment, Jurisdiction and Powers of the Environmental Commission

The Environmental Commission was established by section 81(1) of the EM Act, 2000, and thereby became the first Environmental Court in the Caribbean and one of the few in the world. The first Chairman and members of the Commission were appointed by His Excellency the President on October 30, 2000 for a term of three (3) years in accordance with section 82 of the EM Act, 2000.

As provided in section 81(1) of the EM Act, 2000, the Commission is established for the purpose of exercising the jurisdiction conferred upon it by the EM Act, 2000 or by any other written law. While no other legislation at present specifically provides for jurisdiction of the Commission, such an increased jurisdiction of the Commission is clearly contemplated and provided for in the EM Act, 2000.

The specific jurisdiction of the Commission under the EM Act, 2000 is set out in section 81(5) and includes jurisdiction to hear and determine:

- a) Appeals from decisions or actions of the Environmental Management Authority (“EMA”) (as specifically authorised under the EM Act, 2000);
- b) Applications for deferment of decisions made under Section 25 (for the EMA to undertake emergency response activities) or under Section 41 (to designate environmentally sensitive areas or environmentally sensitive species);
- c) Applications by the EMA for the enforcement of any Consent Agreement or any final Administrative Order;
- d) Administrative civil assessments;
- e) Appeals from the designation of environmentally sensitive areas or environmentally sensitive species by the EMA;
- f) Appeals from a decision by the EMA under section 36 to refuse to issue a certificate of environmental clearance or to grant such certificate with conditions;



Manatee

- g) Appeals from any determination by the EMA to disclose information or materials claimed as a trade secret or confidential business information under Section 23(3);
- h) Direct private party actions under section 69; and
- i) Such other matters as may be prescribed by or arise under the EM Act or any other written law where jurisdiction in the Commission is specifically provided.

The Commission has therefore been given jurisdiction to determine matters related to the regimes created by various pieces of subsidiary legislation under the EM Act, 2000 including:

- The requirement to apply for and obtain Certificates of Environmental Clearance for certain new or significantly modified construction, process, works or other activities, as governed by:
 - The Certificate of Environmental Clearance Rules, 2001;
 - The Certificate of Environmental Clearance (Fees and Charges) Regulations, 2001; and
 - The Certificate of Environmental Clearance (Designated Activities) Order, 2001;
- The regime governing noise pollution established under:
 - The Noise Pollution Control Rules, 2001; and
 - The Noise Pollution Control (Fees) Regulations, 2001;
- The regime governing the designation and use of Environmentally Sensitive Areas established under:
 - The Environmentally Sensitive Areas Rules, 2001; and
- The regime governing the designation and use of Environmentally Sensitive Species established under:
 - The Environmentally Sensitive Species Rules, 2001.



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The EM Act, 2000 also provides at section 30(1) for a right of an interested person to appeal to the Commission against a decision of the EMA where such decision required public participation under section 28 and the EMA failed to comply therewith.

The Commission therefore has both an Original and an Appellate Jurisdiction, and this jurisdiction is expected to grow with the enactment and implementation of new pieces of primary and subsidiary legislation. The Commission, “*as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on and inspection of property, and other matters necessary or proper for the due exercise of its jurisdiction, shall have all such powers, rights and privileges as are vested in the High Court of Justice on the occasion of an action*”¹. The Commission can also order costs to be paid in a matter where appropriate².

The Commission is also mandated by section 84(3) of the EM Act, 2000 to encourage and promote Alternative Dispute Resolution, being any mechanism for resolving disputes other than by way of litigation.

The Commission therefore provides the EMA with a mechanism for obtaining judicial sanction for its law enforcement actions where such is justified, and provides citizens with a right of redress where the EMA has erred in the exercise of its jurisdiction. The Commission also provides a forum for proactive citizens (not directly affected by a matter) to initiate public interest litigation via Direct Private Party Actions under section 69, or by the right of appeal under section 30. The establishment of the Commission does not however replace the other Common Law and statutory remedies available to citizens and the EMA, including judicial review.

3.3 Relationship with Other Arms of State

Unlike the other Superior Courts of Record in Trinidad and Tobago, which communicate with Cabinet through the Attorney General, the Minister with responsibility for the Environmental Commission is the Honourable Minister of Public Utilities and the Environment. In keeping however with the separation of powers between the Executive, the Legislature and the Judiciary, the affairs of the Commission and the Ministry do not intermingle, and the Commission remains a separate and independent body free from Executive control. The Commission however remains in the anomalous position of

¹ EM Act, 2000 s. 84(10)

² EM Act, 2000 s. 86(4)

communicating with Cabinet through the Honourable Minister of Public Utilities and the Environment, and receives some accounting support from the Accounting and Audit Units of the Ministry.

The EM Act, 2000 also provides a right of appeal from a decision of the Commission to the Court of Appeal on a point of law. The Commission however remains a separate entity from the Supreme Court of Judicature, being a Superior Court³ in its own right.

3.4 Organizational Structure

The Environmental Commission consists of two separate yet interconnected elements: the Commission Members and the Commission Staff.

The membership of the Commission comprises a full-time Chairman, a full-time Deputy Chairman and four part-time members. In accordance with the EM Act, 2000, His Excellency the President of the Republic of Trinidad and Tobago appoints members of the Commission for a term of not less than three years under such conditions of service as determined by the President. The Chairman and Deputy Chairman are required to be Attorneys-at-Law of not less than ten years standing. The part-time members are required to be appointed by the President from among such persons as are qualified in the areas of environmental issues, engineering, natural sciences or the social sciences. The composition of the Commission is designed to ensure that the Commission is comprised of persons with qualifications training and experience in both the legal and technical aspects of the complex environmental matters ventilated before the Commission. As a Superior Court of Record, the Commission ensures that its decisions are impartial and based on a sound consideration of the legal and technical issues before it.

The staff of the Commission is employed by the Government and operate in accordance with the Government's fiscal, human resource, management and other policies. Being however, the staff of a Superior Court of Record the staff remain dedicated to supporting the objectives and goals of the Commission and preserving its integrity and independence as a Superior Court of Record.

An Organizational Chart of the Commission is contained herein at Appendix I.

³ The title "Environmental **Commission**" is a misnomer that does not truly reflect the status of the Commission as a Superior Court of Record. This in itself can have the unfortunate result of eroding and undermining public confidence in the Commission as an independent Superior Court of Record vested with the power and authority to exercise its jurisdiction without fear or favour.

3.5 Commission Membership

The current members of the Commission were appointed on October 30, 2000 by His Excellency the President for a period of three years from the date of their appointment.



***Members of the Environmental Commission
Ms. Anne-Marie Sirju; Ms. Sandra Paul, Deputy-Chairman; Justice Zainool Hosien,
Chairman; Dr. Judith Gobin; and Dr. Eugene Laurent***

The following are the members of the Commission:-

- **Chairman: Mr. Justice Zainool Hosein, C.M.T.**

A former Justice of Appeal, Justice Hosein brings a considerable wealth of experience from the Supreme Court of Judicature as well as from his practice at the Bars of Trinidad and Tobago and England. Justice Hosein has also been trained in mediation as a tool for Alternative Dispute Resolution.

Justice Hosein was awarded the Chaconia Medal (Gold) on August 31, 1999 for long and meritorious service to the Republic of Trinidad and Tobago.

- **Deputy Chairman: Ms. Sandra Joy Josephine Paul**

A former Judge of the Industrial Court and former Magistrate, Ms. Paul has the distinction of being a Fulbright Hubert H. Humphrey Fellow. Whilst on fellowship her area of specialisation was Alternative Dispute Resolution with an emphasis on mediation. She brings a wealth of and experience in Alternative Dispute Resolution and in particular mediation. She has conducted numerous mediations and has served as a Consultant and lecturer in this field.

- **Commissioner: Dr. Eugene Cipriani Laurent**

A Medical Doctor, Dr. Laurent has had a long and dedicated career of public and regional service in several posts including Principal Medical Officer, Ministry of Health; and Chief Medical Officer, Grenada. Dr. Laurent was responsible for the development and enforcement of Environmental legislation in the Ministry of Health, Trinidad and Tobago during the period 1980 to 1992. Along with his medical expertise Dr. Laurent is trained in mediation. Dr. Laurent serves the Commission in his capacity as an Environmental Health Specialist, a field in which he has acted as a consultant since 1994.

- **Commissioner: Dr. Judith F. Gobin**

A consultant in the field of Environmental Management (Ecology), Dr. Gobin has valuable environmental and ecological experience particularly in the marine and coastal areas of Trinidad and Tobago. Dr. Gobin's academic achievements are extensive as are her impressive lists of publications and research. She continues to serve as a lecturer at the University of the West Indies, St. Augustine, in the Lands and Survey Department and Environmental Engineering Department.

- **Commissioner: Ms. Anne-Marie Sirju**

An Environmental and Industrial Chemist Ms. Sirju serves as the Head, Laboratory Services Division, Trinidad and Tobago Bureau of Standards. She also brings industry-based experience having served in managerial and consultancy capacities with several private sector companies.

Mr. Roger Carrington, an Environmental Engineer, was also appointed by His Excellency the President at the same time as the other members but to date has not taken up his appointment.

3.6 Commission Staff

The work of the judicial arm of the Commission is supported by the Commission's Administrative staff. At the head of this body is the Registrar who is appointed by the Judicial and Legal Service Commission.

Mr. Andrew Dalip, Jr., Attorney-at-Law, was appointed as Registrar of the Commission effective September 17, 2002. Mr. Dalip continues a career of public service in the field of environmental law, having been a Legal Officer with the Ministry of Agriculture, Lands and Marine Resources, the Ministry of the Environment, and the Ministry of Public Utilities and the Environment. He has gained valuable experience in, *inter alia*, the development of environmental policy and legislation and the prosecution of

environmental offences. Mr. Dalip succeeds Mr. Darryl Allahar, the first Registrar of the Commission, who served for the period April 02, 2001 to September 13, 2002.

The Commission's staff also comprises eighteen (18) other members appointed by the Public Service Commission, including clerical staff, Bailiffs, Verbatim Reporters and other support staff. Provision is also made in the establishment for the replacement of the three (3) Verbatim Reporters with two (2) Computer Aided Transcription ("C.A.T.") Reporters when appropriate personnel and equipment have been sourced. The Commission also employs one (1) night watchman and one (1) janitor by temporary contracts pending the award of contracts for these services. Most members of Staff of the Commission have been appointed on a temporary, acting or probationary basis.



*Administrative Staff of the Environmental Commission
(From Left to Right)*

Mr. Roland Sukhai – Bailiff I; Mr. Clyde Pryce – Librarian I; Ms. Debra Cross – Office Attendant; Mr. Clive Adams – Orderly (Ag.); Mr. Andrew Dalip, Jr. – Registrar; Mr. Rampersad Ramroop – Bailiff I; Ms. Sheila Johnson – Clerk Stenographer IV; Ms. Gloria Edwards – Clerk Stenographer III (Ag.); Ms. Neisha Jaimungal-Carrera – Clerk Stenographer I/II; Ms. Fatima Ali – Verbatim Reporter I; Ms. Gemma Foote – Receptionist; Mr. Vishal Sagram – Clerk I; Ms. Hassina Gaffar – Verbatim Reporter I; Mr. Sukhbair Ramsumair – Chauffeur/Messenger; Ms. Eldica John – Clerk II (Ag.); and Mr. Manshab Ali – Clerk IV(Ag.)

An Organizational Chart of the Commission is contained herein at Appendix I and the details of the establishment of the Commission are contained herein at Appendix II.

4. VISION, MISSION AND PERFORMANCE

4.1 Vision Statement

Trinidad and Tobago developing to first world status while maintaining sustainable development practices.

4.2 Mission Statement

The Environmental Commission will advance the sustainable development of the Republic of Trinidad and Tobago by dispassionately adjudicating over matters brought before it, applying the law fairly and justly, taking into account all relevant technical, scientific, social and economic considerations and having due regard to, inter alia, the need to preserve intergenerational equity.



Salibia, Trinidad

4.3 Operating Principles

- **Timely Justice**

The Commission seeks to ensure that matters ventilated before it are heard and determined with dispatch while giving the parties before it a sufficient opportunity to be heard.

- **Informed Decision Making**

The Commission hears and determines matters ventilated before it on the basis of the applicable law and the relevant scientific, technological, environmental and other information.

- **Public Participation**

The Commission ensures that information on its role, function and services is freely accessible to the public. The Commission provides citizens with a forum for addressing their environmental concerns either where *locus standi* is

specifically provided under the EM Act, 2000 or as an interested party to proceedings in accordance with the Environmental Commission Rules of Practice and Procedure, 2001.

- **Customer Service**

The Commission, which is accessible to environmentally aggrieved persons and interested parties, is committed to providing excellent service to citizens throughout Trinidad and Tobago.

4.4 General Objectives

In pursuing its mission and functions the Commission is guided by the following objectives:

1. to strive for correctness and precision in decision making;
2. to maintain fair and simple procedures for invoking its jurisdiction so as not to deny justice;
3. to ascertain and give priority to the substance of a matter before the Commission, rather than to the form in which it is presented;
4. to consider appeals as expeditiously as possible, decreasing the time needed to hear matters litigated before the Commission and thereby provide swift justice and thus avoid a backlog of cases;
5. to issue clear and consistent decisions bearing in mind that as a Superior Court of Record, the decisions of the Commission have the weight of binding precedent locally and that of persuasive authority in other jurisdictions;
6. to ensure the availability of Commission decisions, rules and procedures to parties that appear before the Commission and to the public at large;
7. to encourage settlement of matters brought before the Commission by Alternative Dispute Resolution;
8. to achieve fairness and unbiased judgements, having regard to the purpose of the EM Act, 2000 and all other relevant law as well as the competing interests of all parties to the matter;
9. to develop closer contacts with relevant local, regional and international courts, tribunals and agencies in the fields of environmental law and environmental management with a view to strengthening the ability of the Commission to discharge its duties;

10. to keep abreast of the concerns of industry, the public and the State about the environment;
11. to strive for the continued development of the Commission members and staff so as to better prepare them to discharge their duties; and
12. to operate the Commission within its budget.

4.5 Strategies

The Environmental Commission employs the following strategies to achieve its objectives:

1. the use of written pleadings and arguments wherever possible and appropriate to minimise costs;
2. encouraging the use of Alternative Dispute Resolution, in particular the mediation process, by utilising the services of Commissioners to conduct such sessions;
3. training Commissioners and Commission staff to mediate matters brought before the Commission which is amenable to settlement;
4. utilising the best available technology not entailing excessive cost, and keeping abreast with current trends in Court technology and the administration of justice, so as to expedite the hearing of matters;
5. providing public access to the Commission including documents filed with the Registry, judgements of the Commission and library resources of the Commission;
6. continuously reviewing the Commission's rules, procedures and documents;
7. reviewing Commission staffing requirements and recommending changes as necessary;
8. making appropriate recommendations to Government with respect to the composition, structure, jurisdiction and functioning of the Commission;
9. practising fiscal responsibility;
10. providing Members and staff of the Commission with capacity building and developmental opportunities, such as attendance at conferences, workshops and training courses; and

11. increasing public awareness about environmental law and issues of environmental management, particularly within the legal fraternity, industry and the public sector.

4.6 Standards of Performance

As a Superior Court of Record, the judgements of the Commission and the processes by which the Commission exercises its jurisdiction are not subject to judicial review or any similar process. Thus, while litigants have a right of appeal to the Court of Appeal on a point of law, the Commission is not subject to any Superior Court or authority in terms of the exercise of its jurisdiction. The Commission however remains keenly aware that in the exercise of its judicial role it must maintain the highest standards so as to achieve justice in the performance of its duty. The judgements of the Commission will also have the weight of binding precedent in Trinidad and Tobago and will be persuasive authority in other jurisdictions. The Commission is also conscious that the judicial work of the Commissioners is directly supported by the administrative staff, and the discharge of the latter's functions and duties has a direct bearing on the success or failure of the Commissioners in exercising their jurisdiction.

In fulfilling its mandate, the Commission will strive to achieve the highest standards of performance. With a view to ensuring the faithful discharge of its duty, the Commission continuously evaluates its performance in terms of achieving its mission. Consistent with international norms in court administration, the Commission has adopted the following standards and measures for appraising its own performance:

4.6.1 Access to Justice

- The Commission must conduct its proceedings and other public functions openly and transparently in accordance with law and custom, and reasonable public expectation, and with due regard to all practical considerations relevant to court users;
- The Commission's facilities must be safe, accessible, and convenient to use, ensuring: the reasonable security of court users and their property; access to the courthouse and its facilities; and the reasonable convenience of those unfamiliar with the Commission's facilities and proceedings;



- All persons appearing before the Commission must be given an opportunity to participate effectively without undue hardship or inconvenience;
- The Members and Staff of the Commission shall, in accordance with the highest judicial and professional standards, be courteous and responsive to the public and accord respect to all with whom they come into contact in the performance of their duties;
- Access to the Commission's proceedings and records shall be reasonable, fair and affordable, and shall not be unreasonably impaired by procedural, monetary, or other such constraints.

4.6.2 Expedition and Timeliness

- The Commission shall seek to maintain a timely and efficient case flow management system, with particular emphasis on the need to avoid a backlog of cases, taking into account the reasonable time needed by litigants to properly prepare and ventilate their case, and the time needed to fairly adjudicate the matter;
- The Commission will seek to ensure that where money is required to be paid out by the Court in litigation matters such funds are disbursed promptly;
- The Commission will seek to ensure that, with respect to matters not directly related to caseload management, it provides reports and information according to required schedules, and responds to requests for information and other services on an established schedule that assures their effective use;
- The Commission shall promptly implement changes in law and procedures affecting the Commission's jurisdiction and operation.

4.6.3 Equality, Fairness and Integrity

- The Commission shall maintain a fair and reliable judicial process, and shall maintain procedures which adhere to all relevant laws, rules of procedure and established policies;
- The Commission shall give individual attention to each matter, deciding cases without undue disparity among like cases and upon legally relevant factors;
- Decisions of the Commission shall unambiguously address the issues presented and make clear how compliance can be achieved;

- The Commission shall take appropriate responsibility for the enforcement of its orders;
- Records of all relevant decisions and actions of the Commission shall be accurate and properly preserved.

4.6.4 Independence and Accountability

- The Commission shall maintain its institutional integrity, preserving the separation of powers while observing the principle of comity in its relations with the Executive and Legislature, and shall clarify, promote and institutionalise effective working relationships with the other arms of State;
- The Commission shall responsibly seek, utilise and account for the public funds and other public resources with which it is entrusted;
- The Commission shall adhere to fair human resource and employment practices;
- The Commission shall promote public awareness of its jurisdiction and operations;
- The Commission shall be proactive, anticipating new and emerging conditions, events and issues of concern to the public and shall adjust its operation and practices as necessary with a view to fulfilling its role of maintaining the rule of law.

4.6.5 Public Trust and Confidence

The Commission, being mindful of the maxim that “*justice must not only be done but must also manifestly be seen to be done*”, shall ensure that:

- the Commission and the justice which it dispenses is not only accessible, but also perceived and recognised by the public as accessible;
- the public has trust and confidence that the functions of the Commission, particularly in terms of matters ventilated before it, are conducted expeditiously and fairly and that the Commission’s decisions have integrity;
- the public perceives the Commission to be independent and not influenced by the other arms of State;

- the public perceives the Commission as functioning in an accountable manner.

5. RULES OF PRACTICE AND PROCEDURE

A major accomplishment of the Commission has been the completion of its Rules of Practice and Procedure, 2001.

Since its establishment, the Commission sought, as a matter of urgency, to comply with the requirements of Section 84(15) of the Environmental Management Act, to prepare Rules of Practice and Procedure for the Commission (“the Rules”). Within a year, the first draft was completed and was forwarded to the Attorney General, the President of the Law Association, the Ombudsman, the Ministry of the Environment and the Environmental Management Authority for comments. Comments were received and considered by the Commission and thereafter meetings were held with representatives of the concerned parties to address comments and suggestions with respect to the Rules. Where appropriate, amendments were made to the Draft Rules. After further reflection and revision, the Draft Rules were finalised and forwarded to the Ministry of the Environment and the Attorney General for consideration. The Rules were thereafter sent to Cabinet for approval and received such approval subject to the vetting of the Chief Parliamentary Counsel. After the Rules had been vetted by the Chief Parliamentary Counsel, who had herself participated in the aforementioned consultation process, the Rules were forwarded to His Excellency the President for approval.

Such approval having been obtained, the Rules of Practice and Procedure were published in the Gazette No. 204 of 2002 dated 29th October, 2002 and is referenced as Legal Notice No. 135 of 2002.



Nariva Swamp, Trinidad

The Rules therefore came into force in time for the hearing of the first matter fully ventilated before the Commission, *Talisman (Trinidad) Petroleum Ltd. v. The Environmental Management Authority (EAP 003 of 2002)*. Thus, the hearing of that matter was procedurally guided by the Rules.

The details of the procedure for actions before the Commission are thus to be found in the EM Act, 2000 and the Rules.

The Commission being a Court, it is not proper for the Members or Staff to advise the public on litigation before the Commission. However, bearing this fetter in mind, the

Registry staff endeavours to assist members of the general public in understanding the Environmental Commission Rules of Practice and Procedure, 2001 and to otherwise understand the procedure before the Commission.

The Commission, being at its germinal stages, has adopted a policy of keeping its procedures under constant review with a view to ensuring that the simplest, most efficient and fair procedures are adopted.

A general overview of the procedures before the Commission is to be found at Appendix III hereto.

The Rules of Practice and Procedure aside however, as the Commission is intended to be much more flexible than the Supreme Court in the exercise of its jurisdiction, the policy of the Commission is not to allow procedural issues to be an insurmountable obstacle to its carrying out its jurisdiction. Compliance with procedure may however still have a bearing in costs.

The Rules also embrace the Commission's duty to encourage the settlement of disputes by way of Alternative Dispute Resolution ("ADR") and sets out a procedure to be adopted where ADR is being used.

6. ALTERNATIVE DISPUTE RESOLUTION

The use of Alternative Dispute Resolution processes has become an increasingly popular means of resolving disputes, and the process of mediation in particular is regularly used in the resolution of environmental disputes and environmental matters. ADR is a particularly useful tool, granted that environmental problems usually involve many stakeholders and a multiplicity of highly technical issues. It provides a mechanism for pursuing a collaborative approach to environmental management.

ADR offers many advantages to parties when compared with litigation. These include:

- Reduced administrative and legal costs;
- Reduced hostility between the parties and greater hope for future collaboration;
- A reduction in the length and time of hearings thus avoiding a backlog of cases;
- An opportunity for laypersons that are parties to proceedings to address the fundamental issues without the danger of being overwhelmed by legal procedure.

The Commission seeks to fulfil its mandate by section 84(3) of the EM Act, 2000 to encourage and promote Alternative Dispute Resolution as a means of resolving environmental disputes. When a matter is brought before the Commission, it is the practice of the Court to explore the possibility of such resolution with the parties at the

earliest possible stage. Parties can also apply to the Commission to have the matter referred to mediation at any stage of the proceedings. Rule 10.1 allows for mediation to be held for the purpose of settlement of the issues or their simplification.

While mediation is part of the proceedings before the Commission, it is not a part of the hearing, and information disclosed during the mediation cannot be referred to in a hearing before the Commission if the mediation fails.

If the mediation should fail, Rule 10.1 allows for the Commissioner who has conducted the mediation to be allowed to sit on the panel to hear the substantive matter. However, the practice of the Commission thus far has been that the Commissioner conducting the mediation not be on the panel fixed for the hearing. It is interesting to note, however, that in the case of *Talisman (Trinidad) Petroleum Ltd. v. The Environmental Management Authority (EAP 003 of 2002)*, where the parties had been referred to mediation which was unsuccessful, both parties indicated in Court at the Preliminary Hearing that they would have no objection to the Commissioner who had conducted the mediation sitting on the panel to actually hear the substantive matter.

One consequence of the Commission encouraging the use of Alternative Dispute Resolution is that many matters commenced before the Commission will be resolved without the Commission having to render judgement in the matter. The statistics thus far have shown this to be the case. The Commission views this as a positive sign for the development of a culture of stakeholder co-operation in the sustainable use and management of the environment.

7. PUBLIC ACCESS

Cases for trial are heard in open court to which the public have a right of access. Documents filed with the Registry are also public documents and are open to inspection by the public. The library of the Commission, though still in its infancy, is also accessible to the general public. The library provides resources on both legal and technical environmental issues and is available for reference only. No facilities are as yet in place to facilitate photocopying of library documents for the public, but this is expected to be established within the coming financial year.

8. PUBLIC AWARENESS

The Commission often receives requests to make presentations with respect to the role, jurisdiction and procedure of the Commission. The Commission endeavours as far as possible to facilitate these requests through the participation of either the Chairman, Deputy-Chairman, Members or Registrar.



Ecotourism, East-coast, Trinidad

The Commission has also successfully hosted its first symposium on May 7, 2003 entitled "Sustainable Development: A Legal Perspective". This symposium, which included local, regional and international presenters, was funded by the United Nations Development Programme and was very well attended, the audience comprising Diplomats, Ministers of Government, Senior Government officials, Attorneys-at-law and Senior Executives from the private sector and members of the public. The presentations were well received by the audience and the Commission has received numerous positive comments by the attendees. The presentations have undoubtedly gone a long way towards increasing public interest in the fields of Environmental Law and Environmental Management, particularly in the legal fraternity. Many attendees have expressed their eager anticipation of the next such symposium to be hosted by the Commission.

9. FINANCES

The Environmental Commission is funded by the Government of Trinidad and Tobago, and expenditure is made under Head of Expenditure 38 – Environmental Commission. From the date of establishment of the Commission and for the financial years 2001 and 2002, the Accounting Officer for the Environmental Commission was the Permanent Secretary, Ministry of the Environment (later Permanent Secretary, Ministry of Public Utilities and the Environment). The current Registrar, Mr. Andrew Dalip, Jr. was appointed Accounting Officer for Head 38 effective September 17, 2002.

The Environmental Commission strives to perform so much of the accounting function as is practical, granted its limited staff and the need to comply with the checks and balances required by the State's system of accountability for public monies. As such, the Commission operates a Sub-Accounting Unit comprising the Registrar, a Clerk IV and a Clerk II. The Sub-Accounting Unit now prepares pay sheets, vouchers, invoice orders, requests for Release of monies, requests for Grants of Credit, and maintains the Vote Book.

The Accounting Unit, Ministry of Public Utilities and the Environment provides Check Staff services, audit services and cheque preparation. The dynamics of this relationship will be perfected in time and the Environmental Commission, the Ministry of Public Utilities and the Environment and the Ministry of Finance are in continuous dialogue on this matter.

Some of the functions performed by the Sub-Accounting Unit and by the Ministry of Public Utilities and the Environment are listed at Appendix IV hereof.

The Actual and Estimates of Expenditure for the Environmental Commission are prepared and reported in the same fashion as all Government Departments. The following are to be found recorded in the Republic of Trinidad and Tobago Draft Estimates – Details of Estimates of Recurrent Expenditure for the Financial Year 2003 at pages 305 to 306:

- 2001 Actual Recurrent Expenditure;
- 2002 Estimates of Recurrent Expenditure;
- 2002 Revised Estimates of Recurrent Expenditure; and
- 2003 Estimates of Recurrent Expenditure

These provisions are reproduced at Appendix V for ease of reference.

The transfer of the portfolio of Accounting Officer to the Registrar has greatly facilitated the operations and development of the Commission. The Accounting Officer and Sub-Accounting Unit strive to ensure compliance with the State's system of accountability for public monies, and as such when in doubt confer with the Comptroller of Accounts, Director of Budgets, Auditor General, Chief Personnel Officer and Office of the Attorney General for appropriate advice as is necessary. The Commission of its own volition also maintains a policy of transparency in its financial dealings. In terms of expenditure, the policy of the Commission is to ensure that smaller contractors are given an opportunity to compete for the provision of goods and services to the Commission, provided that this is possible and consistent with Financial Regulations, Instructions and Directives. The Commission also takes into account environmental considerations in granting contracts for goods and services.

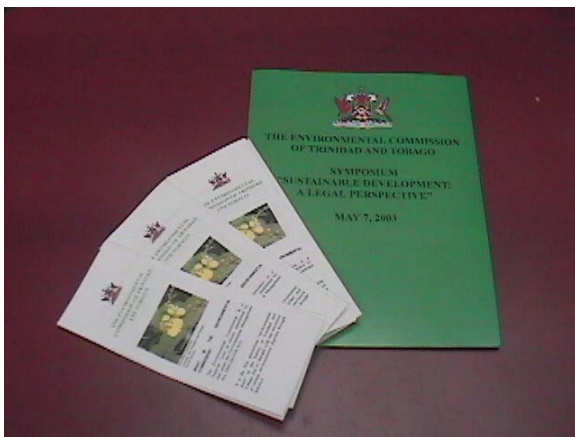
The policy of the Commission is also to minimise expenditure. However, the Commission being at its germinal stages of development, there will initially be a great deal of developmental expenditure to ensure that the Commission is properly equipped to discharge its function.

10. COMMISSION ACCOMPLISHMENTS

The Commission is still in the early stages of its development. As such, much of the time of the Commission thus far has been engaged in putting in place appropriate infrastructure, equipment, personnel and procedures for the proper functioning of the Commission. Some of the accomplishments of the Commission since its establishment are listed hereunder.

- The Environmental Commission Rules of Practice and Procedure, 2001 are now in force. These Rules were prepared by the Commission in consultation with relevant stakeholders. The Rules provide parties to actions before the Commission with a blue print for the procedure that they must follow, yet the Rules retain the procedural flexibility that is the policy of the Commission.
- When the Commission was appointed, its Members and staff took occupation of a facility that was not wholly suited to the work of a Court. The facilities for the Registry in particular were inadequate. On November 8, 2002, the Registry was relocated to facilities that are more appropriate on the Ground Floor of the Commission's offices, greater facilitating easy access by the public. This area also houses the Sub-Accounting Unit.

- The Commission has now furnished a Conference Room, which will greatly facilitate the holding of Alternative Dispute Resolution sessions. Hitherto, such ADR sessions had been held in the Court Room, which was a most inadequate and inappropriate location.
- The Commission has begun stocking its library with technical, scientific and legal texts related to the fields of environmental law and environmental management. These texts will be an invaluable resource to the Commissioners in arriving at their judgements as well as to Attorneys-at-Law and litigants appearing before the Commission. The library is open to the public for reference purposes. Photocopying facilities for the library have not been properly established but the Commission hopes to have this done within the 2004 financial year.



- The Commission has also successfully hosted its first symposium on May 7, 2003 entitled: “Sustainable Development: A Legal Perspective”. This symposium was very well attended, the audience comprising diplomats, Ministers of Government, Senior Government officials, Attorneys-at-law and Senior Executives from the private sector. The

presentations were well received by the audience and the Commission has received numerous positive comments by the attendees. The presentations have undoubtedly gone a long way towards increasing public interest in the fields of Environmental Law and Environmental Management, particularly in the legal fraternity. Many attendees have expressed their eager anticipation of the next such symposium to be hosted by the Commission.

The Environmental Commission has now developed stronger linkages with the United Nations Development Programme (“UNDP”), which funded the symposium, and the United Nations Environmental Programme (“UNEP”), and has been requested by the UNEP to assist in co-ordinating activities with respect to the hosting of a Caribbean Regional Needs Assessment meeting of Chief Justices, Attorneys-General and Directors of Public Prosecution for the development of Regional Environmental law. This meeting is to be hosted by the Honourable Chief Justice of Trinidad and Tobago and is proposed to be held in Trinidad in late 2003. It will be largely funded by the UNEP with the Supreme Court of Judicature and the Environmental Commission providing some administrative support. The Commission is therefore working together with UNEP and the Supreme Court of Judicature towards the holding of this meeting.

- The Chairman and Deputy Chairman have also accepted several invitations to speak to public and private sector organizations, including the Assembly of Southern Lawyers, the Trinidad and Tobago Chamber of Commerce, and the American Chamber of Industry and Commerce, so as to increase public awareness of the work and jurisdiction of the Commission.
- The Commission is the first Court in Trinidad and Tobago to institutionalise the use of Alternative Dispute Resolution as a method of resolving disputes, and has established a systematic approach to employing this tool and conducting ADR sessions.
- The Commission routinely participates in several Government initiatives for Public Service reform and management, including the Government's Integrated Human Resource Management System ("Project IHRiS") (which involves the computerisation of the Public Sector Human Resource records), and the latest Government Human Resource initiatives on performance review.
- The Commission strives to be proactive and forward thinking in terms of developing its human resources, seeking appropriate and cost-effective training for the Commissioners and staff in the various areas of the Commission's responsibilities. This includes:
 - Training of Deputy Chairman and one Commissioner in Environmental Law at the Vermont Law School, United States of America – 2001
 - Successful completion of training in mediation skills by Chairman, Commissioners and Registrar through the Dispute Resolution Centre of Trinidad and Tobago – 2001 and 2002;
 - Training of the Sub Accounting Unit in Government accounting and budgeting procedures – 2003;
- The Commission continues to create institutional linkages with Courts and other agencies locally, regionally and internationally, with a view to information sharing so as to enable the Court to be *en courant* with the latest developments in environmental law and environmental management. In this regard, the Chairman has visited the Environmental Appeals Tribunals of Alberta and Calgary, Canada in 2001, forming strong bonds of co-operation with those Tribunals. The Chairman has also attended the following international conferences and workshops, which leaves the Commission with a better appreciation of current issues in environmental law:
 - First Summit of Environmental Commissions, Presidents and Parliamentarians from Central America and the Caribbean – Panama/Mexico – 24th October to 2nd November, 2001;

- Conference on Climate Variability and Change and their Health Effect in the Caribbean – Barbados – 20th to 23rd May, 2002

The Commission has also developed stronger ties with UNEP, and has received several donations of books and other resource materials for the Commission’s library.

11. STATISTICS

11.1 Statistics on Matters filed before the Commission

Statistics on the matters filed with the Environmental Commission over the period October 2000 to date are shown at the table below.

TABLE 1

| | 2000 | 2001 | 2002 | 2003 | Total to date | Matters Concluded | Matters Still Pending |
|------------------------------------|-------------|-------------|-------------|-------------|----------------------|--------------------------|------------------------------|
| Actions Filed | 0 | 0 | 4 | 1 | 5 | 4 | 1 |
| Administrative Orders Filed | 0 | 0 | 0 | 6 | 6 | N/A | N/A |
| Consent Agreements Filed | 0 | 0 | 6 | 5 | 11 | N/A | N/A |

With each action, administrative order or consent agreement filed, several (often voluminous) supporting documents will also be filed with the Registry.

A brief synopsis of each litigation matter, relevant action taken by the Commission and the outcome is contained at Appendix VI hereof.

11.2 Alternative Dispute Resolution

In accordance with Section 84(3) of the EM Act, 2000 the Commission encourages parties to matters before the Commission to seek to resolve disputes by Alternative Dispute Resolution, being resolution by a means other than litigation. The Commission has therefore adopted two approaches in fulfilling this mandate.

The first is a policy of allowing parties an opportunity to resolve these disputes through their own efforts via negotiation. In this regard, during the process of ventilating a matter before the Commission the parties to the matter will often gain a different perspective of the position of the other side as well as their own position. This often acts as a catalyst for greater collaboration between the parties, resulting in a mutually acceptable solution. When this has been achieved, the parties will so inform the Commission. Where the resolution arrived at is acceptable to the Commission and where the parties so wish, an

Order by Consent is made by the Commission. The parties also have the option of the matter being formally discontinued.

The second approach adopted by the Commission is the conducting of an ADR session, usually mediation. The Court will refer the matter to mediation in accordance with section 84(3) and in accordance with the Rules. The mediation is conducted by a member of the Commission or such other person appointed by the Commission. Where the mediation is successful, the Commission is so informed and an Order by Consent is entered or the matter is formally discontinued as appropriate. The Commission however will not enter a Consent Order unless it is satisfied that the Order is consistent with the relevant law.

The statistics will show that in a large percentage of cases the issues have been successfully resolved by alternatives to litigation⁴. While this will have a bearing on the number of cases in which the Commission renders judgement, the Commission views achieving resolution of these matters as successfully fulfilling its mandate to advance a consensus based approach to environmental management. In the end, the Commission can be viewed as a component of a “carrot and stick” approach to the resolution of environmental disputes. Thus, a consensus-based approach to resolving environmental disputes is catalysed by the parties’ awareness that, should they fail to adopt such a collaborative method, the Court can ultimately resolve the dispute for them. Ultimately this, together with the comparative high cost of litigation and the possibility that costs may be awarded against a litigant, make the prospect of ADR much more attractive to parties.

11.3 Appeals to Court of Appeal on Points of Law

The EM Act, 2000 provides that an appeal from a decision of the Environmental Commission on a point of law may be made to the Court of Appeal. While the Commission has only been called upon to give judgement in one matter to date, it is significant that the judgement of the Commission was accepted by the parties and has not been appealed to the Court of Appeal. It is also noteworthy that the judgement of the Commission in this matter has been received with positive comment by several local and regional jurists speaking in open fora.

11.4 Comments

The Environmental Commission is still in its infancy, and exercises a jurisdiction that is new to the Country and relatively new to the world as a whole. This will have a bearing

⁴ While several matters have been commenced before the Commission, the Court has only had to render judgement in one matter, the others ultimately having been resolved by means other than litigation. This has in part been achieved by the Commission presenting the parties with an Alternative Dispute Resolution mechanism for dealing with the issues in question.

on the number of matters actually brought before the Commission. In comparison, the Alberta Environmental Appeal Board, which exercises its jurisdiction over a much wider geographical area than the Commission, had only six (6) appeals filed in its first year of operation⁵.

It is expected that the volume of work encountered by the Commission will grow with:

- An increase in public awareness of their rights under the EM Act, 2000 and the subsidiary legislation thereunder;
- Increased vigilance on the part of the EMA with respect to its law enforcement duties;
- An increase in the number of pieces of primary and subsidiary legislation under which the Commission has or may be given jurisdiction. In this regard, it is to be noted that several such pieces of legislation are being finalised and are expected to come into force in the short and medium term. These include:
 - The Draft National Parks and Conservation of Wildlife Bill;
 - The Draft Planning and Development of Land Bill;
 - The Draft Beverage Containers Bill;
 - The Draft Water Pollution Rules (made under the EM Act, 2000);
 - The Draft Air Pollution Rules (made under the EM Act, 2000); and
 - The Draft Non Hazardous Waste Rules (made under the EM Act, 2000).

12. OPERATIONS OF THE REGISTRY

With the filling of vacancies in the posts of Clerk II and Clerk I, the Registry now has its full complement of staff. The Registry therefore continues to be fully functional with proper systems in place for the filing of documents and maintenance of proper records. In this regard, the Registry maintains records in both electronic and ledger form. The Commission intends to take this system a step further in the near future by making this information available via the Internet. Besides documents being filed with the Registry for litigation matters, it is also the practice for Administrative Orders, which have the potential of leading to litigation, as well as Consent Agreements, to be filed with the Registry. This is shown on Table 1 above. Documents filed with the Registry are also open to inspection by the public and as such, the Registry provides supervised access to these files. The Registry is also responsible for keeping a Record of Proceedings in Court and for perfecting Orders of the Court.

Due to the small complement of staff at the Commission, most members of staff are required to perform more than one primary function. This applies particularly to the Registry staff, which also functions as the Commission's Sub-Accounting Unit. This arrangement remains tenable granted the current workload of the Court. However, it is

⁵ Alberta Environmental Appeal Board 1999 Annual Report

anticipated that there will be a significant increase in Court related work over the next three to five years, at which time the staffing arrangements of the Commission will have to be revisited.

13. CHALLENGES FACED BY THE ENVIRONMENTAL COMMISSION

During the period under review, the Commission has encountered several challenges to fulfilling its mandate and to best serving the Country.

13.1 Staffing

The Commission has staff deficiencies both at the professional and technical level. The Commission has only recently had vacancies filled for the posts of Clerk I, Clerk II and Librarian. The delay in appointment of the Librarian had significantly set back the establishment of proper library facilities, which are vital to the judicial work of the Commissioners, as well as legal practitioners appearing before the Commission.



The membership of the Commission is designed to ensure that the Commission is comprised of such experts as will best enable the panel hearing a matter to understand both the legal and technical aspects of proceedings commenced before it, and thus arrive at a just decision. At present the failure to appoint an Environmental Engineer or a Commissioner with comparable training and experience impacts on the expediency with which the Commission can adjudicate over matters where there are engineering concerns. While the present cadre of Commissioners is sufficiently equipped to address any technical environmental issues in a matter before it, quite often it would be better for the panel to include an Environmental Engineer. As such, it is imperative that this post be filled as a matter of urgency.

The inability of the Public Service Commission to fill the post of Research Officer also impacts negatively on the functioning of the Commission. This officer performs an important supporting role for the judicial work of the Commissioners. Pending the identifying of a suitable candidate for this post, the Registrar strives as far as possible to perform this function in addition to his multitude of other duties.

The Commission is also concerned about the majority of its staff being appointed on a temporary, acting or probationary basis, as dedicated and properly trained staff equipped

with the expertise required for the proper functioning of a court is critical to the efficient operation of the Commission.

13.2 Finances

13.2.1 The Environmental Commission, being a Superior Court of Record, is empowered to order parties appearing before it to pay costs into Court. There is however no mechanism by which the Environmental Commission can receive such money. In keeping with the doctrine that the Executive and Judicial arms of the State should remain separate, it is viewed as improper that monies ordered to be paid into Court are in practice paid to a Ministry of Government. This issue becomes particularly critical in the present case as the Ministry of Public Utilities and the Environment, through which the Environmental Commission is linked to Cabinet, is also the line Ministry for the Environmental Management Authority. The EMA and the Ministry of Public Utilities and the Environment being potential litigants before the Commission, it would be anomalous for an Order for Costs against either to be ordered to be paid to the Ministry of Public Utilities and the Environment. It is also critical that the system by which monies are paid into Court also allow for speedy payment out of such fund or account when an Order for payment out of the fund has been made by the Commission. Thus, the most appropriate arrangement would be the creation of a Suitor's Fund akin to the Suitor's Fund of the High Court. While discussions have been held with the Ministry of Finance and the Ministry of Public Utilities and the Environment on this matter, such a fund or other appropriate arrangement is yet to be established.

13.2.2 Documents filed with the Registry are open to inspection by the public. The public is also permitted to make copies of such documents, as well as to obtain copies of written Judgements of the Commission in matters ventilated before it. Particularly since the Commission has rendered judgement in the matter of Talisman (Trinidad) Petroleum Limited v. the Environmental Management Authority (EAP 3 of 2002), the Registry has received numerous requests for copies of documents filed in that matter as well as copies of the Judgement of the Commission. Fulfilling such requests does come at a financial cost to the State. Inquiries have revealed that in entertaining similar requests the Supreme Court of Judicature imposes fees of ten dollars (\$10.00) for copies of Judgements of the Court. Further, a fee of fifty cents (\$0.50) per page for photocopies of documents filed in the Registry would be consistent with the fee structure under the Freedom of Information Act, 1999.

Similarly, the library of the Environmental Commission is intended to benefit not only the Commissioners and the Commission staff, but also be accessible by Attorneys-at-Law, litigants and the general public. The

library is a reference only facility, however it is anticipated that visitors to the library will wish to make photocopies of library materials for use in Court or otherwise. At present, such requests cannot be facilitated, as there is no provision for charging a fee for photocopying.

The Environmental Commission therefore proposes that the following fee structure be instituted:

- Copies of Judgements of the Environmental Commission - \$10.00 per Judgement;
- Copies of documents filed with the Registry - \$0.50 per page (one side);
- All other photocopies - \$0.50 per page (one side).

The imposition of this cost recovery system is however contingent upon the appointing of a Receiver of Revenue for the Environmental Commission. While discussions have been held with the Ministry of Finance and the Ministry of Public Utilities and the Environment on this matter, this system is yet to be implemented.

13.3 Tenders for Goods and Services

The Environmental Commission, like the Industrial Court and the Tax Appeal Board, finds itself in an institutional arrangement unlike most Departments of Government. Here the Accounting Officer is not a Permanent Secretary, but is instead a Registrar who does not fall under the direct control or direction of a Permanent Secretary. The Environmental Commission, like the other Superior Courts, is categorised as a Department of Government not under Ministerial control (though this in itself is a misnomer threatening to erode the Constitutional doctrine of separation of powers). This institutional arrangement has however created some uncertainty as to how tenders for goods and services are to be secured. Advice had been sought from the Central Tenders Board on this matter, as well as the Comptroller of Accounts. Consensus on this matter between the relevant institutions is yet to be achieved.

In the interim, the Commission has been unable to secure contracts for critical services such as janitorial services and security.

14. CAPACITY BUILDING AND STRATEGIC PLANS

In order to prepare for a future where citizens and the State will be making more vigorous use of its services, the Commission seeks to implement several initiatives in terms of

human resource and infrastructural development. The needs assessment process is however still ongoing.

14.1 Human Resource Development

In order to properly discharge its functions, the Environmental Commission must ensure that its Commissioners and staff are fully trained and proficient in the discharge of their duties. The duties of the Commissioners fall into two separate but interrelated categories: Litigation, and Alternative Dispute Resolution. While the knowledge and skills in one area will better enable the Commissioners to discharge their duties in the other, each area requires proper training. With this in mind, the Commission will pursue the following initiatives:

- For newly appointed Commissioners who have not already received such training:
 - Training in Environmental Law – Vermont Law School, United States of America;
 - Training in Alternative Dispute Resolution, in particular mediation – Local/International
- For all Commissioners:
 - Supplemental Training in Environmental law and other Alternative Dispute Resolution skills as opportunities arise.

The work of the Commissioners is supported by the work of the administrative and support staff of the Commission. With this in mind, the Commission shall pursue the following initiatives:

- Training of Registrar and Research Officer I in Environmental Law – Vermont Law School, United States of America;
- Training of Registrar in Principles of Court Administration – National Centre for State Courts, Williamsburg, Virginia, United States of America;
- Training for Verbatim Reporters in C.A.T. technology (ongoing) – local;
- Training of secretarial and support staff in software applications relevant to Court administration and Court support – local.

14.2 Infrastructure

The offices of the Environmental Commission were not purpose built for the use of a Court. The Commission has thus identified several deficiencies in the current physical infrastructure which threaten to undermine the efficient and proper functioning of the

Commission. The Commission also finds itself without several key tools which are critical to its discharging its function. The following initiatives will therefore be pursued:

- Restructuring and reconfiguration of the First Floor, E.F. “Telly” Paul Building to better accommodate Commissioners, provide for greater confidentiality of information and to ensure proper security of Commission documents and assets;
- Development of a computer network for the Environmental Commission;
- Acquisition and implementation of C.A.T. reporting technology;
- Computerisation of the Courtroom;
- Development of a website for the Environmental Commission;
- Accessing of online research facilities for environmental law and environmental management;
- Proper stocking of the library (ongoing)

15. CONCLUSION

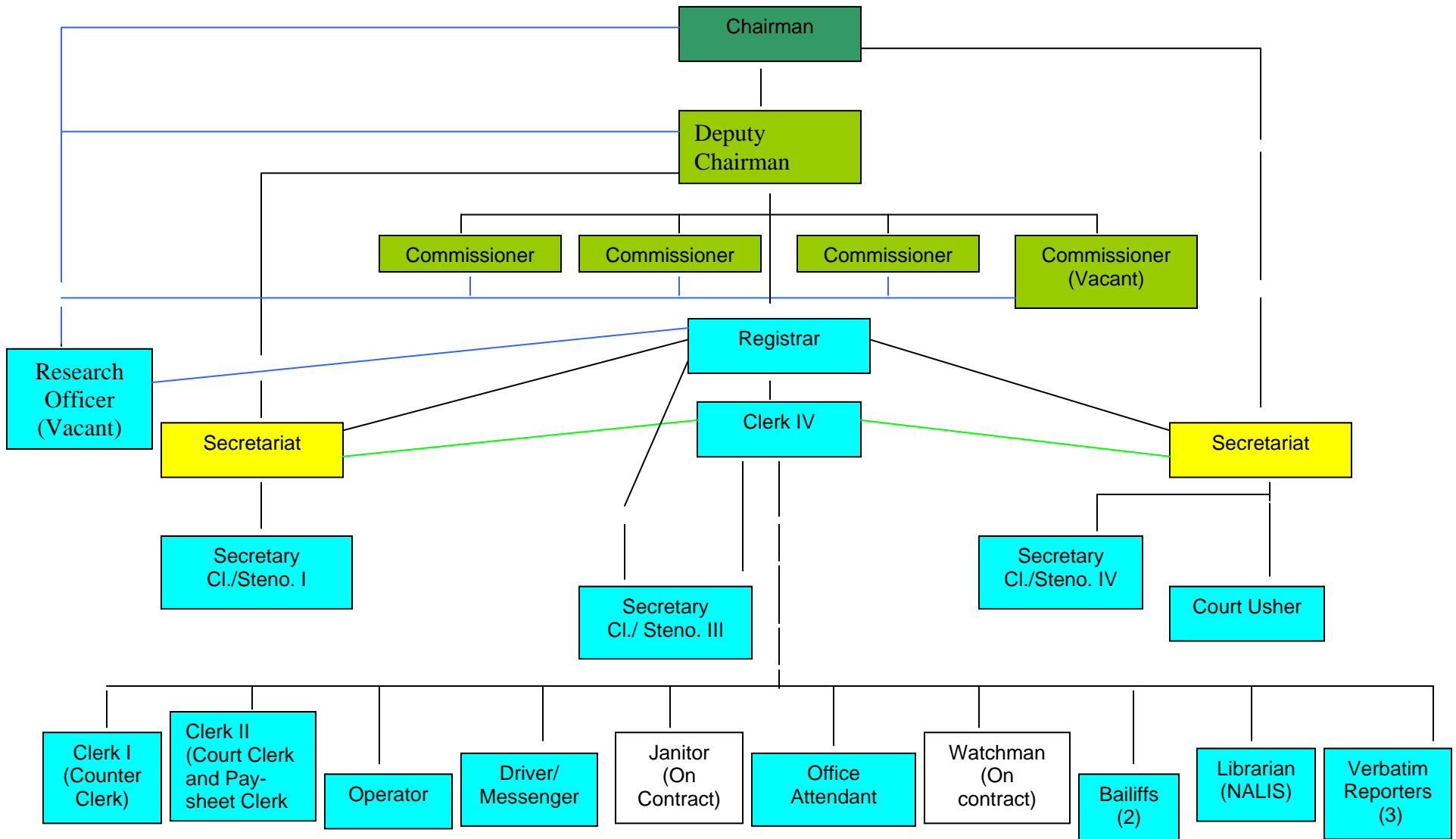
The Environmental Commission as an institution is still in its infancy. The same can, however, be said about Trinidad and Tobago's entire system of environmental law and environmental management. The Commission is of the view that, despite the teething problems encountered, it has properly discharged its mandate to date and has made significant strides in ensuring that the relevant underpinnings of a Superior Court of Record are extant. Thus the Commission is able to deal competently and efficiently with matters falling within its jurisdiction and continues to prepare itself for a future where the public will make more vigorous use of the Court's services. Like the environment the Commission will remain dynamic, adapting as society develops, so as to ensure continued efficiency in discharging its functions under the law.

The Members and Staff of the Environmental Commission remain committed to maintaining the highest standards of service to the Republic in the field of environmental law.



Mangrove Swamp, Trinidad

APPENDIX I
ORGANISATIONAL CHART
ENVIRONMENTAL COMMISSION



APPENDIX II
ENVIRONMENTAL COMMISSION - DETAILS OF ESTABLISHMENT

| Item No. | Post | Range No. | Number of Personnel | Explanations |
|-----------------|------------------------|------------------|----------------------------|--|
| 1. | Chairman | N/A | 1 | Appointed for 3 years w.e.f. October 30 th 2000 |
| 2. | Deputy Chairman | N/A | 1 | Appointed for 3 years w.e.f. October 30 th 2000 |
| 3. | Registrar | Group V | 1 | Two (2) years probationary appointment from September 17, 2002 |
| 4. | Commissioner | N/A | 4 | <ul style="list-style-type: none"> • Appointed for 3 years w.e.f. October 30th 2000 • Only three (3) posts filled |
| 5. | C.A.T. Reporter | – | 2 | <ul style="list-style-type: none"> • Posts to be classified by the Chief Personnel Officer • Posts to replace Verbatim Reporters |
| 6. | Research Officer II | 54D | 1 | Vacant Post |
| 7. | Librarian I | 46 | 1 | Appointed by NALIS |
| 8. | Clerk IV | 30C | 1 | Acting Appointment |
| 9. | Verbatim Reporter I | 30C | 3 | <ul style="list-style-type: none"> • Acting Appointment • Post to be replaced by C.A.T. Reporters |
| 10 | Clerk Stenographer IV | 30E | 1 | Appointed w.e.f. 02/06/00 |
| 11 | Clerk Stenographer III | 26C | 1 | Acting Appointment |
| 12 | Bailiff I | 21/24C | 2 | Appointed w.e.f. 13/11/01 |

| | | | | |
|----|----------------------------------|-------|---|------------------------------|
| 13 | Clerk II | 20C | 1 | Acting Appointment |
| 14 | Clerk Stenographer I/II | 15/20 | 1 | Temporary Appointment |
| 15 | Chauffeur/Messenger | 17 | 1 | Appointed w.e.f. 01/09/01 |
| 16 | Clerk I | 14 | 1 | Temporary Appointment |
| 17 | Receptionists/Telephone Operator | 13 | 1 | Temporary Appointment |
| 18 | Office Attendant | 4 | 1 | Temporary Appointment |
| 19 | Orderly | 17/20 | 1 | Acting Appointment |

APPENDIX III
PROCEDURE FOR MATTERS BROUGHT BEFORE THE COMMISSION

The following is intended to be an outline of the procedure involved in matters before the Commission.

Rule 5.1 provides that proceedings are commenced by filing with the Registry of the Commission an original and four copies of a Notice of Proceedings, which is one of the following 4 documents as appropriate.

1. A Notice of Application (which would be applicable in cases such as an application in relation to a failure of the EMA to go through the public comment procedure as specified in Section 30 (1))
2. A Notice of Appeal (for example an appeal against a refusal to grant a CEC);
3. A Notice of Application for Administrative Civil Assessment under section 66 of the Act;
4. A Notice of Direct Private Party Action.

The formats of these Notices are set out in Schedule I of the Rules and the particulars to be included are set out in Rule 5.2, 5.3, 5.4 and 5.5 as are the documents that must accompany the Notices. In essence, there must be sufficient information to give the Commission a sound understanding of the issues involved and to enable it to come to a just determination of the matter.

The procedure for each type of action varies slightly from each other. Using the procedure for appeals as an example, the following are the relevant steps.

First, the Notice of Appeal must be prepared

Form of Notice of Appeal

- Section 85(5) of the Act provides – The notice of appeal shall describe the specific dispute and specify the grounds of appeal, and shall be in such form as may be prescribed by rules of the Commission.
- In accordance with Rule 5.3(1), the Notice of Appeal shall include:
 - (a) A statement of the order or decision appealed against;
 - (b) the provision of the Act under which the notice of appeal is submitted;
 - (c) the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision objected to;

- (d) the grounds of appeal including the reasons why the appellant objects to the decision;
 - (e) a description of the relief requested by the person objecting;
 - (f) the signature of the person objecting, or the person's agent; and
 - (g) an address for service of the person objecting.
- Rule 5.3(2) provides that the Notice of Appeal must be accompanied by:
 - (a) a copy of the decision of the EMA; and
 - (c) a list of the names and addresses of any other persons who should be notified of the proceedings because they may have an interest in the outcome.

The next issue to arise is service of the Notice of Appeal.

Mode of Service and Time for Serving

- Rule 6.1 provides that the Notice of Appeal must be personally served on each respondent together with the copies of all accompanying documents within 14 days of filing.
- Service on the EMA must be effected by serving the Secretary of the EMA⁶.

EMA to Furnish Commission with Relevant Documents

- Once the EMA has been served it must forward all relevant documents to the Commission⁷.

1. Lists of Interested Parties

⁶ The Environmental Management Act, 2000 section 91 – Service upon the EMA of any notice, order or other document shall be effected by delivering the same, or by sending it by registered post addressed to the Secretary, at the office of the EMA.

⁷ The Environmental Management Act, 2002 section 85(7) – Immediately after receiving the notice of appeal, the EMA shall forward to the Commission copies of all documents relevant to the decision that is the subject of the appeal. (No specific time frame is set for compliance but it is submitted that 7 to 14 days is reasonable).

- Rule 6.30 provides that within 10 days of service on the EMA of the Notice of Appeal, the EMA shall file with the Commission a list of names and addresses of any other persons who the EMA considers should be notified of the proceedings, because they have an interest in the outcome;

2. Preliminary Hearing – Directions as to Procedure

- Rule 7.1 provides that a preliminary hearing may be held to deal with any of the following –
 1. Identifying parties and other interested persons and the scope of their participation in the hearing. The Commission would therefore have regard to the lists of interested parties provided by both the EMA and the Appellant. (It is also to be noted that the Attorney General has the power to intervene in proceedings⁸);
 2. Determining the length, schedule and location of hearing;
 3. Hearing preliminary interlocutory applications, including interlocutory applications to dismiss for non-compliance with the Rules of Practice and Procedure or the Act;
 4. Addressing procedural issues;
 5. Identifying, defining and simplifying issues;
 6. Arranging for the exchange among parties of all documents relevant to the proceedings;
 7. Identifying witnesses;
 8. Establishing facts or evidence that may be agreed on;
 9. Parties agreeing to a joint expert;
 10. Scheduling an Alternative Dispute Resolution process (most probably mediation) prior to the date set for the hearing;

⁸ The Environmental Management Act, 2000, section 93(1)

3. EMA Statement of Defence

- The EMA, upon being served with the Notice of Appeal, must within 28 days of such service file a Reply or Statement of Defence and all affidavits and other documents in reply⁹.

4. Third-Parties – Filing of Statements of Case

- Rule 6.31 provides that a party other than the EMA served with the Notice of Appeal must file within 28 days of service a statement of case in opposition to the application and copies of all documents relevant thereto.

5. Written Submissions – Filing and Service

- Rule 11.1 provides that every party to the appeal must file a written submission (5 copies) and serve a copy on every other party at least seven days before the date of hearing. (See also the Environmental Management Act, 2000 section 84(12)).

Contents of Written Submissions

- Rule 11.2 provides that a written submission shall contain:
 - (a) A summary of the facts and evidence to be relied on by the party;
 - (b) A list of witnesses to be called on by the party and a summary of each witness' evidence (including photographs and other visual presentations other than models); and
 - (c) The name, address, telephone and fax numbers of a lawyer or other agent acting on behalf of the party.

6. Date of Hearing

- The Environmental Management Act, 2000 section 84(6) requires that 14 Clear days' notice be given to the parties of date for hearing of the matter.

⁹ Rule 6.32

APPENDIX IV
FUNCTIONS OF THE SUB-ACCOUNTING UNIT
ENVIRONMENTAL COMMISSION

The Sub-Accounting Unit, Environmental Commission comprises the following officers:

- Registrar – Accounting Officer;
- Clerk IV; and
- Clerk II.

The Registrar has the overall responsibility for all Accounting and Sub-Accounting functions with respect to Head 38 – Environmental Commission.

The functions performed by the Sub-Accounting Unit are largely the same as those performed by a much larger Accounting Unit where more personnel would be employed in the system of checks and balances. Thus, the current arrangement embraces the staff constraints of the Environmental Commission.

The Clerk IV assists the Registrar in the preparation of applications for Releases of Funds and Grants of Credit. The Clerk IV also assists in the preparation of annual estimates of recurrent expenditure.

The Clerk II performs the following accounting functions:

1. Preparation of manual and computerized pay sheets;
2. Preparation of arrears pay sheets and processing of salary increments;
3. Preparation of Pension and Leave records;
4. Processing of all allowances for staff;
5. Bill preparation re recurrent expenditure;
6. Preparation of annual T.D. 4 statements and reconciliation of P.A.Y.E. deductions and Health Surcharge;
7. Maintenance of Vote Books;
8. Preparation of Deposit and Departmental vouchers and Invoice Orders for scheduling and voting in the Vote Book.
9. Assisting the Registrar and Clerk IV in the preparation of the annual estimates of recurrent expenditure;

10. Assisting the Registrar and Clerk IV in accounting matters relating to the Financial Instructions and the Financial Regulations; and
11. Conducting follow-ups with the Ministry of Public Utilities and the Environment to ensure Vouchers are checked, correct and passed for payment by the Accounting Unit, Ministry of Public Utilities and the Environment.

A brief summary of the accounting system established by the Sub-Accounting Unit (in consultation with the Comptroller of Accounts) is as follows:

- (a) The Clerk IV has entrusted the Clerk II with responsibility for all bills, Invoice Orders and all matters relating to pay sheets.
- (b) The Clerk II does all the necessary preparation, scheduling and voting in the Vote Book;
- (c) The Clerk IV will check and certify each voucher correct under the relevant Head, Sub-Head, Item and Sub-Item;
- (d) The Schedule and Voucher are sent to the Registrar for signature and the Vote Book is sent to him for initialling;
- (e) The Clerk II will check to confirm that all relevant Schedules and Vouchers have been signed by the Registrar and will enter these documents into the dispatch book for onward transmission to the Accounting Unit, Ministry of Public Utilities and the Environment;
- (f) The Clerk IV and Clerk II will remain in contact with the Check Staff Section, Accounting Unit, Ministry of Public Utilities and the Environment to ensure that there are no queries with any vouchers and to monitor progress of cheque preparation. In this regard the Clerk IV and Clerk II liaise with the Accountant Executive II, Accountant II and Internal Audit Department of the Ministry of Public Utilities and the Environment on all matters relating to accounting procedures and practices. This element of the arrangement is fundamental to the operation of the system, as the current arrangement between the Commission and the Ministry is still in its infancy;
- (g) Cheques that have been prepared by the Ministry of Public Utilities and the Environment are collected by the Commission for distribution to the payees.

APPENDIX V
HEAD 38- ENVIRONMENTAL COMMISSION
SUMMARY OF EXPENDITURE, 2001-2003

| Sub-Head Description | 2001 Actual Expenditure | 2002 Estimates | 2002 Revised Estimates | 2003 Estimates | Net Increase/(Decreased) |
|--|-------------------------|----------------|------------------------|----------------|--------------------------|
| | \$ | \$ | \$ | \$ | \$ |
| 01 PERSONNEL EXPENDITURE | 227,995 | 1,899,000 | 1,177,684 | 1,489,152 | 311,468 |
| 02 Salaries and Cost of Living Allowances | 221,769 | 1,371,000 | 943,963 | 1,025,000 | 81,037 |
| Overtime | - | 4,000 | - | 4,000 | 4,000 |
| Gov't Contribution to NIS | 6,226 | 70,000 | 22,200 | 51,000 | 28,800 |
| Vacant Posts | - | - | - | 163,152 | 163,152 |
| Allowances | - | 216,000 | 197,600 | 216,000 | 18,400 |
| Settlement of Arrears to Public Officers | - | - | 4,412 | 30,000 | 25,588 |
| Increase Salaries to Public Officers 1999-2001 | - | 238,000 | 9,509 | - | (9,509) |
| 03 GOODS AND SERVICES | 1,449,249 | 2,126,500 | 1,201,672 | 1,827,500 | 625,828 |
| 04 MINOR EQUIPMENT PURCHASES | - | 195,800 | - | 132,575 | 132,575 |
| Total | 1,677,244 | 4,221,300 | 2,379,356 | 3,449,227 | 1,069,871 |

Head 38 – ENVIRONMENTAL COMMISSION

| SUB-Head / Item / Sub Item Description. | 2001 Actual | 2002 Estimates | 2002 Revised Estimates | 2003 Estimates | Increase | Decrease | Explanation |
|---|-------------|----------------|------------------------|----------------|----------|----------|---|
| | \$ | \$ | \$ | \$ | \$ | \$ | |
| 02 GOODS AND SERVICES | | | | | | | |
| 001 General Administration Brought Forward | 1,396,127 | 1,925,500 | 1,137,658 | 1,702,600 | 564,942 | - | |
| 19 Official Entertainment | 18,637 | 20,000 | - | 19,000 | 19,000 | - | |
| 27 Official Overseas Travel | 27,896 | 166,000 | 59,149 | 90,000 | 30,851 | - | 27 – Approval of the Minister of Finance, must be sought for a virement to and from this Sub-item |
| 57 Postage | 8 | - | - | 2,400 | 2,400 | - | |
| 62 Promotions, Publicity and Printing | 6,581 | 15,000 | 4,865 | 13,500 | 8,635 | - | |
| Total General Administration | | | | | | | |
| | 1,449,249 | 2,126,500 | 1,201,672 | 1,827,500 | 625,828 | - | |
| 03 MINOR EQUIPMENT PURCHASES General Administration | | | | | | | |
| 02 Office Equipment | - | 195,800 | - | 132,575 | 132,575 | - | |
| 03 Furniture And Furnishings | - | 94,000 | - | 51,275 | 51,275 | - | |
| 04 Other Minor Equipment | - | | - | | | - | |
| Total General Administration | - | 80,400 | - | 80,400 | 80,400 | - | |
| | - | 21,400 | - | 900 | 900 | - | |

| | | | | | | | |
|--|-----------|-----------|-----------|-----------|-----------|---|--|
| | - | 195,800 | - | 132,575 | 132,575 | - | |
| | | | | | | | |
| | 1,677,244 | 4,221,300 | 2,379,356 | 3,449,227 | 1,069,871 | - | |

Head 38 – ENVIRONMENTAL COMMISSION

| Sub-Head / Item / Sub-Item Description | | 2001 Actual | 2002 Estimates | 2002 Revised Estimates | 2003 Estimates | Increase | Decrease | Explanation |
|--|---|----------------|-------------------|------------------------------|-------------------|------------|----------|---|
| 01 | PERSONNEL EXPENDITURE | \$ 227,995 | \$ 1,899,000 | \$ 1,177,684 | \$ 1,489,152 | \$ 311,468 | \$ - | |
| 001 | General Administration | | | | | | | |
| 01 | Salaries and C.O.L.A. | 221,769 | 1,371,000 | 943,963 | 1,025,000 | 81,037 | - | 01 – Includes provision for vacant posts with bodies. Approval of the Budget Division is required for virement from Sub-Items 01, 08 and 12 |
| 03 | Overtime | - | 4,000 | - | 4,000 | 4,000 | - | |
| 04 | Allowances | - | 216,000 | 197,600 | 216,000 | 18,400 | - | |
| 05 | Government Contribution to N.I.S. | 6,226 | 70,000 | 22,200 | 51,000 | 28,800 | - | |
| 08 | Vacant Post – Salaries and COLA (without bodies) | - | - | - | 163,152 | 163,152 | - | 08 – New-Sub-Item |
| 12 | Settlement of Arrears to Public Officers | - | - | 4,412 | 30,000 | 25,588 | - | |
| 22 | Increased Salaries to Public Officers – 1999-2001 | - | 238,000 | 9,509 | - | - | 9,509 | |
| Total | General Administration | 227,995 | 1,899,000 | 1,177,684 | 1,489,152 | 311,468 | - | |
| 02 | GOODS AND SERVICES | 1,449,249 | 2,126,500 | 1,201,672 | 1,827,500 | 625,828 | - | |
| 001 | General Administration | | | | | | | |
| 01 | Travelling | 8,400 | 143,200 | 54,607 | 175,000 | 120,393 | - | |
| 02 | Leave Passage | - | 50,000 | 75,000 | 50,000 | - | 25,000 | |
| 03 | Uniforms | - | 8,000 | - | 6,400 | 6,400 | - | |
| 04 | Electricity | 16,998 | 60,000 | 77,074 | 95,000 | 17,926 | - | Approval of the Budget Division is required for virement from Sub-Items 04 and 05 |
| 05 | Telephones | 61,616 | 150,000 | 44,260 | 95,000 | 50,740 | - | |
| 08 | Rent – Accommodation | 327,744 | 362,300 | 392,819 | 362,300 | - | 30,519 | |
| 10 | Office Stationery and Supplies | 16,166 | 50,000 | 4,685 | 27,000 | 22,315 | - | |
| 11 | Books and Periodicals | - | 200,000 | 521 | 85,000 | 84,479 | - | |
| 12 | Materials and Supplies | 1,240 | 15,000 | 1,608 | 13,500 | 11,892 | - | |
| 13 | Upkeep of Vehicles | 515 | 10,000 | 618 | 9,500 | 8,882 | - | |
| 14 | Repairs to Vehicles | - | 8,000 | 15 | 7,600 | 7,585 | - | |
| 15 | Repairs and Maintenance (Building and Equipment) | 150 | 10,000 | 4,013 | 12,750 | 8,737 | - | |
| 16 | Consulting and Other Contracted Services | 931,670 | 741,000 | 472,749 | 703,950 | 231,201 | - | 16 – Includes Provision for: (i) Contract Officers |

17 Training
18 Expenses

| | | | | | | |
|-----------|-----------|-----------|-----------|---------|---|---------------------------------------|
| 17,940 | 100,000 | 5,980 | 42,500 | 36,520 | - | (ii) Janitorial and Security Services |
| 13,688 | 18,000 | 3,709 | 17,100 | 13,391 | - | |
| 1,396,127 | 1,925,500 | 1,137,658 | 1,702,600 | 564,942 | - | |

General Administration
Carried forward

APPENDIX VI
SUMMARY OF CASES FILED FOR LITIGATION BEFORE
THE ENVIRONMENTAL COMMISSION

KIRT SAMLALSINGH & WINSTON RAM v. THE ENVIRONMENTAL
MANAGEMENT AUTHORITY & ALBERT LAI TAN (EAP 001 of 2002)

**Appeal – Noise Variation – Event - Noise Pollution (Control) Rules, 2001,
s.10(1),10(1)(f) & 12(1) - reasonableness**

The Appellants as interested parties appealed against the grant by the EMA of a Noise Variation to Mr. Albert Lai Tan to host a Carnival fete at St. Joseph Village, San Fernando. The Commission saw the parties in Chambers and issued Directions in accordance with Section 81(3) of the EM Act, 2000. The Commission ordered that Mr. Johnny Soong be joined as a Third Respondent to the proceedings. The Commission further ordered that the parties attend before the Commission for the Alternative Dispute Resolution process of mediation. The parties were thereafter able to come to a resolution of the matter with the venue of the fete being changed to another location.

SHERWYN MILLETTE v. PHILOMEN LUMSDEN (EAP 002 of 2002)

**Appeal – Noise Variation – Event - Noise Pollution (Control) Rules, 2001 – failure
by EMA to consider objections of interested parties – failure of the EMA to make
proper investigations – failure of Respondent to make full disclosure of public
nature of party**

The Appellant as a person directly affected appealed against the grant by the EMA of a Noise Variation to the Respondent to host a party in a residential development at Trincity. The Commission saw the parties in Chambers and issued Directions in the matter in accordance with Section 81(3) and 84(2)(c) of the EM Act, 2000. The Commission ordered that the EMA be served with the Notice of Appeal and that the parties attend before the Commission for the Alternative Dispute Resolution process of mediation. The parties were thereafter able to come to a resolution of the matter with the venue of the fete being changed to another location and the action was formally discontinued.

TALISMAN (TRINIDAD) PETROLEUM LTD. v. THE ENVIRONMENTAL
MANAGEMENT AUTHORITY (EAP 003 of 2002)

**Appeal – Certificate of Environmental Clearance – Refusal – Certificate of
Environmental Clearance Rules, 2001, Rules 4(1)(c) & (d) – Ramsar Convention –
National Wetlands Policy – Forests Act Chap. 66:01 – Conservation of Wildlife Act
Chap. 66:02 – Irrelevant Considerations – Error of law - Natural Justice – Audi
alteram partem**

The Appellant appealed against the refusal of the EMA to grant it a Certificate of Environmental Clearance (“CEC”) to conduct a three-dimensional seismic survey in the Nariva Swamp Ramsar Site as part of its oil exploration activities. The Commission issued directions in this matter and ordered that the parties attend before the Commission for the Alternative Dispute Resolution process of mediation. The mediation having failed to achieve a resolution, the matter was litigated before the Commission. The panel was chaired by the Chairman, Justice Hosein, and also comprised Dr. Eugene Laurent and Dr. Judith Gobin. The Respondent argued that the CEC should not be granted on the basis of, inter alia,

- the Nariva Swamp being designated a Ramsar Site;
- the Nariva Swamp was to be designated as an Environmentally Sensitive Area under the Environmentally Sensitive Areas Rules, 2001;
- the Nariva Swamp is protected under the National Wetlands Policy, the Forests Act Chap. 66:01 and the Conservation of Wildlife Act Chap 67:01.

The Appellant argued firstly that the Respondent’s reliance on the Ramsar convention, the prohibitions in the Forests Act, the Conservation of Wildlife Act, and the Wetland Policy was not right in law as a basis to support its decision to refuse to issue a CEC. The Appellant secondly argued that at the time of its refusal to issue a CEC and having regard to the information before the EMA, there was a breach of the Appellant’s right to a fair hearing and/or a procedural irregularity under Rule 4 of the CEC Rules.

The Court found in favour of the Appellant on both of these points, and allowed the Appeal, setting aside the refusal, and referred the matter back to the EMA for reconsideration in accordance with the principles of natural justice and also with particular reference to Rule 4 (1) (c) and/or (d) of the CEC Rules.

NITROGEN (2000) UNLIMITED v. THE ENVIRONMENTAL MANAGEMENT AUTHORITY (EAP 004 of 2002)

Appeal – Certificate of Environmental Clearance – Granting with Conditions – Certificate of Environmental Clearance Rules, 2001 – Error of law – Arbitrariness – Irrationality - Natural Justice

The Appellant appealed against the conditions imposed by the EMA in granting the Appellant a Certificate of Environmental Clearance for its proposed ammonia plant. The conditions included specifications that the plant’s cooling tower should include drift eliminators and limits as to the Cooling Tower drift salt concentration. The Appellant contended that the EMA erred in law and/or acted arbitrarily and/or unreasonably and/or irrationally and/or excessively and/or unjustifiably in that it, inter alia, failed to have regard to the natural practical operations of the Cooling Tower and the emissions of neighbouring facilities. The Appellant also contended that the Respondent acted contrary to the principles of natural justice. The Commission held Preliminary Hearings into the

matter at which time the parties were able to tentatively agree to the variation of the conditions of the CEC. The Court made an Order indicating that it intended to later make an Order varying the CEC but only after the proposed variation be subjected to the public comment procedure. The EMA having fulfilled the public consultation requirements the Commission entered a Consent Order¹⁰ varying the conditions of the CEC.

MATTERS STILL PENDING

GENFAB CONSTRUCTION LIMITED v. THE ENVIRONMENTAL MANAGEMENT AUTHORITY (EAP 001 of 2003)

Appeal – Administrative Order – Constitution of the Republic of Trinidad and Tobago Chap. 1:01, section 4 - Environmental Management Act, 2000, section 65 - Noise Pollution (Control) Rules, 2001 – failure by EMA to have regard to first paragraph of the preamble to Environmental Management Act, 2000 in exercising its functions – Natural justice – Audi alteram partem

The Appellant appealed against the Administrative Order made by the EMA arising out of the alleged violation of the Noise Pollution (Control) Rules, 2001 by the Appellant. The Appellant alleged that it was not given sufficient opportunity to make representations with respect to the Notice of Violation before the Administrative Order was issued, and that it had always been and remained willing to comply with the law, and had been seeking to hold discussions with the EMA to this end but that the EMA had not been able to so meet with them. The Appellant therefore contended that the issuing of the Administrative Order was wrong, excessive and arbitrary and made both against the spirit and the letter of the Environmental Management Act, 2000.

This matter is currently before the Environmental Commission and is therefore still pending.

¹⁰ Where a Consent Order is entered by the Commission it is implied that the parties shall be at liberty to apply to the Commission for any relief should the Consent Order prove to be ineffective in resolving the issue.