

TABLE OF CONTENTS

PAGE

1. MESSAGE FROM THE CHAIRMAN

2. BACKGROUND

2.1 History, Establishment, Jurisdiction and Powers of The Environmental Commission

2.2 Relationship with Other Arms of State

2.3 Organizational Structure

2.4 Commission Membership

2.5 Commission Staff

3. VISION, MISSION AND PERFORMANCE

3.1 Vision Statement

3.1.1 Guiding Principles

3.2 Mission Statement

3.2.1 Guiding Principles

3.3 Core Values of the Environmental Commission

3.4 Operating Principles

3.5 Strategies

3.6 Standards of Performance

3.6.1 Access to Justice

3.6.2 Expedition and Timeliness

3.6.3 Equality, Fairness and Integrity

3.6.4 Independence and Accountability

3.6.5 Public Trust and Confidence

4. THE MANDATE AND CORE BUSINESS OF THE COMMISSION

4.1 The Mandate of the Commission

4.2 The Core Business of the Commission

4.2.1 Hearings and Decision Making

4.2.2 Alternative Dispute Resolution

4.2.3 Staff Processing of Hearings

4.2.4 Public Relations

4.2.5 Public Access

5. ALTERNATIVE DISPUTE RESOLUTION

6. RULES OF PRACTICE AND PROCEDURE

7. CAPACITY BUILDING

7.1 Training of Commissioners

7.2 Training of Administrative Staff

8. PUBLIC EDUCATION

8.1 Brochures

8.2 Website

8.3 The Logo of the Environmental Commission

8.4 Stakeholder Meetings

8.5 Speeches and Presentations

8.6 Freedom of Information Act, 1999

9. OPERATIONS OF THE REGISTRY

10. FINANCES

11. STATISTICS

11.1 Statistics on Matters filed before the Commission

11.2 Alternative Dispute Resolution

11.3 Appeals to Court of Appeal on Points of Law

11.4 Comments

12. CHALLENGES FACED BY THE ENVIRONMENTAL COMMISSION

12.1 Staffing

12.2 Tenders for Goods and Services

13. CONCLUSION

APPENDIX I – ORGANISATIONAL CHART OF THE ENVIRONMENTAL COMMISSION

APPENDIX II – DETAILS OF ESTABLISHMENT

APPENDIX III – SUMMARY OF EXPENDITURE, 2003-2005

APPENDIX IV – SUMMARY OF CASES FILED FOR LITIGATION BEFORE THE ENVIRONMETAL COMMISSION

1. MESSAGE FROM THE CHAIRMAN



*Her Honour Sandra Paul
Chairman of the Environmental Commission*

This is the first Annual Report of The Environmental Commission. The Environmental Commission of the Republic of Trinidad and Tobago is the first one of its kind in the region, and one of the first in the world. This places on us the responsibility to develop with thought, to educate, to receive feedback and to share.

This Annual Report chronicles the development of the Commission over the last year, seeks to educate our nationals and those elsewhere into whose hands our report may fall, and begs for feedback. It is a document to share.

The Commission this year directed much effort into training for Commissioners and staff with the aim of achieving the highest standards of performance, developing our website and informational brochures, drafting codes of conduct, renewing the Vision and Mission

and developing guiding principles upon which the Vision and Mission of the Commission are premised. To accomplish its Mission the Commission has identified four paramount values which we believe represent the core values of the Environmental Commission. These values are **independence, integrity, fairness and quality service**.

This development work and all other accomplishments, tangible and intangible including the publication of this Report are a direct result of the hard work and dedication of the former Registrar, Mr. Andrew Dalip and that of the present incumbent, Mrs. Nicole Ramcharan-Ramdass, and the staff of the Commission. We, the Commissioners commend them for the diligence and patience they have exercised in somewhat challenging circumstances.

The Commission looks forward to serving the people of Trinidad and Tobago in the coming year.

Sandra Paul
Chairman

2. BACKGROUND

2.1 History, Establishment, Jurisdiction and Powers of the Environmental Commission

The Environmental Management Act, 1995 (“EM Act, 1995”) was repealed and replaced by the Environmental Management Act, 2000 (“EM Act, 2000”). The latter was enacted by a two-thirds majority of both the Senate and the House of Representatives so as to address any constitutional concerns with respect to the creation of the Environmental Commission as a superior court of record. The first Commissioners were appointed by His Excellency the President on October 30, 2000.

The Environmental Commission was established by section 81(1) of the EM Act, 2000, for the purpose of exercising the jurisdiction conferred upon it by the EM Act, 2000 or by any other written law. The specific jurisdiction of the Commission under the EM Act, 2000 is set out in section 81(5). The Commission has thus been given an original jurisdiction with respect to specific matters related to the regimes created by various pieces of subsidiary legislation under the EM Act, 2000, as well as jurisdiction to hear appeals against certain decisions of the Environmental Management Authority. This includes the regimes governing noise pollution, environmentally sensitive areas, environmentally sensitive species and certificates of environmental clearance.

Currently the following pieces of subsidiary legislation under the EM Act, 2000 are in force:

- The Certificate of Environmental Clearance Rules, 2001;
- The Certificate of Environmental Clearance (Fees and Charges) Regulations, 2001;
- The Certificate of Environmental Clearance (Designated Activities) Order, 2001;
- The Noise Pollution Control Rules, 2001;
- The Noise Pollution Control (Fees) Regulations, 2001;
- The Environmentally Sensitive Areas Rules, 2001; and
- The Environmentally Sensitive Species Rules, 2001.

The work of the Commission will thus be a corollary of the extent to which these various pieces of legislation are operationalized and enforced. Thus for example, various aspects of the regimes governing certificates of environmental clearance and noise pollution have been implemented by the Environmental Management Authority (EMA). As a consequence, both appeals against decisions of the EMA and applications by the EMA for enforcement of its Administrative Orders have come to the Commission with respect to these regimes. On the other hand, the first Environmentally Sensitive Area has only recently been declared while no Environmentally Sensitive Species have been declared, resulting in no cases under these regimes being filed with the Commission. With the implementation of these regimes, as well as new primary and subsidiary legislation to be enacted (governing such issues as water pollution, air pollution and hazardous and non-hazardous waste) the jurisdiction of the Commission will consequently grow.

In keeping with its status as a superior court of record the Commission has been given the requisite powers to fulfil its mandate. 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 order costs to be paid in a matter where appropriate².

The Environmental Management Act, 2000 also provides a right of appeal from a decision of the Commission to the Court of Appeal on a point of law. Arguably there is ultimately a right of appeal to the Privy Council.

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.

2.2 Relationship with Other Arms of State

As a superior court of record the Environmental Commission remains at arms length from the Executive and Legislature. However, like the other superior courts, the Commission is funded by public monies and its finances are subject to the State’s system of financial accountability.

The Commission communicates with Cabinet through the Minister of Public Utilities and the Environment, unlike the other superior courts of record in Trinidad and Tobago which communicate with Cabinet through the Attorney General. The Commission receives some accounting support from the Accounts and Audit Units of the Ministry of Public Utilities and the Environment.



*The Commissioners and
the Honourable Attorney General,
Mr. John Jeremie*

¹ EM Act, 2000 s. 84(10)

² EM Act, 2000 s. 86(4)

2.3 Organizational Structure

The Environmental Commission consists of Commissioners supported by the Commission Staff. The EM Act, 2000 provides for a full-time Chairman, and five other members including a Deputy Chairman each of whom may be appointed to serve in a full-time, part-time or periodic capacity. 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 while 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 Commission is thus comprised of persons with expertise in the legal, scientific and technical aspects of environmental law and environmental management.



His Excellency Professor George Maxwell Richards, T.C., C.M.T., Ph.D. President of the Republic of Trinidad and Tobago with the Chairman and Members of the Environmental Commission

The primary function of the support staff of the Commission is to support the members in their judicial work. The support staff also has responsibility for all the financial, human resource and general administrative duties necessary for the proper functioning of the Commission.

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

2.4 Commission Membership

The current members of the Commission were appointed on December 30, 2003 by His Excellency the President for a period of three years from the date of their appointment. The Chairman and Deputy-Chairman were both appointed in a full-time capacity while the other Members were appointed in a part-time capacity.

The following are the members of the Commission:-

- **Chairman: Her Honour Sandra Joy Josephine Paul, LL.B., L.E.C., LL.M**

Her Honour Sandra Paul, a former judge of the Industrial Court of Trinidad and Tobago, a former Magistrate of the Judiciary of Trinidad and Tobago and former Deputy Chairman of the Environmental Commission of Trinidad and Tobago brings over fifteen years of adjudicatory experience to the post of Chairman of the Environmental Commission of Trinidad and Tobago.



Ms. Paul is a Fulbright Hubert H. Humphrey Fellow in Alternative Dispute Resolution with an emphasis on Mediation. Whilst on Fellowship she served a period of internship with the dispute resolution firm of Americord, where she co-mediated in many environmental disputes. She has lectured extensively in alternative dispute resolution and mediation and conducted mediation workshops and training programmes for the Supreme Court of Trinidad and Tobago and the Eastern Caribbean Supreme Court. She was appointed a member of the Committee for the Establishment of the Mediation Programme in the Family Court Pilot Project. She along with the other members of that Committee drafted what is now the Mediation Act No. 2 of 2004. Ms. Paul obtained a Diploma in International Environmental Law from the United Nations Institute of Training and Research, and holds a Masters of Laws Degree from the University of London and a Bachelor of Laws Degree (Honours) from the University of the West Indies. Ms. Paul was admitted to practice in the courts of Trinidad and Tobago in 1982.

- **Deputy Chairman: Her Honour Indira Maharaj Ramrekersingh, B.A., LL.B., L.E.C., LL.M**

Mrs. Maharaj-Ramrekersingh brings over 17 years of experience as an attorney at law and broad based knowledge in petroleum and environmental law to her position as Deputy Chairman of the Environmental Commission. She has held senior positions with the Ministry of National Security and the Ministry of Energy and Energy Industries, where she worked for 7 years. Her responsibilities there included the legal environmental portfolio. Up to the time of her appointment, Mrs Maharaj-Ramrekersingh was a national advisor to the Ecuador based SIEAL and Assistant Editor – Environment of OGEL, an affiliate of the acclaimed Alexander's Oil and Gas Journal. She has several publications in reputable UK based journals.

Mrs Maharaj-Ramrekersingh is a former Director of the National Lotteries Control Board, the Trinidad and Tobago Society for the Prevention of Cruelty to Animals, and up to the time of her appointment, was a Director of BWIA. She has also sat on several Cabinet appointed committees. She has been trained in Alternative Dispute Resolution and the Environment at the Environmental Law Centre in Vermont, USA. Following the award of a scholarship, she graduated with a Master's Degree, Distinction in Petroleum Law from the prestigious University of Dundee in Scotland. She is also the holder of Honour degrees in the Bachelor of Laws and Bachelor of Arts.



- **Commissioner: Dr. Eugene Cipriani Laurent, B.Sc., D.M., D.P.H.**

Dr Eugene C. Laurent completed his early education in Trinidad and Tobago. He attended the University of Manitoba, Winnipeg, Canada where he obtained the degrees of Bachelor of Science (B.Sc.) and Doctor of Medicine (M.D.) in 1959 and 1964 respectively. Dr. Laurent pursued post-graduate training at the University of the West Indies, Jamaica where he obtained the Diploma in Public Health (D.P.H.) in 1976.



Dr Laurent brings to the Environmental Commission extensive experience in Environmental Health and Environmental Management, having had the responsibility for those activities in the services of the Governments of Trinidad and Tobago and of Grenada for several years. During those years Dr. Laurent played a leading role in the recommendation and implementation of environmental policies for both countries. In 1985 the Government of Trinidad and Tobago appointed Dr. Laurent as Chairman of a Committee to organise a Pan American Health Organization (PAHO) sponsored National Consultation on Environmental Health and Protection. The major recommendation of the Consultation was that there was urgent need to establish an Environmental Management Agency to ensure sustainable development in Trinidad and Tobago. Dr. Laurent has represented the Government of Trinidad and Tobago and the Government of Grenada at several regional and international conferences, workshops and seminars and has delivered numerous lectures on environmental topics.

- **Commissioner: Dr. Judith F. Gobin, B.Sc., M.Phil, Ph.D**

Dr Judith Gobin's academic qualifications include a BSc. (1982 – Natural Sciences, University of the West Indies (UWI), St Augustine) an MPhil. (1984 – Pollution Ecology, UWI, St Augustine) and a Ph.D (1994 – University of Exeter/Plymouth Marine Laboratory, U.K. in the field of Marine Ecology). She lectures in the Faculty of Engineering in Land Use and Natural Resources, Coastal Zone Planning/Management and Environmental Impact Assessments. At the Institute of Marine Affairs (IMA), Dr. Gobin was directly involved in research (from 1982 to 1998) in the marine and coastal areas of Trinidad and Tobago. As a private consultant (from 1998 to 2002) Dr. Gobin extended her experience to include similar work in other Caribbean islands and also in terrestrial environments. Dr. Gobin continues to work on such research projects at the University of the West Indies, St. Augustine. Dr. Gobin brings to the Environmental Commission academic as well as tremendous practical environmental and ecological experience in the marine, coastal and terrestrial areas of Trinidad and Tobago and the Caribbean.



- **Commissioner: Ms. Anne-Marie Sirju, B.Sc.**

Ms. Anne Marie Sirju brings a wealth of academic and professional experience to her post as a Commissioner of the Environmental Commission. Ms. Sirju graduated in 1980 with a Bachelor of Science Degree in Natural Sciences specializing in Industrial Organic Inorganic Physical and Analytical Chemistry.

In the last quarter century, Ms. Sirju has worked in diverse environments as an Analytical Chemist, Industrial Chemist and Environmental Chemist. She has also worked in the Petrochemical Industrial Estate, the Petroleum Sector and related Service Sectors as a Technical Consultant. In 1996 she completed post-graduate study and research in the field of Oilfield Chemistry and Environmental Biogeochemistry at the University of Newcastle upon Tyne, Newcastle, UK. As of February 2000, Ms. Sirju has been serving as the Head, Laboratory Services Division of the Trinidad and Tobago Bureau of Standards where she oversees a wide range of testing and calibration services, which are executed in accordance with internationally recognised standards and methodologies.



2.5 Commission Staff

The support staff of the Commission is comprised of civil servants and at its head is the Registrar, who is appointed by the Judicial and Legal Service Commission. Mr. Andrew Dalip, Jr., Attorney-at-Law has served as Registrar of the Commission since September 17, 2002. Mr. Dalip has previously worked in the areas of environmental law and policy with various Departments of Government including the Ministry of Public Utilities and the Environment. Mr. Dalip has also recently completed an M.Sc. in Science for Management of Tropical Environments, graduating with Distinction.

The Commission's staff comprises eighteen (18) members appointed by the Public Service Commission, including clerical staff, bailiffs, verbatim reporters and other support staff. 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.



The Registrar (far left) and members of staff of the Commission

3. VISION, MISSION AND PERFORMANCE

3.1 Vision Statement

The Environmental Commission, a superior court of record, will be a court characterised by excellence, which strives to attain justice for all through the rule of law. The Commission will be the premier environmental court in the region setting the trend in environmental decision-making and the utilisation of case management methodology and court information technology.

3.1.1 Guiding Principles

The Vision Statement of the Environmental Commission is premised on the following principles:

- Provide equal access to a fair and effective system of justice to all members of society.
- Offer alternative dispute resolution processes while preserving the right of parties to a hearing before the Commission.
- Provide quality service that continuously improves, that meets and exceeds public expectations, and ensures that all persons appearing before the Commission are treated with courtesy, respect and dignity.
- Maintain the independence of the Commission while strengthening relations with the public, bar, the Legislature and the Executive.
- Enhance the potential of every person at the Commission to contribute to the administration of justice through participation, training and technology.
- Earn the respect and confidence of an informed public.

3.2 Mission Statement

The Environmental Commission shall, in a fair, accessible, effective, and efficient manner, resolve environmental disputes arising under the law and shall interpret and apply the law consistently, impartially, and independently to protect the rights of citizens while being cognizant of the need for the balancing of economic growth with environmentally sound practices.

3.2.1 Guiding Principles

Consistent with its Mission Statement, the Environmental Commission shall be guided by the following principles:

- To make decisions in the best interest of the public.
- To conduct the Commission's business based on an underlying commitment to equal and timely justice while providing public access to an independent forum for the resolution of disputes.

- To advocate for policies and resources that are necessary for the Commission to fulfil its Mission.
- To ensure the continued development of an accessible Commission through planning, research, and evaluation programmes, and through the use of modern management approaches and technological developments.
- To provide leadership in the administration of justice at the Commission by establishing broad and consistent policies for the operation of the Commission and appropriate rules and forms.
- To promote a competent responsive and ethical Commission and staff through a comprehensive programme of judicial education and training of Commission employees.
- To contribute to the public's understanding of the judicial process at the Commission through a continuing programme of public education.

3.3 Core Values of The Environmental Commission

Required to accomplish our Mission are four paramount values representing the core of what the Commission stands for as an organisation:

- **Independence**
- **Integrity**
- **Fairness**
- **Quality Service**

3.4 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.

3.5 Standards of Performance

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:

3.5.1 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.

3.5.2 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.

3.5.3 Equality, Fairness and Integrity

- The Commission shall maintain a fair, impartial, independent 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.

3.5.4 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.

3.5.5 Public Trust and Confidence

The Commission is mindful that *justice must not only be done but must be seen to be done*, and therefore shall ensure that:

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

4. THE MANDATE AND CORE BUSINESS OF THE COMMISSION

4.1 The Mandate of the Commission

The Commission is a superior court of record and is bound by the relevant statutory provisions, the common law, rules of evidence and the rules of natural justice. The Commission adjudicates upon applications, appeals and complaints under the EM Act, 2000 and the subsidiary legislation made thereunder. There is also provision for the jurisdiction of the Commission to be extended to other matters by any written law.



*The Commissioners of
the Environmental Commission*

The specific jurisdiction of the Commission under the Environmental Management 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;
- (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 for.

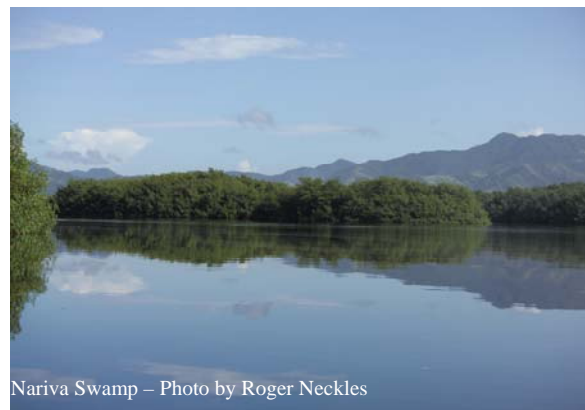
The Commission in keeping with its status as a superior court of record, is mandated to provide an impartial and independent forum for judicial relief and adjudication with respect to specific matters of environmental law. The Commission provides a fair public hearing process which assesses matters before it on the basis of the applicable law and facts including technical, scientific and socio-economic considerations.

The Commission has a key role to play in ensuring the sustainable development of Trinidad and Tobago, that is development which meets the needs of present generations without compromising the ability of future generations to meet their own needs. The Commission therefore keeps clearly in mind the need to strike a balance between economic development and environmental preservation. As a superior court of record the Commission comes to its decisions only after taking into account all relevant issues of law and fact.

4.2 The Core Business of the Commission

The core business of the Commission includes:

1. hearings and decision making
2. alternative dispute resolution
3. staff processing of hearings
4. public relations.
5. public access



Nariva Swamp – Photo by Roger Neckles

4.2.1 Hearings and Decision Making

This aspect of the Commission's business is entirely in the hands of the Commissioners in accordance with their judicial functions.

In discharging these duties the Commissioners are guided by the Commission's Operating Principles which include:

- **Timely Justice**

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

- **Informed Decision Making**

Hearing and determining matters ventilated before it on the basis of the applicable law and the relevant scientific, technological, environmental and other information.



The Courtroom of the Environmental Commission

4.2.2 Alternative Dispute Resolution

The Commission is 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. When a matter is brought before the Commission, the court encourages parties to explore the possibility of such resolution at the earliest possible stage. The matter can be referred to mediation at any stage of the proceedings. Rule 10.1 of the Environmental Commission Rules of Practice and Procedure, 2001 allows for mediation for the purpose of settlement of the issues or their simplification.



Her Honour Sandra Paul, Chairman, is a Fulbright Hubert H. Humphrey Fellow, having specialised in Alternative Dispute Resolution at the University of Minnesota, and who has served as a consultant in this field for many years. Her Honour Indira Maharaj-Ramrekersingh, Deputy-Chairman has also successfully completed specialized training in “Alternative Dispute Resolution and the Environment” at the Environmental Law Centre, Vermont

Law School, while several members of the Commission and the Registrar have received certified training in mediation.

The Commission has achieved a high level of success in encouraging the resolution of disputes, with the vast majority of cases filed with the Commission having been resolved through mediation. The Commission continues to view this as a positive step in achieving a collaborative approach to the resolution of environmental disputes.

4.2.3 Staff Processing of Hearings

This aspect of Commission business includes all administrative steps necessary to process an appeal, application or complaint from the time it is first filed to the time the file is closed. These functions are performed by the Registry staff and other support staff of the Commission but are guided by the strategic decision making of the Chairman. The process includes:

- Ensuring that the Notice of Proceedings (with respect to the appeal, application or complaint) is in compliance with the governing legislation and the Environmental Commission Rules of Practice and Procedure, 2001;
- Scheduling the hearing;
- Ensuring that all subsequent documents filed in the proceedings are in compliance with the governing legislation, the Environmental Commission Rules of Practice and Procedure, 2001 and any relevant Direction or Order of the Commission;



- Ensuring all Directions or Orders issued by the Commission and Notices issued through the Registry are properly filed and served in a timely fashion;
- Monitoring and administering the process until the Commission renders its final decision and the file is closed.

4.2.4 Public Relations

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 and subsidiary legislation made thereunder, or as an interested party to proceedings in accordance with the Environmental Commission Rules of Practice and Procedure, 2001.

The strategies for achieving this ultimately include:

1. Utilising the best available technology without incurring excessive cost.
2. Increasing public awareness about environmental law and issues of environmental management, particularly within the legal fraternity, industry and the public sector.

The Commission has undertaken several initiatives in the discharge of this function. The Commission has developed guides to inform the general public and practitioners before the court about the jurisdiction of the Commission with respect to specific matters as well as the procedures for matters filed with the Commission. The Commission is also in the final stages of launching its website, thereby providing the public with continuous access to regularly updated information.

The website and e-mail also provide an additional forum for contact with the Commission, thereby providing another avenue to receive and respond to inquiries from the public. The Commissioners and Registrar also conduct public educational sessions through guest lectures either upon request or at the initiative of the Commission.

4.2.5 Public Access

This component of Commission business includes all procedural and administrative steps necessary to ensure that members of the public have access to the Commission and its services and facilities as appropriate. As such, this function ultimately involves all Members of the Commission and Commission staff. In this regard, the Commission continues to review its Rules of Practice and Procedure as well as internal registry procedures and controls with a view to ensuring that the system for accessing court services is as simple as possible. Cases are litigated in open court and are thus open to the public, unless the matter is being heard in camera. The Commission also maintains a

reference library (containing texts and periodicals on environmental law and science) which can be accessed by practitioners and members of the public upon request.

The Commission has also sought to address the human element of Public Access by seeking to ensure that its Members and staff achieves the highest standards of performance in the execution of their duties. To this end the Commission has developed and adopted Codes of Conduct for the Environmental Commission's members and staff, which may be viewed on the Commission's website: www.ttenvironmentalcommission.org

5. ALTERNATIVE DISPUTE RESOLUTION

The Commission on its own initiative or at the request of the parties may at any time before or during the proceedings schedule a mediation session, the purpose of which is to attempt to resolve as many issues (whether substantive or procedural) as possible. 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.

The Commission continues to find that the vast majority of cases filed with the Registry are resolved by mediation or negotiation. Of the seven (7) cases heard in 2004³ six (6) were resolved by mediation or negotiation⁴. While this results in fewer matters being decided through litigation, the Commission continues to regard this as evidence of it successfully fulfilling its mandate under section 84(3) of the EM Act, 2000.

Alternative dispute resolution being part of its core business, the Commission continues to take steps to ensure that it can continue to adequately fulfil this role. Within the current financial year Her Honour Indira Maharaj-Ramrekersingh, Deputy-Chairman, successfully completed specialized training in "Alternative Dispute Resolution and the Environment" at the Environmental Law Centre, Vermont Law School. The Commission is also in the process of finalizing an informational brochure, entitled "A Guide to Mediation at the Environmental Commission," which is intended to answer frequently asked questions the public might have on this topic. As part of the review of the Environmental Commission Rules of Practice and Procedure, 2001 the Commission will be re-examining the provisions thereof with respect to mediation. The Chairman and Commissioners are also currently reviewing draft guidelines for mediators with a view to ensuring that mediation at the Commission is conducted in accordance with

³ Talisman v EMA (EAP 003 of 2003)
EMA v. James Jehu (EAA 001 of 2004)
Unicell v. EMA (EAP 002 of 2003)
EMA v. Arlene Crichlow (EAA 002 of 2004)
EMA v. NFM (EAA 003 of 2004)
Anthony Price v. EMA (EAP 001 of 2004)
Genfab v. EMA (EAP 001 of 2003)

⁴ In the seventh matter, EMA v. Arlene Crichlow (EAA 002 of 2004), the EMA withdrew the Application on its own accord.

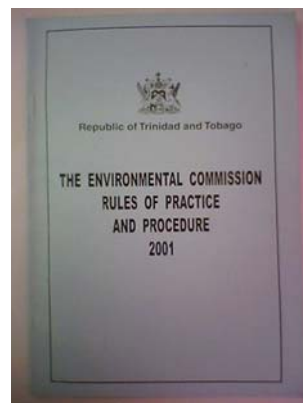
internationally accepted best practices and achieves the objects of the Environmental Management Act, 2000.

6. RULES OF PRACTICE AND PROCEDURE

The Commission continues to regard the completion of its Rules of Practice and Procedure, 2001 (“the Rules”) as a major accomplishment. The Rules set out the procedures not only with respect to litigation but also with respect to mediation, the Commission’s preferred form of alternative dispute resolution. Copies of the Rules are available at the offices of the Government Printer (Corner of Victoria Avenue and Tragarete Road, Port of Spain) or can be downloaded from the Commission’s website.

The Commission has however begun to review and redraft the Rules with a view to having amended Rules of Practice and Procedure submitted to his Excellency the President for approval in accordance with section 84(15) of the EM Act, 2000. In reviewing the Rules, the Commission continues to strive to ensure that:

- the Rules are as comprehensive as possible;
- its procedures are simple;
- matters are dealt with expeditiously; and
- parties are given the fullest opportunity to ventilate their case.



Before the amendments are finalised, it is the intention of the Commission to invite comments from a wide cross-section of stakeholders. The draft amendments will also be included on the Commission’s website so that the wider public can comment thereon.

Finally, while the Commission strongly urges practitioners and litigants to adhere strictly to the Rules, the Commission continues to maintain a policy of not allowing procedural issues to be an obstacle to the exercise of its jurisdiction.

7. CAPACITY BUILDING

One of the main focal points of the Commission over the last year has been training of the Commissioners and staff to ensure the efficient discharge of their duties. The Commission views the personal development of its officers as the enrichment of the human capital of Trinidad and Tobago. The Commission not only seeks out opportunities for relevant training for Commissioners and staff but also encourages its personnel to pursue training on their own accord. The Commission has also been able to

access additional training opportunities through the support of Trinidad and Tobago's international allies including the Governments of Canada⁵ and the United States of America⁶.



Chairman and Deputy-Chairman at Workshop in Judgement Writing conducted by Professor James Raymond

7.1 Training of Commissioners

The membership of the Commission comprises persons with a legal, scientific or technical background. All Commissioners however serve in a judicial capacity and as mediators in matters before the Commission. Over the last year training with respect to the Members of the Commission has focused on further preparing them for these roles. The training undertaken by the Commissioners in this regard was as follows:

NAME OF COURSE/SUBJECT MATTER	TRAINING PROVIDER	ATTENDEES	PERIOD
"Judicial Decision Making"	Justice Monica Barnes (Retired) – In house training	<ul style="list-style-type: none"> • Her Honour Sandra Paul – Chairman • Her Honour Indira Maharaj-Ramrekersingh - Deputy-Chairman • His Honour Dr. Eugene Laurent – Member • Her Honour Ann Marie Sirju – Member 	April 20, 2004
"Judgement Writing"	Professor James Raymond – In	<ul style="list-style-type: none"> • Her Honour Sandra Paul – Chairman 	July 19 – 21, 2004

⁵ Provided partial funding for partnership training for the Chairman with the Institute of Public Administration of Canada.

⁶ Provided partial funding for the visit of Professor James Raymond to conduct training for Commissioners in "Judgement Writing"

	house training	<ul style="list-style-type: none"> • Her Honour Indira Maharaj-Ramrekersingh - Deputy-Chairman • His Honour Dr. Eugene Laurent – Member • Her Honour Ann Marie Sirju – Member 	
“Alternative Dispute Resolution and the Environment”	Environmental Law Centre, Vermont Law School, U.S.A.	<ul style="list-style-type: none"> • Her Honour Indira Maharaj-Ramrekersingh - Deputy-Chairman 	June 1 – 19, 2004
“Partnership Training – Manitoba Department of Water Stewardship”	Institute of Public Administration of Canada	<ul style="list-style-type: none"> • Her Honour Sandra Paul – Chairman 	June 23 – July 2, 2004

7.2 Training of Administrative Staff

Training for members of the administrative staff is related to the different duties of the respective individual, whether this be administrative, human resource, financial or court related work. Training is also undertaken with respect to internal and external public relations of staff with a view to ensuring that the highest professional standards are maintained. This is in addition to training routinely provided to Commission staff by different Departments of Government (e.g. with respect to the Integrated Human Resource Information System – Project IHRiS).



Staff being trained by Ms.Dawn Richards of DRA Consulting

Training undertaken by the staff of the Environmental Commission during the last year was as follows:

NAME OF COURSE/SUBJECT MATTER	TRAINING PROVIDER	ATTENDEES	PERIOD
“Office Protocol”	DRA Consulting	16 members of Administrative Staff	April 5 – 8, 2004
“Office Protocol”	Lenore Dorset	All Members Of Staff	May 18, 2004
“Basic Computer Literacy”	YTEPP	<ul style="list-style-type: none"> • 2 Members of Administrative and Clerical Staff 	October 5 – December 2, 2004
“Advanced Computer Literacy”	YTEPP	<ul style="list-style-type: none"> • 3 Members of Administrative and Clerical Staff 	October 4 – December 1, 2004
“Hospitality Training”	Human Resources Department, Parliament	<ul style="list-style-type: none"> • Office Attendant 	May 20 – 21, 2004
“Excellence in Hospitality Service”	Trinidad and Tobago Hospitality and Tourism Institute	<ul style="list-style-type: none"> • Office Attendant 	July 7 – 8, 2004
“Facilities Management”	School of Business and Computer Studies	<ul style="list-style-type: none"> • Registrar 	October 5 – 28, 2004
“Diploma in Environmental Management”	Cipriani College of Labour and Co-operative Studies	<ul style="list-style-type: none"> • Clerk I (Court Clerk/Counter Clerk) 	2004/2005
“Defensive Driving”	National Safety Council	<ul style="list-style-type: none"> • Bailiffs (Travelling Officers) • Driver 	April 24, 2004
“Managing Records and Files in an Information Age”	National Association of Secretaries and Administrative Professionals of Trinidad and Tobago	<ul style="list-style-type: none"> • Clerk/Stenographer IV (Secretary to Chairman) • Clerk/Stenographer I (Secretary to Registrar) 	November 23, 2004

8. PUBLIC EDUCATION

The ability of the general public to enforce their rights under Trinidad and Tobago's environmental law regimes and to fully participate as stakeholders in our system of environmental management is directly proportional to how educated the public is as to these rights. The Environmental Commission is an integral part of these regimes. However, as a relatively new institution on the domestic landscape, the public remains largely unaware of the existence and role of the Commission. Over the last year the Commission has sought to address this by approaching public relations with renewed vigour. In doing so the Commission remains cognizant of the fact that it must strike a balance between the need to ensure that the public is educated as to their right of access to the services of the Commission and the need to ensure that public confidence in the impartiality of the Commission is preserved.

8.1 Brochures

The Commission has developed various guides to inform the general public and practitioners before the court about the jurisdiction of the Commission with respect to specific matters, as well as the procedures for matters filed with the Commission. These guides include:

- A General Guide to the Environmental Commission;
- A Guide to Appeals against Decisions of the Environmental Management Authority under the Environmental Management Act, 2000;
- A Guide to Instituting Civil Actions (Direct Private Party Actions) against Other Persons for Violations of Environmental Requirements under the Environmental Management Act, 2000;
- A Guide to Applications for Deferment of Decisions made by the Environmental Management Authority under Sections 25 and 41 of the Environmental Management Act, 2000.
- A Guide to Hearings of Matters arising under the Environmental Management Act, 2000 and Subsidiary Legislation made Thereunder; and
- A Guide to Mediation at the Environmental Commission.

The Commission is also in the process of finalizing other guides of a more detailed nature focussing on litigation and mediation before the Environmental Commission. These include "A Practitioners Guide to Litigation before the Environmental Commission."

8.2 Website

One of the milestones of the Commission's public awareness thrusts during the past year has been the development of its website. The website will allow 'round-the-clock' global access to information about the Commission. Besides general information, the public will be able to access copies of relevant primary and subsidiary legislation; the Environmental Commission Rules of Practice and Procedure, 2001; court forms; and informational brochures and materials.



The website will also provide a forum for the public to contact the Commission to make inquiries, access information and make suggestions.

The website address is www.ttenvironmentalcommission.org.

8.3 The Logo of the Environmental Commission

An important part of the Environmental Commission's public awareness drive has been the development of the Commission's logo. Within the period under review the Commission invited proposals for the development of a logo which would be easily identifiable and which would reflect the Vision and Mission of the Commission. The logo is intended to be reproduced on all official correspondence of the Commission and in other media including the Commission's web site. The contract for the development of the logo was awarded to Messrs. Rostant Advertising. The underlying philosophy of the logo is outlined on the inside-front cover of this Report.



8.4 Stakeholder Meetings

With a view to ensuring that the Commission can better serve the public, the Commission, on the initiative of the Chairman, Her Honour Sandra Paul, has begun an outreach programme meeting with key stakeholders. The Commission has begun

identifying key private sector, governmental and non-governmental organizations who have roles to play in environmental management and who may have recourse to the services of the Commission. The objectives of the programme include sensitizing stakeholders to the role of the Commission in Trinidad and Tobago's system of environmental law; increasing stakeholder awareness of the Commission's services available to them; and receiving stakeholder feedback on how the Commission can improve its efficiency and otherwise better fulfil its mandate.

Within the current year the Commission has held such meetings with:

- Senator the Honourable John Jeremie, Attorney General;
- The Honourable Orville London, Chief Secretary, Tobago House of Assembly and Mr. Hughford Mc Kenna, Secretary for Agriculture, Marine Affairs and the Environment, Tobago House of Assembly;
- Ms. Jennifer Baptiste-Primus, President, Public Services Association;
- Mr. Errol Mc Leod, General Secretary, Oilfield Workers Trade Union and Mr. Teddy Stapleton, First Vice-President, Oilfield Workers Trade Union;
- Mr. Vincent Cabrera, General Secretary, National Trade Union Centre and Mr. Rudrinath Indarsingh, Second Vice-President, National Trade Union Centre.



*The Chairman welcoming
Mr. Errol Mc Leod, General Secretary,
OWTU, on his visit to the Commission*

The Commission will be holding similar meetings with other Non-Governmental Organizations early in the new calendar year.



The Chief Secretary of the Tobago House of Assembly, Mr. Orville London and the Secretary for Agriculture, Marine Affairs and the Environment of the Tobago House of Assembly, Mr. Hughford Mc Kenna visit the Environmental Commission

8.5 Speeches and Presentations

The Chairman, Deputy-Chairman and Registrar often accept invitations to speak at different forums.

Within the last two years the Commission has developed closer ties with the United Nations Environment Programme as well as superior courts of record throughout the region. The Chairman, Her Honour Sandra Paul accepted an invitation to attend and address a Regional Meeting of Chief Justices of the Countries of the English-speaking Caribbean in Trelawney, Jamaica during the period June 11 – 12, 2004. This meeting was organized by the United Nations Environment Programme. The Chairman's paper, entitled "The Role of Environmental Law within the Framework of Sustainable Development," was well received by the attendees of the meeting.

8.6 Freedom of Information Act, 1999

The Environmental Commission has prepared its Public Statement as required under Sections 7, 8 and 9 of the Freedom of Information Act, 1999. The Statement has been vetted and approved by the Freedom of Information Act Secretariat, Ministry of Public Administration and Information and has been sent to the Honourable Minister of Public Utilities and the Environment for her consideration. It is expected that this statement will be published early in 2005. In addition to publication in the Gazette and newspapers, the statement may be viewed on the Commission's website: www.ttenvironmentalcommission.org.

9. OPERATIONS OF THE REGISTRY

The Registry performs several critical roles in terms of court administration, including receipt and custody of documents filed in proceedings before the Commission and supervising public access to documents filed with the Registry. The Registry remains fully functional with proper systems in place for the filing of documents and maintenance of proper records.

The Commission's limited staff must attend to all the responsibilities attendant upon the administration of a Department of Government. Members of the Registry staff therefore are often required to perform double-duty to ensure the smooth running of the organization. In addition to their Registry duties, the Clerk I and Clerk II have heavy responsibilities in terms of accounting and general administrative duties, as well as other court-related work. In order to ensure that the Registry functions (as well as other functions) are properly and continuously discharged, the Commission ensures that its staff are cross-trained. The Commission has also developed desk-manuals for Registry staff and other staff of the Commission. Thus, in the absence of any member of

Registry staff, other designated members of staff are able to discharge these functions with a high level of efficiency.



*Members of staff
of the Environmental Commission*

10. FINANCES

For administrative purposes the Environmental Commission is regarded as a Department of Government not under Ministerial control and is fully funded by public monies under Head of Expenditure 38 – Environmental Commission. Since September 17, 2002 the Registrar, Environmental Commission has served as Accounting Officer with respect to this Head of Expenditure.

The Commission continues to operate a Sub-Accounting Unit staffed by the Registrar, Clerk IV and Clerk II. While in larger Departments the diverse functions discharged by these three (3) officers would be performed by a larger staff complement, the current system has been designed in consultation with the Comptroller of Accounts Department to ensure compliance with Government's

system of financial accountability for public monies. 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 Ministry of Public Utilities and the Environment provides Check Staff services, audit services and cheque preparation.

The Commission has encountered several challenges both within and outside the organization in terms of the discharge of these accounting functions. The small staff structure within the Commission and resultant absence of opportunities for upward mobility within the organization results in a proportionately high rate of staff turnover. Within the 2004 calendar year alone four (4) different officers have served as Clerk II, Environmental Commission. This impacts on the operations of the Commission in several ways including a proportionately large portion of management time having to be reallocated to the training and direct supervision of new officers. The need to ensure accountability in financial matters would also be better served if there was a slower pace of turnover in such critical positions.

Outside of the organization the Commission still enjoys support services from the Ministry of Public Utilities and the Environment. While the Commission remains confident in the commitment of the Ministry at the managerial level to have these support services discharged in an efficient manner, there remain occasions where this commitment is not translated into effective action at the operational level, often as a result of the human resource constraints faced by the Ministry. To overcome this hurdle the Commission has from time to time deployed staff to the offices of the Ministry for the purpose of expediting the work done by the Ministry on behalf of the Commission. In this regard the Clerk I and Clerk II, Environmental Commission have worked with the Staff of the Ministry to, amongst other things:

- Prepare Reconciliation Statements of Monthly Abstracts of Payments;
- Prepare Reconciliation Statements of Unpaid Cheques; and
- Verify that the information on the Reconciliation Statements match the Treasury Cards issued by the Comptroller of Accounts.

With a view to working towards a more efficient accounting structure, the Commission has held discussions with the Comptroller of Accounts Department for the purpose of reviewing the staffing of the Commission's Sub-Accounting Unit and otherwise implementing more appropriate accounting arrangements.

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 2005 at pages 254 to 256:

- 2003 Actual Recurrent Expenditure;
- 2004 Estimates of Recurrent Expenditure;
- 2004 Revised Estimates of Recurrent Expenditure; and
- 2005 Estimates of Recurrent Expenditure

These provisions are reproduced at Appendix III hereof for ease of reference.

The Commission strives to ensure compliance with the State's system of accountability for public monies and to otherwise maintain a policy of transparency in its financial practices. Internally, the Commission has prepared a Draft Procurement Policy, which was submitted for comment to key stakeholders in Government's financial regulatory framework. The issue of the tendering for goods and services for the Commission has been the subject of longstanding discussions with the Director of Contracts. We are advised that the Director of Contracts has referred the matter to the Comptroller of Accounts for advice and the Draft Procurement Policy remains in abeyance pending the resolution of this matter.

Pending the implementation of the Draft Procurement Policy, the Commission strives to maintain its procurement procedures in accordance with generally accepted best practices. In this regard the Commission remains in continuous dialogue with its internal auditors and the Ministry of Finance to ensure that procurement practices employed are acceptable. Procurement is also guided by the Code of Conduct for the Commission's Staff, the provisions of which reflect a commitment to transparency and accountability in the financial affairs of the Commission.

The Commission has also taken steps to ensure greater linkages between financial planning and other management functions. In this regard the Commission is moving towards in-house development and implementation of computerised inventory management, thereby allowing for easier compilation and analysis of historical data on the consumption of supplies. Parallel to this, the Commission is developing a facilities and asset management plan, which will again allow for data capture with respect to building and equipment related expenditure. This allows for greater sophistication in terms of financial planning, by better allowing the Commission to gain a holistic picture of life cycle costs when procuring goods.

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.

MATTERS FILED WITH THE ENVIRONMENTAL COMMISSION 2000 – 2004

	2000	2001	2002	2003	2004	Total to Date	Matters Concluded	Matters still pending
ADMINISTRATION CIVIL ASSESMENTS	0	0	0	6	2	8	N/A	N/A
DIRECT PRIVATE PARTY ACTION	0	0	0	0	0	0	N/A	N/A
CONSENT AGREEMENT	0	0	6	5	0	11	N/A	N/A
APPEALS	0	0	4	2	1	7	7	0
APPLICATION	0	0	0	0	3	3	3	0

Since the Commission opened its doors in the year 2000 over 160 (often voluminous) documents have been filed with the Registry relative to matters listed above.

The year 2004 saw the first Applications for Enforcement of Administrative Orders being filed by the Environmental Management Authority as well as the first Appeal from Tobago⁷.

A brief synopsis of each litigation matter (for the period under review), relevant action taken by the Commission and the outcome is contained at Appendix IV hereof. Similar synopses of litigation matters commenced and/or concluded before 2004 are contained in the Commission's Report on Performance and Activities 2000 to 2003.

11.2 Alternative Dispute Resolution

The Commission continues to enjoy great success in resolving disputes by the use of the alternative dispute resolution process of mediation. Of the seven (7) cases heard in 2004⁸ six (6) were resolved

⁷ Anthony Price v. EMA (EAP 001 of 2004)

⁸ Talisman v EMA (EAP 003 of 2003)
EMA v. James Jehu (EAA 001 of 2004)
Unicell v. EMA (EAP 002 of 2003)
EMA v. Arlene Crichlow (EAA 002 of 2004)
EMA v. NFM (EAA 003 of 2004)

my mediation or negotiation⁹. The Commission is also committed to the timely resolution of matters before the court and to demonstrating good and efficient case flow management. The Commission has recognized that alternative dispute resolution processes, particularly mediation, represent important tools to achieve this goal.

11.3 Appeals to Court of Appeal on Points of Law

Section 86(5) of the Environmental Management 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. No such appeals have however been filed to date.

11.4 Comments

While the Environmental Commission is in its fourth year of existence the rate at which matters are filed with the Commission is much lower than the other superior courts of record in Trinidad and Tobago. This rate is however consistent with that which obtained in the germinal years of the few other specialised environmental courts throughout the world. The statistics for matters filed with the Commission remains dependent on several factors. The first factor is the number of pieces of legislation with respect to which the Commission has jurisdiction. To date only subsidiary legislation with respect to Certificates of Environmental Clearance; Noise Pollution; Environmentally Sensitive Areas; and Environmentally Sensitive Species have been enacted under the Environmental Management Act, 2000. The Commission is however advised that the EMA is moving towards ensuring the enactment of other pieces of subsidiary legislation including those governing Water Pollution, Air Pollution, and Hazardous and Non-Hazardous waste.

A second factor affecting the number of matters filed with the Commission is the degree to which the existing legislation is implemented by the regulatory agencies. Thus, for example, while the Environmentally Sensitive Areas Rules, 2001 has been in force for quite some time, the first environmentally sensitive area was only designated in 2004.

A third and very crucial factor is the level of public awareness as to their rights under the law and as to the very existence of the Commission. The Commission has sought to address the latter through increased public awareness activities as to the role and function of the Commission.

The Commission continues to prepare itself for the possibility of the exponential increase in the number of cases filed that is expected to come in the future. Every case filed and litigated or mediated provides the Commission with an opportunity to examine its efficiency and to take steps to ensure all necessary improvements are made. Feedback from litigants and attorneys-at-law is key to this process, and in this regard the Commission has recently implemented feed-back forms for participants in litigation and mediation before the Commission. These forms may be found on the Commission's website: www.ttenvironmentalcommission.org. Litigants and attorneys-at-law who

Anthony Price v. EMA (EAP 001 of 2004)

Genfab v. EMA (EAP 001 of 2003)

⁹ In the seventh case, EMA v. Arlene Crichtlow (EAA 002 of 2004), the EMA withdrew its Application at the first Preliminary Hearing held by the Commission in the matter.

have participated in either litigation or mediation are asked to fill out confidential questionnaires evaluating the process in which they participated particularly in terms of efficiency and impartiality. The data collected in these forms will be used in statistical analyses by the Commission.

12. CHALLENGES FACED BY THE ENVIRONMENTAL COMMISSION

Despite advances in many areas over the last year, several long-standing challenges faced by the Commission persist.

12.1 Staffing

In terms of its original staff structure, the Commission remains without a Research Officer. This officer performs an important supporting role for the judicial work of the Commissioners, and the inability of the Service Commission's Department to fill this vacancy can have a negative impact on the efficient functioning of the Commission.

Over the last four years the Commission has found itself faced with new responsibilities, particularly in the areas of accounting, human resource management and general administration. The Commission however remains with its original staff structure which did not embrace these new responsibilities. The result is that some members of staff have been called upon to shoulder responsibilities which are beyond their experience. This has caused a relatively high rate of staff turnover in some key positions, including the post of Clerk II. This has led to several consequences including a proportionately high amount of management time having to be re-directed to training and directly supervising new staff. In this regard the Commission is in continuing discussions with the Public Management Consultancy Division with respect to a review of the staff structure of the Environmental Commission.

The Commission is also without its full complement of Commissioners. The Commission sees the need to include in its membership a Commissioner with relevant experience and training in Environmental Engineering. While the present cadre of Commissioners possess a combination of skills and experience that will allow them to properly evaluate any technical environmental issues arising in matters before the court, the Commission would be better equipped to discharge its duties if the remaining vacancy was filled.

12.2 Tenders for Goods and Services

The Environmental Commission, like the other superior courts, is categorised as a Department of Government not under Ministerial control. This institutional arrangement has however led to continued disagreement as to how tenders for goods and services for the Commission are to be secured. Advice had been sought from the Central Tenders Board on this matter, as well as the Comptroller of Accounts. However consensus on this matter between the relevant institutions is yet to be achieved. In the interim, the Commission remains unable to secure contracts for critical services such as janitorial services and security.

12.3 Payment of Monies into and out of Court

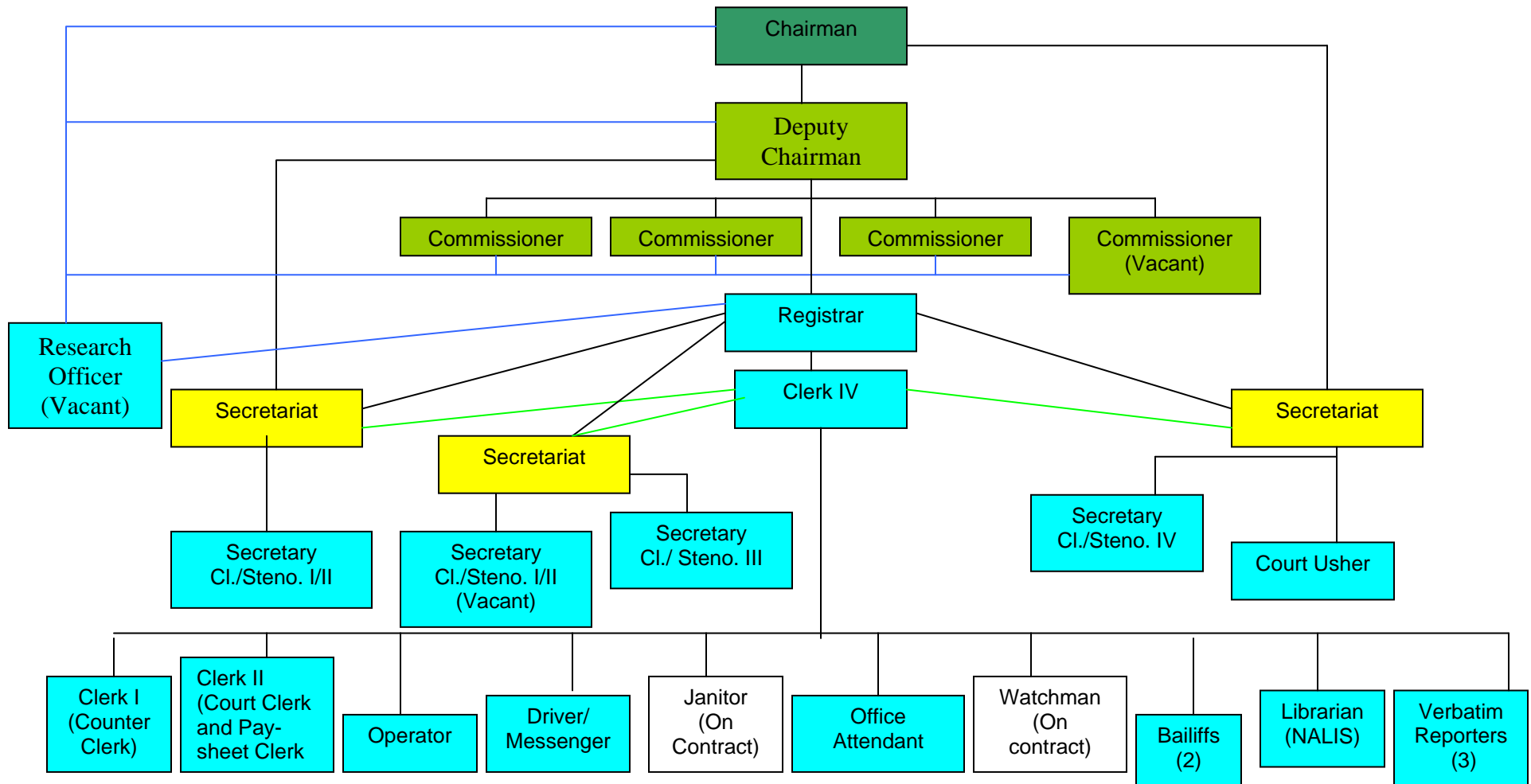
The Environmental Commission, being a superior court of record, is empowered to order parties appearing before it to pay costs into Court. There is however no mechanism by which the Environmental Commission can receive such money. In keeping with the doctrine that the Executive and Judicial arms of the 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 (EMA). The EMA and agencies of 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. CONCLUSION

Though in existence for four (4) years, the Environmental Commission represents a new genus in the institutional environment of Trinidad and Tobago. As is to be expected with any new organization, the Commission continues to encounter teething problems. The Members and Staff however continue to treat these as opportunities for learning and to re-evaluate the various aspects of the operations of the court. The Commission can however be credited with continued smooth operation and the fulfilment of its mandate. In this regard the Commission has made several accomplishments over the past year and they have all taken the Commission a step closer to greater efficiency in the discharge of its duties. The Members and Staff of the Environmental Commission remain committed to maintaining the highest professional standards in the discharge of their duties under the law.



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. December 31st 2003
2.	Deputy Chairman	N/A	1	Appointed for 3 years w.e.f. December 31st 2003
3.	Commissioner	N/A	4	<ul style="list-style-type: none"> Appointed for 3 years w.e.f. December 31st 2003 Only three (3) posts filled
4.	Registrar	Group V	1	Two (2) years probationary appointment from September 17, 2002
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	Appointed w.e.f. 01/12/03
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	Acting Appointment
11.	Clerk Stenographer III	26C	1	Acting Appointment
12.	Bailiff I	21/24C	2	<ul style="list-style-type: none"> One (1) officer Appointed w.e.f. 13/11/01 One (1) Acting Appointment
13.	Clerk II	20C	1	Acting Appointment
14.	Clerk Stenographer I/II	15/20	2	<ul style="list-style-type: none"> One (1) Temporary Appointment One (1) Post Vacant

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
HEAD 38- ENVIRONMENTAL COMMISSION
SUMMARY OF EXPENDITURE, 2003-2005

ESTIMATES OF EXPENDITURE , 2005
38 – ENVIRONMENTAL COMMISSION
SUMMARY OF EXPENDITURE, 2003 – 2005

Sub-Head Description	2003 Actual Expenditure	2004 Estimates	2004 Revised Estimates	2005 Estimates	Net Increase/(Decrease)
	\$	\$	\$	\$	\$
01 PERSONNEL EXPENDITURE	1,361,134	1,784,200	1,249,095	1,854,500	605,405
Salaries and Cost of Living	1,054,374	618,200	507,588	700,000	192,412
Allowance		492,000	373,373	492,000	118,627
Salaries – Direct Charges	-	228,000	161,764	216,000	54,236
Allowances – Direct Charges		395,000	158,516	366,000	207,484
Remuneration to Board Members –	-	2,000	-	2,000	2,000
Direct Charges		25,000	27,278	35,000	7,722
Overtime	-		2,076	4,700	2,624
Government Contribution to NIS		-	18,500	38,800	20,300
Government Contribution Group	-	24,000	-	-	-
Health Insurance	20,394				
Allowances		-	1,169,344	2,318,150	1,148,806
Settlement of Arrears to Public	-				
Officers	270,934	1,625,977	10,711	100,000	89,289
	15,432				
02 GOODS AND SERVICES		35,000			
	1,630,787				
03 MINOR EQUIPMENT PURCHASES	82,148				
Total	3,074,069	3,445,177	2,429,150	4,272,650	1,843,500

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

UNICELL PAPER MILLS CARIBBEAN LIMITED v. THE ENVIRONMENTAL
MANAGEMENT AUTHORITY (EAP 002 of 2003)

Appeal – Certificate of Environmental Clearance – Conditions – Discharge of process effluent into drains, water courses and sewage treatment facilities – Environmental Management Act, 2000 sections 40 and 81(5)(f) – Certificate of Environmental Clearance Rules, 2001

The Appellant appealed against a condition imposed by the EMA in granting the Appellant a Certificate of Environmental Clearance (“CEC”) for its proposed paper mill at O’Mera Industrial Estate Arima. The condition stipulated that “...no process effluent shall be discharged into drains water courses and sewage treatment facilities.” The Appellant sought a variation of the condition contending that a minimal amount of treated water (that is water complying with local standards) should be permitted to be discharged from their facility. The Appellant also contended that the EMA had the power to vary or modify a condition of a CEC. The Appellant contended that, inter alia, the EMA acted unreasonably and/or irrationally and/or unjustifiably in that the condition of the CEC was unclear; the EMA failed to clarify the condition; the EMA wrongly interpreted the term “process effluent”; the EMA failed, refused and/or neglected to exercise its discretion to vary the condition; the EMA imposed a condition that was too strict and not in accordance with environmentally acceptable standards and guidelines; and the EMA erred in law. The Commission held Preliminary Hearings into the matter at which time the parties were able to come to a preliminary agreement resulting in the Court granting a Consent Order, the terms of which include the EMA amending the conditions of the CEC unless after public consultation the EMA felt that withholding the modification was justified. The EMA later informed the Commission that it had conducted public consultations and felt that the withholding of the modification was justified. The parties thereafter appeared before the Commission again, at which time the parties were able to come to a final agreement in terms of which the Commission granted a Consent Order varying the CEC.

TALISMAN (TRINIDAD) PETROLEUM LIMITED v. THE ENVIRONMENTAL
MANAGEMENT AUTHORITY (EAP 003 of 2003)

Appeal – Certificate of Environmental Clearance – Conditions – Certificate of Environmental Clearance Rules, 2001

The Appellant appealed against a condition imposed by the EMA in granting the Appellant 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 condition specifically identified the nearest permissible shot line to the boundary of the Nariva Swamp Prohibited Area and further specified that the line shall not be closer than 500 meters from said boundary. The Appellant sought to have the Certificate of Environmental Clearance varied by deleting the condition in question. The Appellant first sought and obtained, by consent, leave of

the Commission to file its appeal out of time. The Commission held Preliminary Hearings into the matter after which time the parties were able to tentatively agree to the variation of the conditions of the CEC. The Commission made a Consent Order that the EMA modify the terms of the CEC by reissuing same without the condition in question.

THE ENVIRONMENTAL MANAGEMENT AUTHORITY v. JAMES JEHU (EAA 001 of 2004)

Application – Enforcement – Administrative Order – Noise Pollution Control Rules, 2001 – Noise Zone – General Area – Zone III - Daytime standards

The EMA applied for enforcement of an Administrative Order referring to a previously issued Notice of Violation alleging breaches by the Respondent of the Noise Pollution Control Rules, 2001. The Administrative Order required the Respondent to cease and desist from any such further violations. The EMA alleged that the Respondent breached the day-time standards for noise emission in the General Area (Noise Zone III) through the playing of a trumpet. In his Defence the Respondent contended, inter alia, that the readings of the Noise Pressure level taken by the EMA were unreliable and that he complied with the referenced Administrative Order. The Commission held Preliminary Hearings into the matter after which time the parties attended Mediation before a Commissioner. In accordance with Rule 10(8) of the Environmental Commission Rules of Practice and Procedure, 2001 the Mediator informed the Commission of the conclusion of the mediation. The parties having resolved the matter through mediation the action was formally discontinued.

THE ENVIRONMENTAL MANAGEMENT AUTHORITY v. ARLENE CRICHLOW (EAA 002 of 2004)

The EMA sought a Declaration that the Respondent had breached the Noise Pollution Control Rules, 2001 and applied for enforcement of an Administrative Order referring to a previously issued Notice of Violation alleging breaches by the Respondent of the Noise Pollution Control Rules, 2001. The Administrative Order required the Respondent to cease and desist from any such further violations. The EMA alleged that the Respondent breached the day-time standards for noise emission in the General Area (Noise Zone III) through the playing of a radio. The Application was subsequently withdrawn by the EMA.

THE ENVIRONMENTAL MANAGEMENT AUTHORITY v. NATIONAL FLOUR MILLS (NFM) (EAA 003 of 2004)

Application – Enforcement – Administrative Order – Noise Pollution Control Rules, 2001 – Noise Zone – General Area – Zone III - Daytime standards

The EMA applied for enforcement of a Consent Agreement arising out of an alleged breach of the Noise Pollution Control Rules, 2001. The Consent Agreement sought to resolve an alleged

breach of the night-time standards for noise emission in both the General Area (Noise Zone III) and Industrial Areas (Noise Zone I) resulting from an event held at the premises of the Respondent. The Consent Agreement provided, inter alia, that the respondent shall not conduct an activity or event that will cause sound in excess of the prescribed standards without applying for a Variation in accordance with the Noise Pollution Control Rules, 2001. The EMA alleged that subsequent to the execution of the agreement another event was held at the premises of the Respondent and inter alia no variation was applied for.

The Commission held a Preliminary Hearing into the matter. The parties having discussed and agreed the Commission entered a Consent Order in the matter enforcing the Consent Agreement and ordering that costs be borne by the Respondent.

ANTHONY PRICE v. THE ENVIRONMENTAL MANAGEMENT Authority (EAP 001 of 2004)

Appeal – Noise Pollution – Variation – Conditions – Noise Pollution Control Rules, 2001

The Appellant appealed against the refusal by the EMA to grant him a variation with respect to a proposed cultural show and dance at the Dwight Yorke Stadium, Bacolet, Tobago. In his Notice of Appeal the Appellant contended, inter alia, that the EMA failed and/or refused to take into consideration all the relevant matters in arriving at its decision, and failed and/or refused to forward to the Appellant particulars of objections to the granting of the variation. The Commission held Preliminary Hearings into the matter after which time the parties attended Mediation before a Commissioner. The mediation having successfully resolved several of the substantive issues the Commission made an Order embodying a Consent Order that the Refusal of Grant of Variation be cancelled and the EMA issue the appropriate Variation subject to specified terms and conditions. The Appellant made an application for costs which was refused by the Commission.

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 preamble to Environmental Management Act, 2000 in exercising its functions – Natural Justice – Audi alteram partem rule

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, *The Environmental Commission of Trinidad and Tobago*

2000. The Commission made an Order by Consent *inter alia* issuing directions in the matter and referring the parties to mediation. Following mediation it was agreed between the parties that they attempt to resolve the matter by the Appellant relocating its business to a new location in respect of which they would first seek and obtain a Certificate of Environmental Clearance. The Commission made an Order that the proceedings be stayed and that the matter proceed if the Certificate of Environmental Clearance was refused.

The Commission was subsequently advised by the parties that the Certificate of Environmental Clearance had been issued to the Appellant. The parties again appeared before the Commission at which time the Commission was advised that despite the issuing of the Certificate of Environmental Clearance the matter remained unresolved. The parties were again referred to mediation and the matter was listed for trial. The mediation having been successful, the Commission made an Order by Consent ordering *inter alia* that the Appellant: confine its operations to certain hours of the day; comply with the applicable standards in the Noise Pollution (Control) Rules, 2001; and complete relocation of its operations to the new site by a specific date (failing which operations at the old site were to cease by said date).