

**THE
JUDICIAL AND LEGAL
SERVICE COMMISSION**

ANNUAL REPORT

2006

TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
1.1	Origin.....	1
1.2	Powers, Functions and Jurisdiction	1

2.0	PROCEDURES.....	2
2.1	Meetings.....	2

PART I

3.0	MEMBERSHIP.....	2
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PART II

4.0	THE APPOINTMENT OF JUDGES	3
4.1	Appointment of Judges in 2006.....	4
4.2	Appointment of Acting Judges.....	4
4.3	Advertisement of Office of Puisne Judge.....	5

PART III

5.0	OTHER APPOINTMENTS, ACTING APPOINTMENTS AND PROMOTIONS	6
5.1	Appointments.....	6
5.2.	Temporary Appointments	6
5.2.1	Interpretation.....	6
5.2.2	Temporary appointments made during the year 2006.....	6
5.3	Acting Appointments.....	7
5.3.1	Acting appointments made during the year 2006.....	7
5.3.2	Consultation with the Prime Minister.....	7

5.4 Promotions	8
5.4.1 Promotions made during the year 2006.....	8
5.4.2 Advertisement of Promotional Offices	9
5.5 Problems Encountered In Filling Vacancies.....	9

PART IV

6.0 TRANSFERS.....	10
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PART V

7.0 CONFIRMATION OF APPOINTMENTS.....	10
7.1 Procedures	10
7.2 Appointments confirmed during the year 2006.....	10

PART VI

8.0 Termination of Appointment.....	11
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PART VII

9.0 DISCIPLINE	11
9.1 Allegations of misconduct	11

ACKNOWLEDGEMENTS.....	11
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APPENDICES

- APPENDIX I** Sections 104, 110 and 111 of the Constitution of the Republic of Trinidad and Tobago
- APPENDIX II** First and Second Schedules to the Judicial and Legal Service Act Chapter 6:01 of the Laws of the Republic of Trinidad and Tobago (as amended)
- APPENDIX III** Statistics on matters considered by the Judicial and Legal Service Commission for the year 2006
- APPENDIX IV** Practice followed and constraints faced by the Commission in making appointments
- APPENDIX V** Offices advertised in the Judicial and Legal Service for the year 2006
- APPENDIX VI** Qualified Candidates who submitted unsolicited Applications for the office of State Counsel I, Civil and Criminal Law in the year 2006
- APPENDIX VII** Appointment and Promotion to offices in the Judicial and Legal Service in the year 2006
- APPENDIX VIII** Vacancies in the Ministry of the Attorney General as at December, 2006

1.0 INTRODUCTION

This is the seventh Report of the Judicial and Legal Service Commission (**the Commission**) which is being submitted pursuant to Section 66C (2) of the Constitution of the Republic of Trinidad and Tobago (**the Constitution**). The Constitution requires the Commission to submit to the President not later than September 2007 a Report on its functions and powers – describing the procedures followed and the criteria adopted by it – for the year 2006.

1.1 Origin

The Commission is an executive body established under Section 110 of the Constitution and comprises the Chief Justice and the Chairman of the Public Service Commission (both *ex officio*) and three other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition and otherwise in accordance with the stipulations set out in the said Section (*see Appendix I*).

1.2 Powers, Functions And Jurisdiction

Section 104 of the Constitution gives the Commission the power to advise the President on the appointment of Judges other than the Chief Justice, the acting appointment of Judges and the revocation of such acting appointments. The President must act upon the advice which he receives from the Commission on all these matters.

Section 111 of the Constitution also vests in the Commission the power to appoint persons to hold or act in prescribed public offices for which legal qualifications are required, including the power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices (*see Appendix I*). The total number of offices falling under the purview of the Commission currently stands at three hundred. In this connection Part III of the First Schedule of the Judicial and Legal Service Act has been amended to include the new office of Parliamentary Counsel III which is attached to the Legislative Drafting Department of the Ministry of the Attorney General. The Office has been classified. However an approved job specification is not yet available to enable the office to be filled. The schedules listing these offices are at *Appendix II*.

2.0 PROCEDURES

Section 129 of the Constitution gives the Commission the power to regulate its own procedure with the consent of the Prime Minister by regulation or otherwise. In the year 2006 the Commission continued to discharge its responsibilities in accordance with the procedures contained in the Public Service Commission Regulations (as

amended), which it has adopted mutatis mutandis with the consent of the Prime Minister.

2.1 MEETINGS

During the year 2006 the Commission met at the Hall of Justice on twenty -five (25) occasions and considered one hundred and sixty-eight (168) Notes, which were prepared by the Secretariat of the Commission in the Service Commissions Department. On seven of these occasions interviews were conducted by the full Commission to select persons for appointment to the offices of Acting Puisne Judge of the High Court, Solicitor General, Legal Research Officer II and Magistrate (Tobago). Sub-Committees of the Commission met on fourteen (14) occasions to conduct interviews of candidates for appointment to the Judicial and Legal Service. Additionally eighty-one (81) Notes were circulated by way of round robin for the attention of Commission members between meetings.

Minutes of all meetings of the Commission, the decisions taken and matters noted by round robin were recorded and duly confirmed by the Commission.

A statement showing the number of meetings held by the Commission and the nature of the matters considered during the period under review is set out in *Appendix III*.

PART I

3.0 MEMBERSHIP

During the year 2006 the membership of the Commission comprised:

The Honourable the Chief Justice Mr Satnarine Sharma T.C.	Chairman
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Mr Justice Roger Hamel Smith acted as Chairman during the period 28/7/06 to 31/12/06.

H.A.S. Wooding Esq. C.M.T., Q.C.	Member
Christopher R. Thomas Esq. C.M.T., L.L.D. Chairman, Public Service Commission	Member
Madam Justice Jean Permanand C.M.T., S.C.	Member

The Executive Director, Human Resource Management, Judicial and Legal Service, Service Commissions Department served as Secretary to the Commission.

PART II

4.0 THE APPOINTMENT OF JUDGES

Selection of persons to fill vacancies on the High Court Bench is made by the Commission after due consideration of the merits of experienced and talented members of the legal profession, both within and outside the Judicial and Legal Service, who have indicated their willingness to serve. In the exercise of its powers under section 104 of the Constitution as aforesaid, the Commission established and published in the Trinidad and Tobago Gazette of 13th April, 2000, a detailed statement of the criteria and procedures used and followed in the selection of persons for appointment as Puisne Judges of the High Court.

Those procedures are repeated here:

- (a) anyone who wishes to be considered for appointment must make a written application to the Commission;
- (b) anyone who is being considered for appointment will be interviewed by the Commission;
- (c) when the need arises the Commission will advertise in the daily press the existence of vacancies on the Bench and invite applications for appointment;
- (d) the views of the President of the Law Association and those of the President of the Criminal Bar Association (where relevant) are sought with regard to any judicial appointment; and
- (e) the Commission may also seek the views of judges and other attorneys before making an appointment.

The criteria used by the Commission in making judicial appointments are grouped under the following main heads:

- Integrity
- Professional competence
- Temperament
- Experience

Appointments as Justice of Appeal are normally made from the High Court Bench but the Commission may advise the President to appoint to the Court of Appeal an outstanding candidate from outside the Judiciary. Seniority between High Court Judges is taken into account, but is not the only or governing factor.

The weighting given to the criteria for selecting the two levels of judges differs to some extent. While integrity is of prime and equal importance in both cases, greater importance is attached to professional competence in appointments to the Court of Appeal.

4.1 Appointment of Judges in 2006

The Commission made no appointments to the Court of Appeal during the year 2006.

4.2 Appointment of Acting Judges

In accordance with the provisions of section 104 (2) (d) (i) of the Constitution of the Republic of Trinidad and Tobago, His Excellency the President appointed the under-mentioned persons as Acting Puisne Judges:

- Mr Ian Stuart Brook during the period 3rd January, 2006 to 31st December, 2006
- Mr James C Aboud during the period 6th January 2006 to 31st December, 2006
- Mr Vasheist Kokaram during the period 26th January 2006 to 25th August, 2006
- Mr Larry Lalla during the period 1st February, 2006 to 31st December, 2006

In accordance with the provisions of section 104 (2) (d) (ii) of the Constitution of the Republic of Trinidad and Tobago, His Excellency the President appointed the under-mentioned former Judges, temporarily as Puisne Judges:

- Mr Lennox Deyalsingh during the period 6th January 2006 to 31st December, 2006
- Mr Mustapha Ibrahim during the period 6th January 2006 to 31st December, 2006
- Mr Zainool Hosein during the period 9th October, 2006 to 31st December, 2006
- Mr Shaffeyei Shah during the period 9th October, 2006 to 31st December, 2006

4.3 Advertisement of Office of Puisne Judge

In September 2006 the Commission invited applications for persons to act as Puisne Judge of the High Court. Interviews were conducted by the full Commission in December 2006.

PART III

5.0 OTHER APPOINTMENTS, ACTING APPOINTMENTS AND PROMOTIONS

5.1 Appointments

In previous Annual Reports the Commission gave a general account of the practice followed and the constraints faced by it in making appointments. While problems identified in previous Reports, relative to the reclassification of offices and the issue of new job specifications have since been resolved, some challenges remain and new ones have emerged. These are identified in the general account set out at *Appendix IV*.

During the year 2006, the Commission made thirty-three (33) first appointments to entry level positions, plus one (1) first appointment to a promotional office.

... *Appendix V* lists the offices that were advertised during the period under review, while *Appendix VI* shows the total number of persons who submitted unsolicited applications for the office of State Counsel I (Civil Law and Criminal Law) and for whom interviews were scheduled.

5.2 Temporary Appointments

5.2.1 Interpretation

A temporary appointment is made for a specified period, and is determined on the expiry of the period specified.

5.2.2 Temporary Appointments made during the year 2006

The Commission made thirty (30) temporary appointments during the period under review. The temporary positions arose as a result of:

- officers either proceeding on no-pay leave to accept Government employment on contract, or on no-pay leave for private reasons, or on no pay study leave;
- acting appointments in higher offices;
- promotion to higher offices;
- appointment to temporary offices;
- resignation of officers

The positions were advertised within and without the Service unless there was an established priority list of persons who had previously applied, and had been interviewed and found suitable for appointment. The higher vacant offices were filled when possible, by promoting the acting incumbents, the consequential vacancies were filled by persons serving in a temporary capacity. Temporary appointments were made to the following offices:

- State Counsel I, Civil Law and Criminal Law, and Inland Revenue Division, Ministry of Finance
- State Solicitor I
- Assistant Registrar and Deputy Marshal
- Magistrate
- State Counsel II, Ministry of Energy and Energy Industries

5.3 Acting Appointments

5.3.1 Acting appointments made during the year 2006

Of the one hundred and thirteen (113) acting appointments which were made in the year 2006, *eight (8)* were against vacant offices and *four (4)* were against vacant temporary offices, the remainder were as a result of officers proceeding on:

- vacation leave/casual leave
- no-pay leave/leave on grounds of public policy
- sick leave
- leave to pursue courses / Training Programmes
- secondment
- official business out of the country
- pre-retirement leave

5.3.2 Consultation with the Prime Minister

No appointment may be made by the Commission to the offices of Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General or Chief State Solicitor, unless the Prime Minister signifies that he has no objection to such an appointment. (Section 111 sub-sections (2) & (3) of the Constitution of the Republic of Trinidad and Tobago).

In previous Reports the Commission identified the difficulties that can be experienced in implementing this provision. The Commission reiterates that while these difficulties do not always prevail, they are an ever present consideration and as such they are reproduced once more for general information:

- (a) An impasse can arise which may be difficult to resolve in the time available to make an acting appointment, if the Prime Minister objects to the person whom the Commission proposes to appoint. The problem becomes even more acute if the need for an appointment arises and there is disagreement between the Prime Minister and the Commission over who should be appointed substantively to fill a vacant office.
- (b) Requests for persons to act in these offices should be received with the endorsement of the Permanent Secretary, Ministry of the Attorney General, or Permanent Secretary, Ministry of Legal Affairs, at least one month before the effective date of the proposed appointment to facilitate the processing of the requests. In the period under review this continued to be the exception rather than the rule; on occasions, these requests were received less than one week before the commencement of the proposed appointment.

During the year 2006, the Commission sought and obtained the concurrence of the Prime Minister for acting appointments in the offices of Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General, Chief State Solicitor and Solicitor General.

5.4 Promotions

5.4.1. Promotions made during the year 2006

During the year 2006 the Commission made forty-seven (47) promotions including three (3) promotions to entry level positions. A list of these promotions together with appointments made is at *Appendix VII*.

5.4.2 Advertisement of Promotional Offices

Following decisions of the Commission these promotional offices were advertised within the Service:

- Senior State Counsel, Service Commissions Department
- Senior State Counsel, Ministry of Energy and Energy Industries (temporary vacancy)
- State Counsel III, Customs and Excise Division, Ministry of Finance
- State Counsel III, Ministry of Trade and Industry
- State Counsel II, Service Commissions Department (temporary vacancy)

5.5 Problems Encountered In Filling Vacancies

- (a) In spite of several advertisements within and without the Judicial and Legal Service, certain Departments continue to be understaffed. This is due to poor responses to advertisements, the high incidence of persons declining first appointment by the Commission and the vacation of offices, both temporary and substantive, by officers who prefer to take up contract employment with the State.
- (b) In an effort to contain the understaffing problem, the Commission has been obliged, from time to time, to make acting or temporary appointments of appointees who fell short of the number of years of professional experience stipulated in the job specification for the office.
- (c) A promotion exercise was conducted in 2006, nevertheless, the continuing difficulty encountered in filling vacancies in the Ministry of the Attorney General is illustrated by *Appendix VIII*, which sets out the number of positions on the establishment, those that are vacant and those to which acting appointments have been made.

As stated in *Appendix IV* the review and reclassification of offices in the Judicial and Legal Service has enhanced the attractiveness of the Service for recruitment purposes. However a positive impact on the continued understaffing that exists in some departments is yet to be seen.

PART IV

6.0 TRANSFERS

One (1) request for transfer was made to the Commission during the period covered by this Report.

PART V

7.0 CONFIRMATION OF APPOINTMENTS

7.1 Procedures

First appointments in the Judicial and Legal Service are made subject to two years' probation and to medical fitness. Subsequent appointments are made subject to one year's probation. These appointments are confirmed by the Commission on receipt of satisfactory probationary and medical reports (where applicable).

7.2 Appointments Confirmed during the Year 2006

In 2006 the Commission confirmed a total of twenty-eight (28) appointments. Twenty-six (26) of these related to officers who were promoted to a higher office/appointed on transfer, on one year's probation. The other two (2) related to officers who were appointed on two years' probation and who had fulfilled the medical fitness requirements.

The failure of Permanent Secretaries and Heads of Departments to submit timely probationary and medical reports together with their recommendations as to the suitability of officers for confirmation of appointment, continues to be an impediment to the full and due exercise by the Commission of its function in this area.

PART VI

8.0 TERMINATION OF APPOINTMENT

No requests were made for the termination of the appointment of any officer in the Judicial and Legal Service during the period covered by this Report.

PART VII

9.0 DISCIPLINE

9.1 Allegations of Misconduct

During the period under review, the Commission considered eleven (11) complaints against members of the Judicial and Legal Service and one (1) complaint against a Court of Appeal member.

In six (6) of these complaints the Commission concluded that the matters or issues raised were outside the jurisdiction of the Commission.

In four (4) of the matters the Commission concluded that the complaints did not merit action available to the Commission under its Constitutional powers.

In one (1) instance the Commission invoked the provisions of regulation 84B of the Public Service Commission Regulations, as adopted by the Judicial and Legal Service Commission.

In one (1) complaint relative to the performance of a member of the Service, the Commission noted that there had been subsequent compliance and suspended further action in the matter.

Acknowledgements

In conclusion the Commission once again wishes to express its appreciation to the Director of Personnel Administration and to the officers of the Service Commissions Department, for their valuable assistance during the year 2006.

