

**ANGLIA RUSKIN UNIVERSITY**

**FACULTY OF ARTS, LAW AND SOCIAL SCIENCES**

**JUDICIAL REVIEW: TRANSFORMING THE PRACTICE OF HUMAN  
RESOURCE MANAGEMENT IN THE PUBLIC SERVICE OF TRINIDAD  
AND TOBAGO**

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**A dissertation in partial fulfilment of the requirements of  
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**ANGLIA RUSKIN UNIVERSITY**  
**ABSTRACT**

**FACULTY OF ARTS, LAW AND SOCIAL SCIENCES**

**DOCTOR OF BUSINESS ADMINISTRATION**

**Judicial Review: Transforming the Practice of Human Resource Management in the  
Public Service of Trinidad and Tobago**

**By Gloria Edwards-Joseph**

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The following research aims at assessing to what extent Judicial Review has been transforming the practice of Human Resource Management in the Public Service of Trinidad and Tobago as it relates to the functions of the Service Commissions and the Service Commissions Department. With the passage of the Judicial Review Act in 2000 and the removal of the ‘ouster clause’ which permitted public officers to challenge the decisions of Service Commissions, there has been a preponderance of Judicial Review applications by public officers who are aggrieved with the Commissions’ decisions. Further, there is a general perception that the Judicial Review judgements in this regard have been impacting on Public Service Human Resource Management. This research examines the judgements of the Courts of Trinidad and Tobago and the Privy Council of London over the period 2000-2015 to determine whether there is any veracity in this perception.

The research was conducted utilizing qualitative methodologies in that a phenomenological approach was adopted. This permitted the use of a case study, interviews and purposive sampling of Human Resource Management practitioners, senior officials, members of the Service Commissions and legal officers who have a rich knowledge of the subject. Other methods employed in the research were, Hermeneutics due to the legal aspect of some parts of the research that aided in the narratives contained in the texts of the judgements. Grounded theory permitted the building of theories and a hypothesis that were germane to the research.

The research shows that Judicial Review has been transforming the practice of Human Resource Management in the Public Service due to its legislative framework which has its genesis in Public Law and which governs the practice. Further, it reveals that the Court is playing a critical role in Public Service Human Resource Management due to its inherent supervisory jurisdiction. The research also enunciates that Public Service Human Resource Management is underpinned by Public Law and that a good understanding of Public Law is critical to the practice of Human Resource Management in the Public Service.

The research argues that universal prescriptive Human Resource Management models cannot guide Human Resource Management practices in the Public Service due to its restrictive legal framework. Finally, a model has been designed, which is underpinned by Public Law, for the practice of Public Service Human Resource Management. It is advocated that this model is a template for Strategic/ Contemporary Public Service Human Resource Management. The use of this model should lessen the number of Judicial Review applications by public officers and should contribute to good Human Resource Management and by extension, good Public Administration.

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## **ABBREVIATION OF TERMS**

ACE	Assessment Centre Exercise
ADR	Alternative Dispute Resolution
ASI	Adam Smith International
CA	Civil Action
CARPAM	Commonwealth Association of Public Administration and Management
CARICAD	Caribbean Centre for Development Administration
Ch	Chapter
DPA	Director of Personnel Administration
FOIA	Freedom of Information Act
FSEB	Fire Service Examination Board
HCA	High Court Action
HR	Human Resource
HRM	Human Resource Management
ICT	Information Communication Technology
IDB	International Development Bank
MORI	Market Opinions Research International
PNM	People's National Movement
PC	Privy Council
PS	Permanent Secretary
PSAB	Public Service Appeal Board
PSEB	Public Service Examination Board
PSC	Public Service Commission
PSR	Public Service Reform
SCD	Service Commission Department
TSC	Teaching Service Commission
UK	United Kingdom
UNC	United National Congress
UNDP	United Nation Development Programme
SC	Senior Counsel
V	Versus

**JUDICIAL REVIEW: TRANSFORMING THE PRACTICE OF HUMAN RESOURCE  
MANAGEMENT IN THE PUBLIC SERVICE OF TRINIDAD AND TOBAGO**

**CHAPTER 1**

**INTRODUCTION**

This chapter provides the context of the study. It is divided into three (3) sections. Section one (1) gives an overview of the study in that the historical perspective of public service reform over the last fifty-two (52) years have been illuminated. It also provides insights into the Service Commissions and the Service Commissions Department. Section two (2) presents the researchers view on the study; it looks at elements of change and transformation of the Public Service over the years and provides a critique of those initiatives. Also the rationale for the study is ventilated. Further, the gaps in the literature that underpin the study are enunciated and the motivation for this study is outlined.

Section three (3) presents the conceptual framework which has been designed to guide the research. Further there is a discourse on its relevance to the research questions showing how it helped in answering the questions. This framework represents an understanding of the issues surrounding Judicial Review, its impact on Human Resource Management and management of the resultant change and transformation that is required due to the rulings/judgements of the Courts. This conceptual framework provides not only a road map for the practice of Public Service Human Resource Management but it has been used to design the appropriate methodology to collect data to meet the objectives of the research and answer the research questions. This conceptual framework is consistent with the researcher's view that Public Service Human Resource Management is underpinned by Public Law or conversely Public Law provides the overarching framework for the practice of Public Service Human Resource Management.

**1 Overview of the Study:**

The Public Service of the Republic of Trinidad and Tobago is like those in other Commonwealth Countries; it is an administrative Public Service, based on the principle of impartiality and is responsible for administering and implementing the policies of the Government. The Public Service is governed by Rules and Regulations and the Constitution of Trinidad and Tobago. The Legislative Framework sets the parameters for the practice of Human Resource Management in the Public Service of Trinidad and Tobago.

The research paper looks at Public Service Reform in Trinidad and Tobago, in particular Judicial Review and the manner in which it is transforming the practice of Human Resource Management; the role that the Courts play in Public Service Human Resource Management is critically assessed, the cases of Judicial Review are reviewed. The judgments of the Courts in this regard are examined to determine whether there are any lessons/learnings that can be gleaned from them. Also the problems encountered by the Service Commissions, Service Commissions Department and Human Resource Management Practitioners in the practice of Human Resource Management are outlined as a result of the perceived role played by the Courts in Human Resource Management decisions. The efforts at modernization of Human Resource Management in the Public Service are enunciated and the fragmented nature of the practice of Human Resource Management is discussed. The role of the Service Commissions and the Service Commissions Department in the practice of Human Resource Management are evaluated.

The Researcher argues that Human Resource Management Reform is a pre-requisite for Public Service Reform and that Human Resource Management reform can only occur if there is a review of the Legislative Framework that governs its operations. Further, the absence of a comprehensive Human Resource Management Policy Framework or philosophy and the preponderance of old Rules and Regulations cannot promote the practice of contemporary Human Resource Management. The researcher therefore hopes to answer the following Research Questions.

### **1.1 Central Research Question:**

Has Judicial Review been transforming the practice of Public Service Human Resource Management in Trinidad and Tobago?

### **1.2 Ancillary Questions:**

- i. How does Public Law Influence Human Resource Management in the Public Service?
- ii. What amendments should be made to the Legislative Framework that governs the Practice of Human Resource Management?
- iii. What really is the role of the Courts in the Practice of Public Service Human Resource Management?

- iv. Have Judicial Review judgments forced the Service Commissions and the Service Commissions Department to examine their Human Resource Management processes/practices?
- v. What change and transformation are required in light of Judicial Review judgments?
- vi. What strategic model should be designed for Human Resource Management in the Public Service?
- vii. Is an understanding of Public Law crucial to the practice of Human Resource Management in the Public Service?

In answering the Research Questions, the paper argues that foreign prescriptive Human Resource Management Models/Frameworks cannot guide Public Service Human Resource Management. The researcher is advocating a new Model/Framework for the practice of Human Resource Management in the Public Service that is underpinned by Public Law. The researcher intends to design the appropriate Model that is conducive to the Public Service context, which would be a guide/template for the Practice of Human Resource Management in the Public Service of Trinidad and Tobago. This research would contribute to new knowledge in the field of Human Resource Management.

### **1.3 Historical Perspective**

Public Service Reform has been an issue over the past fifty- two (52) years in Trinidad and Tobago. The Reform Agenda has placed emphasis on the functioning of the Public Service to respond more effectively to the responsibility of Government and the demands of the citizenry. The creation of new organisational structures and managerial rationality ‘Private Sector Thinking’ into the Public Service, replacing traditional approach to management has been widespread trends in administrative reform. The tendency to ‘new public management’ and ‘Public Service transformation’ were the watch words of the Public Service, the new phenomenon; the paradigm shift – the idea that private management was better than public management permeated the reforms and created opportunities for new techniques and models for the management of the Public Service.

The application of these broad reform principles led to the shift from the traditional bureaucracy to make the administration of public affairs more result oriented, influencing cost effectiveness, customer service and decentralization of authority.

Key elements of the new paradigm of Public Service Reform and good governance were:-

- (i) Greater transparency and accountability.
- (ii) Movement from Personnel Management to Human Resource Management.
- (iii) Introduction of Technology.
- (iv) Public Service as an enabler and active participant in bringing about change.
- (v) Networking and partnership to deliver service – the concept of ‘joint-up’ Government.
- (vi) The Public Service needed to focus on more agile and flexible leaders as Public Service leaders were being challenged to work more strategically, develop critical thinking skills and build the capacity of their employees.

The major assumption of the Reform Agenda was that the Public Service should be structurally robust, possess institutional capability in order to achieve Public Service excellence. This Public Service model focused on the importance of managing human resources effectively.

A summary of these Public Sector Reform initiatives is listed in Table 1 below:-

1964	Reform focused on terms and conditions for public officers and in establishing career paths for employees
1970	Reform efforts focused on institutional strengthening and streamlining of Public Service practices and procedures. Concerns about over-centralization, management of change and the lack of effective disciplinary and performance appraisal systems.
1973 – 1975	Administrative Improvement Programme. This highlighted weaknesses in performance appraisals, as well as the need for training and development.
1981	Improvement of Efficiency in the Public Service. Focus on delegation in financial and personnel matters. Primary thrust on job evaluation, career development and training and development.
1984 – 1986	Reports of the Public Service Review Task Force (The Dumas Report). Research indicated that the appraisal system was inadequate across the Public Service.

1989	Administrative Reform Programme. This initiative called for institutional strengthening. Key components: Establishment of mission statements and strategic plans; optimization of organizational structures and processes; integrated financial management system.
1992	Transforming the Human Relations Management function in the Public Service. (Draper Report).

***Table 1: A Summary of these Public Sector Reform Initiatives***

Source: Researcher's Compilation

From 1995 to-date there has been a renewed approach to public service reform with several initiatives; some 'home grown' whilst in other cases foreign consultants were employed to drive the process. In 1995, this new effort came with a change in Government which did not want to continue the initiative of the previous Government, even if they were noble and in the best interest of the population – so old initiatives had to be disguised, packaged and sold as better products. This in itself caused much delay and frustration among public officers who were responsible for the reform programmes. In some instances public officers started to display symptoms of 'reform fatigue' as such initiatives did not achieved the expected outcomes.

Volatile environment and rapid changes in Government (*there have been five (5) General Elections in the past 15 years*) have had a major impact upon the Public Service and have stymied the reform agenda as incoming Governments have all been reluctant to continue the programme of their predecessor.

#### **1.4 Citizen Centred Governance/ Better Public Administration**

In an effort to provide better governance/ better Public Administration and as part of the reform thrust, Legislations have been enacted to provide the citizens with more access to information (The Freedom of Information Act 2000), thereby forcing Public Service organizations to operate with more transparency. Laws have also been promulgated to promote equal opportunity; Equal Opportunity Act (2000) and more significantly, the Judicial



Review Act (2000) which allowed citizens to file for Judicial Review against the decisions of Public Authorities. Against this background, Public Service decisions are now more contestable and subject to the jurisdiction of the Court. The Public Service of Trinidad and Tobago therefore operates in a very litigious environment; it is for these reasons that the outcome of litigation and how it impacts on people management is very significant to the practice of Human Resource Management in the Public Services of Trinidad and Tobago.

There is therefore an urgent need to design a response to evolving jurisprudence as it pertains to Human Resource Management in the Public Service, as it is evident that Public Law underpins the practice of Human Resource Management in Trinidad and Tobago.

### **1.5 The Nature and Structure of the Civil Service**

Trinidad and Tobago is a democracy with a Westminster System of Government. The Public Service is based on the principle of impartiality. The Public Service of Trinidad and Tobago was established by the Civil Service Act of 1965 (Chapter 23:01) of the Laws of Trinidad and Tobago. This Act also specifies in Section 3 which offices shall constitute the Public Service.

The Public Service of Trinidad and Tobago is established and governed by an Act of Parliament, Rules, Regulations and other Circulars from competent bodies (e.g. Ministry of Finance, Chief Personnel Officer and the Director of Personnel Administration). The legal status of a public officer is therefore, not the same as that of an employee in the private sector since the relationship between the employee in the private sector and his employer is one governed by private Law contract, while the contractual relationship between the public officer and Government is one governed by statute and Public Law. So that while an employee in the private sector may sue his employer for wrongful or unfair dismissal and for damages, a public officer is precluded by Law from so doing (Lalla 2013).

## **1.6 Composition and Size of the Public Service**

The Public Service is comprised of 86,000 officers and they are distributed as follows:

- Public Service – including the Fire and Prisons Service;
- Teaching Service;
- Police Service; and the
- Judicial and Legal Service.

## **1.7 Overview of the Service Commissions**

### ***Historical Perspective:***

Service Commissions are relics of the Colonial Secretariat which was part of the governance structure of British Colonies. Service Commissions were first established in 1950 with the promulgation of the Trinidad and Tobago (Constitution) order in council 1950. Their role then was mainly advisory and they were the chief mechanisms for the appointment of persons to the Public Service. They were therefore fashioned like the British Service Commissions.

Service Commissions have been the brunt of much criticism over the years and it has been argued by some writers and politicians that they have outgrown their usefulness and not only inhibits but frustrates the effective management of the Public Service. There is a general perception in some quarters that they are irrelevant and have been abolished in some countries in the Commonwealth. At a regional conference held in Trinidad in June, 2007 F.E. Nunes in a paper titled 'Public Service Commission and Modern Personnel Management' argued that they are monstrosities and should be abolished. He stated that they have a dismal record, that they were counterproductive and in his opinion as institutions are anachronisms. Nunes further added that Commissions are vestiges and that any attempt to reform the Public Service whether structural, procedural or technical will not have any lasting effect as long as the Commissions remain intact. In his opinion, they must be extinguished. Gordon Draper, a former Minister of Public Administration in Trinidad and Tobago in 2001 had expressed similar sentiments at a Latin American Conference on the Civil Service. In his paper 'Situation and Future Challenges; The Caribbean Perspective' he stated that, it was generally conceded that Service Commissions are insensitive and dilatory and in respect to their operations their procedures are cumbersome. He pointed out that several years earlier at a Commonwealth Association of Public Administration and Management (CAPAM)

Conference many of the participants were of the view that the existing Rules and Regulations governing the Public Service ought to be revised. Similar views were expounded by Deryck R. Brown, a former lecturer at the University of the West Indies at another CAPAM conference in 2008. Notwithstanding the above, it is important to understand the *raison d'être* for the establishment of the Service Commissions, which will be further enunciated later in this paper.

There are four (4) Service Commissions in Trinidad and Tobago which were established in accordance with the Constitution of the Republic of Trinidad and Tobago.

- Public Service Commission (Sec. 120-121)
- Police Service Commission (Sec. 122-123 as amended by Act #6 of 2006)
- Teaching Service Commission (Sec. 124-125)
- Judicial and Legal Service Commission (Sec. 110-121).

### **1.8 Basic Ideology of the Service Commissions:**

The framers of the Constitution of Trinidad and Tobago had the objective of establishing non-political bodies with the sole purpose of maintaining neutral Services operating on the basis of merit, free from patronage, discrimination, nepotism and injustice, favouritism, victimization in matters of appointments, promotions and discipline.

The members of the Service Commissions are all appointed by the President after consultation with the Prime Minister and Leader of the Opposition usually for a period of three (3) years. The appointment of members can be renewed for further periods. In the case of the Police Service Commission, the President issues a 'Notification' in respect of each person nominated which must be subject to affirmative resolution of the House of Representatives (Trinidad and Tobago Constitution Amendment 2006). To achieve the basic ideology as stated above, the Constitution has built in the following safeguards:

A person who –

- (a) Is a member of the House of Representatives or the Senate, or
- (b) Holds or has acting in any public office or has any public office within the period of three (3) years preceding his proposed appointment is not qualified to be a Commissioner;

- (c) Was a Commissioner is not eligible for appointment to any public office within a period of three (3) years from the date he last held the office of Commissioner;
- (d) A member of a Service Commission can only be removed from office by the President and for specific causes only.
- (i) Each Commission functions as a body giving effect to the principle of joint rather than individual responsibility;
- (ii) Commissions are free from Ministerial control;
- (iii) Commissioners cannot be sued in their names but must be sued as a body (Trinidad and Tobago Constitution 1976).

### **1.9 Role and Function of Service Commissions:**

Service Commissions derive their powers from the Constitution of the Republic of Trinidad and Tobago. They are statutory or Administrative Authorities conferred with powers by the Constitution to appoint persons to hold or act in offices and to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in offices in the Public Service, the Teaching Service and the Judicial and Legal Service. The Police Service Commission is no longer responsible for the range of functions mentioned above. The Constitution of the Republic of Trinidad and Tobago was amended on the 1<sup>st</sup> June, 2006 to modernize that Commission. With effect from that date its functions are:

- To monitor the efficiency and effectiveness of the functions of the Commissioner and Deputy Commissioner of Police
- Prepare an annual performance appraisal report in such form as may be prescribed by the Commission respecting and for the information of the Commissioner or Deputy Commissioner of Police
- To hear and determine appeals from decisions of the Commissioner of Police or of any persons to whom the powers of the Commission of Police have been delegated in relation to appointments on promotion or as a result of disciplinary proceedings brought against a police officer by the Commissioner of Police.

Although the Commissions are administrative authorities, they exercise a quasi-judicial function and as such their decisions which could affect the legal rights of the public officer.

The Constitution provides that the Service Commission shall not remove, or inflict any punishment on a public officer on the grounds of any act done or omitted to be done by that officer in the exercise of a judicial function conferred upon him unless the Judicial and Legal Service Commission concurs thereof (Trinidad and Tobago Constitution 1976).

Service Commissions are independent bodies and are insulated from political influence or interference in the exercise of their functions; they exercise discretionary quasi-judicial powers and their decisions are accordingly subject to the control and the supervisory jurisdiction of the Court. Prior to 2000, the decision of the Commissions could not have been challenged in the Court due to an 'ouster' clause, but in 2000 the ouster clause was revoked thereby removing the limits of the court to inquire into and review acts of Service Commissions or statutory bodies. The Court was then allowed to inquire into all acts of Service Commissions and other such bodies to determine whether they acted capriciously or arbitrary or in substantive disregard to their regulations.

#### **1.10 Limitations on the powers of Service Commissions**

In the performance of their functions/ powers the undermentioned restrictions have been placed on the Commissions;

- They can only fill offices approved by Cabinet and for which purpose the Ministry of Finance has confirmed that funds are available
- Salaries fixed on appointment must be within the limits of approved ranges
- Appointees must possess qualifications prescribed in relevant legislation and approved job specifications
- There must be consultation with the Prime Minister in respect to the appointment of senior managers in the Public Service. This applies to the offices of Permanent Secretary, Chief Technical Officer, Director of Personnel Administration, and the Head of a Department of Government, the Chief Professional Advisor in a Ministry or Department and the Office of Deputy to any of these offices. No appointment shall be made to these offices if the Prime Minister signals an objection.

- There must be consultation with other Service Commissions where other appointments involve the selection of officers under another Commission's jurisdiction
- For the Public Service Commission, there must be consultation with the Auditor General and the Ombudsman in respect of appointments or transfers of members of staff of their Departments.
- They are not empowered to lay down terms and conditions of service.

By Section 129(1) of the Constitution each Service Commission is empowered with the consent of the Prime Minister by Regulations or otherwise to regulate its own procedure, for consultation with persons with whom it is required by the Constitution to consult. The Commissions are empowered to confer powers and impose duties on any public officer, a Judge or any authority of the Government for the purpose of discharging its functions. The Commissions therefore as enunciated above perform critical Human Resource functions for the Public Service.

#### **1.11 Membership of the Commission:**

The Commissions comprise a Chairman and four or five members, the Chief Justice of Trinidad and Tobago is the Chairman of the Judicial and Legal Service Commission, whilst the Chairman of the Public Service Commission is an ex-officio member of that Commission. On the other hand, the Police Service Commission comprises of a Chairman and that person and the other members must be qualified and experienced in the disciplines of Law, Finance, Sociology or Management.

#### **1.12 Delegation of Powers:**

In the case of the Public Service Commission it has delegated a substantial amount of its powers to Permanent Secretaries/Heads of Departments and other public officers, the power delegated include the powers to;

- Appoint a public officer to act in the public office in the Civil Service up to and including Salary Range 68 for periods up to six months in exercise of which power,

the Permanent Secretary shall apply the principles of selection prescribed in Regulations 18 and 26 and the provisions of Regulation 25 of the Regulations.

- Transfer a public officer from an office in a grade in the Ministry or Department to which such an officer is assigned to a similar office in that grade in the same Ministry with no alteration in remuneration up to and including salary Range 68 and this power shall be exercised subject to the provisions of Regulation 29 of the Regulations which requires notice to be given to such officer and to the right of such officer and to make representations to the Commission.
- Appoint persons temporarily to offices in the Public Service for periods not exceeding six months at a time where such persons have already been appointed temporarily by the Public Service Commission for a fixed period.
- Confirm the appointment of a public officer to a public office after consideration of all performance appraisal reports and medical reports on the officer, where applicable during the probationary period if satisfied that the service of the officer on probation has been satisfactory.

The Teaching Service and the Judicial and Legal Service Commissions have not delegated any of their powers. Except that the Teaching Service Commission (TSC) has directed the Ministry of Education that it should instruct a teacher to cease reporting for duty in accordance with Regulation 88 of the PSC regulations (which have been adopted by the TSC) in instances where serious allegations of misconduct have been made against the teacher pending the conclusion of an investigation into the matter.

### **1.13 The Service Commissions Department:**

**This Department is the secretariat for the four Service Commissions and the Public Service Examination Board.** The primary function of the Service Commissions Department is to provide supporting services to enable the Service Commissions to discharge their constitutional responsibilities of staffing and exercising disciplinary control over the Public Service. The Department is headed by the Director of Personnel Administration who is the Chief Executive Officer and principal adviser to all the Commissions. It is one of the central human resource agencies in the public service.

#### **1.14 Roles and Functions of the Service Commissions Department:**

The roles and functions of the Service Commissions Department and the Director of Personnel Administration (DPA) are enunciated hereunder:-

- (i) As Administrative Head of the Department, the DPA is responsible of the efficient conduct and work of the entire Department and as such is responsible for:
- The recruitment of the best possible candidates for appointment to entry level offices in keeping with the principles, procedures and policies laid down by the respective Service Commissions.
  - Ensuring that the Human Resource needs at the higher levels of the Service falling under the constitutional responsibilities of the various Service Commissions are met and
  - The legitimate career goals and expectations of officers are satisfied; and monitoring the management activities attendant thereto.
  - Represents the Commissions in Court with respect to all Judicial Review matters.
  - Conducts all examinations as specified by the various Regulations and is a member of the Examination Board.

#### **1.15 Research Purpose:**

The purpose of the research is to examine the impact of Court judgments as a result of Judicial Review applications in respect of the practice of Human Resource Management in the Public Service with particular reference to the functions of the Service Commissions and the Service Commissions Department. It critically assesses the practice of Human Resource Management in the Public Service, in respect of appointment, promotion and discipline which are the constitutional functions of the Commissions. The Regulatory/Legislative Framework that governs the practice of Human Resource Management is examined along with the Judicial Review Act (2000), the tenets of Public Law and the role of Court in the Practice of Human Resource Management. The research aims to design a framework/model for the practice of Human Resource Management in the Public Service which should assist in improvements in Human Resource practices in the Public Service as they relate the functions



of the Commissions. It is anticipated that, that should contribute to a reduction in the number of Judicial Reviews cases by public officers.

It was also imperative that the judgments of the Courts over the period 2000 – 2015 were critically examined to determine the extent to which they have impacted on the practice of Human Resource Management in the Public Service. The research evaluates existing models/best practice for Human Resource Management and matches them against Public Service Human Resource Management practices to enable the design of a more cohesive model for the practice of Human Resource Management by the Service Commissions and the Service Commissions Department that would incorporate tenets of Public Law. The researcher is of the firm view that prescriptive Human Resource Models as advocated by Human Resource Management gurus cannot be implemented in Public Service Organisations due to the restrictions placed on them by their Legislative Frameworks which have been informed by Public Law. In order to design the new framework/model the paper also evaluates the change and transformation initiatives of the past so that pitfalls and challenges of those initiatives could be avoided.

#### **1.16 Research Contribution to Knowledge in the Field of Human Resource Management**

This study is original as it combines the disciplines of Public Law, Human Resource Management and examines theories, constructs and frameworks of change and transformation. While theories of Human Resource Management are relevant to the Practice of Human Resource Management in the work place, the dynamics of Public Service organisations and the fact that they are restricted by the tenets of Public Law, their decisions are susceptible to the Judicial Review. The outcome of the research would create a better understanding of the dynamics of Public Service Human Resource Management.

The research aims to examine Public Service Human Resource Management Practices and the rulings of the Courts in that regard. The outcome of the research would result in the creation of a model that depicts the way Public Service Human Resource Management should be practiced, to lessen the amount of Judicial Review action plaguing the practice at present. This research would be practically useful for Public Service Human Resource Management Practitioners and the findings could be a critical resource to guide them in the Practice of Human Resource Management. The knowledge generated would be an actual reflection of

the practice of Human Resource Management in the Public Service of Trinidad and Tobago as it relates to the functions of the Service Commissions.

In addition, the study focuses on the Judgments of the Courts in relation to the Public Service Human Resource Management. The outcome of the research would enrich the current knowledge base on the ways in which Judicial Review is changing the Practice of Public Service Human Resource Management in Trinidad and Tobago. This knowledge, apart from informing Human Resource Management Practice can advise policy makers to formulate and implement better policies in Human Resource Management in the Public Service. For scholars in the field of Human Resource Management, this research could aid in the revision or critique of existing models of Human Resource Management.

In particular Management and Human Resource Management Scholars would be provided with a greater understanding of Judicial Review and how it is transforming Public Service Human Resource Management Practices. This research due to its originality can be the catalyst for further research in this specific area; this certainly would contribute to redefining the Human Resource Management Models and the practice of Human Resource Management in Public Service organizations.

## **1.2 RESEARCHER'S VIEW ON THE TOPIC**

This section presents the researcher's view on the study. It looks at elements of change and transformation of the Public Service over the years and provides a critique of those initiatives. Also, the rationale and justification for the study is further ventilated (including the researcher's personal objectives for the study). Finally, the gaps in the literature that underpin the study are enunciated and the motivation for this study is illuminated.

### **1.2.1 Overview of the topic:**

Over the years, the Public Service has employed several attempts to reform the Public Service of Trinidad and Tobago. These initiatives focused on institutional strengthening, streamlining practices, decentralization modernization of performance management systems, financial reform, transformation of Human Resource Management and strategic planning as

vehicles of Public Service modernization. There is general consensus that while much valuable work has been done on analysis of problems most of the initiatives have had limited success. It is not clear, whether those initiatives were guided by the work of any particular theorist. Further, there is not any evidence to indicate that those initiatives included any efforts aimed at legislative reform.

The Public Service Reform initiative programmes in the past had been developed by the Government of Trinidad and Tobago; Peoples National Movement (PNM) at the time, and the Inter-American Development Bank to facilitate the development and implementation of a long-term strategy to reform the Public Service. The programme suggested that Government must improve its effectiveness and efficiency in the provision of goods and services, to allow for greater resource allocation for investment on infrastructure and human development, to increase productivity and competitiveness. This called for holistic, focused and comprehensive reform of the Public Service, including analysis and improvement of governance systems, institutional frameworks, processes, infrastructure and mind-sets. The specific objectives of the Programme were:

- To identify the issues for the transformation of the Public Service;
- To define a suitable, feasible and politically sensitive strategy for the transformation of the Public Service.
- To facilitate the widespread agreement and support necessary to implement such a strategy; and
- To develop basic management instruments and capacity to manage the reform.

These attempts were somewhat different from the previous ones mentioned in chapter one, in that it represented an investment of resources into intensive planning for reform. ‘Enhancement of the quality and delivery of Public Services’ was the overall strategic objective of the reform effort. Accordingly, to meet those objectives general initiatives had been developed to prepare for reform. These initiatives were designed to address Public Service Surveys, Innovation for Service Excellence Award Schemes, Policy Networking Forums, Monitoring and Evaluation Policy, and Information and Communication Technology (ICT) Programs to transform the Public Service.

The Government of Trinidad and Tobago, in March 2004, launched its Public Sector Reform Initiation Programme (PSRIP) largely aimed at reforming the Public Service. This PSRIP was developed in conjunction with the Inter-American Development Bank (IDB) to facilitate the development and implementation of a long-term strategy to reform the Public Service. This initiative was undertaken as a major prerequisite to the successful achievement of Government's Strategic Plan; Vision 2020 which was the goal to achieve developed country status by the year 2020. In its Vision 2020 document, the Government at that time the P.N.M indicated that the fundamental development challenges confronting Trinidad and Tobago, as indeed all Caribbean countries, was the need to transform. Further, the ultimate goals of transformation were improvement in the quality of life of all citizens and the positioning of the economy to compete in the global marketplace. The Government stated that transformation therefore must take place both at the level of the society as a whole as well as at the level of the economy. It indicated that the transformation must lead to the evolution among other things of: A society with an effective system of governance particularly in terms of the regulatory framework which must promote harmonious relationships as well as the continuous development of the economy especially its business sector. The Government recognised that in the era of globalization and market liberalisation where trade competition continued to intensify, innovation must be the key driver in business sector development.

It was in this context, and with funds provided by the I.D.B the public sector reform initiation programme was launched aimed at reducing the structural rigidities inherent in the system to prepare the service for reform. In 2008, the Government of Trinidad and Tobago engaged the Service of Adam Smith institute a United Kingdom Firm as the lead consultant; Adam Smith co-opted the services of other consultants to develop and design a strategy for transformation of the economy and several sectors of the Public Service. This transformation initiative was seen as a prerequisite for achieving Government's vision for developed nation status by 2020.

Among the objectives for the reform were the rebranding the Public Service to focus on customer service, the modernizing of Human Resource Management and monitoring the implementation of the transformation programmes. The consultant was also expected to draw on past experiences and issues of previous reform initiatives. In his report, outlining the programme to transform the Public Service, the consultant stressed the importance of coordinating and implementing Public Service Reform (PSR) and delineated key principles regarding a programme management approach to Public Service Reform. The consultant also

emphasized the importance of leadership required by the Prime Minister and the Cabinet of Trinidad and Tobago, and the need to take some difficult decisions in order to advance the reform. The question of administrative capacity to co-ordinate the Public Service Reform and the necessity for a close link between that capacity and the Prime Minister and the Cabinet were highlighted. Finally the consultant addressed the role of the Ministry of Public Administration, in relation to the co-ordination of Public Service Reform, the provision of information, advice, training and consultancy services to other Ministries and Departments. The Ministry was advised to provide specific leadership for specific Public Service Reform projects.

### **1.2.2 Elements of the Reform Programme**

Adam Smith contended that Human Resource Management Reform was a prerequisite for implementing the Government's other Public Service Reform objectives, in particular reforms in leadership, financial management and customer Service. He argued that there was overwhelming evidence that the official Human Resource system for the Public Service had all but collapsed. Outcomes were very poor and there was widespread dissatisfaction with the current system among civil servants, as revealed through the Market Opinion Research International (MORI) survey and Adam Smith International (ASI's) stakeholder analysis. Specifically, Adam Smith concluded that over the years there had been a number of attempts to reform Human Resource Management for the Public Service. None have succeeded. He argued that permanent and sustainable solutions needed to be sought in reforming the whole Human Resource system and that the reform had focused on the Human Resource system rather than particular functional areas.

### **1.2.3 Critique of Past Reform Initiatives**

Like the advocates of past reform initiatives Smith contended that previous initiatives at reform had only targeted parts of the system and that the reform was retarded by the central agencies, like Service Commissions and Personnel Department which were not capable of exercising a leadership role. Further, the existing Laws and regulations and the reluctance to change them, and the associated fear of litigation to a lesser extent, moreover the lack of "buy in" by the Public Services Association, (the Trade Union for public officers) had stymied the

process. Finally, he argued that these blockages would have to be addressed if the Government was to tackle Public Service Reform successfully.

Further it was suggested that the overarching goal was to build the foundation of a contemporary approach to Human Resource Management. Moreover, a perusal of past reform initiatives identified that it focused on the development of a comprehensive policy framework for Human Resource Management which would enable Trinidad and Tobago's vision for the Public Service to be achieved, also, it mentioned the alignment of the regulatory framework Laws, regulations and procedures within the agreed policy framework. Further the establishment of an appropriate institutional framework to set Human Resource Policy, and the provision for independent oversight of the Human Resource Management function. Moreover, the building of permanent organizational capability for contemporary modern Human Resource Management, both in the central agencies and ministries, finally, the development of a comprehensive programme to strengthen senior management capability within the Public Service.

Several of the Reform initiatives thus far have stated that Human Resource Management reform had also been seen as a pre-requisite for implementing the other Public Service Reform programs. There was a general assumption that Human Resource Management in the Public Service due to the very fragmented approach had led to widespread dissatisfaction among Practitioners as well as recipients of their service, as the Human Resource Functions are dispersed among a number of agencies which did not promote a cohesive management of the Human Resource of the Public Service. Smith's conclusions are in agreement with the views of previous advocates of public reform and it can be argued that he was simply repeating the concerns of those who preceded him. The researcher shares the views and opinions of Smith and others but observes that although there was a stated intention to review the Regulations, no mention was made of the Human Resource Management challenges presented by Judicial Review, and the inadequacies of the legislative framework to facilitate Contemporary Human Resource Management.

#### **1.2.4 The Current Human Resource Environment**

It can be reasoned that some of the key issues that have been identified hereunder have stymied the Human Resource Reform Agenda over the years. The list of issues is not exhaustive and only the ones relevant to this paper would be given credence at this particular juncture:-

- (i) There is no single comprehensive Human Resource Policy Framework or philosophy for the Public Service.
- (ii) Responsibility for the Management of Human Resource and designing Human Resource Management Policies is shared among the Personnel Department, the Service Commissions Department and the Ministry of Public Administration with limited coordination among the various agencies.
- (iii) Old and antiquated Rules and Regulations (Legislative and Regulatory) that do not promote the practice of Contemporary Human Resource. These Regulations have been revised in an ‘ad hoc’ fashion in response among others to the judgments of the Court as a result of Judicial Review.

Concomitant with the above, the passage of the Judicial Review Act in (2000), and the removal of the ‘ouster clause’ which prohibited public officers from challenging the decisions of Service Commissions in the Courts; there has been a surge in the number of officers who have filed for Judicial Review since 2000. While the State pays for the Public Institutions against which the Judicial Review applications are filed, the public officers finance their own matters. This has resulted in exorbitant legal fees to both the State and the public officer. Further, Trinidad and Tobago has the highest volume of Judicial Review in the Region for the period 2000 – 2015. The Service Commissions have had three hundred and fifty (350) matters filed against their decisions. As a result of the judgments handed down in these matters, the Commissions have had to re-examine their processes and regulations which set the parameters for their decision-making.

There have been concerns in some quarters that there has been excessive interference by the Courts in the business of administration. Such interference they argue can create a loss of efficiency and effectiveness in administration, not to mention frustration and tension De La Bastide (2006). Interestingly, De La Bastide former Chief Justice of Trinidad and Tobago

further posits that Judges are not well equipped to make policy which he argued would be better left to those whose business it is to make them.

In addition the passage of the Freedom of Information Act and the Equal Opportunity Act in 2000 has also presented serious challenges for the Service Commissions and the Service Commissions Department, as both Agencies have had to comply fully with the pieces of Legislation. Such action has caused the Agencies to review their policies and procedures to be in compliance with these Acts. Moreover, the Public Service Commission, although it has delegated several of its functions to line Ministries and Departments still has responsibility for the effective discharge of these functions. It is therefore sued when there are breaches or perceived breaches in the execution of the delegated function. Despite the fact that the Commission has established monitoring and quality mechanism to ensure compliance, there continues to be breaches by the delegates. Maybe the time has come to assess this monitoring and evaluation mechanism to determine its efficiency and usefulness, also to discern whether the officers have the requisite knowledge required to discharge their functions. These are fundamental issues that must be addressed as the absence of the knowledge base might be a factor contributing to the increase in the number of Judicial Review matters. This suggests that it might be appropriate at this time to modernise Service Commissions.

Using the 2006 Police Service Commission's model as a guide, the Public Service Commission has signalled its intention to reform itself by delegating the majority its functions to line Ministries and Departments. The Commission envisages that it will evolve into an oversight and appellant body like the present Police Service Commission. Notwithstanding, this noble intention, the Public Service Commission has expressed concerns with the Human Resource capacity without the Public Service to manage these additional functions due to the high incidence of Judicial Review and therefore has not yet delegated any additional functions to Line Ministries and Departments. Maybe the outcome of this research can be the catalyst to inform the approach that is needed to bring about this much contemplated change and transformation.



### **1.2.5 Justification/Rationale for the Research**

As the decisions of Service Commissions and the Service Commissions Department are susceptible to review by the Courts; these Agencies before making critical decisions in most instances first seek the input of eminent Jurist to advise whether such decisions are on good legal grounds and can stand the scrutiny of the Court. This action for the most part tends to delay the decision making process and in some instances Senior Counsel may advise on another course of action, than the one previously contemplated. Amendment to existing Legislations has been undertaken in a piecemeal manner in accordance with judgments of the Courts to address the breaches in processes alluded to by the Learned Judges.

Apart from the resulting delay in this approach, the Service Commission Department has been faced with extreme budgetary costs due to legal fees for advice and representation at the Courts in Trinidad and Tobago and the Privy Council in London to defend Judicial Review Actions. It is estimated that over the past fifteen (15) years, the Service Commissions Department has expended more than forty-five (45) million dollars in legal fees. It is hoped that this research would provide answers to the issues and problems identified.

As part of the reform thrust, Legislations like the Freedom of Information Act (2000) have also been enacted to provide the citizen with more access to information, thereby forcing public organizations like the Service Commissions to operate with more transparency. In this connection, The Service Commissions have had to reform their methodologies in light of the duties and responsibilities imposed on public authorities in accordance with the Act. Whereas, previously the Commissions operated in an environment of secrecy, they were now required to make operational information available to the public as the Act created a general right of access to information in the possession or custody of public authorities. The Act also provided for oversight and accountability and allowed individuals to make application for Judicial Review, in instances where their request for information was denied. As the Act also spoke to openness, transparency accountability and improved democracy, Public authorities, like the Service Commissions were called upon to publish annual statements regarding themselves, the nature of their operation and information in their custody and control. Further, they were also required to publish a statement containing a list of their internal

working documents (Exempt documents). The Act also provides for disclosure of exempt documents in the public interest, this has resulted in a number of judicial review applications. See *Ashford Sankar v the Public Service Commission*, where M. Justice Moosai ruled that Mr. Sankar should be given access to the minutes of the Commission which were exempted documents.

The Service Commissions Department, also had to redesign its structure to establish a F.O I unit staffed with designated officers with the requisite legal knowledge and familiarity with legal research techniques and legal sources in keeping with the Commissions' responsibilities in accordance with the Act, and their responsibilities in light of the judicial review process contained in the Act.

Laws have also been promulgated to promote equal opportunity for all, like the Equal Opportunity Act (2000) and the Judicial Review Act (2000) as mentioned previously to allow citizen to file for Judicial Review against Public Authorities. Against this background, Public Service decisions are now more contestable and subject to the jurisdiction of the Court. The Public Service of Trinidad and Tobago therefore operates in a very litigious environment; it is for these reasons that the outcome of litigation and how it impacts on people management is very significant to the practice of Human Resource Management in the Public Services of Trinidad and Tobago.

The outcome of this research can contribute to a solution to lessen the number of Judicial Review action by public officers.

#### **1.2.6 Personal and Research Objectives:**

The researcher held the office of Director of Personnel Administration and was the Administrative Head of the Service Commissions Department until December 2014. As head of the organization, the researcher strived constantly for more efficient and innovative ways of fulfilling the mandate of the organization. Due to the number of Judicial Review matters that have been filed over the years and the resultant judgments, the researcher is convinced that the principles of Public Law are integrated in the practice of Human Resource Management in the Public Service. Also Public Service Human Resource Management Practitioners must therefore exhibit an appreciation and understanding of Public Law if they are to make the right decisions and thus avoid the level of dissatisfaction among public

officers that culminated with the increases in the number of judicial matters filed on their behalf. There must also be critical examination of the processes by which Human Resource Management decisions are made, as Judicial Review focuses on the decision making process rather than the decision itself. Woolf et al (2007).

The researcher being a Human Resource Management practitioner hopes to formulate an appropriate model framework for the practice of Human Resource Management in the Service Commissions Department. This model/ framework could be employed as a template for the practice of Human Resource Management in Public Service Agencies. The researcher also has a passion for the field of Law, in particular Public Law. A research of this nature allows the author to pursue both her love for the Law and Human Resource Management so that meaningful changes can be achieved in the practice of Human Resource Management in the Public Service.

This research discusses the several attempts at change and transformation in the Trinidad and Tobago Public Service over the past fifty two (52) years (1964 – 2015); and the nature of such intervention, the issues, the challenges, the success and the failures and the reasons for such are enunciated.

An overview of the practice by Human Resource Management in the Public Service is given and the problems relative to the practice of Human Resource Management are discussed, especially as there is no single comprehensive Human Resource Management Policy Framework or Philosophy for the Public Service.

There is also a discourse on the overarching Legislative Framework that governs the Public Service, in that critical Legislation that underpins the practice of Human Resource Management is examined to show its crippling effect on attempts to practise Contemporary Human Resource Management, and also to assess how it can be reviewed in light of the many nuances and challenges of Judicial Review. It is the opinion of the researcher that Regulations promulgated in the 1960's were ideal for the personnel management context that existed at that time. Certainly the drafters of the Regulations could not have contemplated that more than fifty (50) years later they would still be applicable to the modern day realities of the evolving Human Resource Management context.

The Research also examines the impact of court judgments as a result of Judicial Review on the practice of Human Resource Management in the Public Service, in respect of

appointment, promotion and discipline of public officers. At the conclusion of the research, the writer hopes to design a framework/model for the practice of Human Resource Management in the Public Service. It is anticipated that this would serve as a guide, thus reducing the number of Judicial Reviews matters by public officers.

The researcher also critically examines the judgements of the Courts over the period 2000-2015 to determine the extent to which they had been impacting on the practice of Human Resource Management in the Public Service. A review of the existing legislative framework for the practice of Human Resource Management is also undertaken to determine the strategic approach required for reform of Public Service Human Resource Management. As reiterated previously the aim is to formulate an appropriate framework/ model for the practice of Human Resource Management in the Service Commissions Department. This framework/ model is critical to the practice of Human Resource Management in Public Service Agencies.

In as much as Service Commissions are Public Bodies, it can be argued that all their decisions can be reviewed by the Court once an officer files for Judicial Review. The Commissions must ensure that proper procedures and processes are followed in accordance with Public Law. The old model and fragmented approach to Public Service Human Resource Management is dysfunctional resulting in high legal fees for representations in the Courts. The trust towards Contemporary Human Resource Management cannot occur against the backdrop of outdated Legislation. Foreign prescriptive models for reform especially Public Service Human Resource Management cannot occur in our present context. The researcher advocates a new model/framework that has at the centre, heavy emphasis on Public Law.

The Literature review on the subject area has been undertaken. While the studies and works examined are particularly strong in their particular subject area, namely ***change and transformation, public sector modernization, Human Resource Management, Public and Administrative Law and Judicial Review***, no writer has previously undertaken a study on the combination of these subject areas. The research is expected to fill the void as it focuses on all these subject areas together and attempts to show that there is a relationship among them. The outcome of this research shows that in order to have Public Service Modernization, there must be Human Resource Management Transformation that is underpinned / integrated with Public Law.

Further, the research shows that without a legislative reform agenda Public Service modernization in the area of Human Resource Management will be elusive. The study also emphasizes that Public Law is an integral part in the practise on Human Resource Management in the Public Service. The outcome of the study should provide a guide/handbook for Public Service Human Resource Practitioners and change agents. In essence the work is a marriage of Public Service Modernization/ Transformation, Public Law and Human Resource Management.

None of the studies reviewed have examined these three (3) subject areas as one phenomenon (Organizational Change, Human Resource Transformation and Public Law) as a collective. The researcher emphasizes that her work will fill these gaps. It is necessary to enable more effective and successful Public Service Modernization initiatives and Human Resource Management Reform.

This research examined Change and Transformation in the Public Service of Trinidad and Tobago over the past fifty-two (52) years. In particular, its main focus is the study of the Judicial Review, and the manner in which it is transforming the practice of Human Resource Management by the Service Commissions. While there is a general understanding that the practice of Human Resource Management is guided by a strategic approach that speaks of Human Resource philosophies, strategies, policies, and processes Armstrong (2007). Torrington, Hall and Taylor (2009) recognise that it also encompasses Change Management and Administration.

The practice of Human Resource Management in the Public Service while it might be informed by these theories and models, as Public Service institutions they are governed by Legislative Framework which has its genesis in Public Law which places certain restrictions on their operations. Public Service organisations, in particular the Service Commissions Department and the Service Commissions are compelled to make their decisions within the parameters of these Legislative Frameworks or face the consequences of Judicial Review by public officers who are aggrieved by their decisions.

The preoccupation with Change and Transformation of the Public Service is evident in many areas of business research and practice. Although the practice of Human Resource Management in the work place is not exempt from such preoccupation, there is an apparent dearth of study in the combined fields of Public Law and Human Resource Management and

change and transformation. The Judicial Review Act (2000) and the judgment of the Courts have been examined and assessed. Additionally, the ways in which these are impacting the practice of Public Service Human Resource Management have been scrutinized. On the basis of these analyses several gaps have been identified in relation to the change and transformation initiatives to reform Human Resource Management and the practice of Human Resource Management in the Public Service.

**The first gap** focuses on the absence of a coherent Change and Transformation Framework for the Public Service Human Resource Management. This study argues that Human Resource Modernization must be undertaken with this framework. For instance, the research has revealed that many of the Change and Transformation and Modernization efforts including Human Resource Management Reform of the Public Service were externally driven and did not examine all the contextual realities of the Trinidad and Tobago Public Service, e.g. its culture, leadership, politics and power. The recognition that change is a continuation seems not to be fully addressed, as critical stakeholder consultation by the Government of the day with the Opposition was lacking. This is essential if the initiatives are to continue should there be a change in government. Moreover, as transformation/modernization of the Public Service has been illusionary, for the most part, there have been too many starts and stops when Government administration changes. How then can Public Service Modernization and change and transformation occur if these critical ingredients are absent? This leads to the question, “What is the model that should be employed for Trinidad and Tobago Public Service Human Resource Modernization?”

**The second gap** centres on the ‘Fragmented Approach’ to the practice of Human Resource Management in the Public Service. While theorists like Armstrong (2007), Storey (2010) speak of Strategic Human Resource Management and a coherent approach to the management of people, based on the business strategy of a particular organization and within a Human Resource Planning Framework, that examines Human Resource issues in the organization from entry to exit this is absent/ lacking in the Public Service. In the Public Service of Trinidad and Tobago there are five (5) agencies responsible or the management of people in the Public Service. These will be discussed later in the paper.

As mentioned previously, there is no clear Human Resource philosophy or strategy that guides the practice of Human Resource Management. Clearly there should be an overarching framework and a coherent approach to the management of people in the Public Service of

Trinidad and Tobago, if transformation of Human Resource Management is a prerequisite for the transformation of the Public Service. This is essential bearing in mind that, it is through people that the transformation will occur.

**The third gap** relates to the Legislative Framework and Judicial Review. In essence, one of the tenets of the transformation agenda of the Public Service of Trinidad and Tobago is the modernization of Human Resource Management; however there is a prevailing view that the Legislative Framework of the Public Service has stymied the transformation. The Legislative Frameworks are archaic, as they have been in existence since 1966. In an effort to practice Contemporary Human Resource Management, Human Resource Management Practitioners have had to face the Courts of Trinidad and Tobago and the Privy Council of London whenever there is a perception by public officers, that their decisions may have been taken contrary to the rules and regulations that govern the practice of Human Resource Management in the Public Service.

Public Law, the Legislative Framework of the Public Service and the Judicial Review Act of (2000) among others set the context for the practice of Human Resource Management in the Public Service. Public Law ensures that Public Bodies do not exceed or abuse their powers as they perform their duties. Also Public Bodies like Service Commissions must observe statutory procedural requirements and Common Law Principles of Natural Justice and procedural fairness. Public Law recognises that one of the major challenges of the action of public officers is Judicial Review. It is the primary method by which the Courts exercise their supervisory jurisdiction over Public Bodies to ensure that those bodies observe the substantive principles of Public Law. As enunciated earlier in this paper, the Judicial Review Act of (2000) gave public officers the right to challenge any decision of a Public Body in the Courts, if they perceive that in the exercise of its authority, it acted unfairly, arbitrarily and capriciously. Judicial Review is a Public Law remedy that is concerned not with the decision itself but with the decision making process. There is a belief that the Courts of Trinidad and Tobago and the Privy Council of London (the final Appeal Body of Trinidad and Tobago) have been playing a critical role in the practice of Human Resource Management in the Public Service.

#### **1.2.7 Motivation for the Study:**

The researcher's choice is to investigate Judicial Review and the manner in which it is transforming the practice of Human Resource Management in the Service Commissions

Department and the Service Commissions of Trinidad and Tobago. The researcher's reasons for this study are guided by the fact that the work of the two (2) entities is inter-related, in that the Service Commissions Department is the Secretariat/Administrative arm of the Service Commissions. Also, writers and Practitioners in the field of Human Resource Management and Change and Transformation in Trinidad and Tobago have all argued that there is a need to change and transform the two organisations, while others critics have questioned the relevance of the two organizations to the Public Service and the Practice of Human Resource Management. Furthermore, other Public Law Legislation like Freedom of Information Act (2000) and the Equal Opportunity Act (2000) have placed obligations on Public Service organisations, including the Service Commissions Department and the Service Commissions to find new modalities of doing business. As such, the Human Resource Management context is fraught with many challenges, and it can be reasoned that Public Law is playing a critical role in the administration of Human Resource Management.

This research which is informed by the literature review discussed in the next chapter provides solutions to fill the gaps identified above as it will critically assess the Legislative Framework that governs the practice of Human Resource Management in the Public Service; it examines the fragmented nature of Public Service Human Resource Management. It will design an integrated model/framework for the practise of Human Resource Management, which takes into consideration tenets of Public Law and Strategic Human Resource Management. The research proffers ideas and elucidations that can inform practice and policy relative to Public Service Human Resource Management.

### **1.3 THE CONCEPTUAL FRAMEWORK AND RESEARCH QUESTION**

#### **1.3.1 The Conceptual Framework:**

The Conceptual Framework at Figure 1 depicts that the focus of the inquiry, as it embodies the main research interest as well as the ancillary questions. Contextually it looks at Human Resource Management in the Public Service, Change and Transformation and the role of the Courts, Human Resource Management Practitioners and other professionals that are integral to the investigation. This conceptual framework guided the research in that it helped the researcher to conduct a critical review and analysis of the relevant data. On the basis of





***Source: Researcher's Interpretation***

The conceptual framework suggest that executive leadership, that is the role of the Government at the level of the Prime Minister or other designated key Minister, is crucial to the Human Resource Management Reform Agenda. It sees Public Service Reform being driven by the Government as it is essential for good governance. It argues that Public Service modernization must be undertaken in keeping within a change and transformation framework and that change and transformation are contextual.

It posits that Strategic Human Resource Management speaks to a coherent approach to the management of people based on the business strategy of a particular organization, and within a Human Resource Planning framework, that examines the Human Resource issues in the organisation from entry to exit. The conceptual framework depicts that Public Service Reform Transformation guides Human Resource Public Service Transformation. It looks at Human Resource Management as practiced in the Public Service and this fragmented approach with several agencies having responsibility for different functions. It suggests that there should be a clear Human Resource philosophy or strategy that guides Human Resource Practice. Such philosophy should be guided by the theories, models and construct of strategic Human Resource Management.

The conceptual framework shows that there must be modernization of Service Commissions and the legislative framework that governs the practice of Human Resource Management in the Public Service. It suggests that in as much as the Courts of Trinidad and Tobago and the Judicial Committee of the Privy Council of London have been playing a critical role in the practice Human Resource Management in the Public Service, it is apparent that the practice of Public Service Human Resource Management is aligned to the principles of Administrative and Public Law. The fragmented approach to the practice of Human Resource Management must be addressed as long as the independence of the Commissions is not compromised. Transformation of Human Resource Management is a prerequisite for the transformation of the Public Service, as it is through people management and people that the transformation will occur. There has to be recognition that change is a continuum. Over the years, although there have been brilliant ideas, and initiatives, the transformation/modernization of the Public Service has been illusory, as there have been too many “start and stops” when Administration (Government) changes. The question of

resistance to change and change fatigue cannot be ignored. Mechanism and strategies must be formulated and implemented to treat with these phenomena. There is a recognition that prescriptive models of change and transformation cannot work in the Public Service as it is a creature unlike private sector organization. The context, in particular, the legislative framework is essential to the transformation thrust. Contemporary Human Resource Management and Strategic Human Resource Management cannot be practiced, within the existing legislative framework. It can be hypothesised that there must a unique integrated Human Resource Management model for the practice of Human Resource Management in the Public Service, one that encompasses the principles of Public Law.

### **1.3.2 Research Questions:**

The Central Research Question: - Has Judicial Review been transforming the Practice of Public Service Human Resource Management in Trinidad and Tobago?

This question guides the research in that it establishes the context and sets the parameters for the study. It aids in focusing the enquiry to determine whether or not due to Judicial Review applications Human Resource Management as practiced in the Public Service of Trinidad and Tobago is evolving/ transforming. It helps to examine, the extent if any of the transformation of the practice. The answer to this question would assist in the formulation of the design of the new model/framework for Public Service Human Resource Management. It would enable Public Service Human Resource Management Practitioners to better understand the importance of following set procedures/ processes in arriving at their decisions, as it should be borne in mind that Judicial Review speaks to the manner or process by which the decisions are made and not with the decisions themselves.

### **1.3.3 The Ancillary Questions:-**

1. How does Public Law influence Human Resource Management in the Public Service?

The practice of Human Resource Management in the Public Service is underpinned by a Legislative Framework which has its genesis in Public Law. The answer to this question will show the extent to which Public Law influences Human Resource Management in the Public Service. On the basis of the Literature reviewed, it has been established that Public Law

directs the function, roles and responsibilities of all public institutions. Arguably, it can be reasoned therefore that the Human Resource Management function/ Practice of Public Service organizations must be guided by Public Law.

2. What amendment should be made for the Legislative Framework that governs the Practice of Human Resource Management?

The data, findings, and analysis as a result of the investigation into the phenomenon would provide an answer to the question. This question sets the platform for the critical review of the legislative framework that governs the practice of Public Service Human Resource Management. The answer to this question should aid in the drafting of an amended new legislative framework that promotes contemporary Human Resource Management and Human Resource Management Transformation.

3. What really is the role of the Courts in the Practice of Human Resource Management?

This question looks at the critical role that the Courts of Trinidad and Tobago and the Privy Council of London (the final appellant Court of this country) are playing in the practice of Human Resource Management. The answer will show the specific role of the Court and determine how their decisions as a result of the judgements of the Judicial Review are impacting on the practice of Public Service Human Resource Management.

4. Have Judicial Review judgments forced the Service Commissions and Service Commissions Department to examine their Human Resource processes?

Like question three (iii) this question focuses on a clinical examination of the Court judgements, in particular the landmark judgements of the Court of Appeal of Trinidad and Tobago and the Privy Council of London. This critical examination will help to determine what action, if any, has the Service Commission and the Service Commissions Department been taking to re-examine and review their Human Resource Management Practices over the years in light of all the Judicial Review judgements and in particular the landmark ones. More importantly, what decisions or actions have been taken or contemplated in light of the judgements.

5. What change and transformations are required in light of Judicial Review judgments?

The answer to this question informs the Change and Transformation Agenda for Human Resource Management in the Public Service as it relates to the functions of the Service Commissions and the Service Commissions Department. Not only would it signal the required change and transformation but the strategic approach that must be adopted including the form, structure and scope of the transformation will be enunciated.

6. What strategic model should be used to bring about the Change and Transformation in Human Resource Management in the Public Service?

On the basis of the answers to all of the questions above, that is, the central question and the ancillary questions, a strategic model/ framework would be designed to implement the required change. This model would be influenced by theories, constructs and best practices of change and transformation and Human Resource Management. The failures and successes of previous reform initiatives would be taken into account in the design of this model.

7. Is an understanding of Public Law critical to the practice of Public Service Human Resource Management?

The answer to this question should show whether senior officials and Human Resource Management Practitioners are required to have a good working knowledge of the principles and tenets of Public Law and all relevant Public Law legislation to enable them to make good Human Resource Management decisions. It should also indicate what training and development should be undertaken in order to build the competencies required to enable an effective discharge of the Human Resource functions in the Public Service.

The next chapter discusses the methodology that was adopted in the conduct of the research. The methodology has been designed as a result of the conceptual framework; the research questions also dictated the choice of the methodology to be adopted. The chosen methodology is the best one that can successfully answer the research questions and meet the objectives of the research.

#### **1.3.4 Organization of the Thesis**

This thesis consists of six (6) chapters. **Chapter 1**-provides and overview of the study in that there is a discussion on the research subject, an overview of the Service Commissions and their roles and functions and their relationship to the research subject is established. The purpose of the research is outlined to show why it is important and how it should contribute to new knowledge. The chapter outlines the research questions and gives insight into the issues relative to the study. This chapter also enunciates the researcher's view of the topic. It gives valuable insight into the researcher's perspective on the topic as it relates to the area of public policy, Public Service Reform and Public Service Human Resource Management. The researcher discusses the view that the Judicial Review Act (2000) has been impacted on the practice of Public Service Human Resource Management. This chapter illuminates the gaps in the literature as they relate to public service reform; Human Resource Management; change and transformation and in particular, Public Service Human Resource Management. It identifies how this particular study will contribute to the field of Human Resource Management and fill the gaps identified.

Additionally, the chapter presents the conceptual framework for the research. The various elements of the framework are discussed to show how the literature review has informed the design of the framework. The researcher discusses how the framework will guide the entire study. The research questions are discussed to show how they are pertinent to the research. This chapter concludes by discussing how the conceptual framework will inform the methodology adopted in the study. Finally the chapter gives an overview of the other chapters of the thesis.

**Chapter 2** is the literature review and is divided into three sections; Section one (1) presents and outline on Judicial Review, Public Law, Administrative Law and the Legislative framework for the practice of Public Service Human Resource Management. It discusses the challenges/ issues related to the practice of Human Resource Management in the Public Service in light of the Judicial Review Act (2000) and the legislative framework governing Public Service Human Resource Management practices are enunciated. Section two (2) looks at Judicial Review and the public officer: it examines the cases filed by public officers over the period 2000-2015 and scrutinizes the judgements of the Courts in these cases to ascertain

whether there are any lessons that can be learnt from the judgements in relation to Public Service Human Resource Management.

**Section 3** - Gives an insight as to whether the Judicial Review judgements are transforming the practice of Public Service Human Resource Management. This chapter also examines the theories and models of change and transformation, and Human Resource Management. It also looks at some change and transformation of the public service in relation to Human Resource Management. Also, a summary and critique of the literature have been presented and the emergent themes and sub-themes are enunciated to show their relationship to the study.

**Chapter 3-** This chapter enunciates the research methods and the methodologies used in the research. The researcher physiological assumptions and theoretical perspectives are discussed. Critical attention is paid to the whole issue of researchers bias as the researcher being a Human Resource Practitioner is part of the phenomenon under investigation. The methods utilized are justified. Finally, the strength and limitations of the chosen methods are stated to show how they contributed to or impacted negatively on the data collection. The important issue of research ethics is also discussed.

**Chapter 4-** Presents the data findings and engages in preliminary analysis. The researcher's reflection on the findings is also discussed and the trends, issues and relationship discerned in the data are disclosed. The link between the findings and the research questions is established.

**Chapter 5-** This is the major analysis section of the paper. It presents the answers to the research questions. The theoretical contribution of the research is enunciated. The researcher's conceptual framework for the research is re-examined in light of the data findings, analysis and theoretical contribution. There is a discussion on whether the data collection methods may have impacted on the findings. Finally, there is a discourse on the findings in relation to the substantive topic of the study.

**Chapter 6-** This chapter presents the conclusions on the bases of the research questions and objectives to show that they have all been met. It also establishes the contribution to and the creation of new knowledge in the field of Human Resource Management. There is a discussion on future research in the field of Public Service Human Resource Management. The implication of the study in relation to policy, practice and future research are highlighted. Finally, the limitation of the study is discussed, in that issues that emerged during the

research beyond the scope of the study were presented to show how they impacted on the subject researched.

## **CHAPTER 2**

### **Review of the Literature**

#### **INTRODUCTION**

#### **Public Service Laws, Regulations, Human Resource Management – Challenges/Issues**

This chapter is divided in three sections. Section one (1) provides a review of the literature that underpins the study. It gives useful insights into the Legislative framework that governs the practice of Public Service Human Resource Management. It explains what is Public Law and Administrative Law to show their relationship to Public Service Human Resource Management. The Judicial Review Act (2000) and Freedom of Information Act (2000) are introduced and the relevant literature is reviewed to show their connectivity to the phenomenon under investigation. Thirdly, it looks at the various pieces of legislation for the practice of Human Resource Management in the Public Service. They are the Public Service Commission Regulations, the Civil Service Regulations and the Code of Conduct. They are examined in relation to the study. It also discusses the practice of Human Resource in the Public Service and the fragmented nature of the approach and the challenges/ issues encountered in the practice are identified. The Public Service approach is compared and contrasted with Human Resource Management as a construct, also the models and theories and frameworks for the practice of Human Resource Management are used in the evaluation. This section also presents an overview of Human Resource Management Best Practices and the gaps identified in Public Service Human Resource Management Practices. Finally, it summarizes the literature reviewed in this section to show how it is linked to the literature reviewed in the next section.

This chapter also looks at Judicial Review and the public officer. It examines the cases filed by the public officers, the judgements of the Courts in respect of these cases and the lessons learnt from these judgements. It is segmented into three (3) parts. Section one gives an insight into the public officers rights under the Judicial Review Act and the whole question of Judicial Review as it relates to them. It details the process that must be followed by public



officers to make applications for Judicial Review and the reasons they have made such applications. Section two provides an overview into the cases and judgements of the Courts of Trinidad and Tobago and the Privy Council of London as a result of the Judicial Review filed by public officers, to show their relationship to the subject under investigation. Section three presents a discourse on the lessons from the judgements and what signals are being sent to the Service Commissions and Human Resource Management Practitioners in the Public Service. Section four synthesises the main points from the section to show the linkage with the previous section and to signal how the conclusion drawn from this section will inform the requisite change and transformation that is needed in Human Resource Management in the Public Service.

Section three (3) looks at Judicial Review and Human Resource Transformation, in a sense what is required to transform Human Resource Practices in the Public Services in light of the obligations placed on Public Authorities due to their regulatory framework and the lessons learnt from the judgements. It looks at some of the initiatives already undertaken to transform Public Service Human Resource Management and the success and failures of such undertakings. If change and transformation is to occur, it is imperative that it should be implemented utilizing an acceptable template. Such a template should be formulated in keeping with the constructs, models and theories advocated by renowned gurus in the field of organizational change and transformation. The arguments advanced by these gurus are instructed if the Service Commissions are to avoid the pitfalls of earlier initiatives to transform Public Service Human Resource Management.

This section therefore examines the work of theorists in the field of change and transformation to show how their models and theories help the researcher to answer the research questions and meet the objectives of the research. It is important to understand that change is always contextual and that while prescriptive models may not address all of the nuances of a particular context, elements of universal change models can be adapted to match an organizations specific context. It has already been established that the Public Service is not like any other as a result of the overarching Legislative Framework

## **2 Public Law, Administrative Law, Tenets Principles and Concepts**

### ***2.1 Public Law***

Public Law concerns the Law governing relations between the individual and Public Bodies and relations between different Public Bodies, such as central and local Government. The Courts have developed a body of substantive principles of Public Law to ensure that Public Bodies do not exceed or abuse their powers and that they perform their duties. The Court will review an exercise of power to ensure that the Public Body:

- a) Has not made an error of Law;
- b) Has considered all relevant factors and not taken into account any irrelevant factors;
- c) Has acted for a purpose expressly or implied authorised by statute;
- d) Has not acted in a way that is so unreasonable that no reasonable Public Body would act in that way; and
- e) That the Public Body has observed statutory procedural requirements and common Law principles of natural justice or procedural fairness (Lewis 2003) Lord Diplock summaries these grounds as illegality, irrationality and procedural impropriety.

Public Law ensures that a Public Body does not fetter its discretion, or unlawfully delegates its power, or reaches a decision on no evidence, or abuse its power to frustrate. Public Law recognises that one of the major sources of challenges to legislation or the action of Public Bodies is Judicial Review. It is the primary method by which the Courts, exercise their supervisory jurisdiction over Public Bodies to ensure that those Bodies observe the substantive principles of Public Law Ganz (2001). The Service Commissions and the Service Commissions Department are Public Bodies and in the discharge of their functions are subjected to Public Law.

### ***2.1.1 Administrative Law***

Administrative Law and Public Law are used interchangeably in the literature. It is Law that relates to control of Government's power. The powers of all Public Authorities are subordinated to the Law. Public Bodies operate on the rule of Law; they are subject to legal limitations and have no such thing as absolute or unfettered administrative power which has a number of different meaning and corollaries. Its primary meaning is that everything must be done according to Law. Applied to Government, this requires that every Government Authority which does an act which would otherwise be wrong (such as taking a man's land) or which infringes on a man's liberty (as by refusing him permission) must be able to justify

its action as prescribed by Law and in every case this will mean authorized directly or indirectly by an act of Parliament. “Every act or Government power i.e. every act, which affect the Legal rights, duties or liberties of any person must be shown to have a strictly legal pedigree”, Wade and Forsyth (2000).

They further posit that if a person is affected by the decision of a Government authority they can resort to the Court which will invalidate the act if it is not found to be perfectly in order. Wade and Forsyth (2000) argue that Government Authority must do everything within the Law. Also the conduct of such authority must be within a framework of recognised principles which restrict discretionary power.

Wade & Forsyth (2000) opined that Government Departments may misunderstand their legal position as easily as many other people, and the Law which they have to administer is frequently complex and uncertain. Abuse is inevitable; therefore it is all the more necessary that the Law should provide means to check it. Further, as well, there is duty; it is also the concern of Administrative Law to see that Public Authorities can be compelled to perform their duties if they make default.

It can be concluded that Administrative Law is a body of general principles which governs the exercise of powers and duties by Public Authority like Service Commissions.

Bradley and Ewing (2007) are in agreement and suggest that by way of formal definition Administrative Law is that it is a branch of Public Law concerned with the composition, procedures powers, duties rights and liabilities of the various organs of Government that are engaged in administering public policies. These policies have been either laid down by Parliament in Legislation or developed by the Government and other authorities in the exercise of their executive power. Administrative Law while empowering a public agency or other body with the power to perform its tasks, the Legislator thereby imposes a measure of control, since an agency is not authorised to go outside its power. The power of Public Authorities is not absolute and any decisions, including Human Resource management decisions must be made within the Law.

### **2.1.2 Administrative Law and Parliamentary Sovereignty / Parliamentary Process**

One cannot discuss Administrative Law without examining the role of Parliament and the issue of Parliamentary Sovereignty. Wade and Forsyth (2000) opine that the Sovereignty of Parliament is a particular feature of the British constitution. This suggests that it presents an ever present threat to the position of the Court and naturally included the Judges towards caution in their attitude towards the executive, since Parliament is effectively under the executive control. It is also responsible for the prominence in Administrative Law of the doctrine of ultra vires. Wade & Forsyth (2000) further state that the sovereign legal power in the United Kingdom lies in the Queen acting by Act of Parliament. Further, that an Act of Parliament required the assent of the Queen, The House of Lords and The House of Commons, and the assent of each House is given upon a simple majority of votes of members present. This is the one and only form of sovereign legislation and there is no limit to its legal efficacy.

Any previous Act of Parliament can also be repealed by a later Act, either expressly or in the case of conflict, implicitly. Acts of the most fundamental kind for example, Habeas Corpus Act (1969) or European Communities Act (1972) are just as easy to repeal, no special majorities or procedures are needed. The ordinary, everyday form of Act of Parliament is sovereign and can affect any legal consequences whatsoever. But the legal paramountcy can be exercised only by Act of the sovereign Parliament assented to by the Queen, Lords and Commons. The two (2) Houses of Parliament by themselves have no legislative or legal effect whatsoever, except and Act of Parliament so provides, *see R.v. Electricity Commissioners ex p. London Electricity Joint Committee Co. (1920) Ltd. (1924) 1 KB 171; R.v. HM Treasury ex p. Smedley (1985) QB 657.*

Trinidad and Tobago has a Westminster System of Government like the United Kingdom, however it is well established that one of the consequences of Parliamentary sovereignty is that the United Kingdom has no Constitutional guarantees as there is no written Constitution. In Trinidad and Tobago, unlike the United Kingdom, there is a written Constitution which is the supreme law of the land. It is the Constitution that has sovereignty and not the Parliament. This is reinforced by Lalla (2013), who argued that in Trinidad and Tobago, the Constitution is supreme, while Parliament on the other hand is subordinate to the Constitution; also he affirms that indeed Parliament owes its origin to the Constitution, derives its power from the Constitution and is obliged to Act within the Constitution. He posits, that any law passed by

the Parliament, that is in conflict with the Constitution is ultra vires the Constitution and therefore null and void. *This was illustrated in the case of Endell Thomas v The Attorney General (1982) AC113 pgs. 128-133.*

Lord Diplock, in delivering judgement stated that the function of the Police Service Commission as set out under Section 102 of the Constitution of Trinidad and Tobago and therefore the Commission has no power to lay down codes of conduct as this is for the legislature. He concluded that any regulation made by the Police Service Commission giving effect to a code of conduct for police officers was ultra vires the constitution.

The modification of any existing law which was found to be inconsistent with the Constitution was analysed by the former Chief Justice De la Bastide in the decision of the Court of Appeal in the case of Roodal v the State C 1APPL 64 of 1999. This decision was affirmed by the Privy Council in the case of Matthew v the State [2005 1AC 43] in his judgement of 1999. The former Chief Justice stated that whenever there is any inconsistency between the law and the Constitution it provides that the other law is void though only to the extent of the inconsistency.

Some critics have argued that there is much dissatisfaction in what is perceived as undiluted parliamentary power in the United Kingdom. Wade and Forsyth (2000) have suggested that the control of legislation has been passed into the hands of the executive as parliament's independent control has been fairly weakened by the party system. It should be recalled that renowned Jurist Dicey advocated that judge made law is a better protection for the liberty of the citizens than constitutional guarantees. Several distinguished judges in the United Kingdom have suggested that a written Constitution which is respected as for example, in the United States of America, provides valuable safeguards which in the United Kingdom is lacking. They further suggested that the Constitutional fundamentals such as the rule of law judicial independence and judicial review may be beyond the scope of parliament to abolish; see *RV Secretary of State for Transport Esp. factor Lane Limited (#2) [1990] 1AC.*

Wolfe et al (2007) in examining judicial review in the United Kingdom have argued that in some of the cases the Courts have been faced with the challenge of having to adjudicate when the principles of the rule of law and the principle of the sovereignty of parliament are in competition. This they suggest can occur when parliament attempts to oust or limit jurisdiction of the Court to determine the scope of public authority's power: see *Taylor v New Zealand Poultry Board [1984] 1 NZ IR 394-398.* This is an observation of the New

Zealand parliament but no doubt it aptly applies to the United Kingdom parliament. The matter of parliamentary sovereignty was considered in a number of judicial review cases in the United Kingdom. In the decided case of *Jackson v the Attorney General* 2005 UK HL 56 [2006] AC 262. Lord Birnham stated categorically that parliamentary sovereignty was still the bedrock of the British Constitution. On the other hand, Wolfe et al (2007) opined that without challenging the primacy of parliamentary sovereignty the Courts have finessed the apparent inconsistency between the rule of law and the parliamentary supremacy by making the presumption that parliament intended its legislation to conform to the rule of law as a constitutional principle.

Is there such a thing as Dual Sovereignty? Or can sovereignty be shared between the parliament and the judiciary. In the case of *X Ltd. v Morgan Gampian Ltd.* [1999] 1 AC 148E Lord Bridge stated that the maintenance of the rule of law is in every way as important in a free society as the democratic franchise. He argued that in the United Kingdom the rule of law rests upon the twin foundations, the sovereignty of the Queen's Parliament in making the law and the sovereignty of the Queen's Court. This brings us to the question of the separation of powers.

### **2.1.3 Separation of Powers**

It is a well-established principle that the three branches of Government have established and entrusted with their own unique powers, the legislature to make the laws, the executive to implement and the Judiciary to adjudicate. Montesquieu in formulating the Separation of Power theory stated that its mere purpose was to prevent the same man or the same body or people to execute those three powers all together. It assumes that one of the branches will act as a check upon the other and therefore individual liberty will survive. Montesquieu argued that due to the Separation of Power one person should not form part or more of the three organs of Government. Also the various entities should not infringe with the exercise and function of another. Further one branch of Government is forbidden from exercising the function of the other.

Fordham (2004) posits that the Separation of Powers is a constitutional principle. He cited the case of *R. Anderson v Secretary of State for Home Dept.* [2002] U.K.H.L. 46 [2003] 1A.C.837 at 39 where Lord Steyn said "the Separation of Powers between the Judiciary the

Legislature and the Executive branches of government is a strong principle of our legal system". Fordham (2004) further argued that the rule of law is the first principle of constitutional theory. Also, with the Separation of Power it explains why the court's supervisory role is of crucial constitutional importance. In Fordham's opinion the Government and the Crown are accountable to the Courts. Further the rule of law is a theme that pervades judicial review and while this is not found in any statute or any constitutional document, such as a written constitution, it has evolved through self-recognition by courts as a sovereign role.

On the other hand, Figist Assejar of the University of Addis Ababa writing an article in 2010 titled Judicial Review of Administrative Action in arguing in favour of judicial review stated that in modern management, the existence of judicial review helps the functioning of the principle of the Separation of Power. In support of his argument he advanced the claim that by exercising the function of judicial review, courts are entrusted with the tasks of affirming that the other branches of the government are acting within the legal boundary they are entrusted with. He also postulated that since the doctrine of the Separation of Powers existed in many countries constitution, the nature of judicial review makes this remedy as having a constitutional source.

Assejar further argues that while many scholars may define the rule of law in different ways; Dicey defines the rule of law as having three (3) different perspectives. Firstly, absolute supremacy or dominance of regular law as opposed to the influence of arbitrary power. Secondly, it speaks of equality before the law or the equal subjection of all classes to the ordinary law of the land administered by ordinary Courts. Thirdly, it extends to the law of the constitution as a consequence of the rights of individuals as defined and enforced by the Courts. For him, basically the rule of law is also defined as everything must be done according to law and government should be conducted within a framework of recognized law. Assejar posits that the existence of judicial review in light of it being consistent with the rule of law, its purpose is to limit government within the legal boundaries and to make them accountable in instances of any infringement.

#### **2.1.4 Separation of Power; Tension between the Courts and the Executive**

The principle of the Separation of Powers confers matters of social and economic policy upon the legislature and not the judiciary. Courts should therefore avoid interfering with the exercise of discretion of elected officials and their appointees, when its aim is the pursuit of policy Wolfe et al (2007). They further argue that the constitutional status of the judiciary should not however excuse the Court from any scrutiny of policy decision. Courts are able and indeed obliged to require that decisions, even in the realms of high policy and within the scope of the relevant power or duty are arrived at by the standard of procedural fairness; See *Bancoult v Secretary of State for Foreign and Commonwealth Affairs* [EWCA CIV498 2007] 104 (23) LSY31 at 46 (Sedley LG) stated that very broad latitude is given to the executive in deciding what makes for a peace, order and good governance of a colony but that the Executive must be open to challenge on grounds of jurisdictional error or malpractice, or if the subject matter is not manifestly of the colony. See also, the cases of *midway* [2002] EWHC2516 and *JPL583 Green Peas* 2007 EWH311.

Wolfe et al (2007) advanced, that the growth of judicial review in Europe in the 1980s and 1990s in terms of doctrinal sophistication is theoretical base and that there are a range of government functions that are amenable to review. Further, the impact of judicial review on government decision has not been universally welcomed. This suggests that although an approach of partnership between the Courts and government has been advanced and often achieved the potency of judicial review to constrain government policy has led to a range of responses. Some can be seen as constructive engagement between the Courts and the Executive, while others have at times risked undermining the constitutional principles that ought to govern the relationship between the judges and Ministers.

The question of tension between the Executive and the Judiciary as a result of judicial review is not unique to the United Kingdom. This issue has caused some concern in the greater commonwealth and Trinidad and Tobago in particular due to the preponderance of judicial review challenges to administrative decisions. Michael De La Bastide T.C; Former Chief Justice of Trinidad and Tobago and President of the Caribbean Court of Justice in delivering an address in 2006 in Barbados in a paper titled '*Judicial Supervision of Executive Action in the Commonwealth Caribbean*' commented that while it was not practical for him to undertake a survey of judicial review in each commonwealth jurisdiction he focused his attention on Trinidad and Tobago as it has the highest volume of public law litigation and also the sharpest increase in litigation in recent years.



De La Bastide stated that in the year 2000 Trinidad and Tobago passed the Judicial Review Act which extended access to judicial review remedies to persons outside the category of those who could show a sufficient interest in the subject matter of the application. He pointed out that when the Bill for the Judicial Review Act was presented in the Parliament in July 2000 the then Attorney General represented that the provision for the making of the application in public interest was a significant change in existing law. De La Bastide further stated that it appeared to have been so regarded by the legal profession and the public of Trinidad and Tobago, resulting in a flurry of public interest application for judicial review, that the Cabinet of Trinidad and Tobago in 2005 introduced a Bill to repeal the section sanctioning them. Shortly after Cabinet introduced the Bill in Parliament to repeal the provision in the Judicial Review Act, which provided for public interest application, a constitutional motion was filed by a civil rights group and an Association challenging the constitutionality of the Bill and the decision of the Cabinet to pursue its passage; See Civil Rights Association of Trinidad and Tobago and Basdeo v Attorney General of Trinidad and Tobago H.C.A. No. S-1070 of 2005.

The Hearing of the motion was adjourned Part-heard over the Courts vacation period. In the interim parliament was prorogued and as a result the Bill lapsed. Gobin, J. held that the Bill would have deprived the Supreme Court of an essential part of its supervisory jurisdiction and therefore involved an amendment of entrenched division in the Constitution. She also declared that the action of government was unconstitutional. This action by the learned Judge, De La Bastide contended seemed to establish a right by the Courts to prevent the Cabinet from taking to the Parliament and the Parliament from considering or passing a Bill which would produce, if passed, an unconstitutional act. He opined that in such circumstances the Court can, if the judgement is correct, effect something in the nature of a pre-emptive strike.

In another case, that of *Devant Maharaj v The Statutory Authorities Service Commissions (SASC)* HCA 305 of 2004 the applicant challenged the decision of the respondent Commission to appoint someone else in preference to him to act as Deputy Director of the National Insurance Board as the Prime Minister had vetoed his appointment. The Court held that the Commissions' deference to the objection of the Prime Minister was unlawful and squashed the other decision to appoint the other candidate. The Court also made an order that if the Commission did not appoint the applicant it should furnish him with reasons in writing within fourteen (14) days of its decision. Such action by the Court De La Bastide argued is

within the Courts' Supervisory function to protect individuals against abuse of political power and victimisation.

### **2.1.5 Judicial Activism – Challenge to the Executive**

Judicial Activism is an ongoing debate. According to the Merriam Webster dictionary of law, Judicial Activism is the practice in the Judiciary of protecting or expanding individual rights through decisions that depart from established precedents or are independent of or in opposition to supposed constitutional or legislative intent. Black Law dictionary defines Judicial Activism as a philosophy of judicial decision making where judges allow their personal views about public policy among other facts, to guide their decision making, usually with the suggestion that adherents of this philosophy tend to find constitutional 'violationist' that are willing to ignore precedents.

Critics have argued that Judicial Activism implies going beyond the normal constraints applied to jurists and the constitution gives jurists the right to strike down any legislation or rule against any precedent if it goes against the constitution. Judicial Activism is basically a deviation from the principles of the Separation of Powers. It is based on the theory of Jurisprudence called Sociological Jurisprudence which arms the Judiciary with wide legislative Powers. (Justice Markandey Katju) He further argues that in some quarters it sees the Judges as an activist.

While there may be learnings and lessons that can be derived from the judgments of the Courts and the Privy Council, some writers have expressed concern with the level of Judicial Activism that is now prevalent in the Judiciary. Judicial Activism also refers to a Judge deciding a case on the basis of his own moral preferences rather than the law. It is when the Courts do not confine themselves to a reasonable interpretation of laws, but instead create laws. Alternatively, Judicial Activism occurs when the Courts do not limit their rulings to the dispute before them but instead establish a new rule to apply broadly to issues not presented in the special circumstances. It is when the Judge acts like the legislature from the bench, rather than a traditional Court. In so doing, the Court takes for itself the power of the Executive rather than limiting itself to the power traditionally given to the Judiciary. It should not be confused with the Court Constitutional mandatory rule in enforcing limitations

on Government powers. Moreover, Judicial Activism can have positive impact but this can be achieved by other methods (Britannica.com, 2016).

The Rt. Hon. Mr. Chief Justice Michael de La Bastide T.C. President of the Caribbean Court of Justice, in an article “*Judicial Supervision of Executive Action in the Commonwealth Caribbean*” in 2006 enumerated; “*the recent decisions of the Courts in the Commonwealth Caribbean seem to reflect a higher level of Judicial activism in the field of Public Law than was previously evident*”. In support of this statement, he cited two (2) judgements one (1) of Justice Gobin J. in Trinidad and Tobago Civil Rights Association and Basdeo v Attorney-General (supra) and the other of Justice Jones in Sharma v the Cabinet of Trinidad and Tobago HCA No, S-854 of 2005. However, he stated that there are many arguments for recognizing the imperative of Judicial Restraint, which still maintains its validity in societies in which the Constitution and not the Parliament is supreme. He continued by stating that Judges are not well equipped to make policy decisions which are better left to those whose business is to make them. Moreover, Judges too must obey the law and therefore must respect the rights of public officials and authorities to exercise their decision making power which the law has invested in them. De la Bastide cautioned that it is wrong for Judges to breach the social contract embodied in the Constitution by disregarding the allocation of responsibilities and functions which that contract dictates as between the three arms of Government. He lamented further that as a practical matter excessive interference by the Judges in the business of administration will create a loss of efficiency and effectiveness in administration, not to mention frustration and tension.

### **2.1.6 Judicial Review**

Judicial Review is the power or jurisdiction of the Courts to review the acts, decisions and omissions of Statutory Authorities or Administrative Bodies to determine whether they have exceeded or abuse their powers. Accordingly, it is the exercise of those powers, duties or discretions that are challenged in the Courts. The relevant authority or body may rely on its broad statutory duty as justification for its action while the public officer on the other hand may seek to show that the power of the Public Authority in question has not been lawfully exercised, even suggesting that it has acted arbitrarily and capriciously.

Judicial Review is concerned, not with the decision, but with the decision making process. It is not an appeal from a decision, but a review of the manner in which the decision was made Ramlogan (2007) whereas Woolf et al (2007) define Judicial Review as a way to control the abuse of public power, they further argue that it is the principles that are developed through Judicial Review that have become central to all of Public Administration in so far as these principles seek to enhance both the way decisions are reached and the quality of decisions. For them also Judicial Review goes some way to answering the age old adage question of “who is guarding the guards” by ensuring that Public Authorities responsible for making decisions do so within the boundaries of their legal powers. Judicial Review is limited to determining whether a decision is legal, not whether or not it was correct. The Court will review a decision if it is illegal, unreasonable or tainted by mala fides or whether a Public Authority has acted in excess of its jurisdiction. “Generally speaking it speaks to the concept of good administrative action that is not tainted by unlawfulness, unfairness and unreasonableness”, Fordham (2004). On the other hand Judicial Review is a central control mechanism of administrative Law (Public Law), by which the judiciary takes the historic constitutional responsibility of protecting against abuses of power by Public Authorities. Such a safe guard promotes the public interest, insuring that Public Bodies are not above the Law.

Additionally Frigist Assejar a lecturer from the University of Addis Ababa Ethiopia in January 2010, in an article titled ‘Judicial Review of Administrative Action’ argues that Judicial Review is defined as; The power exerted by the Courts of a country to examine the actions of the Legislative, Executive and Administrative arms of Government, and to ensure that such actions confirm to the provision of the Constitution. He argues that Judicial Review is a mechanism to oversee decisions of Governments organs and to make sure their decisions are made within their legal boundary. In other words he continued that this mechanism will make sure the decisions are not made to trespass the powers granted by Law. These views are supported by Fordham (2004), Wade & Forsyth (2000) and Woolf et al (2007). Fordham argues that the Court has supervision over Public Bodies however, the Courts has limited supervisory jurisdiction over the exercise of Executive discretionary powers and as such it is a well-established rule of Law that the Courts have no power to interfere with the actions taken by Administrative Authorities in the exercise of their discretionary powers. (Small vs Moss 1938) This view was reinforced by Lord Hadsbury in (Westminster Corporation v London North Western Railway Co. 1905) He stated thus:

***“Where the Legislature has confided the power to a particular body, with a discretion Law it is to be used, it is beyond the power of any court to contest that discretion”***

Lalla (2013) cited Wade Administrative Law 10<sup>th</sup> ed. pg. 593 when he stated that “Administrative Law is a branch of Public Law which is concerned with the composition, duties, rights and liabilities of governments which are engaged in administration, or precisely the Law relating to Public Administration”. Lalla continues that the primary object of an Administrative Law is to control and keep the powers of Government within their legal bonds so as to protect citizens against their abuse. For Lalla therefore, Judicial Review according to Public Law is the power or jurisdiction of the Court to review the acts, decisions and the missions of Statutory Authorities or Administrative Bodies to determine whether they have exceeded or abused their powers. Service Commissions are Statutory or Administrative Bodies and they exercise human resource functions in accordance with the powers given to them by the Constitution of Trinidad and Tobago, they are therefore under the jurisdiction of the Courts. As Public Bodies which are vested with powers by statutes they are obliged to make decisions that do not infringe or take away the rights, interest or obligations of others.

A claim for Judicial Review is a specialised procedure by which the Courts may grant one of the prerogative remedies, namely a quashing order (formerly call a certiorari), a mandatory order (formerly called prohibition) and alternatively or in addition, a declaration or injunction. Damages or institution or recovery of money may also be awarded if one of those five remedies is granted. Public Law forces Public Service organizations to work within their legislative framework and tenets of Public Law.

### **2.1.7 Limitation of Judicial Review**

Wolfe et al (2007) argue that there are certain decisions which the courts cannot and should not engage. Further, they state that the courts are limited by (a) their constitutional role and (b) their institutional capacity. In the courts’ constitutional role and due to the Separation of Powers, matters of social and economic policy fall to the legislature and not the Judiciary. Also there are limits inherent in the courts’ constitutional role as they should not interfere with the exercise of a discretionary power of elected officials or their appointees. This view is shared by Lalla (2013) who posits that it is a well-established rule of law that the courts have no power to interfere with the actions taken by administrative authorities in the exercise of

their discretionary powers. In support of his opinion he cited the case in the United States of America, where the Supreme Court in *Small v Moss* (1938) 279 NY 288 stated “into that field the courts may not enter.” See also, *Westminster Corporation v London North Western Railway Co* [1905] AC 426/7, where Lord Halsbury said “where the Legislature has confided the power to a particular body, with discretion how it is to be used, it is beyond the power of any court to contest that discretion”.

The constitutional status of the Judiciary should not, however excuse the courts from any scrutiny of policy decisions, this view is held by Wolfe et al (2007) who point out that the courts are able and indeed obliged to require that decisions even in the realms of high policy are within the scope of the relevant power or duty and arrived at by standards of procedural fairness. See *Secretary of State for the Home Department Ex. p. Everett* [1989] Q.B. 811 (Taylor L.J) and the application of *Bancoult v secretary State for Foreign and Commonwealth Affairs* [2007] E.W.A. Civ. 498; (2007) 104 (23) L.S.G. 31 at [46] (Sedley L.J. considered that very broad latitude is given to the executive in deciding what makes for the “peace order and good government” of a colony but that the executive must be open to challenge on grounds of jurisdictional error or malpractice or if the subject matter “is manifestly not the peace, order or good government of the colony”)

In terms of limitations inherent in the court’s institutional capacity, Wolfe et al (2007) argue that there are some decisions which the courts are ill-equipped to review, that is, those which are not amenable to the judicial process, or those which are better able to be determined by other bodies, including Parliament. See *Secretary of Civil Service Unions v Minister for the Civil Service* [1985] 1A.C. 374 at 418 (Lord Roskill). They also posit that there are limitations placed on the courts on matters which are in essence matters of preference. These include decisions which cannot be impugned on the basis of any objective standard because their resolution is essentially a matter of individual (including political) preference. Further they state that another institutional limitation of the courts is lack of relative expertise. Particularly as the review of fact, or the merits of a decision, is not routinely permitted in judicial review. They suggest that there are some matters which are best resolved by those with specialist knowledge. See *R. v Higher Education funding Council Ex. p. Institute of Dental Surgery*. [1984] 1 W. L.R. 242 (Sedley J. considered the question of rating the research of a university department not amenable to review on the ground of lack of the courts’ expertise).

Tigist Asseja of the Addis Ababa University in examining judicial review of Administrative actions in different legal systems state that application for judicial in many Countries is only admissible by the court if three conditions are satisfied. The first one is the application must be made promptly and in any event three months from the date when the grievance arose. Secondly, the applicant must satisfy the requirement of locus standi by showing, that he has sufficient interest. Also, the application also needs to relate to public law, matter without being based on tort or contract law. He further argues that judicial review cannot extend to primary legislations or legislations made by the parliament. This is so, due to the well-established and accepted doctrine of Parliamentary Sovereignty. Based on this doctrine, the role of the courts is seen as enforcing the will of Parliament and the courts have no power to review laws made by the sovereign. Moreover, since most government powers are created by an act of parliament, a decision of a public body can only be set aside if it exceeds the power granted to it by Parliament.

#### **2.1.8 Judicial Review Act (2000):**

In 2000 the Judicial Review Act was passed in Trinidad and Tobago which allows the citizens of Trinidad and Tobago to seek justice through the Courts of the land and in some instances, the Judicial Committee of the Privy Council of London. The Judicial Review Act No. 60 of 2000 (Trinidad and Tobago) was promulgated on the 13<sup>th</sup> October, 2000 and sets out the principles and procedure to be followed when making an application for Judicial Review and the jurisdiction of the Courts to adjudicate on such applications. In piloting the Bill in the Parliament on 21<sup>st</sup> July 2000, the then Attorney General and Minister of Legal Affairs, Ramesh Lawrence Maharaj stated that the Judicial Review Bill was being introduced to fill the lacuna in Law to give statutory effect to what has been modern development in Judicial Review. He indicated that it was an important part of the Laws of Trinidad and Tobago and the Laws of any country which is committed to democracy. Maharaj argued that Judicial Review deals with the field of law known as Administrative Law and that law is part of the legal framework which gives the citizens and individuals the right to ensure that Government action and those who exercise public power fall within the law. He stated, that while the Law of the land always provided for some form of Judicial Review, of Executive Action, it was restrictive. The old law was inherited from the United Kingdom and one had to show that there was an error of the decision on the face of records. Maharaj opined that as

lawyers they knew how difficult that had been, as many people were turned away from the seat of justice. He stated that over the years the law in the United Kingdom has developed and expanded so that the Courts have found ways and means to allow citizens who challenged public Authorities to be able to scrutinise their action.

Maharaj indicated that the Courts have always recognised that that they cannot substitute their decisions on policy matters for that of a Government or Public Authority. He stressed that Judicial Review was concerned with the decision making process, that is to ensure that the person who is entitled to have the benefit of that decision; has a decision based on law. is within the confines of law, is reasonable, and is made fairly in accordance with the rules of natural justice. Maharaj stated that the development of the law which occurred in the U.K. in 1977 was done by merely amending the rules of the Courts in the U.K. It was later found to be a wrong process and the Courts in the U.K. held that changes could not have been done without statutory effect. In 1981 the U.K. passed the law and the Courts had specific powers to grant Judicial Review on the basis of illegality, procedural impropriety and unreasonableness. He pointed out that when the reform occurred in the U.K., the rules of the Court in Trinidad and Tobago was also amended. Further that this Law was primary legislation as all other Commonwealth Countries had done, to make it clear that the court had the power to review Government actions in keeping with modern trends in the development of Judicial Review.

Maharaj opined that this law will permit the Courts to award damages where a public authority contradicts the law as far as judicial review is concerned, He explained that previously in order to get redress one had to show that he or she is adversely affected by a particular decision in order to have locus standi, the standing in law in order to file that action to get redress. He explained that this law would grant persons greater access to the courts as it was introducing something in the Bill known as public interest litigation, which would empower person in the community, on-governmental organisations and groups to take up matters deemed as public wrong and vindicate the action in court. Maharaj assured that there were safety measures in the Bill so that mere busy bodies and people with no genuine interest do not waste the courts time. He argued that several countries had adopted this approach, as it was based on the principles of Parliamentary Government, that the actions of Government must be scrutinised by the courts at the insistence of citizens to ensure that decisions taken and administrative practices comply in all aspect with the law of the land and with best administrative practices. Maharaj concluded by stating that Judicial Review provided a



means, not only for citizens to seek redress against official action, but for them to actively promote good administrative practices.

Fitzgerald Hinds, Member of Parliament, speaking on behalf of the Opposition pointed out the principles that govern judicial review and the remedies that can be granted to aggrieved citizens. He complimented the thinking of Lord Diplock who he indicated was at the forefront in the development of judicial review in the U.K. Hinds however, cautioned about the inclusion of the public interest clause in the Bill, which he claimed appeared beautiful and good, but on closer examination the sting might be in the tail as this might be designed to create confusion. He stated that he was not saying that all public interest legislation was objectionable, but he suggested that Administrative law was unique as it touches on the issue of Politics more than any other Law. Also, the nature of Administrative Law and judicial review in particular was a challenge to state action, as far as the law stand anyone can challenge the State, Executive action, challenge the decisions of any public authority as being unreasonable, illegal and the other grounds as contemplated by the Bill.

Hinds argued that as a result of giving the Courts an opportunity to make an intervention in what the State or a body carrying out a public function had done, this was where in his view the Politics really touch. He suggested that nearly all of the cases in Administrative Law and Judicial Review in particular are very political in orientation. Further, in a case in the U.K. the House of Lords said that public interest matters are political in nature, but the courts must as far as possible remain outside politics and assert and maintain its independence. Hinds also stated that remedies in judicial review were discretionary as the courts cannot order that the Government do or not do or prohibit them from doing something, as this would mean interfering with substantial decisions of the Government of the day. He affirmed that judicial review is about challenging improper procedure, where the action is outside the jurisdiction of the decision making body or is downright illegal or the reasons for the decision appear to be whimsical. Hinds indicated that he was in support of the Bill as judicial review would impact the quality of public decision. He stated that this would lead to better decisions as the decision maker was obliged to give reasons if his decisions were challenged.

Hinds, however argued that judicial review would present challenges for Service Commissions with the removal of the ouster clause, which imposed a fetter on the right of the courts to review the actions and decisions of these Commissions. He opined that this would

open a floodgate to all kind of foolish challenges for frivolous reasons against Service Commissions

Barry Sinanan, another opposition member of Parliament indicated that he was concerned with the public interest clause in the Bill, but was supporting the Bill generally. He stated the Government should give the Judiciary the tools by which it can implement and adjudicate the law. He ended by complementing the Attorney General in bringing the Bill to the Parliament.

The Bill was unanimously passed in both Houses of Parliament in 2000. However in 2005, the Judicial Review (Amendment) Bill was tabled in the Parliament, the purpose of that Bill was to amend the Judicial Review Act, no. 60 of 2000. The Bill sought to limit the categories of persons who may apply in the High Court for relief respecting a decision of an inferior court, tribunal, public body, public authority or person acting in the exercise of a public duty or function in accordance with any law. The Bill sought to accomplish its purpose by repealing the provision permitting persons to apply for judicial review under the Judicial Review Act, 2000 where the relief sought would be justifiable in the public interest. In support of that action the then Attorney General stated there was a flurry of public interest application for judicial review that was impacting negatively on the work of the Judiciary. Despite opposition in some quarters, like the Trinidad and Tobago Transparency Institute which saw it as a retrograde step and contrary to the principles of developed democracies in which transparency and accountability are paramount: The Amendment was passed appealing the clause

The Judicial Review Act of Trinidad and Tobago has been fashioned after the Judicial Review Act of the U.K. Section 4 (1) of the Act provides that:

“An application for Judicial Review of a decision of an inferior court, tribunal, Public Body, Public Authority or a person acting in the exercise of a public duty or function in accordance with any Law shall be made to the Court in accordance with this Act and in such manner as may be prescribed by rules of the Court.”

#### Grounds for Judicial Review:

The Court may on an application for Judicial Review grant relief to:

- (a) Person whose interests are adversely affected by a decision; or

- (b) A person or group of persons if the Court is satisfied that the application is justified in the public interest in the circumstances of the case.

The grounds upon which the court may grant relief to a person who has filed for Judicial Review are: (a) that the decision was in any way unauthorised or contrary to Law; (b) excess of jurisdiction; (c) failure to satisfy or observe the conditions or procedures required by Law; (d) breach of the principles of natural justice; (e) unreasonable, irregular or improper exercise of discretion; (f) abuse of power; (g) fraud, bad faith, improper purpose or irrelevant consideration; (h) acting on instructions from an unauthorised person; (i) conflict with the policy of an Act; (j) error of Law, whether or not apparent on the face of the record; (k) absence of evidence on which a finding or assumption of fact could reasonably be based; (l) breach of or omission to perform a duty; (m) deprivation of a legitimate expectation; (n) a defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice; (o) an exercise of power in a manner that is so unreasonable that no reasonable person could have so exercised the power (Lalla 2006).

### **2.1.9 Public Law and Judicial Review**

All decision making powers of Public Authority are derived from Parliament and have their foundation in Public Law. Woolf et al (2007) argue that Public Authorities are therefore subject to the ordinary Court which is the corner stone of the rule of Law. In accordance with Public Law the Courts possess the power to review the decisions of Public Bodies unless there are expressed statutory provisions excluding judicial control. Ganz (2001) argues that Judicial Review is not an appeal against a decision, but with its propriety, though in practice the decision may be a fine one. Judicial Review is a Public Law remedy and the juristic basis for Judicial Review is the doctrine of “ultra-vires” (All review, 1988 p. 3). Public Law on the other hand relates to acts and omissions of Public Authorities and decisions made by them in the performance of their duties or the exercise of powers vested in them by the legislative. The principles of unfairness or breach of the rules of natural justice and unreasonableness are Public Law concepts for which redress can be obtained or an application for Judicial Review.

### **2.1.10 Principles and Tenets of Judicial Review**

A classic review of several Judicial Review cases establishes three main areas under which the court will intervene to provide redress against a decision by a Public Authority. These grounds are irrationality and illegality and procedural impropriety. Ganz (2001) These grounds for Judicial Review have been categorized by Lord Diplock in his Council of Civil Union v Minister of Civil Service (1984: GCHQ case).

#### **2.1.11 Illegality**

Under the heading of illegality, Lord Diplock said, “*the decision maker must understand correctly the Law that regulates his decision making power and must give effect to it.*” The difficulty is to distinguish a mistake of Law that regulates the decision making power (error going to the jurisdiction) from mistake of Law which the decision maker has the authority to determine (error of Law). The distinction between the Law which delimits the jurisdiction of the decision maker and that which is within his jurisdiction was illuminated in the Anisminic case (1969). Ganz argues as a result of that decision any error of Law of a decision making body is open to the Judicial Review. Taken to its logical conclusion, this will enable the Courts on an application for Judicial Review to sit in judgements on the interpretation of all the statutory provisions and those contained in delegated legislation which have been entrusted to the various types of the decision making body. Illegality is therefore when the decision matter has failed to understand correctly the Law that regulates his decision making power e.g. “acting ultra-vires”.

#### **2.1.12 Irrationality**

Lord Diplock’s second ground for Judicial Review is irrationality, which is defined as, “*unreasonableness in accordance with the principle of the Wednesbury Case (1948), that is, “a decision which is so outrageous in its defiance or logic or of accepted moral standards that no sensible person who applied his mind to the question to be decided could have arrived at it.”* Justice Dean Amorero in the application of the Director of Public Prosecution High

Court Action (HCA) No 3367 of 2001 (Trinidad and Tobago) reaffirmed this decision. The Court always has the last word on interpreting statute.

### **2.1.13 Procedural Impropriety**

Lord Diplock's third ground of Judicial Review is concerned with challenge to the procedure by which the decision is reached, rather than with its substance. In practice, this may often be the only line of attack open to an applicant who wants a decision to which he objects set aside, because he cannot challenge the decision on its merits by Judicial Review. Procedural Impropriety applies where there is failure to observe the basic rules of natural justice or failure to act with procedural fairness towards a person who will be affected by the decision (CCSU v Minister of Public Service 1985). The most famous principles are the rules of natural justice which has been applied to a constantly expanding area of decision making. Though originally, the Court distinguished these rules from a more flexible concept of procedural fairness. Out of these rules the Courts have now developed a new concept of Procedural Propriety where a legitimate expectation of the applicant is withdrawn. There are two rules of natural justice which the Courts have formulated, mainly no one can be a judge in his own cause and that a person affected by a decision must be given an opportunity to state his case and one person must not be heard behind the back of the other. The first rule of natural justice is a rule against bias in the decision-maker.

In the case of legitimate expectation, Ganz (2001) states that this may arise from an expressed promise and such a promise may be held binding on the Public Authority not only where it relates to matters of procedure, such as consultation but also on substantive issues. He further argues that on the other hand a Public Authority must be able to change its policy in the public interest even at the expense of a private individual (see Laker Airways Ltd. v Department of Trade 1977). Similarly a Government may not fetter its own discretion by laying down rules for this exercise unless it is prepared to hear representations from anyone that the rule should be changed or not apply to them. Thus he argues the Court has fashioned a battery of principles through which they can impose their values on a Public Authority. The Government can by legislation reverse any decisions of the Courts but it cannot easily eradicate the principles on which the judicial control is based. In closing, Ganz commented that perhaps this should be regarded as the true meaning of Law.

Judicial Review is concerned not with the decision, but with the decision making process. It is not an appeal from a decision but a review of the manner in which the decision was made. Lord Brightman (1982). Judicial Review extends only to determining whether or not a decision was legal, not whether it was correct. Justice Julia Pemberton (2005). Judicial Review Act forces Public Bodies to make decisions in accordance with the process defined by the relevant legislation governing their operations.

#### **2.1.14 To Qualify for Judicial Review**

To qualify for Judicial Review the decision of the Public Authority must have consequences which affect the person or body of persons. The decision must affect the person by altering his rights and obligations Lalla (2013). The person or entity launching a Judicial Review action must have sufficient standard to justify the Courts intervening on their behalf with respect to the decisions of the Public Body. The Courts will not allow mere 'busy bodies' to bring proceeding to question decision of Public Bodies. The person must establish their "locus standi" before the Court would contemplate intervention by way of judicial proceedings Ramlogan (2007). Nonetheless it must be emphasised that demonstrating sufficient interest does not lift the burden of establishing an arguable case as a pre-requisite for obtaining leave for Judicial Review.

The applicant for Judicial Review must show that he had a legitimate expectation to enjoy some benefit or advantage. According to Lord Diplock (1983) legitimate expectation or reasonable expectation may arise either from an expressed promise given on behalf of a Public Authority or from the existence of a regular practice. Legitimate expectation is not a legal right and so is not enforceable in Private Law. However, the Courts will protect that expectation by Judicial Review as a matter of Public Law. Judicial Review must be brought promptly and in most jurisdictions most proceedings must be brought no later than three (3) months from the date of the decision that is being questioned. The Court will extend the time for the filing of Judicial Review action only if good reasons are given.

### **2.1.15 The Question of Natural Justice and Judicial Review**

Several of the cases of Judicial Review refer to the question of natural justice that is the failure of the Statutory Authorities or bodies vested with judicial, quasi-judicial and administrative power to observe the rules of natural justice. The rules of natural justice require, that no man should be punished or condemned unless and until he has been informed of the charges or allegations against him and be given a reasonable opportunity to be heard in his defence. The right to a fair hearing, that is, a party is given adequate notice of the allegations made against him and an opportunity to be heard. The rules of natural justice are intended to preserve the integrity of the judicial process. It speaks to fair play and due process Lord Ruskil (1984).

The rules of natural justice can therefore restrict the freedom of Administrative Action and their observance costs a certain amount of time and money. In Administrative Law, natural justice is a well-defined concept which comprises two fundamental rules of fair procedure: that a man may not be judged in his own cause and that a man's defence must always be fairly heard. Natural justice goes to common Law which imposes a far reaching and sophisticated duty of procedural fairness, upon those who decide administrative matters. The Service Commissions in the exercise of their functions in accordance with the Constitution of the Republic of Trinidad and Tobago must adhere to the rules of natural justice, especially in issues relating to the disciplining of officers. The Commissions must follow the procedures as outlined in the overarching legislative framework that governs Public Service Human Resource Management practices.

### **2.1 16 The Freedom of Information Act (2000):**

The Government of Trinidad and Tobago in an effort to provide for openness and transparency in the operational procedures of Public Authorities like the Service Commissions and to facilitate the access to information enacted the Freedom of Information Act No. 26 of 2000 by which members of the public have a right to access information in possession of Public Authorities. Any public officer who desires to have access to information or documents of a statutory authority or a Service Commission on a matter affecting him may therefore, make such a request to the relevant Service Commission in accordance with the provisions of the Act.

The Act provides, inter alia, as follows:

- (a) Making available to the public, information about the operations of Public Authorities and, in particular, ensuring that the authorisations, policies, rules and practices affecting members of the public in their dealings with Public Authorities are readily available to persons affected by those authorisations, policies, rules and practices; and
- (b) Creating a general right of access to information in documentary form in the possession of Public Authorities limited only by exceptions and exemptions necessary for the protection of essential public interests and the private and business affairs of persons in respect of whom information is collected and held by Public Authority.

#### **2.1.17 Freedom of Information and Judicial Review**

Ramesh Lawrence Maharaj; Senior Counsel and former Attorney General of Trinidad and Tobago in piloting the Freedom of Information Act in the Parliament on 30<sup>th</sup> April 1999 stated that:

*“the rationale for this kind of legislation has been to make Government more accountable by making it more open to public scrutiny. It is also to improve the quality of decision making by Government to enable groups and individuals to be kept informed of the functioning of the decision making process as it affects them, and to know the kind of criteria that will be applied by Government agencies in making those decisions, to enable individuals, except in very limited and exceptional circumstances to have information about them held on Government files so that they may know the basis on which decisions that can fundamentally affect their lives are made and, have the opportunity of correcting information that is incorrect or misleading. Also, it is to increase the level of public participation in the process of policy making and the Government.”*

It can be inferred therefore that the Freedom of Information Act is a tool for good governance and a guiding philosophy on how a Public Authority should transact business and it speaks to improved democracy. The Act also provides for oversight and accountability and allows



citizens to file for Judicial Review. It stipulates that documents should be disclosed in the public interest except a document is deemed to be exempt in that its disclosure may cause damage to the public interest.

Justice Moosi in *Sankar v the Public Service Commission* [HCA] 2007 ruled that the Court be provided with the Public Service Commission's Minutes. The Judge stated "*in my view the exercise of such power of review, on the highly complex ground stated therein ought properly to be reserved to independent impartial bodies with legal or judicial experience competent to address their minds to the issue of the existence of reasonable evidence that broadly speaking, significant prejudice has, or is likely to have occurred, or in the circumstances giving access to the documents is justified in the public interest.*" This statement implies that decision making with respect to giving information under this Act requires considerable legal knowledge and familiarity with legal researching techniques and legal sources.

The Freedom of Information Act is linked to Judicial Review as Section (20), (23), and (39) stipulate the grounds on which a person can apply for Judicial Review if they are denied information under the Freedom of Information Act. The Act stipulates that public officers should give full and frank disclosure so that the Court will not act on misrepresentation or selective information. In matters of Judicial Review the Public Authority like Service Commissions, is obliged to provide all information relating to the particular case even where it will help the claimant's case, the Public Authority has the duty of candour. The question of transparency and disclosure is at the heart of the Freedom of Information Act. The public has an interest in the administration of justice and therefore has a right to information. Public Authorities must show why they are withholding information; they must provide reasons for refusing. In summary, it concerns what is in the public interest. Moreover, once a claim for Judicial Review is afoot, the defendant Public Authority like Service Commissions is expected to proceed with "all their cards faced upwards on the table" in the words of Woolf et al (2007) and the Court may order disclosure. Before that point the claimant may consider exercising their statutory rights to right of access of information.

#### **2.1.18 Equal Opportunity Act No. 69 of 2000:**

Trinidad and Tobago is a heterogeneous society which is characterized by underlying racial tension between the two main ethnic groups. In an effort to promote equity among the several groups the Equal Opportunity Act was promulgated in 2000. This Act seeks to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal and for matters connected therewith.

#### Discrimination in Employment:

The Act specifically states that “An employer or a prospective employer shall not discriminate against a person –

- (a) In the arrangements he makes for the purpose of determining who should be offered employment.
- (b) In the terms or conditions on which employment is offered; or
- (c) By refusing or deliberately omitting to offer employment.

An employer shall not discriminate against a person employed by him –

- (a) In the terms or conditions of employment that the employer affords the person;
- (b) In the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment, or by refusing or deliberately omitting to afford the person access to them; or
- (c) By dismissing the person or subjecting the person to any other detriment.

The Act also established the Equal Opportunity Commission to ensure that employers observe the tenets and principles of the Act. While the Act speaks of the employer, legal advice received from the Service Commissions Legal Advisor states “that Service Commissions are not deemed as employers and that that function is carried out by the Chief Personnel Officer of the Personnel Department.” However in 2013, the Teaching Service Commission and the Director Personnel Administration of the Service Commissions Department were brought before the Port of Spain Magistrate’s Court on a charge resulting from an issue relating to an application made under this Act. The matter of the full applicability of this Act to the Service Commissions has not yet been resolved.

### **2.1.19 The Legislative Framework for the Practice of Human Resource Management in the Public Service**

The Practice of Human Resource Management in the Public Service is guided by the following several pieces of legislation, which set the parameters, define the processes and guidelines for the Human Resource functions among the several Human Resource Agencies of the Public Service. The Laws / Regulations with the exception of a few have been in existence for well over fifty (50) years. Many persons have contended that the Laws and Regulations are antiquated and need to be revised. This view is also shared by the researcher as discussed previously.

The following are the legislative framework that governs the practice of Human Resource Management:

1. The Constitution of the Republic of Trinidad and Tobago
2. Public Service Commission Regulations
3. Civil Service Act and Regulations
4. Code of Conduct
5. Police Service Commissions Regulations
6. Occupational Health and Safety Act
7. Education Act
8. Police Service Act

For the purpose of this research, an overview of the legislations listed at 1-4 will be discussed.

### **2.1.20 The Constitution of the Republic of Trinidad and Tobago**

This sets the parameters for the practice of Human Resource Management in the Public Service, as it is the supreme Law of Trinidad and Tobago. The present Constitution was promulgated in 1996. It establishes the Public Service and defines their roles and functions of all public institutions and sets the legal guidelines for their operations. Any subsidiary legislation or Law that is created, that is at variance with the Constitution is null and void.

Chapter 9 Section 121- 129 gives effect to the establishment of the various Commissions, it also sets the parameters for their operation, defines their functions as well as their mode for consultation with the Prime Minister. Section 130-132 establishes the Public Service Appeal Board and delineates its composition and function.

#### **2.1.21 The Public Service Commission Regulations**

In considering matters falling within the purview of their constitutional powers, the Commissions are guided by the principle, procedures and rules set out in Public Service Commission's Regulations (1966). These Regulations guide in the formulation of the various policies and Precedents handed down from time to time. They set the parameters for the conduct of the functions of the Commissions and define in detail such matters as the processes to be followed in respect of appointment, promotion, transfers, discipline and removal of officers in the Public Service. The Public Service Regulations are part of the laws of Trinidad and Tobago. The Teaching Service Commission and the Judicial and Legal Service Commission have not yet promulgated Regulations but pending such promulgation they have adopted the Public Service Commission's Regulations. These Regulations also guide the operations of those Commissions.

#### **2.1.22 The Civil Service Act/Regulations**

One of the Legislation that impacts the Public Service is the Civil Service Regulations (Chapter 23:01) of the Laws of the Republic of Trinidad and Tobago which established the following:

- (i) The Establishment and Structure of the Civil Service.
- (ii) Terms and Conditions of Employment.
- (iii) Modes of Termination of Service.
- (iv) Civil Service Regulations

In the performance of its functions the Public Service Commission is guided by the tenets of the Civil Service Regulations. These Regulations place a mandatory obligation on the Commission in that they state in part "a copy of these Regulations shall be transmitted to every officer on first appointment by the Commission by which he was appointed together with his letter of appointment".

The Civil Service Act outlines the following classes in the Public Service which are: - Administrative, Professional and Scientific, Technical, Clerical, Secretarial and Manipulative. It also specifies the terms and conditions of the Public Service. Moreover, it states the mode of recruitment and the entry requirement for the various classes in the Public Service. The Act also specifies the age limit of candidates for recruitment, their period/s of probationary appointment and the requirement for confirmation of appointment. It also states the nature and form for the performance management of officers and other matters. It also outlines how matters of secondment payments, pension and gratuities, remuneration, increments and allowances, hours of work should be treated (Civil Service Act 1966).

#### 2.1.23 The Codes of Conduct:

The Codes of Conduct of the Public Service of Trinidad and Tobago forms part of the Civil Service (Amendment) Regulations (1966) and seeks to regulate the behaviour of public officers. Breaches in the Code of Conduct by a public officer would be construed as misconduct liable to disciplinary process.

The Codes of Conduct stipulate the desired behaviour in terms of: General Conduct, duties of the officer, absence without leave, activities outside the service, publication of information, comment on questions of public policy, lectures and talks related to his/her duty, indebtedness, bankruptcy and bribery, receipt of gifts and awards, bribery, legal proceeding, criminal charges and general misconduct. The Commissions in exercising disciplinary control over public officers do so in accordance with the relevant Codes of Conduct.

#### **2.1.24 The Change from Personnel Management to Human Resource Management**

This section of the paper would now examine the theories, models and construct of Human Resource Management as well as Human Resource Management in the Public Service. Is Human Resource Management just another approach to Management? Several theorists and authors have expressed difficulties in identifying differences between the two (2) concepts. Some authors suggest it might simply be a relabelling process. Legge (1989) and Torrington (1989) agree that “*a change of label*” is obvious, though one cannot be sure that the context

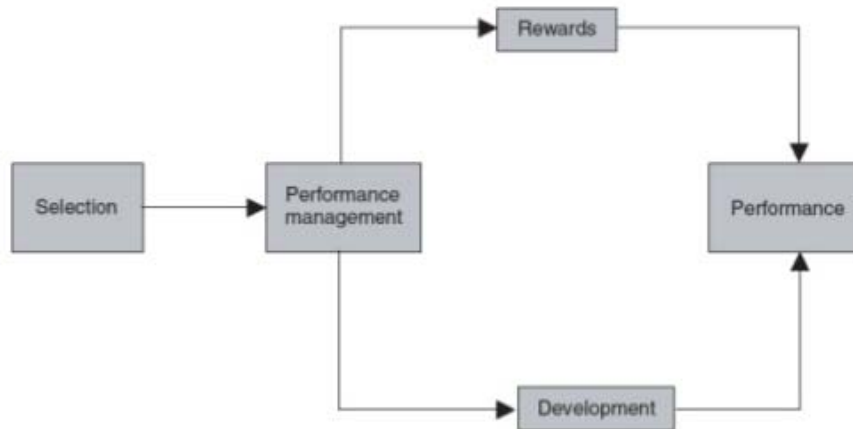
has differentiated to any extent. However the new terminology may at least rid Personnel Management from its unfavourable welfare image and other “*negative connotations*” (Sisson 1990) and thus, save the ailing function of managing personnel from marginalization.

Accordingly, some Human Resource academics maintain that new labels on old bottles may have their uses, even if it is only for marketing purposes Armstrong (1987), Guest (1989). Furthermore, a valuable contribution of Human Resource Management is to direct the attention to regarding people as the key resource of organizations and lending the management of personnel increased importance Armstrong (1987). The change from Personnel Management to Human Resource Management was the first step taken in the reform of the Public Service. Before examining Human Resource Management practices in the Public Service, one must discuss the theories and construct that inform Human Resource Management generally.

#### **2.1.25 Models of Human Resource Management**

There are several models of Human Resource Management that explain how Human Resource systems and structures should be managed in a congruent manner in line with an organization’s strategy. One of these models is referred to as the Matching Model, which suggests that generic processes and functions are performed by all organizations. One of the main models is that of the Michigan model Fombrun et al (1984). This model advocates that selection, performance management, reward systems and training and development are all performed by one organization (See Figure 2 below).

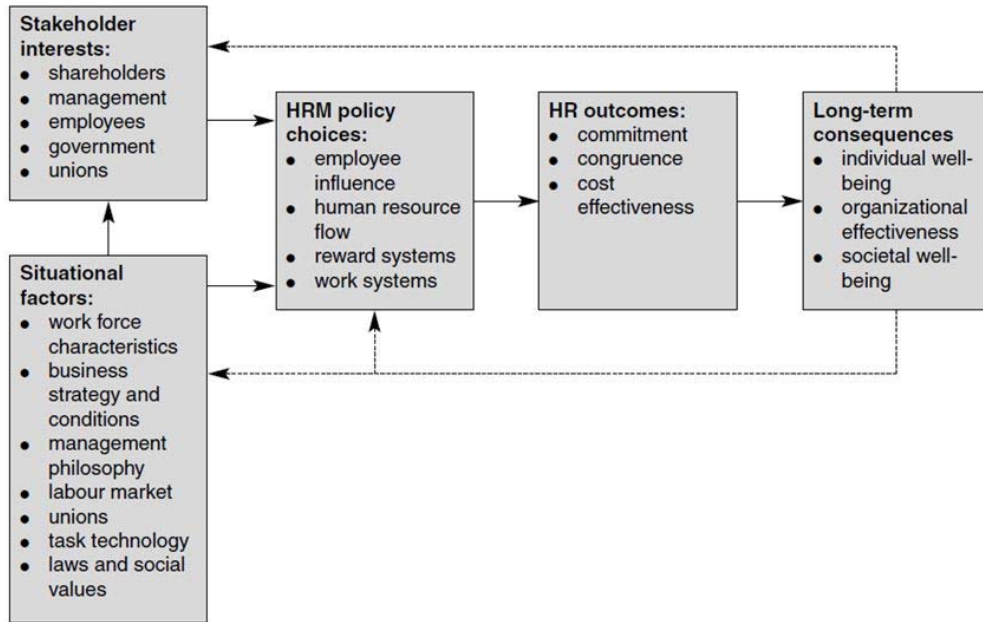
#### **The Matching Model**



**Figure 2: The human resource cycle (adapted from Fombrun et al, 1984)**

This is not the case in the Public Service of Trinidad and Tobago as these functions are distributed among the Service Commissions, the Personnel Department and the Ministry of Public Administration. The Service Commissions are only responsible for issues in respect to selection of public officers.

# The Harvard Framework



**Figure3: The Harvard Model for Human Resource Management**

(Source Beer et al 1984)

Another model is the Harvard Business School Model, Beer et al (1984) which is depicted at Figure 3. This model states that Human Resource Management involves all management decisions and actions that affect the nature of the relationship between the organization and its human resources. The Harvard Business School model has two (2) characteristic features, in that it suggests managers accept more responsibility for ensuring the alignment of competitive strategy and personnel and policies. The second that personnel has the mission of setting policies that govern how personnel activities are developed and implemented in ways that make them more neutrally reinforced. Boxall (1992) in commenting on this model stated in part that the model acknowledges a broad range of contextual influence on management's choice of strategy, suggesting a meshing of both product-market and socio-cultural logics. It also emphasizes choice in that it is not driven by situational or environmental determinism.



While the model is a guide to managing people in organisations, its total usefulness to the context of Public Service Human Resource Management in Trinidad and Tobago is questionable. To the models credit it includes reference to laws as a situational factor that would impact Human Resource policies and choices. Nevertheless, as indicated by Boxall in relation to strategic choices the model argues that Human Resource Management is not driven by situational or environmental determinism. On the contrary, Public Service Human Resource Management is heavily influenced by law and other situational factors such as its legislative framework and other Public Law legislation, like the Judicial Review Act (2000) that defines the parameters for its operationalization.

One of the major characteristic of Human Resource Management is that it is a management driven activity in that, delivery of Human Resource Management is a line management responsibility to ensure that the purpose of Human Resource Management which is achieving success through people is achieved. Moreover, Gratton et al (1989), in conducting research into Human Resource policies and practices lamented that generally there was a wide gap between the sort of rhetoric expressed in relation to theories, models and framework and the reality of their application. They argue that it is always difficult to do all the things advocated by the models; the whole concept of (theory in use) is often difficult. These areas they agreed are driven by contextual factors, process and problems. They reasoned that while it would be easy to come up with new and innovative policies and practice, the challenge is to get them to work. These views aptly apply to the Public Service context and realities, in trying to reform Human Resource Management in the Public Service. One has to be careful in trying to import foreign prescriptive models that may have worked elsewhere but efforts to introduce them within the Trinidad and Tobago context may well prove disastrous due to its legislative framework and other constraint.

### **2.1.2 6Applicability of the Human Resource Management Models to the Public Service**

The models suggest that strategic Human Resource Management is a coherent, integrative approach to the management of people. Also critical are the human resource systems and activities and organizational strategy. The models speak to the use of planning which is underpinned by a philosophy, in which people (strategic resource) are seen as a major means of achieving competitive advantage, vertical and horizontal integration are major features of the models which contend, that congruence between business and human resource

management strategies, so that the latter supports the accomplishments of the former and help to influence it.

The models point to a unifying framework for the practices of Human Resource Management within a single organization. These practices should be driven by the formulation and implementation of specific strategies for each of the functional area of Human Resource Management. In essence this implies there must be an overarching strategy which describes the general intentions of the organization about how people should be managed and developed and what steps should be taken to ensure that the organization can attract and retain the people it needs, as well as, specific strategies relating to different aspects of Human Resource Management. Clearly, the practice of Human Resource Management, if it has to be transformed, it can be guided by these strategic models but adapted to suit the Public Service context.

#### **2.1.27 The Establishment of Human Resource Management Divisions in Ministries and Departments**

One of the initiatives agreed to by the Cabinet of the Republic of Trinidad and Tobago in 1993 as part of the process of transforming the Public Service of Trinidad and Tobago was the establishment of Human Resource Management Divisions in Ministries and Departments. The creation of Human Resource Management Divisions was seen as a way to effect the transformation from Personnel Administration to Human Resource Management and to allow for the decentralization from Central Agencies to Line Ministries and Departments through delegation of authority and devolution of responsibility. Each agency of Government was therefore expected to engage in its own Strategic Human Resource Management with specific guidelines from the Central Human Resource Agencies of Government. Accordingly, Human Resource Agencies were established in several Ministries and Departments with the exception of a few. Many writers since then have argued that these Human Resource Divisions have made very little difference to the management of people in the Public Service due to the fragmented nature of the practice.

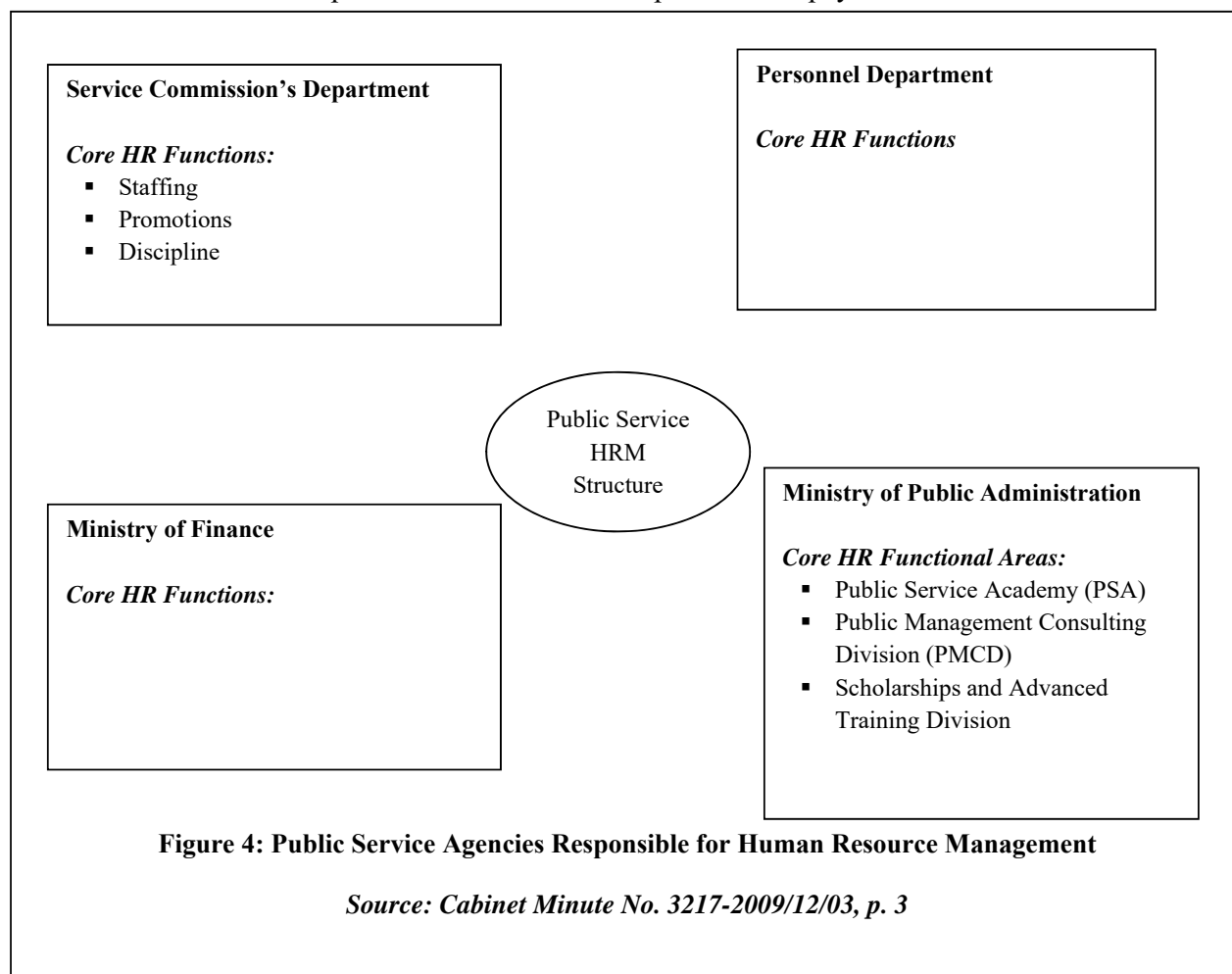
### **2.1.28 The Practice of Human Resource Management in the Public Service**

The responsibility of Human Resource Management is fragmented among four Agencies- the Personnel Department, the Service Commissions Department, the Public Management Consultancy Division of the Ministry of Public Administration and Information and Pensions Division of the Ministry of Finance.

The functions of each organization are briefly described below: -

- **The Personnel Department-** the functions of which are described fully at Section 14 of the Civil Service Act Ch. 23:01 has responsibility for Terms and Conditions of Employment in the Public Service, such as; Benefits Management, Job Evaluation and Salary Administration, Industrial Relations and Employee Development.
- **The Service Commission Department** is the administrative arm of four (4) Service Commissions. It is the Secretariat for the Commissions and provides support and advice to enable to Commissions to carry out their constitutional functions of appointment, promotion, confirmation, transfer, discipline, separation and disciplinary control over officers, in respect of the Public Service Commission. Some aspects of these functions e.g. acting appointments except those requiring consultation with the Prime Minister of Trinidad and Tobago, minor infractions of the Code of Conduct that do not attract the penalty of dismissal and temporary appointments and transfers within Ministries or Departments, have been delegated to Permanent Secretaries and Heads of Departments. The Service Commissions Department's role is also to monitor the performance of the delegated authority.
- **The Public Management Consulting Division** is a branch of the Ministry of Public Administration and is the management consultancy agency of the Public Service. It advises and recommends on the creation of new positions, organizational designs, and development of systems, procedures for the efficient utilization of human and other resources. It also manages the strategic review process in the Public Service.
- **The Pension Division** is a branch of the Ministry of Finance and is responsible for the general administration of pension matters in accordance with the Pensions Act and Regulations. It also manages existing Memoranda of Agreement arrived at with the

various Public Service Unions. It is in charge of the maintenance of pension and leave records for all public officers and the computation and payment of terminal benefits.



Under the existing arrangements, no agency has singular authority for Human Resource Management. Human Resource Management as performed by these Agencies is not practiced within an overall Human Resource Management framework as is envisaged by Human Resource theories, models and construct. This has resulted in a high incidence of overlapping, duplication, endless delays, inefficiency and a lack of effectiveness.

### **2.1.29 Reform Initiatives to Address the Issues**

In May 1997, the Minister of Public Administration and Information laid in Parliament a Policy Agenda for the Public Service, which was designed to motivate Public Service agencies on improving their services by focusing on the highest level of professionalism and integrity. To achieve this, Public Service Agencies needed to transform the way in which they

managed their Human Resources as this was seen as a critical ingredient of the reform initiative. The then Minister argued that current practices in the Public Service focus on Personnel Administration. This is a field from the 1920s, which concentrated on procedures for hiring, disciplining and compensating employees, as well as Industrial Relations. However, it was suggested that it did not cater for the management of people.

In support of the thrust towards Human Resource Management, the Minister acknowledged that Modern Human Resource Management seeks to achieve the best fit between the employee and the organization. It is the process of attracting, developing and maintaining a quality work force and encompasses activities relating to:

1. Human Resource Planning;
2. Human Resource Development; and
3. Employee Relations.

In keeping with this thinking, several reform initiatives were introduced to deal with specific areas mentioned. The creation of Human Resource Management Divisions was seen as a way to effect the transformation from Personnel Administration to Human Resource Management and the decentralization of Human Resource Functions from the Central Agencies identified previously to Line Ministries and Departments, through the delegation of authority and devolution of responsibility. In 2006 the Public Service Commission delegated some additional functions to Line Ministries and Departments as discussed in Chapter 1 while the Personnel Department devolved several Industrial Relations functions.

In 2009, the Government embarked on an initiative to facilitate the effective co-ordination of the Human Resource function in the Public Service. The then Minister of Public Administration in piloting a note to Cabinet stated; that among the critical organization systems that must be improved in order to effect the desired and sustainable transformation of the Public Service and the resulting improvements in organization effectiveness and Service delivery was the Human Resource Management System. He argued that the Human Resource Management System in the Public Service of Trinidad and Tobago was considered to be non-strategic, antiquated, inadequate and incapable of contributing to the achievement of the core mandate of the Government and its Vision 2020 objectives. These views have been reiterated over the years by several writers on Public Service Reform in Trinidad and Tobago. The views of these writers will be enunciated later in this chapter.

### **2.1.30 Service Commissions and their role in the Practice of Human Resource Management in the Public Service**

As discussed previously, the Service Commissions are independent agencies established by the Constitution of the Republic of Trinidad and Tobago to safeguard the integrity of and ensure the political impartiality of the public officer.

As the former British Colonies in the Caribbean moved to independence, there was the view that one way to ensure the neutrality of civil servants was to establish mechanisms that denied Politicians a role in recruitment, promotion, and disciplining of staff. Service Commissions were therefore established as independent bodies to perform these Human Resource Management functions for the Civil Service. The independence Constitutions of Caribbean countries created Service Commissions as independent and autonomous bodies to govern the appointment, discipline and removal of all public officers Draper (2001)

### **2.1.31 Composition and Accountability of Service Commissions**

Sections (110),(120),(122)and (124) Of the Constitution of the Republic of Trinidad and Tobago establish the Judicial and Legal Service Commission, Public Service Commission, Police Service Commission and the Teaching Service Commission respectively. The constitution also specifies who shall be members of the respective Commissions. In the case of the J.L.S.C, the members are the Chief Justice who is the Chairman, the Chairman of the Public Service Commission, a person who held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeal from any such court. Also, two other persons with legal qualifications, one of whom should not be in active practice. Although, the Constitution states the in case of the P.S.C it shall consist of a Chairman, Deputy Chairman and not less than two nor more than four other members and in respect of the T.S.C a Chairman and not more than four other members, it does not specify specific qualifications that these individuals should hold. In the case of the Police Service commission, it was previously structured like the P.S.C and T.S.C, however, in 2006 it was reformed, and now comprises of a Chairman and that person and four other members must be qualified and experienced in the disciplines of Law, Finance, Sociology or Management.

In terms of their accountability, these Commissions with the exception of the J.L.S.C are required to submit an Annual Report on their performance to the President of Trinidad and Tobago. The President is required to lay the Report in Parliament, and thereafter each Commission is required to appear before a Joint Select Committee of the Parliament to answers questions on their report. These meetings of the Joint Select Committee are open to the general public, who are not permitted to any questions. It is also broadcasted live on television and radio.

### **2.1.32 Arguments For and Against The Abolition Of Service Commissions/ Reform Of Service Commissions**

Some of the most frequent criticisms of the Public Service of the region have been directed at the composition, powers and procedure of the Service Commissions established by the various Constitutions. The Commissions were created to insulate members of the Public Service from political influence exercised upon them by the Government of the day. Many persons have doubted that the original rationale remains relevant. One critique, “F.E.Nunes”, in a paper on Service Commissions presented to CARICAD contends that Service Commissions are “counter-productive” anachronisms and should be abolished. In support of his position he stated that they were out of step with well-developed labour laws and modern industrial relation practices. Further, that they were ill-equipped to treat effectively with the management of human resources in the public service. The researcher argues that Service Commissions are still relevant, but their composition and the legislative framework that governs their operations need to be reviewed. Deryck Brown a former University of the West Indies Lecturer, in his paper presented at CAPAM Regional Conference in 2008, argued that the separation/segregation of roles in the Public Service may simply be unrealistic and this informal way of “doing government” may itself call for creative research. Continuing he stated that Public Service Commissions are in need of administrative reform and further he lamented that there seems to be an absence of any meaningful attempt to develop a body of Public Administration Theory relevant to the Caribbean is a glaring vacuum. Other writers like Paul Sutton, in 2008, writing for The Caribbean Papers on Public Sector Reform in the Commonwealth Caribbean had enunciated the rationale for Service Commissions, which he stated was threefold: (a) to protect public officers against discrimination in respect of appointment, promotion, transfers, and disciplinary proceedings:( b) to provide public

officers with equal opportunities and fair treatment on the basis of merit; and (c) to minimise the incidence of the exercise of patronage as the reward for support of a political party or individual politicians, and the exercise of nepotism, or favouritism from other influential sources. He observed that in the region a view has been gradually gaining ground that Service Commissions need to be reformed or abolished and cited the case of Kenny Anthony, a former Prime Minister of St Lucia who advocated for the modernization of the Public Service and the introduction of a philosophy of partnership between the Executive, the Public service Commissions, the representative organisations of public officers, and the public at large. Anthony, Sutton stated proposed legislative reform to reduce the functions of the Commissions.

Gordon Draper, a former Minister of Public Administration, in 2001 acknowledged that there had been considerable debate about the continued relevance and role of Service Commissions. He questioned whether some of the functions of Service Commissions should not be delegated to public service managers. Draper argued that other writers like Nunes (1995) and Eaton et al (1992) have suggested that they should be abolished as they were anachronistic and inconsistent with the norms of modern Human Resource Management. These writers posited that Commissioners are drawn exclusively from outside the service and cannot be fully conversant with human resource practices and subtleties of job requirements within the Public Service. Lalla, a former Chairman of the Public Commission and member of the Judicial and Legal Service Commission in 2013 stated that the views expressed by these writers are tenuous and unjustified and argues that Service Commissions are mechanisms allowing the people and not the politicians to become partially involved in the selection of candidates for appointment to the Civil Service. He further states that Commissions are independent agencies of the State, established by the Constitution to ensure that every citizen have a right to equal opportunities for appointment in the Public Service and the other services and be treated with fairness, reasonableness and justice in matters of discipline, transfers and confirmation. Lalla lamented that while there have been several calls by politicians for the abolition of Service Commissions due to their constitutional powers, he was of the firm view that they were still valuable and useful in a democracy like Trinidad and Tobago: they should be allowed to grow and develop as independent institutions in our system of government especially since openness, transparency and impartiality have become our imperatives. There is a general view that it is unlikely than any government in the region



would have the courage even to consider abolishing the Service Commissions and these voices have advocated that efforts should be directed at the prospect of improving them.

Although there has been much discussion on the inefficiencies of Service Commissions by several Governments over the years, there has never been any serious attempt to reform them. In 2006 however, in a joint effort, both the PNM (the government of the day) and the UNC (the opposition) brought a Bill to the Parliament to reform the Police Service Commission. This Bill eventually became Act No. 6 of 2006. Reference to the new reformed Commission has already been mentioned earlier in this paper. Since then, despite numerous outcries there has been no further initiative aimed at modernization of the other three (3) Service Commissions.

### **2.1.33 Challenges/Issues related to the Practice of Public Service Human Resource Management**

The practice of Human Resource Management in the Public Service is fraught with many challenges and issues. As early as 1986 Gordon Draper the former Minister of Public Administration, in a paper titled “A quest for Appropriate Public Service Reform” lamented the fact that many common challenges repeatedly surfaced and re-surfaced. Among the challenges that he identified at that time were the need for the Public Service to review systems, Laws, rules and procedures that regulate the processes of Human Resource Management, including recruitment, training, industrial relations and wage administration. Moreover, Professor John Legere of the University of the West Indies, in the early 70’s had also signalled the key contributors of ineffective Public Service Reform efforts were the lack of strong political support and the fragmented ‘Ad-hoc’ rather than systems approach had been applied.

These challenges continue to exist today, especially as it relates to Human Resource Reform. The current challenges are listed hereunder:

- A fragmented approach where the various elements of the Human Resource Management Functions are located and executed in disparate agencies across the Public Service, with sometimes limited co-ordination among them.
- The absence of an appropriate institutional framework to provide strategic oversight to the Human Resource Management function.

- The non-existence of a modern overarching Human Resource Management philosophy and policy to guide Human Resource Management operations across the Public Service.
- An inadequate and non-enabling legislative and regulatory framework for Human Resource Management.
- The absence of a visible Strategic Road Map or Vision for Human Resource Management that articulates the long-term improvement of the system and how it contributes to the overall Public Service transformation process.
- The current Human Resource Management System in the Public Service served as an impediment rather than an enabler of effective governance.

Of critical and immediate concern is the fragmented and un-coordinated approach to Human Resource Management that currently exists within the Public Service. The Minister recommended a more coordinated approach to Human Resource Management in the Public Service. This fragmented approach to Human Resource Management is considered a principal contributor to delays in the implementation of Government policy and has long been considered a “fetter to the efficient functioning of the administrative machine”. The Dumas Report (1975) argued that a more coordinated approach to Human Resource Management and the effective management of the Human Resource Management function in the Public Service was needed.

#### **2.1.34 Public Service Appeal Board**

Another major issue in the Public Service is the system of Appeal with respect to Human Resource decisions. The Public Service Appeal Board was established in accordance with Section 130 (1) of the Constitution of the Republic of Trinidad and Tobago to treat with appeals of public officers who are aggrieved with the decisions of the Service Commissions or persons to whom their powers have been delegated in respect of disciplinary proceedings brought against them. The Appeal Board may where it considers necessary that further evidence may be deduced:

- (a) Order such evidence to be adduced either before the Board or by affidavit: or
- (b) Refer the matter back to the relevant Commission to take such evidence and
  - i. to adjudicate upon the matter afresh; or

- ii. to report for the information of the Appeal Board specific findings or facts

Where a matter is referred to the Service Commissions in accordance with (b) above the matter, so far as may be practicable or necessary, shall be dealt with as if it were being heard at first instant. Upon conclusion of the Hearing of the Appeal the Board may-

- (a) affirm , modify or amend the decision appealed against; or
- (b) set aside the decision; or
- (c) substitute any other decision which the Service Commission could have made (1976 Constitution of the Republic of Trinidad and Tobago)

The Public Service Appeal Board hears appeals only with respect to matters of discipline, there is no body established to hear appeals in relation to the other Human Resource Management functions performed by the Commission. In 2007 with the amendment of the Constitution and the reformation of the Police Service Commission the amended legislation that gave effect to this decision did not retain the provision to give police officers the right to appeal to the Public Service Appeal Board.

Provisions were made in that amended legislation for Second Division Officer in the Police Service and Officers up to the rank of Assistant Commissioner of Police to appeal to the Police Service Commission, in instances where they are aggrieved about the decisions of the Commissioner of Police. The new legislation is silent on the avenue for redress for the Deputy Commissioners and Commissioner of Police in instances where they might be dissatisfied with the decision of the Police Service Commission. Also, public officers who are aggrieved with any other decisions apart from discipline as there are no avenues for redress have turned to the Courts to review such decisions by way of Judicial Review. The researcher opines that such a lacuna must be addressed as part of the agenda of Public Service Reform. The next section will examine the challenges faced by the Service Commissions as a result of the Judicial Review Act (2000).

## **JUDICIAL REVIEW AND THE PUBLIC OFFICER**

### **2.2.1 Judicial Review and the Public Officer**

Prior to the passage of the Judicial Review Act in 2000, Section 102 (4) of the Constitution of the Republic of Trinidad and Tobago provided for an ‘Ouster Clause’ excluding the jurisdiction of courts to enquire into the validity of any decision made by any of the Service Commissions. However, in 1982 in the case of *Endell Thomas v Attorney General of Trinidad and Tobago*, the Privy Council ruled that the ‘Ouster Clause’ will not oust the jurisdiction of the Courts, where the Commission or any administrative tribunal acted in excess of its jurisdiction, or in breach of the rules of natural justice. The judgement was a “watershed” moment for the Public Service as it signalled that the ‘Ouster Clause’ could be challenged.

With the revocation of the ‘Ouster Clause’ in 2000, it removed the limits of the court to inquire into and review the acts or omissions and decisions of Service Commissions or other Statutory Bodies. This therefore allowed the Courts to determine whether the Commissions acted capriciously or arbitrarily or in substantiated disregard of their respective regulations, or whether they acted in contravention of the fundamental rights of an individual to equality of treatment in accordance with the rules of natural justice. Lalla in his book “Public Service and the Public Service Commission” painstakingly illuminated that with the promulgation of the Judicial Act (2000), there has been a preponderance of Judicial Review Applications by public officers.

Over the period 2000-2015 public officers have applied for Judicial Review with respect to the Commission’s decisions on the following grounds:-

- i) Breach of officer’s fundamental rights
- ii) The Commission has exercised jurisdiction it does not have
- iii) The Commission acted outside its Lawful functions
- iv) Unfair dismissal
- v) Failure to comply with mandatory direction
- vi) Policy contrary to Law
- vii) The Commission did not make an independent judgement

- viii) Improper delegation of authority
- ix) Abdication of function
- x) Bad faith
- xi) Breach of legitimate expectation
- xii) Decision tainted by bias
- xiii) Errors in form or procedure, lacking in substance, acting procedurally improper
- xiv) Unfair treatment and discrimination
- xv) Unfair and unreasonable decision, acting irrational and unreasonable.
- xvi) Unlawful and contrary to Law, acting ultra-virus
- xvii) Breach of natural justice, acting improperly and irregular
- xviii) Improper exercise of its discretion
- xix) Abuse of power and contrary to regulations
- xx) Abuse of process
- xxi) Unreasonable delay in making a decision

### **2.2.2 Eligibility to Qualify For Judicial Review**

A public officer seeking to file for Judicial Review with respect to a Commission's decision must show;

1. That he has sufficient interest in the matter to which the application relates;
2. That a justifiable discriminatory decision or an act of omission has been made by the Public Authority (Ramlogan 2007)

Lalla (2013) further argues that the applicant must have 'locus standi' and legitimate expectation, in that the applicant must show that the decision of the Statutory Body affect him by altering his rights and obligation, which are enforceable in private Law or that he has a legitimate expectation to enjoy some benefit or advantage. Lord Diplock (1983) stated that "*reasonable expectations may arise either from an expressed promise given on behalf of a Public Authority or from the existence of a regular practice*". Legitimate expectation is not a legal right so it is not enforceable in private Law, however the Courts will protect that expectation by Judicial Review as a matter of Public Law.

### **2.2.3 Pre-action Protocol**

The public officer must make application to the Court for Judicial Review. That is, he must seek permission. In terms of process, he must show that he has exhausted all other remedies before his application for Judicial Review. Woolf et al (2007), pp. 839-847 state that “*an application for permission is a proceeding for the purpose of the Supreme Court to regulate access to the Courts for vexatious litigants and so a person subject to a civil proceeding order must make a separate prior application for permission to institute the proceedings.*” This permission stage, they elaborated, served a number of purposes. First, it may safeguard Public Authorities by determining or eliminating ill-founded claims without a need for a full hearing. This will also prevent administrative action being paralyzed by pending, but possible spurious legal challenges. Secondly, it provides for the Administrative Court, a mechanism for efficient management of the ever growing Judicial Review case load. By granting permission to proceed on some, but not all grounds, the Courts are able to stop hopeless aspects of a case in their tracks. Thirdly, for the claimant the permission stage, far from being an impediment to assess the justice may actually be advantageous since it enables the litigant expeditiously and cheaply to obtain the views of a high court judge on the merit of his application.

Woolf et al (2007), further point out, before making a claim the claimant should send the letter (*commonly referred to as the pre-action protocol letter*) to the defendant (*in this case the Service Commissions*). The purpose of the letter is to identify the issues in dispute and establish whether litigation can be avoided. The Courts are interested to determine whether the parties have exhausted or tried some form of alternative dispute resolution, as the Courts take the view that litigation should be the last resort and that claims should not be issues prematurely when a settlement is still actively being explored. This protocol sets out a code of good practice and contains the steps which parties should generally follow before making a claim for Judicial Review.

The officer applying for permission must also gather all relevant information including the facilities granted in accordance with the Freedom of Information Act (2000), which was established to provide information from Public Authorities. The Service Commissions for the period 2000-2015 have had 3000 requests for information under the Freedom of Information

Act. In many instances the officer once given information used it in his application for Judicial Review.

#### **2.2.4 The Question of Alternative Remedy**

As has previously been pointed out Judicial Review is a remedy of last resort, the Court will not grant an application for Judicial Review unless the claimant has exhausted all avenues in respect of alternative remedy. It is argued by Woolf et al (2007) that without intending to be prescriptive, the Court has suggested inappropriate cases that a claimant should expect to explain to the Administrative Court, why (if this be the case) any internal complaint, procedure had not been pursued. They further contended that there are three (3) practical propositions to guide aggrieved citizens and their adversaries. First, the complainant should always seek a local resolution of the dispute as any Public Authorities have in place a process for internal resolution/reconsideration of specific decision, or dealing with broader complaints of the conduct of public officials. Woolf et al (2007) further suggested that complainants who fail to use such a mechanism without first giving the Public Authority an opportunity to put things right are likely to be turned away. Secondly, where a local resolution cannot be attained, there is a string of prescription that the complainant must use, any statutory appeals procedure that exists. Thirdly, investigations by the Ombudsman and a claim for Judicial Review are the avenues of last resort.

Furthermore, Fordham (2004) argues that with respect to alternative remedy, Judicial Review is regarded as inappropriate where suitable alternative safeguards exist. For him Judicial Review is not seen as the sole means of protection against legal impropriety of Public Authorities. The existence and pursuit (or non-pursuit) of other avenues of protection, stand to make a big difference to whether the Courts will hear the case and the approach to be adopted if it does. Fordham (2004) further contends that in certain context, usually under particular legislative provisions, a special alternative mechanism is regarded as the exclusive means of challenge, so that Judicial Review is effectively ousted. However, he cautioned that usually an alternative remedy will not be an exclusive one (that is one which might be seen as excluding Judicial Review). Instead he suggested that the question will be whether Judicial Review should be entertained as a matter of discretion and sound case management as Judicial Review is generally guarded as a last resort. Fordham (2004) concluded by stating that the existence of an alternative remedy especially an unused statutory right of appeal can

be a strong reason to refuse permission at the beginning of the case or a remedy at the end of it. The Court will look at all the circumstances including the nature of the issue and the suitability of the alternative remedy for resolving it.

Moreover, Fordham (2004) affirms that there might be other remedies curing Public Law wrong. He insisted that the pursuit of a suitable alternative means of recourse can have the effect of remedying a prior Public Law wrong which is one reason why the Court will usually expect and insist on such pursuits. If the claimant does (or Court) pursue an alternative mechanism by taking the case to a second decision making body, that body's approach and ambit (whatever its substantive decision) may cure any previous legal effect, or prevent such defect arising when the process is viewed as a whole. It can therefore be reasonable to assume that the presence of an alternative mechanism within the Service Commissions Department to treat with officers' complaint in an effective manner as suggested might go a long way to alleviate officers' reliance on the Court by way of Judicial Review to address their complaints. Alternatively, alternative remedy mechanisms might be legislated by the requisite law to give effect to such an approach as there is no such system of external appeal mechanism available. As previously discussed the Public Service Appeal Board is only empowered to hear appeals with respect to decisions taken by Service Commissions in the exercise of their disciplinary function.

#### **2.2.5 The Role of the Courts in the Practice of Human Resource Management in Trinidad and Tobago**

The question that has to be asked, since the passage of the Judicial Review Act is, “ *What really is the role of the courts of Trinidad and Tobago and the Privy Council of London in Public Service Human Resource Management?* ” “The Courts do not act as Court of Appeal in Judicial Review cases, although they review the decisions of Public Bodies, that is the merit of the decision or the decision making process. A perusal of the judgements revealed that in instances when the Courts ruled against the Commissions they commented adversely on the process that was followed in arriving at the decisions. The Courts in those instances remitted the matter to the Commissions for reconsideration, as the Courts do not pronounce on the correctness or veracity of the substance of the decision, Ramlogan (2007) and Woolf et al (2007).



The Service Commissions in reviewing their decisions will be forced to carefully examine their processes to determine whether there are flaws in their processes or whether they have deviated from the processes outlined in the Regulations that may have contributed to any of the breaches. Administrative Bodies like the Service Commissions are given vast discretionary powers affecting the rights and interest of individuals. Therefore, in the exercise of this power they are not permitted to function without the supervision, control of the Courts. Lalla (2013) argues that if a Public Authority has unbridled power they can abuse such power and so act arbitrarily and capriciously. Lalla's view is supported by the old adage pronounced by Lord Acton "*Every power tends to corrupt absolutely.*" It can be concluded that the powers of the Service Commissions are subjected to the controlling jurisdiction of the Courts.

#### **2.2.6 The Question of Supervisory Jurisdiction**

Judicial Review is a central control mechanism of Administrative Law (Public Law) by which the judiciary takes the historic constitutional responsibility of protecting against abuses of power by Public Authorities. Such a safeguard promotes the public interest by ensuring that Public Bodies are not above the law, thus protecting the rights of those affected by Government's action Fordham (2004). For him the question of supervisory review is not whether the Judge disagrees with what the Public Body has done, but whether there is some recognizable Public Law wrong that was done. Supervisory jurisdiction is all about (a) controlling administrative action (b) restraining abuses and (c) securing obedience to law. All this ensures that decisions made by the Executive or by a Public Body are made according to law.

Judicial Review involves a challenge to the legal validity of the decision. It does not allow the Court of Review to examine the evidence with a view to forming its own view about the substantive merit of the case. Accordingly in principle once a Public Body like the Service Commissions or a public officer exercises their power, they can attract the supervisory jurisdiction of the Court. Arguably, it can be distinctly stated that the Courts in the exercise of their supervisory jurisdiction, oversee the decisions of Public Bodies to make sure their decisions are made within their legal boundaries and that they do so within the powers

granted to them. The Courts therefore hold Public Bodies like Service Commissions accountable for their actions.

While the Courts have no general supervisory jurisdiction over the exercise of the Service Commissions powers as they discharge their constitutional functions and by extension their Human Resource Management function, in as much as they exercise administrative, judicial or quasi-judicial powers, the Courts have jurisdiction to supervise the discharge of their functions. However, where the administrative Authority, like Service Commissions exercise their discretionary powers, the Courts have no power to intervene. This is affirmed by several Courts' decisions, some as early as 1905 when Lord Halsbury held that "*where the legislative has confided to a particular body with a discretion how it is to be used, it is beyond the power of any Court to contest that discretion*".

#### **2.2.7 Judicial Review Judgements of the Courts**

The Courts do not act as Court of Appeal in Judicial Review matters. They however, review the decisions of Public Bodies like Service Commissions unless there are expressed statutory provisions excluding judicial control. As mentioned earlier in Trinidad and Tobago, prior to 2000 and the promulgation of the Judicial Review Act the Courts were generally restricted from enquiring into the decisions of the Service Commissions by the constraints placed on them by the 'Ouster Clause' embodied in the Constitution of Trinidad and Tobago. It has been established that Judicial Review is not concerned with the merit of the decision but with its propriety. The grounds for Judicial Review have been categorized by Lord Diplock (1984) under three (3) headings, namely, Illegality, Irrationality and Procedural Impropriety. His views are supported by Ganz (2001) Woolfe et al (2007).

Fordham (2004), in classifying the grounds for Judicial Review has argued that while Lord Diplock's three (3) broad classifications is an outline map, these three (3) grounds are neither exhaustive nor mutually exclusive. Ganz (2001) further pointed out, that there are two (2) rules of natural justice which the courts have formulated. Namely, that no one may be a judge in his own cause and that a person affected by a decision must be given an opportunity to state his case and one person must not be heard behind the back of the other. The first rule of natural justice is the rule against bias in the decision maker, which is a right to a fair hearing

embodied in the Human Rights Act. These are the general principles that underpin Public Law and Judicial Review.

While it is not possible to give details of all the cases of Judicial Review and the resultant judgements in that regard, a few of the landmark cases which were determined by the High Court, Court of Appeal in Trinidad and Tobago and the Privy Council of London are highlighted. It is pertinent to note that the Privy Council of London is the final appellant Court in Trinidad and Tobago. These cases are grouped and discussed in keeping with the grounds of Judicial Review identified above.

### **2.2.8 Illegality**

Under the heading of Illegality Lord Diplock said “the decision maker must understand correctly the Law that regulates his decision making power and must give effect to it.” As a result of a decision any error of Law of a decision making body, is open to Judicial Review. Ganz (2001) further argues that, taken to its logical conclusion, this would enable the Court on an application for Judicial Review to sit in judgement on the interpretation of all the statutory provisions of those contained in delegated legislation which has been entrusted to the various types of decision making bodies.

In the decided case of Ashford Sankar and others v Public Service Commissions and Hermia Tyson Cuffy v the Public Service Commission [2011] (UK PC27) the appellants challenged the Public Service Commission’s use of an Assessment Centre Methodology to assess them for the office of Deputy Permanent Secretary. Among the grounds for their Judicial Review was that the ACE was illegal and that the Commission had acted outside its jurisdiction.

The appeal concerned the legitimacy of the Commission’s use in the years 2003 to 2005 of an Assessment Centre Exercise (the ACE) in determining who to promote to the post of Deputy Permanent Secretary. The main issue was whether the use of the ACE was consistent with Regulation 18 of the Public Service Commission Regulations. Further issues arose as to whether it involved an illegitimate abrogation or delegation by the Commission of its roles and duties and whether it was inconsistent with the appellant’s legitimate expectations and/or unfair.

The Commission in its defence argued that Regulations 14, 15 and 16 allowed it to use the ACE. In essence these Regulations allow the Commission;

- (i) To make appointments by open competition
- (ii) To advertise and office
- (iii) To appoint selection Boards to assist it with the selection of candidates for public office. In accordance with Regulation 16 (2) the Commission can summon any candidate recommended by such Board.

A copy of Regulations 14, 15, 16 and 18 of the Public Service Commissions Regulations is enclosed at Appendix 1.

Regulation 18 sets the criteria for promotion in an office. In the Commission's view the ACE was structured with these Regulations in mind. The Public Service Commissions agreed to utilize the Services of Public Service Commissions Canada Personal Psychology Centre to design and conduct the ACE. This was facilitated by an agreement by the Ministry of Public Administration and the United Nation Development Programme (UNDP).

Justice Carol Gobin ruled that the Commission was wrong to use the Services of the Canadian Consultant which was engaged based on an agreement by Cabinet which had agreed to the engagement of UNDP. She termed it, robust involvement of the Executive and interfering with the independence of the Commission. The Court of Appeal did not agree with her and stated that based on a Privy Council's decision in a previous case that of Cooper and Balbosa (which will be enunciated later) the Commission was free to use the facility. The Privy Council agreed with the decision of the Court of Appeal in that regard. The Court of Appeal ruled that the Commission was entitled to use the ACE and that it took into consideration Regulation 18 or part thereof in utilizing the ACE.

The Board (Privy Council) agreed that it was open to the Commission in considering the criteria contained in Regulation 18 to conclude that a candidate must satisfy certain of them to a minimum standard before the others can be of any relevance. The Board therefore agreed that the Commission was entitled to use the ACE and that it was conducted in accordance with Regulation 18 and it was legitimate for the Commission to use the ACE as a tool to short-list candidates.

On the issue of legitimate expectations and fairness the appellants relied on a Circular memorandum from the Director of Personnel Administration dated 11<sup>th</sup> April, 2000 and a Commission Report for the year 2002, which was laid before the Parliament on February 25<sup>th</sup>, 2005. These two (2) documents stated in part that persons with two years or more service in an advertised office should be considered for appointment to that office on the basis of their work performance. The appellants therefore contended that they had been acting for two years as Deputy Permanent Secretaries before the ACE and should have been appointed to the office without the ACE.

The Board did not agree, as it stated in its judgement that they had ample warning from 13<sup>th</sup> December, 2002 onwards of the new ACE process, which was going to be used and which was only implemented 18 months later to select candidates for the office of Deputy Permanent Secretary. The applicants also claimed that they were not given enough time to prepare for the ACE and that they felt humiliated and traumatized by the process. The Board did not agree as it noted that the as the ACE was designed to test existing skills in a manner requiring no such preparation. The Board did not agree that the ACE was unfair and that any decision based on its use was invalid. The Board therefore dismissed the appeal of the Appellants. What is evident by this judgement is that the Commission's action in utilizing the ACE was in agreement with its Regulations.

In the case of Eusebio Cooper and Clifford Balbosa v the Director of Personnel Administration and the Police Service Commission [2005] (UK PC47), Messrs Copper and Balbosa filed for Judicial Review against the decision of the Cabinet of Trinidad and Tobago to appoint a Public Service Examination Board. They claimed that such action was unconstitutional, illegal, null, void and of no effect. The grounds on which they sought Judicial Review were:

- (i) The setting of examinations by the Public Examination Board was unconstitutional
- (ii) That there had been an unreasonable delay in the publication of the results of the examination for 2002.

On 30<sup>th</sup> December 2003, Justice Myers ruled in favour of the appellants. He declared that the appointment of the Public Service Examination Board was unconstitutional, illegal, null, and void and of no effect and that the Police Service Commission was the only authority responsible for the conduct of promotion examinations for the Police Service, including the

setting, marking and timing of the examinations and publication of the results. He also found that the delay in releasing the results was unreasonable.

The respondent appealed against the Judge's findings with respect to his decision that the Public Service Board was unconstitutional. They did not appeal against the findings that the delay in releasing the 2002 results was unreasonable. On 19<sup>th</sup> January, 2005 the Court of Appeal, consisting of Chief Justice Sharma, Justices Nelson and Kangaloo allowed the Appeal. On May 23<sup>rd</sup> 2005, the appellants were granted final leave to Appeal to the Privy Council.

The Privy Council in arriving at its decision noted that the Constitution of the Republic of Trinidad and Tobago requires that the powers which it had given to the Police Service Commission to appoint persons to hold or act in public office and to make appointments and promotions must be exercised, free from inferences or influence of any kind by the Executive. There is room in this system for the taking of some initiative by Cabinet. A distinction can be drawn between Acts that they take to the Commissions, what they can or cannot do and the provision of a facility that the Commissions were free to use or not to use as they deemed fit. The appointment of the Public Service Examination Board by the Cabinet for the Commission to use, if they chose to do so, was not in itself objectionable.

The Privy Council concluded that the sole responsibility for the conduct of examination for the appointment and promotion of police officers lay with the Police Service Commission. Also, how the Commission discharged that responsibility was a matter for the Commission itself. It noted that Regulation 19 (1) of the Police Service Commissions Regulation stated that all examinations in the Police Service shall be set and marked by an Examination Board appointed for that purpose. The Regulation did not say, by whom that appointment is to be made, but in the context of the Regulation as a whole and in light of the Constitution it must be understood as reserving the power to make that appointment to the Commission and not the Executive. The Privy Council also concluded that in much as the Director of Personnel Administration's duty extends across the entirety of the Public Service of Trinidad and Tobago. The Director of Personnel of Administration was responsible for the conduct of all examinations across the Public Service of Trinidad and Tobago, but this responsibility extended only on how the examinations were to be set and marked by the Board that the Commission had appointed to administer the practice.

In conclusion, the Privy Council stated that the sole responsibility to appoint the Board rests on the Commission, which had ultimate control to make that appointment. Their Lordship therefore allowed the Appeal. This decision clearly highlighted the doctrine of the separation of power, but more significantly the responsibility of the Commissions in the appointment of Examination Boards and the conduct of examinations in the Public Service.

Although this is a judicial review matter, one of the fundamental issues raised in this case was the constitutionality of the PSEB, also whether the Commission had allowed political interference in its constitutional function by utilizing a Board appointed by the Cabinet. The Privy Council noted that the Constitution did not provide for the setting up of the PSEB, however in answering the questions whether the appointment of the PSEB by the Cabinet was unconstitutional and in breach of the principles of the separation of power and whether Cabinet assumed power it did not possess; also whether the constitutional principle was breached if the PSEB was used as an instrument to interfere directly or indirectly with the appointment and tenure of public officers. The Privy Council concluded that the matter of the appointment of the Board was the exclusive responsibility of the Police Service Commission, but it was free to use a Board appointed by the Cabinet if it deemed it fit to do so. Also, the Constitution does not permit the executive to impose an Examination Board on the Commission of the Executive own choosing. The Commission is free to exercise its initiative and its own judgement in making a decision whether to use the Board, which it did.

It is well established that the Constitution of Trinidad and Tobago includes a statement of fundamental rights and freedoms and forbids any infringement of them by the legislature or the Executive or any public body acting on its behalf. The Constitution explicitly provides that aggrieved persons could apply to the High Court for redress for any contravention of those rights and freedoms, by way of a constitutional motion.

While the constitutional issues raised form part of Cooper et al Judicial review application and was not a constitutional motion, Justice De Labastide in 2006 stated that constitutional motions are sometimes used in tandem with applications for Judicial Review where there has been a denial of natural justice. See *Rees v Crane* [1994] E1 ALL ER833. He further added that the action of the Executive can collude with the fundamental rights and freedom of individuals and if they do a remedy by way of constitutional motion may be available. However, it is not uncommon that unconstitutional issues are raised in Judicial Review

applications. See PS Ministry of Foreign Affairs and PM Patrick Manning v Feroza Ramjohn and PM Patrick Manning and the PSC v Ganga Persad Kisoosoon [2001] UK PC20.

Lord Diplock has stated that it is a well-established practice that the jurisdiction of the Court to control administrative action should not be invoked by constitutional motion whenever the act or decision complained of can be classified as a breach by an organ of Government or a public authority or public officer of a fundamental right or freedom of an aggrieved person. If the traditional method of invoking the supervisory jurisdiction of the Court by Judicial Review is available, then that should be utilized. See *Harrikisoosoon v Attorney General of Trinidad and Tobago* [1980] A.C.

In another matter similar to *Cooper and Balbosa*, that is the case of *Imtiaz Mohammed V Public Service Commission, Public Service Examination Board and Trinidad and Tobago Fire Service Examination Board* (Civil Appeal No.37 of 2011). Mr. Mohammed filed for Judicial Review with respect to the legality of the Minister of National Security to appoint a Fire Services Examination Board and the legality of the Public Services Examination Board to adopt the results of an examination set by the Fire Services Examination Board. Further Mr. Mohammed alleged that the Public Service Commission acted illegally in making acting appointments in the Fire Service on the basis of those results.

The trial Judge in the lower Court found that there was no illegality in the Public Service Commission's decision and dismissed the appellant's application for Judicial Review. The appellant filed an appeal against the decision of the judge and the Court of Appeal also dismissed the appeal, in so doing, the Appeal Court ruled that the PSC did not act illegally in its decision. The Appeal Court cited the seminal decision of *Cooper and Balbosa* where the Privy Council considered the constitutionality of the PSEB, which at that time was appointed by the Cabinet of Trinidad and Tobago.

The Appeal Judges noted that the Privy Council held that there was no illegality or unconstitutionality per se in the use of the PSEB by the Police Service Commissions. In the instant case the appeal judges agreed with the trial judge that there was no evidence nor any allegation for that matter that the PSC's decision to use the results of the examinations of the FSAB which were adopted by the PSEB is or was tainted by any influence or interference from the Executive arm of the State. Like in the *Cooper and Balbosa's* case, the State had provided a facility which the PSC had chosen to use in making acting appointments of Fire Sub



Officers. They concluded that the decision of the PSC was not illegal or ultra vires. Further in support of their decision the learned Appeal Judges stated that even if the PSEB could not properly adopt the results of the FSEB examination it would make no difference to the legality of the PSC to use those results when there was no hint of Executive interference or influence. Like in the Cooper and Balbosa case, the PSC is charged with the constitutional responsibility to make appointments to the Fire Service, exercised its undoubted power, so to do. Its decision to use a facility provided by the State without any hint of Executive interference was not illegal per say, even if the PSEB had no power to adopt the examination results. The independent decision of the PSEB to use them is not in itself illegal the Appeal Court reasoned that the case for Judicial Review and the appeal would fail in any event.

In the case of Gopichand Ganga and others v the Commissioner of Police and the Police Service Commission (2001 UKPC 28) the appellants filed for Judicial Review challenging the decision by the Commissioner of Police not to recommend them for promotion on the grounds that his decisions were ultra vires and that in making his recommendation to the Commission he applied a point system to assess them which was irrational unfair (the issue with respect to irrationality and unfairness will be dealt with in another section of this paper). They also sought an order quashing the Commissioner's decision to apply Regulation (15) procedure on the grounds that the decision to do so in relations to the First Division Officers were ultra vires and a declaration that they had been treated unfairly and in breach of their natural rights to justice and contrary to Section 20 the Judicial Review Act (2000) which provides that a person acting in the exercise of a public duty or function in accordance with any Law shall exercise that duty or perform that function in accordance with a fair manner. A copy of these Regulations is enclosed as Appendix II.

The Court of Appeal comprising Hamel-Smith, Warner and Kangaloo dismissed the Appellants appeal. The Privy Council held that the Commissioner had not acted ultra vires and that he was entitled to use a procedure analogous to that prescribed in Regulation (15) in relation to the Second Division. They agreed that he did so in the interest of fairness and transparency in order to ensure that those who were not recommended by him had a proper opportunity to make representation to the Commission. For the Privy Council such action on the part of the Commissioner was not unlawful, it was commendable. In arriving at their decision, the Law Lords noted that while the Commissioner had no statutory power to make recommendations under Regulation (15) in respect of First Division Officers, Regulation (15)

by its expressed terms applied only to Second Division Officers. Also while the Commissioner had no general or specific power under the said Regulation or any other legislative provision to adopt Regulation (15) procedures by analogy nor did he have the power by way of Common Law to act where legislation has provided a specific scheme, a public body may not exercise its power inconsistently with that scheme.

The Privy Council noted that the Commission had therefore acted fundamentally inconsistent with the Constitutional and statutory scheme however it stated it was unable to accept that there was an infringement of the constitutional principles in the Commissioner making representation in response to a request by the Commission. However, they noted that there was no provision for the Commission to apply Regulation (15) to the First Division as that only applied to Second Division and that the Commission's Regulations should not have been regulated on an informal basis. They argued that Regulation (15) provided a clear scheme for the Commissioner to provide recommendation to the Commission in respect of Second Division Officers only and that no such system should have been adopted for First Division Officers. They Privy Council concluded that there may have been good policy reason for the distinction. They however felt that the Commission's use of Regulation (15) which was designed to assist the Commission in discharging its statutory function was not illegal.

In the case of *Harinath Ramoutar v the Commissioner of Prisons and the Public Service Commissions* (Privy Council Appeal 2012 UKPC 29). The Appellant filed for Judicial Review of the PSC's decision not to consider him for an appointment of Acting Chief Prison Welfare Officer of the Trinidad and Tobago Prison Service as he did not possess a degree in social work as specified in the job description for the office. Mr. Ramoutar contended that the Public Service Commissions acted unlawfully in treating him as ineligible to be considered for the acting appointment. Mr. Ramoutar's application for review was refused both by the lower Court and the Court of Appeal in Trinidad and Tobago.

The Board decided that the Public Service Commission acted unlawfully in treating Mr. Ramoutar as ineligible to be considered for appointment for acting as Chief Welfare Officer by reason only that he did not have the Degree in Social Work from a recognized institution of equivalent. In arriving at its decision, that Mr. Ramoutar did not have the degree that was treated as a matter of threshold eligibility and in the circumstances no consideration was given to the merits of his application. The Board noted that while acting appointment falls to be considered in accordance with Regulations (26) which does not impose an absolute rule of

appointment by seniority but only a general rule to that effect. In other words, it is capable of being displaced by other relevant consideration. They argued that this was irrelevant to Mr. Ramoutar's case as the general rule of appointment was not displaced by other consideration. He was not considered at all. The only legal basis on which this could be justified was that the senior officer was not eligible for such appointment within the meaning of Regulation 26 (1) (a). (A copy of Regulation 26 is attached as Appendix III).

The Board further ruled that although the word eligible imports a threshold of appointability it does not normally mean suitable, it means capable of being appointed if unsuitable. Further, if it meant suitable then it would have been incumbent on the Commission to assess Mr. Ramoutar's suitability which it never did. This case was a "watershed" moment for the Commission, as it had always utilized job description and job specification to assist it in selecting persons for appointment to offices in the Public Service.

In commenting on this judgement, Vidya Chandoo, an Attorney at Law stated, *"this judgement shows a clear lack of understanding of the Public Service of Trinidad and Tobago; of the principles of job evaluation and classification and of good industrial relations practices, especially the relationship between the Chief Personnel Officer and association as provided for in the Civil Service and other Service Acts..... However, while this judgement is questionable and unreasonable, it is a binding judgement coming from this country's highest Court of Appeal. Consequently it is essential that attention be paid to the issues therein. The Public Service Commission Regulations will have to be amended to ensure there is no ambiguity when the words "eligible and suitable" are used."*

### **2.2.9 Irrationality**

This is defined as unreasonableness in accordance with the principles of the Wednesbury's Case 1948 that is *"A decision which is so outrageous in its defiance of logic or of accepted moral standard that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

In the case of Robert Ramsahai (Appellant) v The Teaching Service Commission (Respondent) [2011] (UKPC26); he applied for Judicial Review on the grounds that the Commission acted both irrationally and unreasonable and that he was treated unfairly by the Teaching Service Commission by not inviting him for an interview as he did not have the five

(5) years' experience stipulated in an advertisement for the office of Principal at the closing date for the receipt of applications.

In the first instance Justice Narine ruled in Mr. Ramsahai's favour in that he stated that the Teaching Service Commission was not bound by the criteria and deadline imposed by the Ministry. Instead the Commission should have considered him in accordance with Regulation 18 of the Public Service Regulations (see Regulation 18 at Appendix I) which have been adopted by the Teaching Service Commission. He ruled that the Commission had treated Mr. Ramsahai unfairly and bearing in mind that he had in fact acquired the relevant five (5) years' experience at the time of the interview. The Teaching Service Commission appealed the decision and argued that the five (5) year requirement imposed by the Ministry was not merely a factor to be taken into account; it was a condition precedent to the appointment of any candidate. The Court of Appeal comprising, Chief Justice Archie, Judges Warner and Mendonca accepted this argument. They held that the requirement of five (5) years' experience was the minimum requirement for appointment for the post in the Teaching Service, which was authorized by Regulation 4 of the Education Act (a copy of Regulation 4 is attached as Appendix IV). It was therefore a specification which the respondent had to consider under regulation 18 (4) and from which it could not depart because it was a mandatory requirement.

The Privy Council, in giving judgement on the matter ruled that the exclusion of the applicant from consideration for promotion, by not inviting him for the interview for which he had applied and which he had already completed five (5) years by the time of the interview may at first sight seem harsh but there is nothing unreasonable or irrational in setting a criteria of five (5) years as it helped to filter application for the office of Vice Principal. Nothing in the Commission's actions can be deemed irrational or unconnected with the desire to improve the calibre of Vice Principal.

The Law Lords stated that although the memorandum dated March 2005, invited applications, it did not expressly state that the five (5) years teaching experience, after acquiring the necessary Diploma had to be completed before the closing date of application. No other sensible or workable means of giving effect to it was possible. It could not have been intended that it could be satisfied at a later date. Otherwise the Teaching Service Commission would have had to continue to receive applications up to the date of the interview. The decision that the closing date for application would mark the end of the period

at which one could qualify was not only reasonable, it was administratively the obvious and sensible course to follow. The decision to treat the closing date for application as the date on which the five (5) year period required to be completed did not preclude full consideration of the criteria outlined in Regulation 18 of the PSC Regulations. It is perfectly possible to consider the criteria in Regulation 18 while still applying the cut-off provision. Mr. Ramsahai's Appeal to the Privy Council was dismissed.

#### **2.2.10 Unfairness, Contrary to the Natural Justice**

In the case of Feroza Ramjohn (Respondent) v Permanent Secretary; Ministry of Foreign Affairs and Prime Minister Patrick Manning (Appellant) and Patrick Manning and the Public Service Commission (Appellant) v Ganga Persad Kissoon (Respondent) [2011] (UK PC20). It should be noted that Section 121 of the Constitution of the Republic of Trinidad and Tobago confers on the Prime Minister certain powers with regard to appointments to particular offices in the Public Service. In that, the Commission cannot make appointment to these offices if the Prime Minister signals his objection to appointment to these offices. The Prime Minister also has power under Section 121 (6) (b) to make appointment on transfer of persons who are required to reside outside Trinidad and Tobago for the proper discharge of their function in the Ministry of Foreign Affairs.

On 24<sup>th</sup> May 2004, the Prime Minister signed an instrument appointing Ms. Ramjohn as Foreign Service Executive Officer II with the High Commission in London. On 27<sup>th</sup> May 2004, Ms. Ramjohn was informed by the Permanent Secretary Mr. Patrick Edwards that she was being transferred to London. On 4<sup>th</sup> June 2004, the Prime Minister wrote to the Minister of Foreign Affairs revoking Ms. Ramjohn's appointment in light of the contents of a Security Department Intelligence Report. There was no indication that she was told the reason for the revocation. On 11<sup>th</sup> June 2004, Ms. Ramjohn commenced Judicial Review proceedings challenging the decision revoking her appointment to London. Ms. Ramjohn declared that she had been treated unfairly and contrary to the principles of natural justice.

On 3<sup>rd</sup> July, 2007 Justice Tiwary-Reddi ruled in Ms. Ramjohn's favour and quashed the Prime Minister's revocation decision of 4<sup>th</sup> June 2004. On 8<sup>th</sup> July, 2009 the Court of Appeal allowed the Prime Minister's Appeal against the quashing of his decision. Justice Kangaloo however dissented, dismissing the Prime Minister's Appeal in his Minority Statement he

ruled that the respondent was treated unfairly by not informing her of the case against her and giving her an opportunity to make representation.

The Privy Council ruled that on the face of it nothing could be clearer than the sudden revocation of a person's foreign posting on the grounds of suspected criminality without the person concerned being told of the allegation and given the opportunity to respond. Without indeed any reason being given for the decision is unfair. Although the Prime Minister could not have ignored the security report, and he was concerned about the risk of such an appointment, nothing justifies the course of action actually taken of telling Ms. Ramjohn nothing whatever for so devastating a reversal of her fortune. These considerations notwithstanding, Ms. Ramjohn would have been treated fairly if she was told the reason for the revocation of the appointment and given the opportunity to make representation.

In Mr. Kissoon's case, on 18<sup>th</sup> February 2005, Mr. Kissoon was granted leave to file Judicial Proceedings challenging the Prime Minister's decision to veto his appointment as Commissioner of State Lands. On 20<sup>th</sup> February, 2006 Justice Myers dismissed Mr. Kissoon's motion. On 8<sup>th</sup> July 2009, the Court of Appeal allowed Mr. Kissoon's Appeal and made a declaration that the Prime Minister acted contrary to the rules of natural justice by making a decision to object to Mr. Kissoon's appointment without informing him of the factors that militated against him and afforded him an opportunity to make representation in his favour. The Board in giving judgement against the Prime Minister stated that in the circumstances of the particular case and based on the evidence before the Board, the decision making process can be seen as unfair. This also applies in the case of Feroza Ramjohn.

In the case of Sahadeo Maharaj v the Teaching Service Commission [2006] (UK PC36) the appellant sought Judicial Review of the decision of the Commission not to appoint him as Vice Principal in that the Commission appointed a Mr. Jones who was appointed on 4<sup>th</sup> October 1976. Mr. Maharaj claimed that he had been led to believe by the Commission that his appointment to the lower position of Teacher II was 9<sup>th</sup> September 1976 and that he was entitled to be dealt with on that basis. Although Mr. Maharaj was appointed as a Teacher II on 9<sup>th</sup> November 1976 in error by a letter dated 29<sup>th</sup> April 1980 he was confirmed as a Teacher II on 9<sup>th</sup> September 1976.

In the High Court, the Judge, Justice Mendonca held that the decision of the Commission in 1980 to confirm the appellant's appointment with effect from 9<sup>th</sup> September 1976 was based on an error. Mr. Maharaj appealed to the Court of Appeal and Justice Archie who dismissed

the appeal, ruled that the case was about the ability of a public body to reverse a decision taken in error when a person affected had relied upon and enjoyed the benefits of that decision. The decision that had been taken in error gave the appellant a seniority date ahead of persons who had been originally appointed before him. The appellant's claim that he had been unfairly treated and discriminated against failed, because of the removal of a benefit to which he was not lawfully entitled could not constitute discrimination or inequality of treatment.

The Privy Council upheld the decision of the Court of Appeal and ruled that there were no doubts that the applicant genuinely believed that he was entitled to seniority as a teacher from the 9<sup>th</sup> September 1976. The Board however stated that Mr. Jones was clearly entitled to his appointment. Although the Commission made an error, the unfairness that the appellant claimed may well attract sympathy but it is regrettable that he was sadly misled by the Commission's inaccurate record keepings, but the Law cannot provide him with the remedy which he sought.

### **2.2.11 Procedural Impropriety**

Lord Diplock's third ground of Judicial Review is concerned with challenge to the procedure by which the decision is reached, rather than with its substance. Ganz (2001) suggests, procedural impropriety maybe the result of not following the rules laid down by statute or delegated legislation, though the Courts would not construe every minor failure to observe such provisions as grounds for striking down such as decision. He further stated that in this area, the Courts have been most creative in fashioning principles to which those who make decisions affecting individuals must conform. These principles are:

1. The Rules of Natural Justice
2. Procedural Fairness
3. Procedural Propriety
4. Legitimate Expectation

In the case of *Chester Polo v Public Service Commissions*, HCA No, S-1203 of 2002, Mr. Polo applied for Judicial Review of the decision of the Public Service Commissions to appoint Mr. Kenneth Kerr to act in a post in which he, the applicant, had acted for almost three (3) years. He also applied for an order of 'Certiorari' quashing the decision to terminate

his acting appointment as Registrar Pesticide and Toxic Chemical of the Chemistry Food and Drug Division, Ministry of Health. Mr. Kerr stated in his application that the Commission had acted unreasonable, irrational, unfair and illegal and contrary to the rules of natural justice. The Judge ruled that the Public Service Commission had no jurisdiction to make appointment to the position of Registrar Pesticide and Toxic Chemical by Section 5 of the Pesticides and Toxic Chemicals Act 1979, it was the Minister of Health who had the responsible of appointing the Registrar Pesticide and Toxic Chemical. By extension it was the Minister of Health who was responsible for appointing persons to act in the said post. The Court was of the view that if the appointment of Mr. Kerr by the Commission was not illegal it was unreasonable.

The Court did not quash the decision of the Commission but ordered that the question of the appointment of the Registrar be remitted to the Public Service Commission immediately for the consideration and determination by the Minister of Health. The Court was reluctant to quash a decision of the Commission to appoint Mr. Kerr to act since the effect of this would be to nullify the appointment of Mr. Kerr in respect of which there had already been service by and remuneration to the benefit of Mr. Kerr. The Court was of the view that this would be unfair to Mr. Kerr and detrimental to good administration as in the capacity of acting as Registrar, Mr. Kerr performed duties, the validity of which can be called into question if the decision to appoint him was quashed by the Court.

The Court also noted that the Commission, although it had terminated Mr. Polo's acting appointment had failed to provide him with reasons as provided for by Section 16 of the Judicial Review Act of 2002. This decision was in keeping with a ruling of Lord Pierce in the case of *Padfield v the Minister of Agriculture* who declared that the absence of reason for a decision where there is no duty to give them cannot itself provide any support for the suggested irrationality of a decision.

In the case of *Doodnath Rajkumar v Kenneth Lalla and others Privy Council No.1 of [2001] (UK PC)*, the Privy Council ruled in the favour of Mr. Rajkumar who had filed for Judicial Review in respect of breached legitimate expectations, as he had been acting in a post of Prison Officer II for a number of years but had not been appointed to the post. He claimed that his juniors were instead appointed to the post, also that the Commission had relied on an order of merit list, which had been more than three (3) years old in making the appointment and had given no credence to the provision laid down in its regulations, nor had it considered



his performance appraisals in assessing him. The Privy Council ruled that the approach adopted by the Public Service Commission was fundamentally flawed but stated that it was unable to accede to setting aside the flawed decision in so far as the Commission appointed others whose promotion there Lordships are not empowered to question. Their Lordship ruled in Mr. Rajkumar's favour but remitted the case for the urgent attention of the Commission.

In the matter of Favianna Gajadhar v PSC CV 2010 00326, Ms. Gajadhar filed for Judicial Review against the Commission's decision to declare her to have resigned her office with effect from 21/6/07 in accordance with the provision of Regulation 49 of the PSC Regulations (See Appendix VI). She claimed that the PSC acted contrary to Law by its application of the Regulation and that the Regulation was illegal and ultra vires to Section 129 (4) of the Constitution of Trinidad and Tobago (See Appendix VII). Further, that the Commission's decision was unreasonable and amounted to an improper exercise of its discretion. Further, it was a breach of her legitimate expectation and in breach of natural justice. Moreover, that the Commission had terminated her appointment without recourse to disciplinary proceedings.

Ms. Gajadhar, who had been absent from duty with effect from 21/06/07 was declared by the Commission to have abandoned her office in a letter to her dated 10/12/2008. The officer claimed that the Commission did not follow proper procedure in arriving at its decision as her representations in this matter were not duly considered. The High Court ruled in her favour that the officer should not have been removed without the Commission carrying out a proper investigation and that merely inviting Ms. Gajadhar to make representation in not acceptable. Further, that if the Commission had to enforce the said Regulation, it should have only done so when the facts were clear and unequivocal that the officer had effectively abandoned her job by her conduct in that regard. The Judge quashed the decision of the Commission to declare Ms. Gajadhar to have abandoned her office.

At the Court of Appeal the Judges ruled that the Commission had breached the principle of natural justice in that prior to making its decision the Commission had failed to allow a second round of disclosure and invitation to allow the officer to respond before a final decision was made. The Court of Appeal outlined a detailed process to be followed, indicating that natural justice and fairness is not always a one-off affair. The Court of Appeal overruled the decision of the lower Court to quash the decision of the Commission and remitted the matter to the Commission for further consideration.

### **2.2.12 Judicial Review/Judgements in Employment Disputes in Other Jurisdictions**

Judicial review decisions in respect of employment disputes in the U.K., Jamaica, and Barbados will be examined to discern what learnings may be obtained from these cases. The power to review administrative actions is enshrined in the respective laws of these Countries. Through judicial review the courts have been able to exercise its inherent supervisory control over public bodies.

#### **UNITED KINGDOM**

The case of Regina v Chief Constable of Mersey side Police Ex parte Calvery and others [1986] Q.B. 429 is worthy of mention as it relates to the delay in preferring disciplinary charges against police officers. In that case there was a delay of over two years before serving the police officers with the notice of disciplinary action. The regulation there provided that the notice be served “as soon as practicable.” The delay of two years in serving them with the notices was held to be a serious departure from the regulations sufficient to entitle them to have the disciplinary proceedings quashed. Sir John Donaldson in giving judgement stated that the police officers were placed at peril of not having a fair trial, as their ability to defend themselves was prejudiced by the delay.

In another case, on the issue of legitimate expectation with respect to employees’ right, Council of civil Service Unions v Minister of the Civil Service [1984] 3.R. 935. The union filed for judicial review following a decision by the minister taken without the consultation with the union, that the terms and conditions of public officers should be revised to exclude membership in the union. The union alleged that the minister had acted unfairly in removing their fundamental right to belong to a trade union without consultation. The judge in the lower court ruled in favour of the minister; however the union appealed the decision and the Court of Appeal allowed it on the grounds of national security. The union appealed the decision to the House of Lords, stating that the employees had a legitimate or reasonable expectation to be consulted before any alterations to their terms and conditions of service. Their Lordships held that there was a duty by the minister to consult with the union. In their opinion even where a person claiming some benefit has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and if so the courts will protect his expectation by judicial review as a matter of public law. Notwithstanding, The Lordships’ opinion, they stated that issues of national security overrode any duty which the minister had to consult and dismissed the union’s appeal.

## JAMACIA

In the case of the Institute of Jamaica, Civil Appeal no 9 of 2002, Downer J. ruled that the Industrial Dispute Tribunal made an error in law, in that it did not follow the law of land. It also behaved irrationally, in that it did not grant the Institute a fair hearing before re-instating a Mr. Becker. The judge stated that the law on industrial relation is designed to strike a balance between the rights of a worker and the rights of the employer. The court ruled in favour of the Institute, in that it stated, that its conduct in dismissing Mr. Becker was justified.

In another case involving the Industrial Dispute Tribunal of Jamaica, R. v The Industrial Dispute Tribunal ex parte Bank of Jamaica Supreme Court no.116 of 2001 Justice Peter J.- The court was asked to determine whether the Tribunal had acted in excess of its jurisdiction in determining the salary to be paid to Miss Steele. The court ruled that it was satisfied that the Tribunal in calculating Miss Steele salary acted within its jurisdiction and took due cognisance of and applied the provisions of the Employment (Termination and Redundancy Payment) Act and the relevant Regulations. Further that the Tribunal did not make the award inconsistent with any enactment of law, but acted within its powers and did not contravene section 12 (7) Of the Labour Relation and Industrial Dispute Act.

It is also noteworthy, to mention the case of Cremo Ltd. Supreme Court no M122 of 1998 J.Walker ruled that the Minister of Labour had acted in excess of his jurisdiction as he had intervene in an industrial relation dispute contrary to the provision of the Industrial Relation Act. The judge stated that the Minister was not expected to be arbiter in every dispute between employer and worker and that the power of the Minister was only properly invoked in circumstances which were in conformity with the overall scheme of the Act. See also R.v the Industrial Dispute Tribunal and Hay Moon Ltd, (1979) 16 J.L.R 333. Campbell J. The judge ruled that the recognition disputes were expressively reserved for determination by the Minister of Labour and not the Industrial Dispute Tribunal, in accordance with section 5 of the Industrial Relation Act.

In the matter of R.v Industrial Dispute Tribunal ex parte Jamaica Civil Service Association – Supreme Court no. M-36 of 2001, Pitter J. in deciding the case as to whether the Tribunal had acted on the evidence before it in making an award of \$1,500 per month to an employee or whether it took irrelevant consideration into account, or wrongfully excluded evidence, ruled that the Tribunal erred in law; when it took into account several irrelevant facts and also

failed to consider the facts relevant to the case. The judge stated that those errors rendered the award of the Tribunal a nullity. See also, *Erin Hall v Public Service Commission* (1993) J.L.R 442 Langrin J, The judge ruled that the P.S.C Regulations did not give an absolute discretion to anyone to dispense with the service of the applicant. Also, the discretion, although wide was not absolute. The Commission should have acted on the criteria laid down in the Regulations and in accordance with the principles of natural justice.

## BARBADOS

In a case of unreasonable delay, that of *Griffith v Commissioner of Police and the Attorney General* (1994) 30 Barb. L.R 416 Waterman J ruled that the Police Service Commission had omitted to act with expedition in accordance with the proper construct of Regulation 13 (2) of the Police Service Regulations and that Mr. Griffith had been placed in a detrimental and prejudiced position. He stated that the Commission's action to suspend Mr. Griffith for a protracted period without his full salary, pending the completion of disciplinary action against him was wrong. The judge ordered that the officer be paid his full salary which he would have received if he was not suspended.

In another case, that of legitimate expectation, *Leacock v the Attorney General of Barbados* H.C.A no. 1712. Leacock filed for judicial review against the Commissioner of Police's decision not to recommend his application for study leave to pursue studies at the law school. The officer claimed that on the basis of a long standing practice, he had legitimate expectation that his application would have been approved, as other police officers similarly circumstance like him had gained approval over the years. The court found that on the basis of the evidence that the applicant legitimately expected to be granted the leave. Also no overriding evidence was found to justify a departure from the practice. The court held that to depart from that practice, in the instant case was a breach of the officer's legitimate expectation, the court declared that the decision of the Commissioner of Police was null and void and made an order of certiorari quashing it.

### **2.2.13 Lessons from the Judgements**

It is difficult to provide an evaluation of all the judgements to discern the lessons and learnings contained therein, as the list is exhaustive. Only the ones of great importance which have contained critical comments and issues will be highlighted in this research.

An evaluation of the Judicial Review judgements over the years lends itself to a scholarly discourse of the lessons contained therein. Evaluating the judgements forced the researcher to discern several recurring themes and sub-themes and by extension lessons. These lessons forced the researcher to engage in critical reflections and raised some key questions on what the judicial judgements mean for the practice of Public Service Human Resource Management. How would these lessons drive organization change and transformation at the level of the Service Commissions and the Service Commissions Department? What new learnings have emerged? Are these learnings/lessons important in terms of organization practice, particularly, Public Service Human Resource Practices?

These lessons if any can assist in the creation of new knowledge about Public Service Human Resource Management and help to shape a community of practice for Public Service Human Resource Management Practitioners. For a community of practice to be effective, it implies that there must be a common understanding of common practice and the use of a common language. For this community of practice to function there will be a need to develop ways of approaching things that are shared to some extent among members. The lessons from the judgements should be used to inform and shape public policies in the area of Human Resource Management.

In the case of *Furlonge v O'Brien* HCA CV 2098/2063 Justice Jamadar questioned whether Regulations 25, 26, 27 and 28 were mandatory, and stated, “*inter alia that in the case of Rajkumar v Lalla PC Appeal No. 1 of 2001 the Privy Council ruled unequivocally that the Public Service Commission Regulations set out a detailed code, for, amongst others, appointment in the Prison Service. The same is unquestionably true of all acting appointments (including those otherwise than as a prelude to a substantive appointment) governed by the Regulations under consideration. He concluded in my opinion the language and context of all the Regulations under consideration point to this conclusion that they are mandatory. Further, where it is recommended that an eligible senior officer be passed over the reason why the general rule in Regulation 26 (1) may be ignored must be generally given to the Public Service Commission if it is to adjudicate properly and fairly. Furthermore, since*

*the Regulation contemplates a particular scheme of things the reasons required under Regulation 28 must generally be given to the officer being passed over. Further because of the effect recommendations may have on the careers of individuals passed over the general requirement for giving and disclosing reasons in my opinion are incapable of being waived.” (A copy of Regulations 25, 26, 27 and 28 can be seen as Appendix V).*

Also in the case of *Harridath Ramoutar v the Commissioner of Prisons and the Public Service Commission* [2012] (UKPC 29), the Privy Council ruled that in making acting appointments in accordance with Regulation 26, the Commission must consider the senior officer capable of filling the post and generally he should be appointed. If the Commission wishes to depart from that general position, it must be on the basis of not taking irrelevant facts into consideration and for reasons or on grounds that are reasonable and relevant.

It is noteworthy that in a matter with respect to the FOIA (2000) the Privy Council in *Graham v the Police Service Commission* [2011] (UKPC 46). Sir John Lewis stated at paragraph 18 “a Public Authority.....in Judicial Review proceedings owes a duty of candor to disclose material which are reasonably required for the Courts to arrive at an accurate decision.

With respect to promotion, the Commissions have the Constitutional responsibility for promotion in the Public Service, to the exclusion of anyone else however, they do not have authority to lay down terms and condition. This was highlighted in the case of *Endell Thomas v the Attorney General* [1982] AC 113, PC. In making promotions they must do so in relation to the criteria set down in the relevant regulations. It cannot disregard the regulations in considering the promotion of officers in the Public Service.

In relation to job description and specification the Privy Council in *Harridath Maharaj v the Commissioner of Prisons and the Police Service Commissions* [2012] (UKPC 29) ruled that they had no statutory status, further, that they should not bind the Commissions to treat it as a criteria for eligibility. Moreover, it stated that job specification and job description because of the use of the words like sound observation skills, and expert knowledge of principles and practices, sound knowledge of, basic knowledge of..... The Privy Council ruled that a position should not be based on criteria which were not susceptible to a paper test yielding yes or no.

Further, in the case of *Balbosa and Cooper* the Privy Council reinforced the discretionary powers of the Commission when it stated that there is room in the system for taking some

initiative by the Cabinet as a distinction can be drawn between acts that dictates to the Commission what they can or cannot do and the provision of a facility that the Commissions are free to use or not to use as they think fit. The appointment of a Public Service Examination Board by the Cabinet for the Commission to use if they choose to do so is not in itself objectionable. The advantages of using such are obvious and in practice the Commission may well content to continue to make use of them. Until that decision was taken in 2006, the Commission had for decades misunderstood the Law in regard to its jurisdiction relating to Public Service Examination.

On the question of legitimate expectation, the Privy Council ruled that legitimate expectation cannot accrue to an individual on an error. In the matter of *Sahadeo Maharaj v the Teaching Service Commission* [2006] (UKPC 36) the Privy Council ruled that if a Public Authority makes an error, and it comes to light, the Public Body owes a duty to fix it. Also, a public officer cannot have a legitimate expectation to something for which he is not entitled on the basis of an error to the detriment of others.

The Courts and the Privy Council have also been interpreting Regulations for the guidance of the Commission. In the case of *Ashford Sankar and others v the Public Service Commission and Hernia Tyson-Cuffy* [2011] (UKPC 27), the Privy Council in delivering judgement on the ACE stated, *“that Regulation 14 and 18 must be read together”*. *That is where a promotion is to be made within the Public Service, it can be done by competition, but the decision on which of the competitors to promote should be made in accordance with Regulation 18.*” This provided guidance on the way forward for future use of the ACE.

These judgements are of administrative importance and should play an instrumental role in changing the behaviour of Public Authorities and defining policies for the implementation of their action. The extent of these organizational changes and transformations is open to debate. While the researcher can speculate on the scope of the change, there is the anticipation that the research can lead to improvement in the quality of the decision making process by stressing that compliance with the Law, the regulatory framework is paramount to good Public Administration.

The judgements point to the whole question of Public Administration in so far as decisions by the Courts pronounce on principles which seek to enhance both the ways decision are arrived at (the process) and the quality of the decision made. The decisions speak to the issue of Public Authorities exercising their function within the legal parameters of their powers. Good

administration dictates that Public Authorities observe the principles of lawfulness, fairness and reasonableness. Judicial Review guards against the rights of individual against the abuse of official power by those who exercise it.

The judgements show that Public Service Human Resource Practitioners display a surprising ignorance of elementary legal principles and a lack of appreciation of the impact of legal consideration on administrative problems resulting in great embarrassment to themselves, and the Commissions and heavy financial burden on the State, a view which has also been expressed by Carla Herbert SC when she commented on the outcome of a matter, that is *Seetal Rattansingh v Winston Gibson and the Public Service Commission* H.C.A No.1014 of 2001. Senior Counsel Herbert stated Mr. Rattansingh who was transferred by the Chief Technical Officer had acted ultra vires as he had no such power to do so in accordance with the Public Service Commission's Regulations. That power of transfer should have been exercised by the Permanent Secretary in accordance with the powers delegated to her by the Public Service Commission.

Herbert concluded that the Rattansingh's case illustrated the need for senior managers to familiarize themselves with the source of the authority, not only in the technical areas, but also in the areas of Human Resource Management. They should also familiarize themselves with the consequences of Public Law as to when they exceed their jurisdiction, act irrationally or with bias or fail to deliver a legitimate expectation or make a bad decision. Clearly the decision where the decision makers are without authority falls within the category which will cause unnecessary financial burdens on the State and embarrassment to the Public Service Commission or those who act on its behalf. Herbert lamented that the Rattansingh's case also illustrates the need for Service Commissions to monitor the aspects of their delegations more vigorously to ensure they were being complied with so as to avoid unnecessary litigation. Herbert concluded that Public Service Commissions should put measures in place to sanction officers who fail to comply with written instructions as senior managers in the Public Service can bring Service Commissions by their actions into disrepute.

The judgements call on Human Resource Management Practitioners and Public Administrators to be more aware of the legal implications of the decisions and stressed the need for departmental lawyers to become involved at early stages of the decision and policy making processes. The judgements provide clear and consistent guidelines for the execution



of administrative decisions in that, Public Bodies should provide some form of internal complaints procedure for people dissatisfied with the outcome of a decision or the way in which the decisions are made.

#### **2.2.14 Judgements Implications for Human Resource Practices**

The Courts have recognised that the impact of their decisions on Administration is relevant in the exercise of its supervisory jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards opening decisions and lead to increased and unbudgeted expenditure (Lewis 2003). Against this backdrop the Court is reluctant to quash decisions especially if the challenge is procedural and not substantive, and the Court is not certain that the Administrator would not reach a different decision even if the original was quashed.

In light of the judgements, the Commissions have been examining their regulations, policies, processes and procedures, to effect the necessary amendments, in line with the rulings of the Courts. This is being implemented in a very “ad-hoc” approach, and maybe the time has come for a holistic review of the relevant legislative framework that guides the work of the Commissions and by extension the practice of Human Resource Management as it relates to their functions. Also there is the need to take cognisance of the learnings from the judgements and the advice preferred by Senior Counsel. Maybe the research may also reveal further issues that may impact on the practice of Human resource Management in relation to the role and judgements of the Court. The next section will look at Judicial Review and the manner in which it has been transforming Human Resource Management in the Public Service.

### **Judicial Review and Human Resource Transformation**

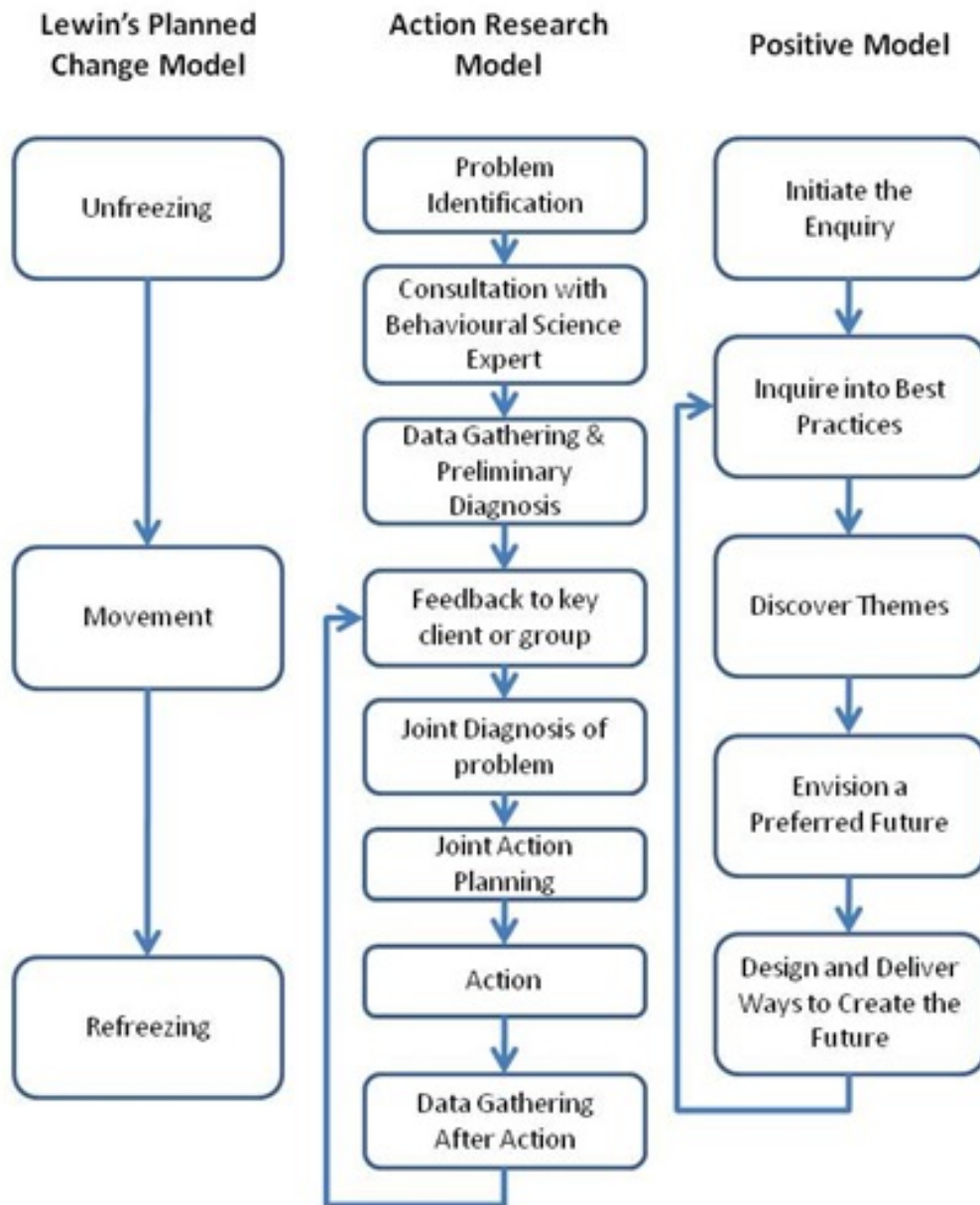
#### **2.3.1 Change and Transformation in Context**

Change and Transformation gurus, theorists Lewis (1999), Cummings and Worley (2015) and Connelly (2010) all argue that organization transformation emphasises radical changes in how members perceive, think and behave at work. To them, transformation speaks to changing the status quo and also refers to changing the way the organization responds to environmental factors and stakeholders, the organizational context in particular is important.

They posit, that it involves innovative thinking, a change in mind set, corporate values, culture, organizational structure, operations and procedures and overall organizational strategies. If organization transformation at the level of the Service Commissions and the Service Commissions Department is to occur, cognisant must be taken of the factors enunciated by these theorists, also, there must be a realization that organisations are open systems and are affected by factors outside of the organization in a similar manner; factors inside the organization affect the environment. This is true even of the Service Commissions and the Service Commissions Department. In order to design a change and transformation intervention, it is imperative that one understands the models of change.

### **2.3.2 Models of Change**

The theorists identified above all suggest that the approaches to change and transformation must be undertaken in keeping with the dictates of change and transformation models. For them the Lewin's Planned Change Model, Action Research Model and Positive Model are some of the most effective guides that provide vital key steps in the management of the change process.



**Figure 5: Comparison of Planned Change Models**

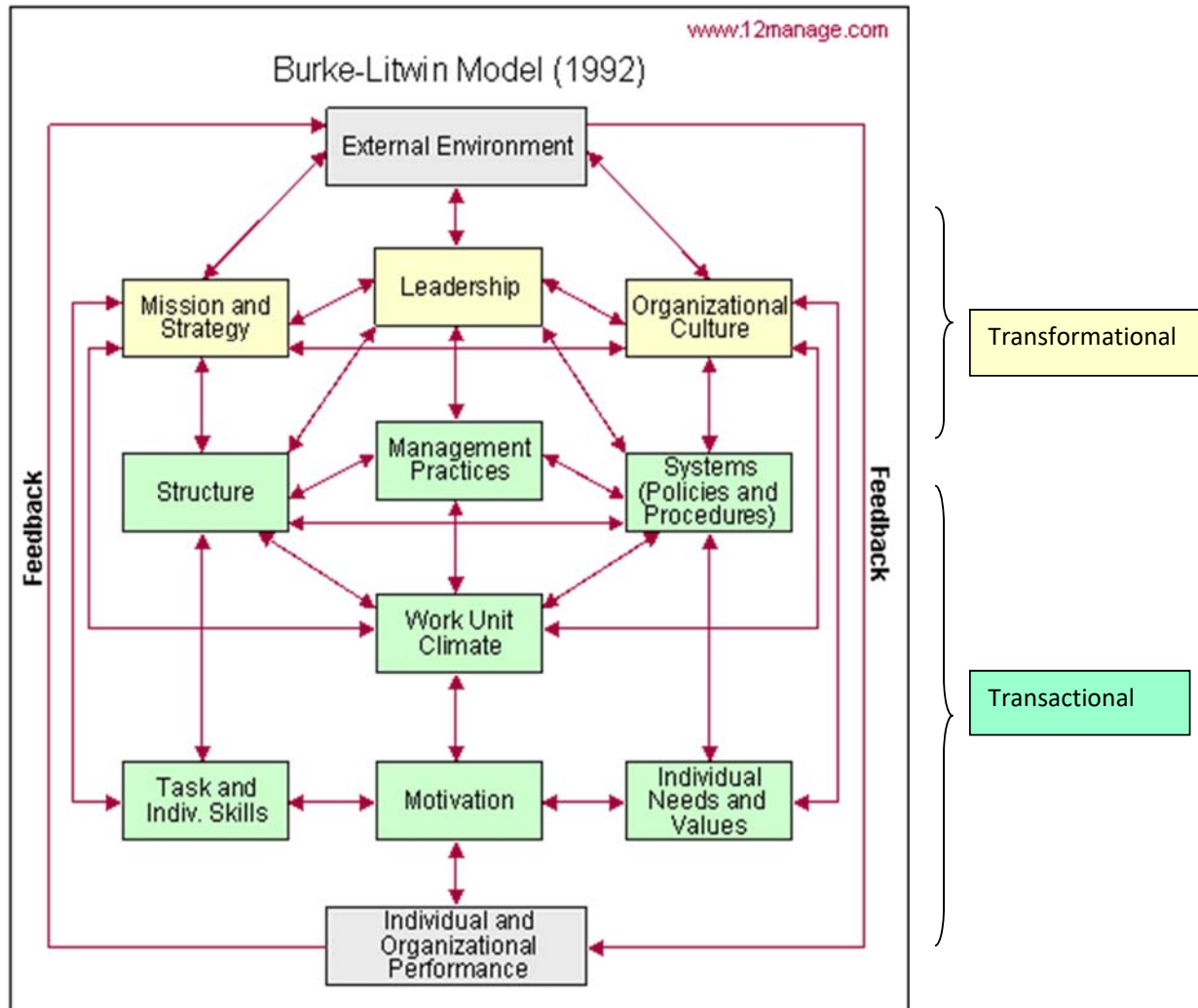
*Source: Cumming and Worley (2009) Organizational Development and Change, p. 25*

The models suggest a systematic phased approach to the Management of Change. They help organizations to diagnose the factors driving change as well as those that would create resistance to change. While the models all agreed that there is a Consultative/ Collaborative

approach to the Management of Change, they highlight the importance of envisioning the future status of the new and transformed organization. What the models essentially advocate is that a general framework for planned change encompasses four (4) basic activities that Practitioners and organization members need to jointly carry out. This systematic approach should guide the management of change contemplated as a result of the lessons from the Judicial Review Judgements of the Courts.

These models contend that change and transformation, must be understood relative to the context. Further that transformation necessitates changes in structure, processes, culture and strategy. Other models like the open system Katz and Kahn (1976) recognize that the organization exists within its environment and therefore is affected by it and it similarly affects the environment in which it exists. This model places emphasis on feedback as a prerequisite for transformation and organizational change. These theorists argue that organization operates as part of a wider social system. There is recognition that the Public Service environment is very litigious and with the advent of legislation like the FOIA (2000), the Judicial Review Act (2000) and the Equal Opportunity Act (2000) have exasperated this situation in that Public Authorities are more accountable to the citizens and their decisions are subject to interpretation by the Courts. The Service Commission will be well advised to initiate the required changes in the light of the judgements of the court. However, there should be an understanding that it necessitates a planned approach as advocated by the theorists. Further, the planned change may have to be facilitated by an expert with the requisite skills in Organizational Development.

In planning and implementing that change initiative, the researcher advocates The Causal Model of Organizational Performance and Change Burke and Litwin (1992). This might be one the most appropriate models that can be adapted to the Trinidad and Tobago Public Service Human Resource Management context. This model places emphasis on the organization context, there is emphasis on the role of leadership, vision and strategy and organizational culture.



**Figure 6: Causal Model of Organizational Performance and Change**

*Source: Burke and Litwin (1992)*

This model, which is supported by empirical research, advocates a revolutionary approach to the management of change as it suggests that each of the variables impact on each other and that continuous feedback throughout the process of change is critical to its success. The only thing that is absent, is that the model while it speaks of factors of the internal environment, there is no emphasis on the legal environment in particular and this may provide some drawbacks in adapting it to the specific nuances of the Human Resource Management context, as it relates to the practice of Human Resource Management by the Service Commissions and the Service Commissions Department.

Writers on change and transformation all agree that effective change management should consider the motivational factors associated with the establishment of “buy in” and creating a platform for supporting change through political constructs or influential stakeholder Cummings and Worley (2015). Woodward (1970) on the other hand posits that the major problem associated with organization change is ineffective diagnoses and evaluation, a view that is shared by Johnston and Heidi (2008). It is the researcher’s view that the models discussed in this chapter could be useful guides to managing any change and reform agenda for Human Resource Management Modernization in the Public Service.

### **2.3.3 The Role of Leadership:**

Theoretical and empirical studies conducted by Burke and Litwin in 1992 advance the view that Leadership is the key to transformational change, a view that is shared by several other theorists on change and transformation. Nadler (1993), White and Toombs (1998), Anderson and Ackerman (2001) and Riches (2003) all agree that leadership plays an important role in the management of change and transformation. Nadler et al (1997) contend that Leadership has the responsibility for expediting there (3) important roles.

- 1) Envisioning – set new standards for performance
- 2) Energizing – demonstrate excitement for the change and exhibit behavioural integrity, and
- 3) Enabling – transformational change through resource allocation, rewards and building effective top management teams

Leadership must also focus on continuous improvement, celebrating small wins, and encouraging people to see more opportunities for improving organizations. Anderson and Ackerman (2001) in particular argue that transformation cannot be ‘managed’ but what is needed is strong leadership to affect ‘conscious transformation’. The change and transformation of Public Service Human Resource Management has to be driven by the executive that is the Prime Minister or designated Minister, or the respective Chairmen of the various Commissions in order to maintain the independence of those Commissions. This is essential if the pitfalls identified by Howlett (2009) are to be avoided.

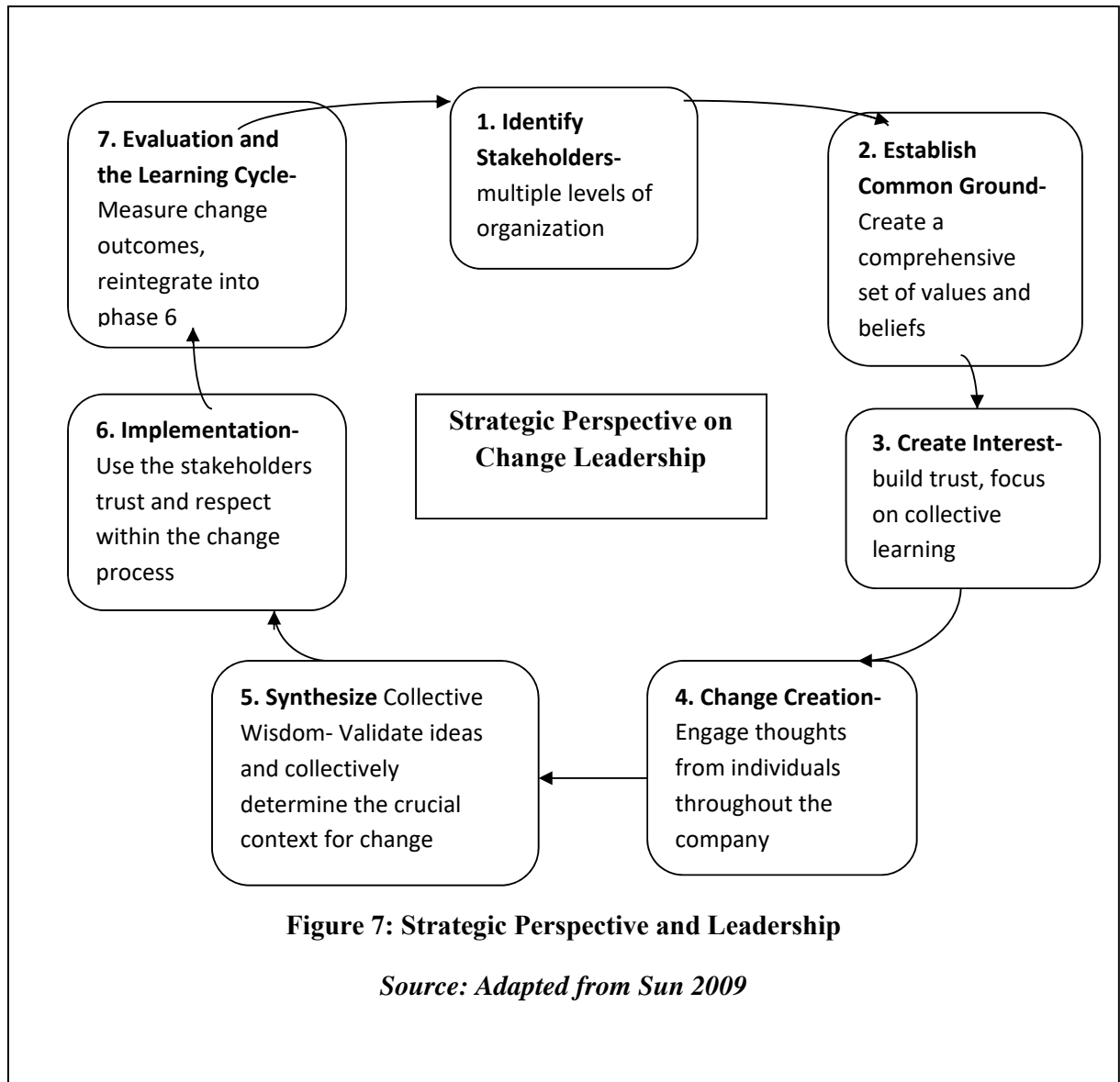
### **2.3.4 Leadership and Relationship to Organizational Transformation:**

Lisette Howlett (2009) Management Consultant and Director of Global Human Resource Consulting; *a US Based Firm* agrees and lists Leadership as second among a number of factors which present serious barriers to change as stated hereunder;

#### **Factors / Barriers to Change**

1. Not enough understanding about the change itself and poor alignment behind it
2. Lack of leadership
3. Lack of focus and strong project management of the change
4. No engagement and /or buy-in of key stakeholders
5. No clear process
6. People's issues/barriers to change are not defined
7. People practices are not reviewed and re-aligned
8. Successes are not recognized, communicated and/or celebrated
9. Change is very tiring and is often something that requires extra effort
10. Progress is not measured and the learning is not reviewed

Howlett (2009) concludes that leadership is paramount to any major change and transformation. Sun (2009) agrees with the recommendations advanced by Howlett (2009) and proposes a seven (7) phase strategic perspective on change leadership by integrating insights on systems thinking, he cites the work of Checkland (1999), Leadership theorist (Bass 1990) and the learning organization, Nonaka and Takeuchi (1995), and references his own work, Sun (2007) to support his thinking.



### **2.3.5 Change Management Strategies:**

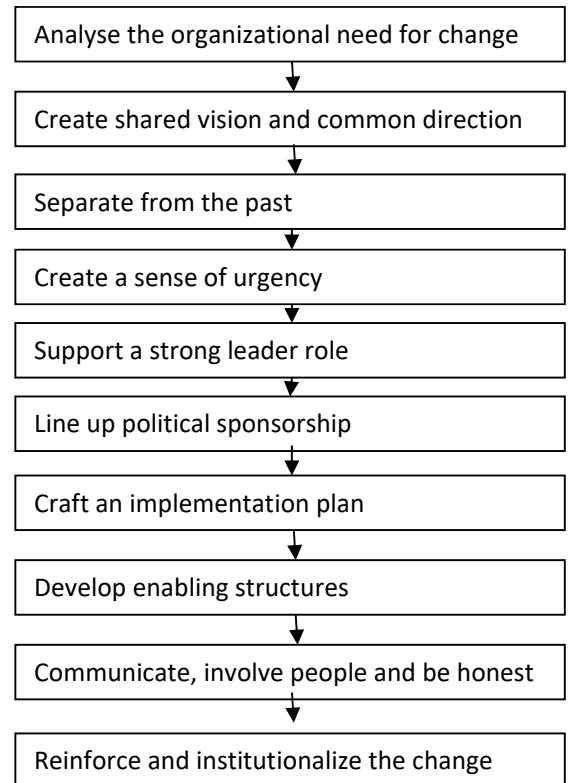
Whether one utilizes, Sun (2009), Kotter (1996) Eight steps or Jick's (2003 model) depicted hereunder as Figure 8, organization transformation can only be realized or effectively managed through a conceptual framework. Cummings and Worley (2015) agree that the model depicted as Figure 9 is a useful guide/framework for the management of change.



**Kotter's (1996) 8 Steps Model for Change**

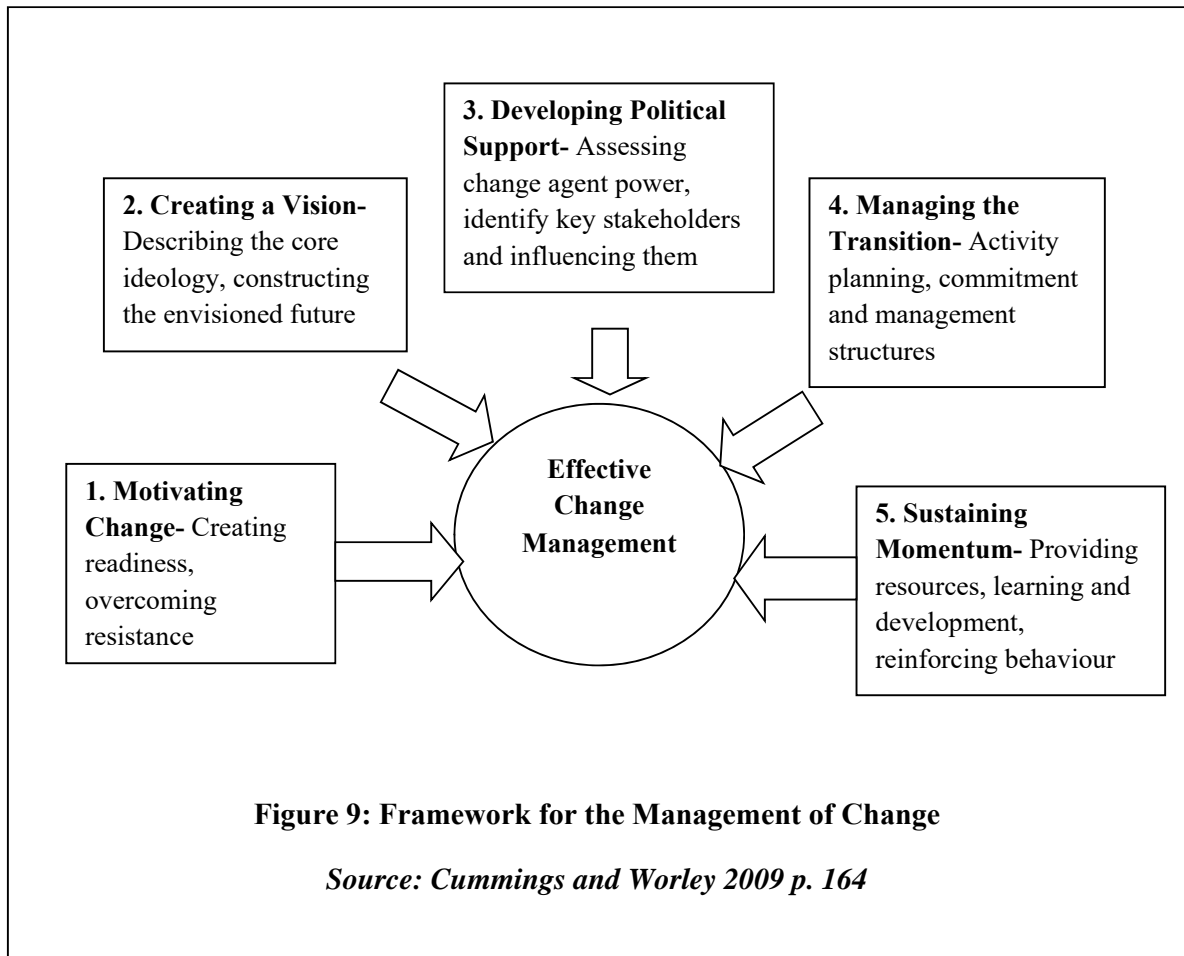


**Jick's (2003) Model for Change**



**Figure 8: Kotter's (1996) 8 Step Model and Jick's (2003) Model for Change**

*Source: Adapted from Delhi Business Review (2008)*



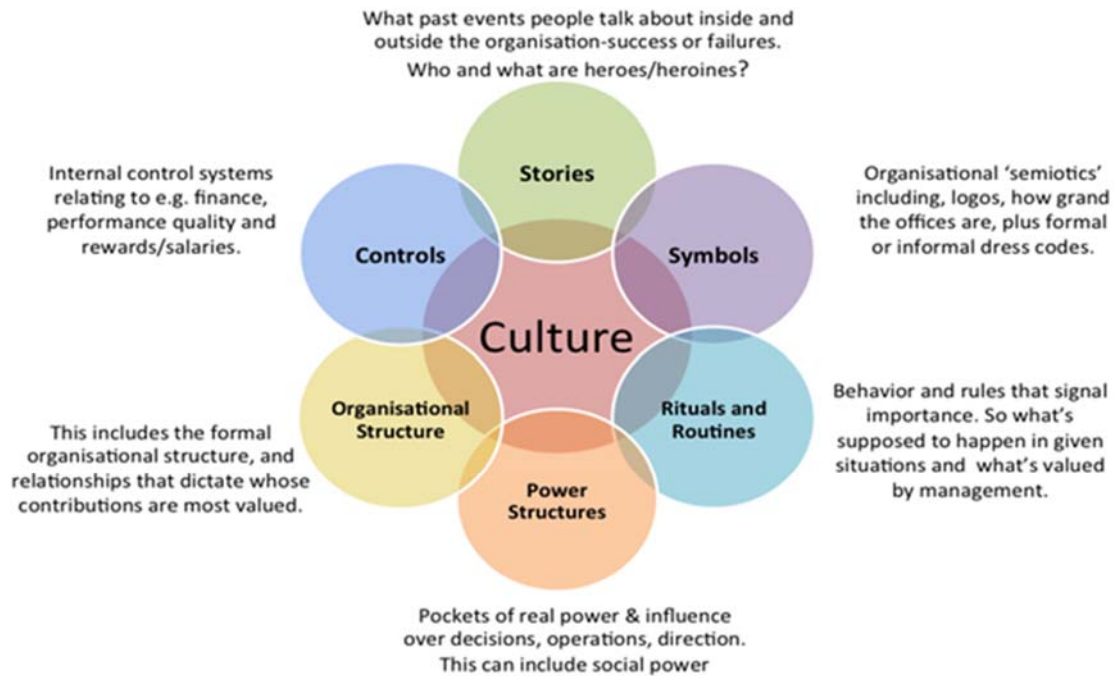
Cummings and Worley's five (5) step model incorporates similar elements of Kotter (1996) and Jick (2003). It highlights the needs for stakeholder identification and prioritization and further sees change as a continuous process thus the needs for sustenance. This conceptual framework like the models, propose that there are certain activities that must be followed sequentially for effecting management of change. The researcher finds the model for the management of change advocated by Cummings and Worley (2015) most useful for the realities for the phenomenon under investigation, as it speaks to a continual process for the management of change. In as much as the courts are continuously by their judgements signalling new learnings and interpreting the regulations. The Commissions therefore, have to continuously transforming their approaches/processes in light of these judgements. This model is flexible enough to facilitate the type of change that is required.

### **2.3.6 The Question of Culture in the Management of Organizational Transformation:**

One cannot discuss the construct of organization transformation without placing emphasis on the importance of organizational culture.

Schein (1997), Carnall (2003) and Cummings and Worley (2015) all agree that organizational culture, which is referred to as the basic assumptions, values, norms, beliefs and artefacts' that shape behaviours of individuals in organization can impede or promote organizational strategy and design and can further facilitate or hinder organizational transformation. Research tends to imply that an organization's culture has both direct and indirect relationship to an organization's effectiveness. Indirectly it affects performance through its ability to influence implementation of change, directly it affects the implementation of an organization's business strategy and organizational performance. It is useful to consider whether the existing organizational culture of the Service Commissions and Service Commissions Department would be appropriate to the promotion of the change and transformation envisaged.

The Cultural Web, a framework designed by Johnson, Scholes and Whittington (2005) is a tool that can aid organization development Practitioners to evaluate the organizational culture in that it assists in examining the impact of each element of the organizational culture on the other. The framework stresses that each element of an organization's culture must be identified and understood before strategies are implemented to promote a paradigm shift and cultural change. Theorists argue that re-webbing of an organization is a necessary prerequisite for cultural change. Clearly the culture of the organizations under review would have to be re-webbed if it is deemed inappropriate to the new change and transformation agenda. Certainly if this is not done the present culture will stymie any change and transformation initiative.



**Figure 10: The Cultural Web**

*Source: Johnson and Scholes and Whittington (2005)*

### **2.3.7 Power and Politics in the Management of Change and Transformation:**

Burke (2004) Johnson et al (2009) Mullins (2010) postulate that change is often seen as a threat to power or influence of certain groups within the organization, such as their control over decisions, resources and information. The exercise of power by powerful stakeholders (both within and outside the organization) impacts on the organization's ability to implement change.

Carnall (2003) agrees but opines that to understand how organizations are managed, experienced and changed we need to understand their politics. He suggests that this involves the examination of political process, activity and skills. For him, the use of power and politics are necessary parts in the management of change. Carnall's view supports the writing of Pettigrew, 1973, 1985, Pfiffer (1981), Lawler and Bachrach (1986), Child (1986). These theorists all advocate that managers make choices that create the conditions for organizational politics. They further posit that senior executives in organizations have considerable influence over decisions and the use of resources that create rules, policies, and standards of

performance and procedure that influence employee behaviour. A proper study of organizational politics must be undertaken in the transformation of an organization, Service Commissions are no different. If there is executive leadership however, at the level of the Prime Minister and the Chairmen of the Commissions driving the change, this will go a long way in reducing the effects of organizational politics.

#### **2.3.8 The importance of communication:**

Carnall (2003) Burke (2004) Cummings and Worley (2015) affirm that communication is key in gaining people involvement which is an essential element of all change activities. Regular and effective communication it is argued tends to reduce people's level of uncertainty and reduces resistance to change. These theorists agree that the purpose of communication is not just to inform staff that change is being considered, but by drawing them into the decision and debates about the need for change and allowing them the freedom to discuss the issues involved openly to get them to convince themselves of the need for change. The Service Commissions and the Service Commissions Department would have to design and implement an effective communication strategy as a necessary prerequisite for the management of change and transformation. For Public Service Human Resource Management transformation to occur there must be an effective communication strategy, one that is carefully crafted with all stakeholders in mind. This should also include the details and elements of the change intervention in order to obtain the necessary "buy in" to lessen the resistance to change.

Lewin (1999) also focused on the importance of communication in the management of change. He sees it as necessary to gain employee involvement in the change process and reinforces that effective communication reduces the levels of uncertainty and eliminates barriers to change. Communication and involvement are essential elements in gaining people's understanding of the need for change.

### **1.3.9 Managing Reform/ Change Fatigue (Sustaining the Momentum):**

There have been several attempts at Public Service Reform and the level of scepticism is very high with respect to any new change initiative. It will therefore be quite a daunting task to create the level of enthusiasm for another change initiative, as there is a prevailing view that the more things change is more they remain the same. Moreover, it has been argued that even in the best run organization, the initial enthusiasm for change initiative wanes as the pressures of the reform itself mounts and the process sometimes grinds to a halt. In such cases people return to the methods and types of behaviour with which they are familiar. Carnall (2003) cautions that such momentum does not rise by itself nor continue without encouragement, he recommends that organizations need to build and sustain it. Carnall's view is supported by Kotter (1966) Buchan and Boddy (1992) who recommend the following steps be followed:

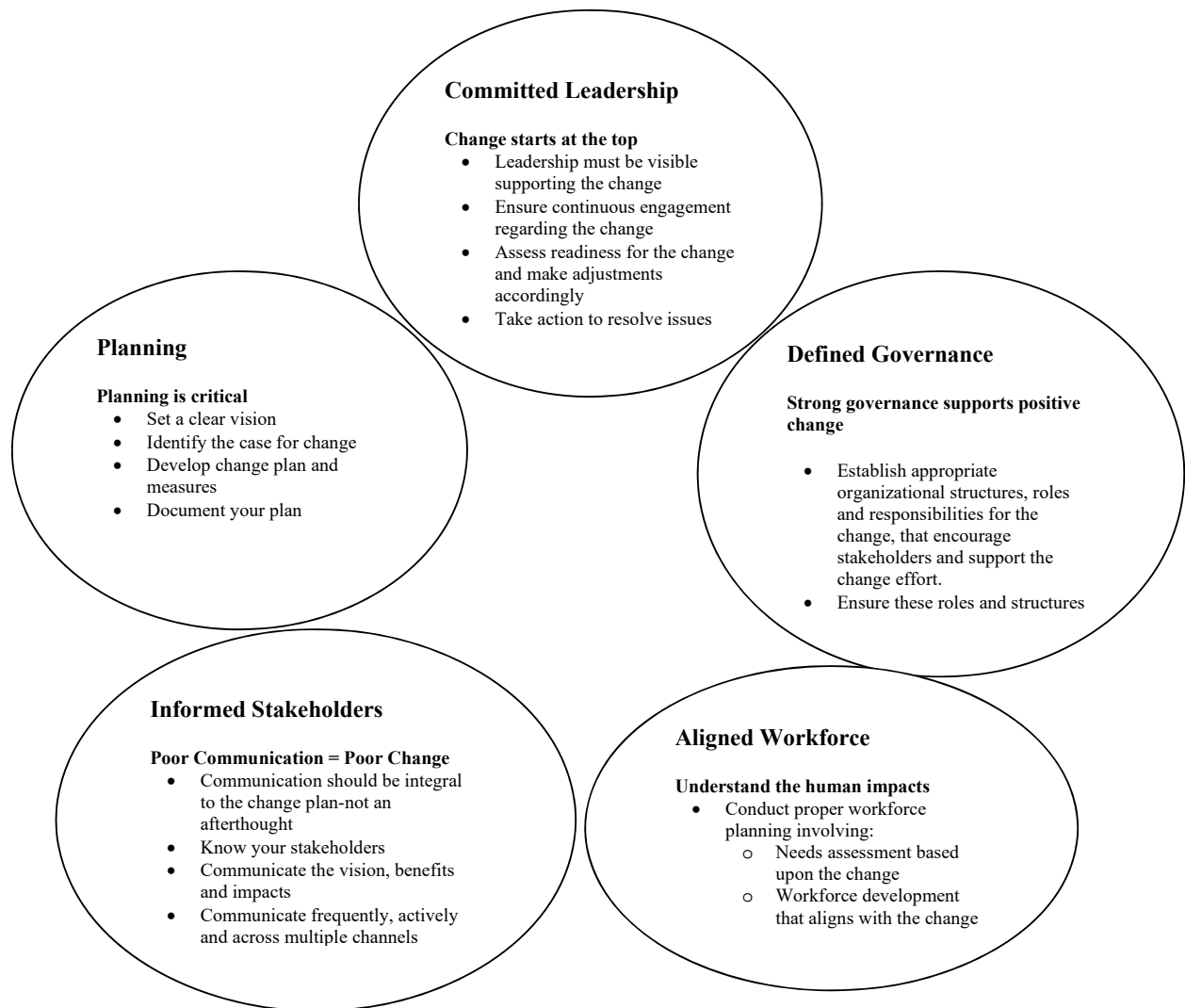
- Provide resources for change, as nothing can be more demoralizing than having to make changes without some additional resources and support.
- Give support to change agents, since considerable responsibility falls on the management team, which has to manage the entire process including motivating others, while dealing with their own personal problems, as they support others they must also be supported.
- Develop new competencies and skills. Change demands new knowledge skills and competencies. Managers will have to learn new leadership skills and styles and members of staff have to learn new behaviours. They have to be trained and re-trained are they are expected to be innovators and improvers.
- Reinforce desired behaviour. The most effective way to sustain the momentum for change is to reinforce the kinds of behaviour to make it successful. Such reinforcement may come in the form of intrinsic and extrinsic rewards

### **2.3.10 Best Practice in Change Management:**

Is there really a best practice in change management? In 2009 Prosci carried out research into 500 organizations to determine the primary reason why change failed in organizations. He concluded, after interviewing the Chief Executive Officers of these companies, that change initiatives failed mainly due to human reaction of resistance or a lack of engagement. He recommends the following Change Management Best Practice emanating from the research:

- **Communication-** Articulating vision and business cases, building an understanding of new capabilities and expectations, inviting dialogue and feedback.
- **Learning-** Development of new, sustainable skills and capabilities.
- **Leadership and Ownership-** Building the alignment of leaders and team members to own program outcomes, that is business ownership for the “what and how”.
- **Work Design & Talent Management-**The architecture of teams; alignment of roles with new capabilities and expectations as well as proactive alignment of talent management efforts to the changing business requirements.
- **Business Readiness & Measurement-** Understanding organizational impacts, enabling readiness, measuring progress, risks and to help ensure benefits are realized and sustained.

The Queensland Model depicted at Figure 10 is another useful guide/best practice for managing change in that it advocates five (5) key factors that must be addressed in the management of change. It argues that committed leadership, which starts at the top, must be visible to support the change. There must be defined governance in that there must be enabling structures and designated responsibilities for the change. Also, the change must be well planned with a clear vision in order to communicate to stakeholders about the need for the change and to align the workforce with the respective change. This model can be adapted to the realities of the Public Service context.



**Figure 11: Five (5) Key Factors for Managing Change/ Change Management Best Practice**

***Source: Change Management Best Practice Guide (Queensland Government 2009; p. 17)***

**Several writers** Berman et al (1999) Haynes (2007), Cummings and Worley (2015) have argued that stakeholder management and engagement have intrinsic value and should be taken into account when formulating strategy and planning and implementing change. Further, they suggest that change agents should identify powerful individuals and groups with an interest in the changes, such as staff groups, unions, departmental managers, and top-level



executives. These key stakeholders, they posit can thwart or support change and it is important to gain broad-based support to minimize the risk that a single interest group will block the changes. Carnall (2003) suggests that key stakeholder should be involved in the diagnosis and planning of change where it is possible and appropriate. This should result in maximum support for the change among those who oppose it and have the power to influence the outcome.

### **2.3.12 Trade Unions as key stakeholders**

Salamon (2000) argues that trade unions play a critical role in the employment relationship, as their membership consist of employees who seek to organise and represent their interests both in the workplace and society and in particular these employees seek to regulate the employment relationship through the direct process of collective bargaining with management. It is also suggested that trade unions can encourage management to implement effective and fair H.R.M strategies to ensure that other unpalatable alternatives are not adopted. Employees through their unions on a collective basis enter into dialogue with management, express their views and seek to influence management decision making. However, writers like Guest (1989) suggests that the values underpinning HRM are predominantly individualist and unitarist and collectively challenge collectivism and the role of the trade unions in the process of managing people in the organisation. On the other hand Armstrong ( ) opines that HRM strategies do not necessarily imply abandoning collectivism, but rather, a shift from an adversarial to a co-operative style of collectivism. He also suggests that the inclusion and maintenance of collectivism within HRM strategies there implies a shift towards a sophisticated consultative style of management. Lucio and Weston (1992) advocate for a Partnership approach with the trade unions to solving people issues in the organisation. This view is shared by Marks et al (1998) who argue that this approach is ideal for formal change programmes, as it creates a commitment to working together to making the change initiative successful. It can reasonably be advances that the trade unions should be perceived as a critical stakeholder in any effort to reform the Public service due to their source of power and influence, trade unions inclusion in the management of change will lessen the resistance and be a catalyst to driving the process.

### **2.3.13 Legal Professionals as Stakeholders**

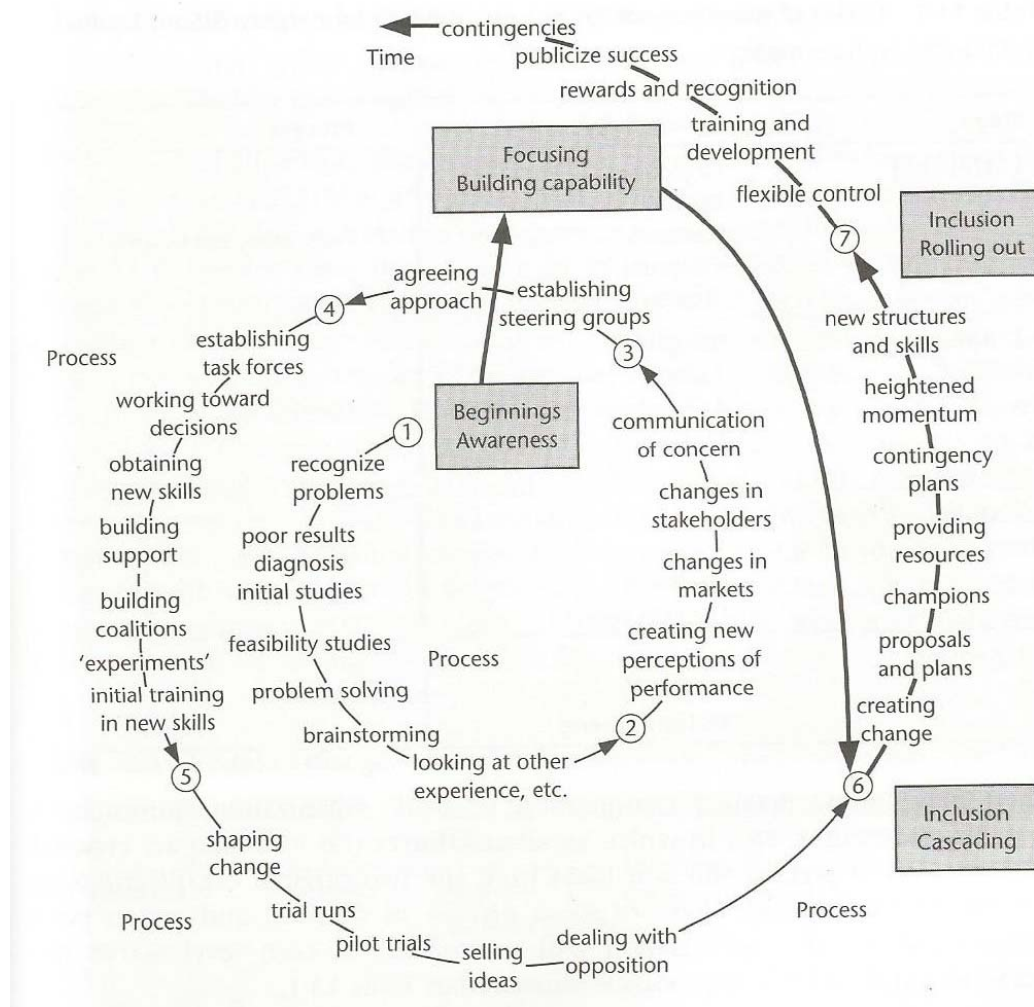
The public service of Trinidad and Tobago is governed by the legislative framework which sets the parameters for its operations. Any changes in legislation, rules or regulation must be undertaken in consultation with personnel from the legal profession. The court, also in its supervisory role interprets the laws and gives guidance to public bodies like Service Commissions about their duties and responsibilities in accordance with the laws. Involving the legal profession in the decisions about what should be changed with respect to public laws will create opportunities and synergies that will positively impact the change. This view is supported by Wolfe et al (2007) who suggest that departments and parliamentary counsel are urged to ensure that legislation was expressed in the clearest language. They also stated that in the UK law and were no longer seen as peripheral to the process of administration, and departmental lawyers are involved at early stages of the policy-making process. Acknowledging the legal profession as a key stakeholder in the reform agenda will help the decision makers to interpret and understand the law thereby aiding in compliance. This will result in improvements in the quality of the administrative decision within the boundaries of the law. The legal profession and the court should therefore have a partnership between them and public authorities like Service Commissions. It is important for the legal profession to enunciate principles of the laws and proffer guidance to public officials engaged in the change intervention.

### **1.3.14 Change as a Cyclical Process**

The model at Figure 10 was designed by Carnall in 2003. It advocates that change should be a cyclical process, where a first stage of awareness is created with respect to the problems. This triggers diagnostic studies to be undertaken how best to address the problems/issues in an organization. Once this occurs, the model suggests that a steering committee be established to take responsibility for the management of change. It also recommends that task forces should be set up for specific action and there should be efforts directed at building coalitions in support of the change. It also intimates that pilot studies and experiments should be done to assess early results and to shape and modify the change program. This model places heavy emphasis on selling the program to those who will be affected by the change as well as dealing with those who are opposed to it. Carnall (2003) further argues that the model promotes looking at all activities involved in change and these activities should broaden as

the process begins to cascade and roll out in the organization. He recommends that this should be consistent with creating and implementing a communication plan. The roll out and the communication plan should be done simultaneously to inform everyone throughout the organization. Carnall (2003) suggests that communication and implementation are inextricably linked. At the last stage of the cycle it is also expected that a detailed examination of the organizations structures, systems, processes and information systems will be undertaken. This is achieved through small task forces for further staff involvement.

What the model argues is that change is a continuous process. Moreover, when one examines the model closely, it is not dissimilar in terms of the processes to be followed than what has been suggested by the Action Research Model at Figure 5. Both these models essentially see the management of change as a joint collaborative process involving management and employees if change is to be successful. Whatever model of change is adopted to transform the Public Service and in particular to transform Public Service Human Resource Management in the light of the learnings from the judgements and the subsequent review of the literature, it must be borne in mind that change is never a neat, orderly, sequential set of activities/events. Change activities have to be managed and designed to occur concurrently, piloting, testing and evaluating. Further leadership, communication, management of the culture, change fatigue and other issues that stymied the process must be considered. One cannot overemphasize the role of leadership in the management of change. In the case of the Public Service, it is a matter of Political will.



**Figure 12: Change as a Cyclical Process**

*Source: Carnall 2003, p. 273*

A review of the models, theories, and framework of change and transformation, suggest that change Practitioners must understand that change is a systematic process, which should be implemented by reference to the context of the particular organization. Change and transformation can only occur if the designers of the planned change understand the concepts,

strategies and types of intervention to assist those problematic areas of culture, leadership and management of change itself that could hinder the process.

Change and Transformation is a continuous process, diagnosis of the problem to be addressed is essential as the change initiative must be designed to match the context of the organization. Above all the programme for the implementation of the change programme and evaluation of the process at each phase is essential to its success.

### **2.3.15 New Public Management/Public Service Reform**

The imperatives of public transformation which has been the theme of the theory of 'New Public Management' (N.P.M) which has driven public sector reform in developed and developing countries in the 80's and the 90's; Trinidad and Tobago being no exception, as many of the initiatives aim at public sector reform were influenced by this new approach to reform referred to as new public management. Writers, such as McCourt and Minogue (2001) and Manning (2001) have argued that N.P.M sought to redefine the role of government through introducing an 'entrepreneurial dynamic' into public administration, adopting management techniques borrowed from the private sector, and the reinstatement of the market as a potentially more proficient provider of services than the state. This they suggest led to a new wave of public service reforms in many developing countries, incorporating the principles on N.P.M and leading to internationalization. Bissessar (1998) posits that in the 80's that several countries in the Commonwealth Caribbean were among the prime exemplars of the movement. She further states that many of the major counties in the region underwent structural adjustment programmes, which shaped and provided the rationale for subsequent public sector reform programmes. Bissessar also opines that while some of the impetus behind the reform came from the international development agencies and major bilateral donors, there was also a growing recognition within the region that reform of the public service was essential.

Sutton (2008) postulate that the Commonwealth version on N.P.M was developed in several conferences and numerous workshops organised with the support and active participation of the management Training and Services Division ( MTSD ) of the Commonwealth Secretariat. Sutton stated that the then Director, Mr. Mohan Kaul had identified the characteristics on N.P. M as; (1) it redefines the role and functions of government, (2) involves thinking

differently about service users, (3) thinking differently about administrative structures, (4) seek to create synergy between the public and private sector, (5) improves financial planning and control systems, and (6) harnesses information technology. The broad emphasis of such reform was to shift the emphasis from developing plans to developing partnerships, to shift emphasis from inputs and processes to outputs and outcomes, and to shift emphasis toward managing diversity within a united public service. Kaul (1997)

This N.P.M model was very influential in informing the public sector reform agenda in Trinidad and Tobago. A new government P.N.M was elected in 1991 and thereafter embarked on a robust public sector reform programme under the stewardship of Gordon Draper, Minister responsible for public Administration. The details of that programme were set out in a publication of the MTSD, titled “A profile of the Public Service of Trinidad and Tobago”, Commonwealth Secretariat 1995. Gordon Draper in 2001 stated that the 1991-1995 government of Trinidad and Tobago in pursuing the public reform agenda, articulated a vision of the public service as one that: is client driven, produces prompt results, is highly motivated and business like, has a high speed processing capacity. Is result oriented, promotes and expects high standards of performance, has high leadership, and provides for the growth and development of its members. Gordon stated that much of the reform work focused on human resource management initiatives inclusive of the articulation of a human resource philosophy and framework of the public service. He further indicated that in a 1997 White paper on a policy agenda for the N.P.M, the government of Trinidad and Tobago had outlined several elements of the reform process which included decentralising Human Resource Management. Gordon posits that a review of the reform in the region shows that there have been activities focused on across the board horizontal change and other reforms which were sector specific or vertical. He laments that there has generally been no systematic attempt to evaluate the results of the reform, and concludes that reform initiatives need to be periodically assessed to determine whether objectives are being met and whether the changes are being implemented in the most appropriate manner.

To what extent the reform initiatives of the 80's and 90's failed or succeeded is arguable. However in 2000, Dr Roland Baptiste, Lecturer of the University of the West Indies published a paper wherein he used a checklist designed by the MTSD, Commonwealth Secretariat to draw conclusions on public service in Trinidad and Tobago. In his paper, he stated that it was

difficult to identify any concrete outputs of the programme. He indicated that even when there was a change in government in 1995, the incoming government (U.N.C) did not depart radically from the programme and initiatives already undertaken. He argued that in some ways there was even greater adherence of NPM as was evident by the U.N.C development of a policy agenda for the public service in a policy document titled *Toward a New Public Administration* (1997). This document he stated drew directly and deepened the theory and practices of the previous government. Baptiste argues that although some peripheral work was done up until that government demitted office in 2000 and another new government (PNM) the reform efforts have been blunted, as there was a realisation that reform would be a long, slow process.

### **2.3.16 Critique of Past Reform Initiatives:**

Past initiatives at reform suggest that they had only targeted parts of the system, writers like Dumas (1975), Draper (2001), Nunes (2009), Smith (2009) and Sutton (2009) have all indicated that the reform was retarded due to the Central Agencies, which were not capable of exercising a leadership role, as well as the existing Law and regulations, the reluctance to change them, and the associated fear of litigation, and to a lesser extent, the lack of “buy in” by the Public Services Association, the (Trade Union for Public Service Employees). These writers argue that these blockages would have to be addressed if the Government was to tackle reform successfully.

Previous reform initiatives all suggested that the overarching goal was to build the foundations of a contemporary approach to Human Resource Management. At the same time, action would need to be taken to tackle the most urgent problems faced by the Service. The objectives for those transformations were to develop a comprehensive policy framework for Human Resource Management which would enable Trinidad and Tobago’s vision for the Public Service to be achieved, through the alignment of the regulatory framework that is the Laws, Regulations, procedure, with the agreed policy framework. Also, it entailed the establishment of an appropriate institutional framework to set Human Resource Policy to carry out operations and provide for independent oversight. The reforms aims were also to build permanent organizational capabilities for contemporary modern Human Resource Management, both in the Central Agencies and Ministries. Further the initiatives spoke to developing a comprehensive programme to strengthen senior management capability within

the Public Service and a medium-term compensation strategy for the Civil Service. Several changes in Government over the years have impacted negatively on the reform initiatives as several of these matters are still outstanding. While some critical work would have been done, in terms of implementation, there is little to show in terms of progress and by extension any meaningful change.

### **2.3.17 Leadership Strategic, Co-ordination and Implementation Issues:**

Many of the authors of change programs in Trinidad and Tobago, have lamented that Public Service Reform is a challenging process that require an administrative system to undergo often far reaching transformations whilst continuing to function and deliver services. They stressed that transformation by definition demands new ways of working and inevitably challenge the in-built inertia possessed by all organizations and normally attract opposition from those who “profit from the old order.” Further, inertia and opposition can only be overcome through determined leadership, which can only come from the highest level; the Prime Minister who they argued should formally sponsor the transformation agenda and be directly engaged at critical stage of the process. This view is shared by many of the theorists’ alluded to previously in this chapter. The writers on Public Service Reform have also enunciated the importance of a Communication Strategy, Planning, Implementing, Co-ordinating, Monitoring and Evaluation Strategies.

One consultant in particular Adam Smith (2009), who was engaged in designing a programme for the management of the reform initiatives commented that, the history of Public Service Reform in Trinidad and Tobago is replete with examples of reform initiatives that have not been fully implemented. He acknowledged that while better co-ordination mechanisms on their own will not guarantee implementation, he opined that stronger procedures which ensured that initiatives have proper implementation plans which tracked implementation and identified factors have impeded implementation.



### **2.3.18 Communication and Dialogue:**

Previous reform initiatives acknowledged that successful reform requires sustained political will and support for the Civil Service and is therefore important to involve Trade Unions in strategic discussion about reform, as well as in negotiations on specific issues that affect their members. They suggested that public officers need to be informed, encouraged and engaged in a dialogue process that enhanced their psychological ownership of reform. Reform initiatives also suggested that the reform process included making people aware of the national demand for reform, aware of internal demand for reform and aware of Government's respect for the Civil Service. The reform initiatives also advocated that there should be a willingness to engage in dialogue. Both internal and external dialogues need not slow the reform progress. If handled well, it can build greater commitment and robust changes. The programme for Public Service Reform as enunciated by Adam Smith (2009) did not materialize as there was a change in Government in 2010.

### **2.3.19 Reform Initiative Programme (2011-2012):**

A perusal of The Ministry of Public Administration's Public Sector Investment Programme for the year 2011 to 2012 revealed that it acknowledged the report of Adam Smith International (ASI) which it suggested that Human Resource Management reform was a pre-requisite for Public Service Transformation. Further, The Ministry envisaged that the most important transformation initiative given its potential to impact all of Government and was critical to successful and sustained transformation was the comprehensive transformation of the system of Human Resource Management that exists in the Public Service.

The Ministry proposed a planned transformation of Human Resource Management systems given the recognition that Human Resources was an organization's most important value adding asset. The Ministry opined that the systems and structures that were put in place to manage this key resource must be able to attract to the organization the very best available talent inspire high levels of productivity by creating an environment that motivated, challenged and retained valuable people. The Ministry agreed with Adam Smith that the existing approach to Human Resource Management was antiquated, ineffective, uncoordinated and non-strategic. Among the factors contributing to this phenomenon, the Ministry suggested were a disaggregated Human Resource Management system that does not

facilitate strategic or coherent oversight of the Human Resource function. Moreover, the lack of an overarching Human Resource Management Philosophy and Policy, to guide Human Resource Management operations, across the Public Service, also the absence of adequate, relevant and enabling Legislative and Regulatory Framework for Human Resource Management. Inadequate structures for the effective and strategic performance of the Human Resource Management function in Ministries and Departments. Further, inappropriate and archaic processes, weak knowledge, skills and abilities, experience with best practice of Human Resource Management displayed by Practitioners in general and the absence of a robust and relevant succession planning and performance management system.

The Public Service Investment Programme (PSIP) for the period under review identified as its primary strategy for transforming Human Resource Management function was the acquisition, development, strengthening capacity (human capital) and Capability (Structure process and framework/architecture). It identified the activities to be undertaken in fulfilment of this strategy and stated that it was supposed to lead to certain outcomes such as, an enhanced Human Resource Management Function in the Public Service, a more strategic and coordinated approach to Human Resource Management and an enhanced workforce and organizational flexibility and capability. Further in 2011, the Ministry of Public Administration produced a green paper on (*Transforming the Civil Service through renewal and modernization*.)The paper identified among the area for modernization was, renewal and strengthening of the Human Resource Management System. Some of the issues addressed in the paper were the shortcomings of the Human Resource Management System in the Civil Service policy and procedures and the Legal Framework. It also saw the need for Human Resource Management Modernisation Strategies for implementation of programs. Of critical importance was the development of a Human Resource Management Philosophy as well as the development of an Institutional Framework for Strategic Human Resource Management. Furthermore, it was recognized that there must be the establishment and implementation of a Strategic Coordinating Division. It was also highlighted that the establishment of a single Human Resource Management entity to manage the Civil Service Human Resource Management Function was critical to Human Resource Management transformation. The Ministry also proposed the development of Human Resource Management Journals and social networks.

The Green Paper makes mention of lessons learnt from past reform efforts and stated that these were critical to the successful implementation of the transformation agenda. It also

stated that change management was important and recognized the role that open discussions played in soliciting the opinions and support of all stakeholders which were viewed as critical to the success of that initiative. The paper critically examined previous efforts at Civil Service reform over the last fifty (50) years and highlighted the work of Gordon Draper, a former Minister of Public Administration, who stressed that reform reports seemed to have an uncanny way of repeating themselves. Draper in his 1986 report “*A Quest for Appropriate Public Service Reform*” laments the fact that common challenges repeatedly surfaced and resurfaced. Among the challenges he identified then were the need for the Public Service to review its systems, Law, rules and procedure that regulate the processes of Public Administration. He argued that the system of planning, both national and sectorial needed to be improved. This also applied to the system of Human Resource Management including recruitment and training.

The paper concluded by recognizing that Human Resource Management modernization was critical to Public Service transformation and that appropriate mechanisms and structures must be put in place to ensure the success of that particular reform effort. The Ministry of Public Administration pledged ownership of that reform initiative and vowed to take charge to ensure that the programme was successfully implemented and sustained. Despite these grand plans, apart from the Establishment of Strategic Coordination Division to oversee the reform initiatives, very little else has been achieved.

Also, the Ministry of Public Administration in 2011 as part of its Public Sector Programme for the year 2011/2012 in recognition of the views expressed by Smith and CAPAM launched a new initiative/project aimed at enhancing the Human Resource Management processes in Public Service. The Ministry acknowledged that despite several attempts at reform the success thus far had been limited, and signalled that among other things that new programme was focused mainly of legislative changes and process design. For the Ministry, the main aim of the project was building capability (structure, processes framework and architecture) and capacity human capital. One of the main objectives of this initiative was transformation of Human Resource Management legislation and policies, formulation of a Human Resource Management philosophy, revised Human Resource Management policies and guidelines and change management intervention.

The researcher having pursued this document found that not enough emphasis had been placed on the design of the appropriate change and transformation framework to guide that

initiative. What is admirable about that initiative however was that there was a realization that if change and transformation is to occur in Public Service Human Resource Management, there is a need for a concomitant change in the legislative framework governing Human Resource Management practices and processes?

### **2.3.20 Judgements and Public Service Human Resource Management Transformation:**

An in-depth examination of the learnings from the judgements of the Courts suggest that if Public Administration is to be improved and Judicial Review applications by public officers reduced, there must be concomitant thrust towards Public Service Human Resource Management modernization. This modernization must be informed by a reformation of the legislative framework that is all overarching legislation that governs Human Resource Management practices. The tenets of Public Law and the outcome of Judicial Review proceedings are two (2) of the main drivers of this reform. The case for the reform of the legislative framework has never been greater. If this need is only given ‘lip service’ and no serious attempts at reform is taken in this regard, that is, one that is informed by the Judicial Review judgements, then Public Service Human Resource Management Practitioners will continuously be called upon to defend their decisions in the Courts, once they step outside the parameters of the legal limits defining their practice in their efforts to practice contemporary Human Resource Management.

The judgements speak to the need for the Service Commissions and Human Resource Management Practitioners to review their processes and procedures by which their decisions are made in as much as Judicial Review focuses not on the decisions themselves, but the processes by which they are made. The learnings/lessons from the judgements present a cogent and coherent case for Public Service Human Resource Management transformation. The judgements highlight that Public Service Human Resource Management Practitioners need to be knowledgeable of Public Law that impacts their practice. They enunciated several gaps in the performance of the Human Resource Management functions of the Service Commissions and the Service Commissions Department in relation to their interpretation and application of the laws. Even in instances where the Commissions have had matters determined in their favour, the Courts have issued cautions to the Commissions with respect to their policies and procedures. It is interesting however, that the Courts have not commented on the archaic legislations, some of which have been in existence since 1966.

Notwithstanding this, it is clear that modern contemporary Human Resource Management cannot be practiced within the parameters of outdated legislation.

### **2.3.21 Government Proposals for Renewal and Modernization:**

As discussed previously in 2011, the Green Paper entitled “Transforming the Civil Service: Renewal and Modernization”, focused on building on previous studies of past reform including those initiated by the late Gordon Draper (a former Minister of Public Administration and an employee of the British Commonwealth Secretariat) in the 1990s. Two (2) of the initiatives air marked for this transformation was (a)- renewal and strengthening of Human Resource systems, in that it stated that attention would be given to the legislative and regulatory framework, that was identifying legislative proposals for legislative changes that would support the renewal/modernization process; and (b)- change management and engagement, promoting awareness of the problems currently existing in Civil Service systems and simultaneously encouraging new ways of doing things.

The paper cited that the legislative framework for Human Resource Management (Laws and Regulations) established at Independence (1962) although reviewed in an ‘ad hoc’ fashion but have not been comprehensively overhauled but remain outdated in relation to contemporary Human Resource Management practices as well as incomplete in terms of coverage for Human Resource policies. It stated that during the 1990s an attempt was made to align the Civil Service with the new Human Resource polices framework but lamented that this initiative ended with the term of that Government. The paper proposed the development of Human Resource Management policies that were expected to guide and synchronize Civil Service Human Resource Management practices. Moreover, it advocated the development of an institutional framework for strategic Human Resource Management which would include enhanced and integrated Human Resource Management as well as an aligned legislative and regulatory framework. While the paper spoke of several initiatives in that it identified the what of transformation, it did not identify how all of that was to happen in that the strategies for implementation was not clearly enunciated and the framework for the implementation was very prescriptive and did not define specific roles, responsibilities and stated outcomes.

There has to be recognition that in designing the way forward while it is important to focus on the issues, challenges and experiences from other Public Service reform initiatives,

cognisance must be given to the learnings from the judgements of the Court. Further, for any change and transformation to occur in any organization, and the Public Service is no different it must be driven by the leadership of the organization several theorists Carnall (2003) Cummings and Worsley (2008), to name a few, have stressed the importance of leadership. In the instance case the matter of changing Public Service Human Resource Management and legislative reform in terms of the legislative framework that guides Human Resource Management practices, these initiatives must be driven by the Prime Minister or designated Minister in collaboration with various Chairmen of the Service Commissions.

The literature thus far points to a different modality for Public Service Human Resource Management, while there is agreement that this new approach is in congruence for the most part with what has been articulated in the Green Paper, there is need for a more comprehensive approach which should incorporate the learnings and the lessons from the judgements. The tenets of Public Law and these learnings and lessons are critical elements in fashioning the way forward. The several pieces of legislation that have been promulgated since 2000 must inform the approach taken towards Public Service Reform. A summary of the literature reviewed points to a coordinated approach inclusive of a partnership with Public Service legal Practitioners to facilitate the Public Service Human Resource Management transformation agenda. Legislation like the Judicial Review Act, the Freedom of Information Act and the Equal Opportunities Act have contributed to a Public Service where the citizens of Trinidad and Tobago and the public officers in particular are more litigious as they have been provided with the opportunity to challenge the decisions of Public Bodies like Service Commissions in the Court.

#### **2.3.22 The Case for the Study of Judicial Review and Public Service Human Resource Transformation:**

The Government of Trinidad and Tobago has already acknowledged that Human Resource Management transformation is the prerequisite for implementing other Public Service Reform Initiatives. There is also a recognition that the practice of Human Resource Management is too fragmented and that there is wide spread dissatisfaction with the present system (Smith report 2008). Lamentedly, the 'ad hoc' approach to reform adopted by the Government thus far has exasperated rather than fix the problems they intended to fix. The lack of a comprehensive Human Resource policy framework for the Public Service and by extension to

guide Human Resource Management Practitioners has not seen the standardization of Human Resource Management practices across the Public Service. There is no community of practice to provide practical guidance to this cadre of public officers.

While there are some handbooks and documented procedures from the Central Human Resource Agencies, a perusal of these documents seems to suggest that they are not in congruence in some instances with the existing legislation or have not been reviewed in accordance with the new pieces of legislation and the lessons from the Judicial Review judgements. The Courts are directing that Public Service Human Resource Management Agencies follow strictly almost slavishly the regulations that inform Public Service Human Resource Management that is they are being advised to work within the existing regulations (Regulations promulgated in the 1960's). These Regulations in their current form reflect Personnel Administration thinking and cannot promote/facilitate the practice of contemporary Human Resource Management. Maybe the Courts have been suggesting indirectly that there is a need for a holistic review of these outdated legislations.

Many of the issues alluded to above have been acknowledged by the Central Human Resource Management Agencies, which have embarked on renewed attempts to address them. Some of these initiatives are (a) The Ministry of Public Administration has launched since 2010 a strategic initiative aimed at transforming the Public Service this has culminated in 2012 with the theme from '*Gold to Diamond*'. One of the items stated for transformation is revision of the legislation and regulatory framework for the Public Service. (b) The Ministry has also drafted a Public Service Policy but it has not yet been adopted as the official policy for the Public Service (there has been a change in Government in September of 2015 and the new Government has not yet signalled whether it is going to be continuing with the Gold to Diamond initiative). The other two (2) Human Resource Agencies, that is the Personnel Department and the Service Commissions Department have embarked on a process to review their Regulations. The process is ongoing. It is the understanding of the researcher that revised/new Regulations have been drafted but they have not yet gone out for stakeholder for consultation.

As discussed earlier, any strategic initiative to reform Public Service and Human Resource Management in particular especially Human Resource Management practices of the Service Commissions and the Services Commissions Department must be undertaken within a change and transformation framework to facilitate strategic design and implementation of the reform.

If this change is to be implemented successfully then a coordinated and structural approach to the management of change is a prerequisite for its success. Any review of the legislative framework/Regulations and Human Resource Management practices must take cognisance of the Judicial Review judgements and must be informed by the lessons emanating therefrom. Only then can there be the resultant good Public Administration, good Human Resource Management practices, one that is integrated with tenets of Public Law.

The next section gives a summary and critique of the literature, the themes and subthemes that have emerged would be highlighted and discussed.

### **2.3 23 Summary/Critique of the Literature Review**

The literature reveals that Public Service reform has been on the national Agenda for more than fifty years. Several of the reform initiatives undertaken over the years have been by driven the need to satisfy the imperatives of external international agencies like the IMF or the World Bank. While In the 80's and the 90's, the concept of NMP was the driver of the reform in many developed and developing countries, Trinidad and Tobago being no exception. Writers on public sector reform in the Commonwealth region seem to suggest that while progress has been made in some areas, the reform initiatives have not delivered the results promised. The literature raises question as to the suitability of the approaches that were adopted and whether foreign prescriptive, universal models were ideal for the national context. It also points out that the legislative framework which is informed by Administrative/Public law set the parameters for the operationalization of the public service. It also shows that the Constitution of Trinidad and Tobago is the supreme law of the land and while parliamentary supremacy resides in the Parliament in the UK, the parliament in Trinidad is Subjected to the Constitution,

The literature indicates that in an effort to promote more effective governance several pieces of legislation have been promulgated aimed at transparency and accountability. Key among the legislation was the Judicial Review Act of 2000 which gave the citizens the right to question the decisions of public bodies when they were negatively affected by those decisions. It discusses the Service Commissions and their role in the practice of HRM in the public service and the fragmented nature of fragmented nature of the practice. The supervisory role of the court is illuminated due to judicial review and the judgements of the



courts have revealed some importance lessons that can be a guide for further public service reform not only of human resource management but of the legislative framework that guides the practice. While the literature highlights the many arguments for and against the abolition of Service Commissions, not much has been advanced as a possible alternative to the August bodies.

It is evident that the literature identifies several gaps in the transformation agenda, the practice of HRM in the public Service and the need for a new model to guide public service HRM. The first gap is that most of the reform initiatives have not focused sufficiently on the leadership that is required and the involvement of critical stakeholders like the Opposition, the trade unions, the courts and personnel in the legal profession in the change and transformation process. Writers have also failed to address the issue of the political realities of Trinidad and Tobago and the fact that Public Sector reform in small island states has a political dimension and this must be taken on-board if the reform is to sustain momentum whenever there is a change in government.

Also the absence of a strategic change and transformation framework and the continuity of reform programmes whenever there is a change in government have stymied the reform agenda. Secondly, while there has been some emphasis on the modernization of HRM and Service Commission very little has been preferred as a suggested approach or advanced to address the fragmented nature of the practice of HRM in the public. It has been argued that the absence of legislative reform, an overarching HRM philosophy and a coherent strategic approach to HRM have all exacerbated the problem. The literature has not enunciated a clear strategy/ framework for HRM modernization in the light of the several pieces of legislation enacted in 2000 aimed at transparency, participation and effective governance. It is anticipated that this research would provide answers in this regard.

## **CHAPTER 3**

### **METHODOLOGY**

#### **Introduction**

This chapter discusses the Methodology adopted to conduct the research. The purpose of the methodology is discussed. The researcher has opted to use qualitative methodologies in the conduct of the study. Choosing a methodology was given careful consideration, as it must reflect one's physiological assumption. The question that comes to mind therefore is, "what is methodology and what is its purpose in research?" A methodology is defined as an approach to the processes of the research encompassing a body of methods. Collis and Hussey (2009) similarly it is argued that it's the theory of how research should be undertaken. Saunders et al (2009), they further argued that there should be a link between the chosen methodology and the research paradigm, which is the physiological framework that guides how the research should be conducted. For the conduct of this research the interpretivist, phenomenological paradigm was adopted which suggests that the data collected was qualitative and subjective Creswell (1994).

This chapter also evaluates the various methods adopted to assess the strengths and weaknesses and their potential in helping to answer the research questions and meeting the objectives of the study. The research was carried out mainly in Trinidad and Tobago and the Service Commissions and the Service Commissions Department was the unit of analysis as they were essential to answering the research questions. The research was informed by the phenomenological paradigm which permitted the researcher to understand the phenomenon from the participants' own frame of reference. This paradigm allowed the researcher to describe, translate, and ascribe meaning to what has been happening in relation to Judicial Review and Public Service Human Resource Management. The following research questions informed the choice of the methodology used throughout the research.

### **3.1 Central Research Question:**

Has Judicial Review been transforming the practice of Public Service Human Resource Management in Trinidad and Tobago?

### **3.2 Ancillary Questions:**

- i. How does Public Law Influence Human Resource Management in the Public Service?
- ii. What amendments should be made to the Legislative Framework that governs the Practice of Human Resource Management?
- iii. What really is the role of the Courts in the Practice of Public Service Human Resource Management?
- iv. Have Judicial Review judgments forced the Service Commissions and the Service Commissions Department to examine their Human Resource Management processes/practices?
- v. What change and transformation are required in light of Judicial Review judgments?
- vi. What strategic model should be designed for Human Resource Management in the Public Service?
- vii. Is an understanding of Public Law crucial to the practice of Human Resource Management in the Public Service?

### **3.3 Research Approach:**

The research was conducted utilizing the qualitative methodology. This approach was taken as there is recognition that quantitative research is designed specifically for the identification and description of variables with a view to establishing the relationship between them. This method focuses on studying larger population as a prerequisite for valid, reliable and easily generalizable findings Robert (2002). Further, this method uses descriptive correlations, quasi-experimental and experimental methods. Data analysis is usually executed through descriptions and inferential statistics. Moreover, quantitative methods also assumes that in terms of ontological stance that the researcher takes an objective view of the phenomenon under investigation and that the researcher is not part of the phenomenon and there is no relationship between the researcher and the phenomenon (epistemological assumption). It also suggests that the researcher should be value free in terms of his axiological assumption, as the researcher is detached from what is being researched Collis and Hussey (2009). Further, quantitative research methods imply hypothesis testing.

On the other hand, qualitative research methods imply recognition of processes that are not readily susceptible to measurement in terms of quantity and amounts of frequency Carney et al (1997). It focusses on capturing an in depth understanding of an interactive process as manifested during a particular study Wainwright (1997). Qualitative research methodology suggests that the qualitative researcher works at great depth with a relatively small sample of participants in order to enhance the quality of the responses, Brink (1991) and mostly prefers interpretive methods such as focus groups, discussions, naturalists observation and unstructured and semi structured interviews. Moreover, analysis in qualitative data starts with the management of data through the assembling of field notes, coding and searching for categories or patterns. Analytical methods include ethnographic, sequential and discourse analysis, constant comparative method; analytic induction and grounded theorising Glaser and Strauss (1967).

The qualitative method was chosen as it best matched the researcher's physiological stance, as the researcher wanted to get a deep understanding and knowledge of whether Judicial Review was transforming Human Resource Management practices in the Public Service. To fully grasp all the dynamics involved it was important to interact with the participants who had full knowledge of the subject matter. Further, the researcher is not independent of what is being researched as the researcher is a Human Resource Management practitioner and therefore the qualitative research methodology matches the researcher's epistemological stance Creswell (1994). This method permitted the use of a small sample hence with the use of a purposive sample which will be discussed later in this chapter, the researcher was able to obtain quality responses from the few chosen participants with the use of a structured master questionnaire (See Appendix VI).

Further, the preferred qualitative approach is comparative with other qualitative research methods utilised in the study that is case study and grounded theory Strauss and Glaser (1992) and Woodward (1999). Moreover, the qualitative research methodologically adopted is complementary with Hermeneutics Collis and Hussey (2009). This permitted the researcher to analyse and interpret the texts contained in the judgements of the courts in respect of the Judicial Review rulings. Also qualitative research methodology facilitated the analysing and interpreting of narratives from the interviews conducted to discern meaningful patterns and descriptions on whether Judicial Review was actually transforming Public Service Human Resource Management. This method was the preferred choice in that, it allowed the

researcher to engage in inductive reasoning to interpret and structure the meanings from the narratives in the text and conversations derived from the data collected and to make judgements on whether those findings were valid. Qualitative research methods permitted a cross examination, and interrogation of the data collected across the various methods adopted which are complimentary with qualitative research methods. Further, it enabled an interpretive understanding by uncovering or decontextualizing what has really been happening as it relates to judicial review and Public Service Human Resource Management. It also facilitated the answering of the research questions and it was possible to do so with the use of the phenomenological method adopted.

### **3.4 Phenomenology as a Methodology:**

Phenomenology is the science of phenomenon, it is concerned with understanding a phenomenon from the participants own frame of reference. It is a reaction to the positivist paradigm in that it assumes that the social realities are within us, therefore the act of investigating reality have an effect on that reality. Considerable regard is paid to the subjective state of the phenomenon; this qualitative approach stresses the subjective aspect of human activity by focusing on the meaning rather than the measurement of the social phenomenon Alleyne (1990). This approach was comparative with the qualitative methodology adopted in this research. This method also allowed an array of interpretative techniques which permitted the researcher to describe, translate and otherwise come to terms not with the frequency of certainly more or less naturally occurring phenomenon in the social world Van Mannen (1983). This approach allowed the researcher to fully understand and put meaning to the findings of the research to evaluate whether Judicial Review was really impacting Public Service Human Resource Management.

Phenomenology methodology is also compatible with case study and Hermeneutics and the symbolic interactionist stance of the researcher. It is particularly effective in bringing to the fore of individuals their own perspective and is therefore challenging to structural or normative assumptions. This was borne out clearly in that the researcher was able to gather the perspective of the participants with respect to their views on the phenomenon under investigation. With its interpretive dimension, it enabled the researcher to use the findings gleaned from the interviews to be part of the basis for practical theory Plumber (1983), Stanley and Wise (1993). Phenomenology methodology can also be applied to a single case study as is being undertaken by this research. It allows in the identification of issues and

discrepancies in systems. It is also a very robust method by allowing the researcher to discern the presence of factors impacting on Public Service Human Resource Management.

In terms of data collection, it facilitated the use of interviews which were the chosen method for this research. It allows the researcher to stay focussed on the subject of the investigation by not bringing undue influence on the participants. It permitted the establishment of a good level of rapport and empathy which were critical gaining depth of information Oakley (1981), Plumber (1983) and Measor (1985). In terms of analysis, while some may argue that Phenomenology research generates a large quantity of interview notes, tape recordings, jottings and other records that all have to be analysed and that analysis is generally messy it allowed the identification of themes, subthemes and issues and was particularly useful in identifying relationship between different themes and subthemes. Phenomenology methodology permits detailed comments about individual situations, which do not lend themselves to direct generalization in the same way, which is sometimes claimed for survey research. However, it allows the development of general theory and it is compatible with grounded theory which is another methodology used in this research. The theories generated with the help of phenomenology if they are to be valid in particular, allow the researcher to work from the findings to interpretation and therefore theory building, with the help of grounded theory. Finally, Phenomenology methodology produced rich data that is true to the phenomenon under investigation. While the reliability is low, the validity is high in that the results can be generalised from one setting to a similar one.

### **3.5 Grounded Theory:**

Grounded theory strives to understand and explain human behaviour through inductive and reasoning processes Elliot and Lazenbatt (2005). Because of its emphasis on the utilization of a variety of data sources that are grounded in a particular context, it was particularly useful for this research. More significantly, because of the importance placed on taking a reflective stance while engaging and interacting with the data to explore how to apply grounded theory to a particular study or research question, it was helpful in answering the research questions and in the building of theory. Moreover, grounded theory offers a practical and flexible approach to interpret complex social phenomenon like the subject of this research Charmaz (2003). It is compatible with other qualitative methods and unlike quantitative methodologies which focus on testing hypotheses and theory this aids in the generation of hypothesis and

theories Chamaz (1983). Further, data is continuously subjected to interrogation until the theory emerges.

The purpose of using Grounded Theory in this research was that it permitted the building of theory that was faithful to the phenomenon under investigation. Similarly, it assisted in making intelligible and useable presumptions and recommendations likely to be used by those in the situation being studied, and open to comment and correction by them Fisher (1981). Moreover, it supported the researcher's inductive, deductive stance. The researcher's overall aim, by using multiple methodologies, was to reduce bias in data collection. It also led to greater validity and reliability than a single method approach. The researcher used triangulation to cross-check the results of each method adopted within the study.

While Glaser and Strauss (1967) suggested that it was best suited for the inductive approach; the researcher posits that in as much as a mix-method approach was being used, this strategy was useful and applicable as it assisted in theory building through the combination of induction and deduction. Goulding (2002) argues that the strategy was particularly helpful for research to predict and explain the behaviour of a phenomenon, the emphasis being on developing and building theory. The researcher used interpretivism in the study and although Suddaby (2006) warns that the strategy has its pitfalls and may not be perfect, it worked well as it permitted an interpretive process and required the researcher to develop a tacit knowledge or feel from the data. The researcher worked at the Service Commissions Department and has institutional memory and tacit knowledge with respect to the phenomenon. Grounded Theory is one of the interpretive methods that shares the philosophy of phenomenology (Stern 1994). It permitted the researcher to arrive at prescriptions and policy recommendations and theories, which are useable to those in the situation being studied. Stern's view is in accordance with those expounded by other theorists, e.g. Turner (1981).

### **3.6 Case Study as a Methodology:**

While there is much controversy surrounding the use of case study as a methodological approach in data collection, it is still very popular in the social science and management especially where an in-depth explanation of a particular phenomenon is being sought. Notwithstanding, the concerns with respect to its usage it was ideal for this research as it

allowed the exploration and understanding of the complex issues surrounding Judicial Review and Human Resource Management in the Public Service of Trinidad and Tobago. The case study method enabled the researcher to closely examine the data within a single context, the Service Commissions and the Service Commissions Department. Case studies, in their true essence, explore, and investigate contemporary real-life phenomenon through detailed contextual analysis of a limited number of events or conditions and their relationships (Yin 1984).

Case study allowed for an in-depth study of Judicial Review and the way it is transforming Public Service Human Resource Management practices, as it relates to the work of the Service Commissions. It stressed the importance of context Eisenhardt (1989). The case study focused on the dynamics of the context and was constructed in the context in which the management issues take place Bouma and Atkinson (1995). This research explored the phenomenon to understand it within its particular context. The case study methodology also used multiple methods of collecting data. This approach was in sync with the interpretivist paradigm and the exploratory nature of the research, especially since there are few theories on the subject research and a deficient body of knowledge, Scapens (1990) and Yin (2003). This approach allowed the conduct of the research by empirical investigation of the particular contemporary phenomenon within its natural context, using multiple source of evidence. Yin (2003) supports the choice of the researcher to use the methodology.

The case study strategy permitted a rich understanding of the context of the research of the phenomenon being investigated. It also facilitated the answering of the research questions and is well suited to exploratory research. The data collection techniques included interviews, and documentary analysis Saunders et al (2009). This strategy complimented the other choices. The case study lends itself to triangulation and supported the utilization of different data collection techniques within one study. The researcher's use of the Service Commissions Department (SCD) and the Service Commissions as a single case study provided an opportunity to collect data and analyse a phenomenon that has not been investigated before within its context. The detailed qualitative accounts produced in this research not only helped to explore the data or describe the real life environment, but also helped to explain the complexities of the realities of what was happening in relation to the matter under investigation Zaidah (2003).



### **3.7 Hermeneutics as a Methodology:**

Hermeneutics is a methodology and a member of the social subjectivist paradigm, and is consistent with phenomenology. It is part of the interpretivist paradigm and focuses on the significance that an aspect of reality takes on the form what the people understand Bretton et al (2002). It focuses on defining sheer linguistic meaning and is likely to be open to infinite interpretations and reinterpretation due to its interpretive ambiguity from presupposition to the condition of usage different from the author's intention and the evolution of words Marshall et al (2001). Due to its interpretive nature, Hermeneutics cannot be approached using a predetermined set of criteria that is applied mechanically Klein et al (1999). However, a major principle is how the Hermeneutic circle guide the approach where the process of understanding moves from part of a whole, to the global understanding of the whole and back to the interpretation in an interactive manner Klein et al (1999). This method allowed the researcher to peruse the whole judgements in order to make sense and to analyse the critical parts of the judgements and the judgements as a whole. In this way, the researcher was able to discern whether there were any learnings from the Judicial review judgements examined for this research.

The use of Hermeneutics permitted the researcher to interpret and understand the text contained in the Judicial Review Judgements. Hermeneutics as a methodology has been applied in research in Law, where the reasons behind judgements or Statutes are sought Lindolf (1995). The researcher looked at Judicial Review, which is a remedy in Public Law for persons aggrieved by decisions of Public Bodies. Hermeneutics allowed the researcher to be an interpreter, identifying and interpreting meaning expressed and embodied in text in the judgements, sub-themes and clusters of themes across texts, sampling key documents, systematically preparing a core report and cross checking written sources against the results from the interviews Jankowicz (2000). The researcher matched the findings from the written texts namely the Judicial Review judgements against the results of the interviews.

### **3.8 Case Study, Hermeneutics and Grounded Theory as Research Methodology:**

The relevance of using a combination of strategies, that is Case Study, Hermeneutics and Grounded Theory for this research is that due to the nature, scope and topic of the thesis, one single strategy would not have allowed the researcher to gather the quality of data to make sense of the phenomenon under investigation, that is, to understand whether Judicial Review

was transforming Public Service Human Resource Management. Further, one method was not sufficient to answer the research questions and meet the aims of the study. Also the various strategies matched the researcher's ontological and epistemological stance. Moreover, multiple methods are acceptable in one single case study as they lend themselves to methodological rigor in allowing cross referencing and interrogation of the data from one methodology to the next. Saunders (2009) advocates the use of multi-methods in qualitative study to investigate a phenomenon.

### **3.9 Research Design:**

#### **The Research Philosophy:**

The Interpretivist philosophy enabled the researcher to engage in the intellectual tradition of phenomenology and symbolic interactionism. This approach permitted the researcher to make sense of whether Judicial Review was transforming Human Resource Management in the Public Service, as well as to interpret the narratives of the text and participants in the study. This philosophy is very effective in the study of business research, particularly, in the area of Human Resource Management which is the focus of the study. Saunders et al (2009) argue that this philosophy is very appropriate for the subject area, under study, as business situations are rather complex and unique and are the functions of a particular set of circumstances and individuals coming together at a specific time. Moreover, the interpretivist philosophy matches the qualitative approach adopted during the study. Further, the researcher focused on exploring the complexity of the phenomenon to gain an interpretive understanding of what was happening Van Maanen (1983). Furthermore, the use of this interpretivist paradigm allowed the researcher to arrive at broad conclusions.

### **3.10 Research Paradigm:**

The phenomenological paradigm assisted the researcher in examining the phenomenon in order to achieve fundamental change to the status quo by designing a new HRM model for the Public Service on the basis of research findings and analysis. This approach permitted the researcher to study the structural patterns of the Service Commissions and the SCD and the extent that they produce dysfunctionalities. The nature of the research and the critical physiological issues that underpin it inform the research paradigm which sets the

physiological framework for the research. The research philosophy provided the basis for the arguments advanced in seeking truth and knowledge about the phenomenon under investigation. The paradigm which was adopted, being Interpretivism is based on the principle of idealism, a philosophy associated with the work of the early theorists Van Maanen (1983) and Alleyne (1990).

This approach was ideal for the conduct of the research as the researcher interacted with what was being researched as it was impossible to separate the research from what was in the researcher's mind. This view is supported by Creswell (1994) and Smith (1996) who argued that the act of investigating social reality has an effect on it. Interpretivism helped the researcher to focus on exploring the complexity of the social phenomenon under investigation with a view to gaining an interpretive understanding of it.

### **3.11 Philosophical Assumptions** (Subjectivism / Social Constructionism):

The researcher's broad philosophical stance was underpinned by the researcher taking a subjective view that Judicial Review was transforming the practice of Public Service Human Resource Management. This assumption of the phenomenon (ontology) subjectivism permitted the researcher to study the details of the situation and to understand all the realities Remeni et al (1998). Social Constructivism is comparative with the researcher's interpretivist philosophy which allowed the researcher to make sense of the phenomenon by interacting with others to garner their separate views and interpretations. Additionally, the approach was grounded by the researcher's epistemological stance, that it is important to analyse the data collected in narratives from the feelings and attitudes from the participants in order to construct the acceptable truth of the subject research Saunders et al (2009). The epistemological position was consistent with the researcher's embracing of the realistic and interpretivist philosophies which allowed the researcher to get the views of the participants from their own perception, that is, with respect to the meanings that they attached to their narratives.

### **3.12 Theoretical Perspectives:**

The researcher's theoretical perspectives emanated from the constructivism epistemology and supports interpretivism as the research paradigm of choice. Writers using interpretivism argue that the social world of business and management is too complex and to gain insight

into these complexities it is necessary to understand humans in their role as social actors. This interpretivism stance was informed by phenomenology and symbolic interactionism. This research was concerned with examining and explaining the judgments of the Courts and the role they are playing in the practice of Public Service Human Resource Management. Also, the researcher is part of what is being researched and was driven by her interest in the subject Blumberg et al (2008). Further, knowledge was developed and theory built through d ideas induced from the data from the narratives from the judgments and interviews. The researcher's involvement in the research, allowed active collaboration with participants to address the phenomenon. The researcher's interpretation of the data collected was socially constructive, reflecting her motives and beliefs. The researcher's thinking guided the investigation of the phenomenon. Moreover, the business world is constantly changing and interpretivists are interested in subjective meanings and of phenomena to detect what is happening in a specific situation Blumberg et al (2008). The researcher took a broad and total view of the phenomenon to provide explanations beyond the current knowledge. Further, the researcher's ontological perspective fitted the interpretivist paradigm, which allowed the discovering of irrationalities Barcel and Morgan (1982).

### **3.13 Ontological, Epistemological, Axiological Assumptions:**

The researcher was guided by her ontological assumption as she is of the belief that social reality is subjective and that each person's perception defines that way they make sense of it Saunders et al (2009) and Collis and Hussey (2009). This approach helped the researcher to examine the way in which Judicial Review has been transforming the practice of Public Service Human Resource Management. In terms of research epistemological assumption the researcher was not removed from the study, as being a Human Resource Management practitioner for over thirty (30) years she was part of the phenomenon under investigation. This assumption falls within the realms of interpretivism which attempts to minimize the distance between the researcher and that which is researched. This epistemological assumption allowed the researcher to use her belief to determining what relevant facts should be used in the study Saunders et al 2009). With regards to the researcher's axiological assumption, the researcher's high regard for the value of integrity helped her to ascertain the facts associated with Judicial Review and assisted in determining the extent if any it was transforming the practice of Public Service Human Resources Management.

### **3.14 Rhetorical Assumption:**

Rhetorical assumption is concerned with the language of the research and this should be written to compliment the chosen paradigm. The researcher is aware that interpretive study allows the use of the personal voice to indicate the intimacy of the research and the researcher's involvement. Collis and Hussey (2009) advocate that the researcher should write the thesis in the first person and in the past tense, however the researcher has chosen the use of the formal style of the passive voice which is at variance to the researcher's paradigm. The researcher, while acknowledging that the study is subjective, the passive voice allowed the researcher to show that rigorous objective procedures were adhered to and the researcher's personal opinions have not distorted the study.

### **3.15 Methodological Assumption:**

In as much as the study is underpinned by the interpretive paradigm the researcher used a purposive sample. That is participants who have a rich knowledge of the phenomenon under investigation. The use of multiple methods to obtain and analyse the data was the researcher's way of obtaining different perspectives on the study. This multiple approach aided in the recognition and observation of patterns from the data collected. This approach is supported by Collis and Hussey (2009).

The nature of the research questions has directed the approach in that it allowed not only the use of a small purposive sample but it permitted the collection of additional data from the judgements to generate theory.

### **3.16 Research Purpose:**

The study was considered to be exploratory in nature as it attempts to explain what was happening with the practice of Human Resource Management in the Public Service as a result of the Judicial Review judgements. It allowed the researcher to assess the phenomena in a new light and clarify the researcher's understanding of the stated problem Robson (2002). This exploratory approach enabled the researcher to search the literature and interview experts, in the fields of the study. It was also flexible and adaptive as it permitted the use of a case study and historical analysis that provided rich qualitative data. This research was

exploratory as there are no earlier studies which examined Public Service Transformation, Public Law, Judicial Review and Human Resource Management in the Public Service as one phenomenon. The study is applied research as it was designed to apply its findings to solving the specific or existing problem Collins and Hussey (2009). The findings of the study on Judicial Reviews and how it is transforming Human Resource practices in the Public Service has been used to design an appropriate model that can assist in the reduction of Judicial Review cases.

### **3.17 Research Strategy:**

While admitting that no strategy is superior to the other, the chosen strategy enabled the researcher to answer the research questions and meet the objectives of the study. The choice of the strategy was guided by the research questions and objectives of the study, the extent of the existing knowledge and the time and other resources which were available to the researcher, as well as the researcher's own philosophical underpinnings. The researcher used case study, hermeneutics, grounded theory and phenomenology. These strategies were compatible with one another as they are all qualitative methodologies and provided an integrated strategic approach to the study Collis and Hussey (2009).

### **3.18 The Role of the Practitioner/Researcher:**

As the researcher was a past employee in the Service Commissions Department and advised the Service Commissions, it placed the researcher in the role of researcher/practitioner. The researcher had an advantage being in possession of knowledge of the organization and that had implications for the understanding of the complexity of what goes on in that organization. The researcher was familiar with the context of the study, but this carried a significant disadvantage as the researcher had to guard against assumptions and preconception that may prejudice the research. Saunders et al (2009) cautioned the researcher in this regard. The researcher kept an open mind and did not allow prior knowledge and preconceptions to influence the outcome of the research.

### **3.19 Researcher's Bias:**

Comprehending bias is paramount to the conduct of sound research Saunders et al (2009). In the context of research methodology bias refers to the presence of systematic error in the study. To avoid bias a questionnaire was designed to gather the data. Care was taken to gather only information pertinent to the research. The research questions guided the

formulation of the questionnaire. The conceptual framework and the literature review guided the construction of the questionnaire.

This ensured that the method used was free from bias when gathering information, hence eliminating the possibility of interviewer bias. In the conduct of interviews, the researcher guarded against her own preconceived ideas and assumptions about the phenomenon which can pose a threat to reliability of the study. Delbridge and Kirkpatrick (1994) cited in Saunders et al (2009) warned that because we are part of the social world, we are studying we cannot detach ourselves from it or for that matter avoid relying on our common sense of knowledge and life experiences when we try to interpret it. To avoid researcher bias, the researcher understood and acknowledged her values, culture and preferences and was willing to set aside her assumptions of the phenomenon under study. Care was taken not to affect the research by including the personal views of the researcher thereby affecting the credibility, validity and reliability of the study.

### **3.20 Negotiating Access**

Sunders et al (2009) advocate that there are several strategies to gain access, personal entry to an organization. In order to collect primary data, a number of issues were addressed; chief among them was the question of gaining access and research ethics. The researcher was in charge of the Service Commissions Department and worked with the Service Commissions Department. She was also a senior public officer; therefore the question of gaining access was not an issue for this study. The researcher had rite of passage to collect the primary data which was crucial to the research. The researcher sought the necessary access to records, although no information or documents were highly confidential or restrictive as they are all public documents and were readily available in the libraries of the respective institutions. The researcher still saw it necessary to seek confirmation of access to pertinent information or documents required for this study. Moreover, gaining entry to the Service Commissions and the Service Commissions Department was not a challenge, as the researcher worked for thirty-six (36) years in the organization and retired in December 2014 as the Head of the Service Commissions Department, and has kept in contact with members of the organization. Gaining access to the participants was not an issue, as the researcher was quite familiar with the participants and they all readily gave oral consent to be part of the research. Also, the cases of Judicial Review and the judgements of the Court were all public documents and were readily and easily accessible in the library of the Court and available on the websites.

### **3.21 Ethics:**

Ethics as underscored by Fisher and Lovelle (2006) refer to the suitability of the researcher's behaviour as it relates to the rights of individuals who become the subject of or are affected by the research Saunders et al (2009). The researcher endeavoured to observe the norms and standards of ethical behaviour during the conduct of the research. A deontological approach supports the researcher's beliefs that the ends to be served by the research can never justify the use of research which is unethical. All ethical issues throughout the research were considered. Participants in the research were told of the nature and scope of the study and their permission (consent) were obtained prior to their engagement. General ethical issues like confidentiality, privacy and anonymity were observed. The researcher guaranteed that any data collected for the research was only used for the purpose for which it was intended and that there were no misrepresentations of the data collected.

### **3.22 Confidentiality/Anonymity:**

The researcher provided confidentiality and anonymity to participants in the research. They were assured that their identity would not be divulged and that any information given was treated with the strictest of confidentiality. This encouraged them to be open and honest in their responses. Collis and Hussey (2009) suggest that confidentiality and anonymity are essential to research. They further emphasized the need to treat participants with dignity as is unethical to embarrass or ridicule them. They further caution that ethics refer to matters of common courtesy. The researcher therefore conducted herself in a manner beyond reproach by adhering to the tenets of good research and behaving in a manner that did not offend the ethics of good research practices.

### **3.23 Sample Selection:**

Collis and Hussey (2009) and Saunders et al (2009), argue that the population is defined in keeping with the objectives of the study and suggest that it was impractical to collect data from the entire population especially if it is large and time constraints prevent such action. Henry (1990) suggests that using sampling makes possible a higher accuracy than a census. Although Collis and Hussey (2009) advocate that selecting a sample is a fundamental element of a positive study and that phenomenological study allowed the researcher to have a sample of one (1). As the study is phenomenological in nature and following the advice of Collis and Hussey the researcher opted to use purposive sampling which is one of the methods in Non-probability Sampling.



The use of purposive sampling fitted the nature of the research, as the researcher only made contact with persons who had a rich knowledge of the phenomenon. This was the best approach to gather data to answer the research questions and meet the objectives of the research. It is also applicable to Case Study Methodology (Yin 2003).

The unit of analysis was the Service Commissions and the Service Commissions Department to determine the way Judicial Review was transforming Human Resource Management practices within their jurisdiction. The research was concerned with gaining information from senior Public Service Human Resource Management Practitioners, members of the Service Commissions, Jurists in the field of Public Law in Trinidad and Tobago, and policy makers in the Public Service who had knowledge of the phenomenon. Pallin (2002) emphasises the need to select information rich cases in purposive sampling, persons who are atypical.

### **3.24 Purposive Sample**

Purposive sampling while it is a subjective sampling approach was ideal for the research, as it was the best method for the phenomenological nature of the study. This approach fits the research paradigm and strategy and allowed the researcher to make subjective judgement about participants, as the researcher was only interested in making contact with persons who had knowledge, experience and fully understood the phenomenon. Cooper and Schindler (2003), support the researcher's approach. Also purposive sampling is complimentary with grounded theory, in that it helped with providing useful information/data for theory building. Purposive sampling provided rich information for this case study as it enabled answering of the research questions and provided theoretical insights into the phenomenon under investigation.

### **3.25 Questionnaire and Questionnaire Design:**

As the researcher used a phenomenological approach, the master questionnaire used during the interviews comprising of open ended questions which gave the participants the opportunity to provide their opinions as precisely as possible in their own words. Collis and Hussey (2009) support this approach. This questionnaire was pilot-tested on the 1<sup>st</sup> November 2015 with the help of senior Counsel for the Service Commissions and the former Deputy Director of the Service Commissions Department who were quite familiar with the phenomenon under investigation. This permitted considerable testing of the questionnaire

with a view to eliciting reliable responses from them to ascertain whether their answers provided the results which adequately addressed the research questions. On the basis of the answers provided and suggestions made by these participants the questionnaire was adjusted accordingly. Jankowicz (2000) Collis and Hussey (2009) advocate this approach.

The master questionnaire was self-administered during the interviews by the researcher. The answers were documented in writing and recorded with the use of an audio recording device. This enabled the researcher to cross check information gathered, ensuring a higher level of accuracy of responses of the participants. Due to the very structured nature of the questionnaire, it made it easy to compare the answers of the participants. This is an acceptable approach when a structured questionnaire is administered. The questionnaire was designed to specially answer the research questions and meet the objectives of the research.

### **3.26 Interviews:**

Purposive sampling enabled the researcher to conduct interviews with the participants who possess the requisite knowledge and experience of the phenomenon. These one to one interviews allowed the researcher personal contact/interaction with the participants; the first interview was conducted with the Senior Counsel who represents the Service Commissions Department on the 8<sup>th</sup> November 2015. This provided vital information and reflection for subsequent interviews.

The interviews with the other participants were conducted over the period November 2015 to March 2016 as indicated hereunder.

<b>Interviewee</b>	<b>Place of Interview</b>	<b>Date of Interview</b>
Senior Counsel, who represents the Service Commissions	Senior Counsel's Office, Port of Spain	8th November, 2015
Two (2) members of the Public Service Commission	Service Commissions Department, Port of Spain	12 <sup>th</sup> November, 2015
Chairman of the Teaching Service Commissions Department	Service Commissions Department, Port of Spain	16 <sup>th</sup> November, 2015
Member of the Police Service Commission	Service Commissions Department, Pasea Tunapuna	20 <sup>th</sup> November, 2015
Permanent Secretary to the Prime Minister and Head of the Public Service	Office of the Prime Minister	24 <sup>th</sup> November, 2015

Permanent Secretary	Ministry of Public Administration	25 <sup>th</sup> November, 2015
Member of the Judicial and Legal Service Commissions	Service Commissions Department, Port of Spain	26 <sup>th</sup> November, 2015
Two (2) retired members of the Public Service Commission	Service Commissions Department, Port of Spain	7 <sup>th</sup> December, 2015
Retired Deputy Director of Personnel Administration	Interviewee's personal residence, Arima	10 <sup>th</sup> December, 2015
Three (3) Directors of HR, namely from; The Ministry of national Security, The Ministry of Public Administration and The Personnel Department	At the respective Offices of the relevant Ministries	15 <sup>th</sup> December, 2015 16 <sup>th</sup> December, 2015 17 <sup>th</sup> December, 2015
Senior State Counsel	Service Commissions Department, Port of Spain	14 <sup>th</sup> January, 2016
Deputy Solicitor General Senior Legal officer	Attorney General's Department, Port of Spain	19 <sup>th</sup> January, 2016 20 <sup>th</sup> January, 2016
Two (2) public officers who filed for Judicial Review	Conference Room, National Public Library, Port of Spain	26 <sup>th</sup> January, 2016 27 <sup>th</sup> January, 2016
Two (2) Attorneys who represented the public officers	Chambers of the Attorney	12 <sup>th</sup> February, 2016 18 <sup>th</sup> February, 2016
Executive Director, Human Resource Management	Service Commissions Department, Port of Spain	24 <sup>th</sup> February, 2016
Commissioner of Police	Police Headquarters, Port of Spain	8 <sup>th</sup> March, 2016
Chief Personnel Officer	CPO's Office, Port of Spain	10 <sup>th</sup> March, 2016
Legal Advisor to the Commissions	Service Commissions Department, Port of Spain	15 <sup>th</sup> March, 2016
Senior Counsel, who represents the Service Commissions	Chambers of the Senior Counsel	30 <sup>th</sup> March, 2016

Table 2: Schedule of Interviews

Source: Researcher's Interpretation

As the data was being coded to determine themes and sub-themes it necessitated a further interview on March 30<sup>th</sup> 2016 with Senior Counsel to verify the researcher's interpretation of the data especially as they related to the legal dimension of the study.

With the use of the master questionnaire discussed in the previous section, the choice of face to face interviews permitted the collection of rich qualitative data, which enabled the researcher to make sense and to understand the phenomenon under investigation. This approach facilitated in-depth and structured interviews and interaction with the participants to find out what was really happening, and to gain new insights which were the main aims of the exploratory study Robson (2002). In-depth structured interviews helped to explore and explain themes that emerged from the use of the questionnaire. Tashakkori and Feddlic

(1998) and Headley and Rawlinson (1994) support the researcher's thinking. Brizan (2006) is in agreement, as well as Saunders et al (2009). They all emphasized the importance of interviews in the conduct of a research project.

### **3.27 Data Collection:**

Research methods facilitate a systematic and orderly approach towards the collection of data and provide academic rigour to enable the answering of the research questions. The selection of the methods depended on the actual context where the questions are applied, Maxwell (1996), and Jankowicz (2000). The data collection process entailed the gathering of data from secondary as well as primary sources. Secondary data was derived from archival records of the Service Commissions Department and the Privy Council, the Laws, Regulations, Rules, Code of Conduct and Judgments of the Courts in relation to Judicial Review were critically examined. Saunders, et al (2009) argue that secondary data refers to data previously collected for some other reasons and that the prime reason for using secondary data is that it saves time, money and effort. Primary data was collected specifically for the study. This type of data was collected through the methods of interviews with the structured questionnaire.

### **3.28 Reliability and Validity of Data:**

Saunders et al (2009) suggest that the interval validity and reliability of the data you collect and the response rate you receive depend to a large extent, on the questionnaire design and the rigour of pilot testing. The master questionnaire was not pilot tested due to the fact that it was administered to a group of professionals with a sound knowledge of the phenomenon under investigation; in addition the literature review heavily influenced the content of the questionnaire. It was rigorously designed to capture precise data to answer the research questions and fulfil the objective of the research. Foddy (1994) posits that valid questionnaire enables accurate data to be collected and that if reliable, the data would be collected consistently. He suggests that the questions should be so designed that they are easily understood by the respondent in the way intended by the researcher. The language used in the questionnaire was one that was familiar to the participants as it did not stray from their professional genera.

### **3.29 Analysis of the Data:**

As the research is qualitative in nature and set in phenomenological (interpretivist) paradigm, the data collected was qualitative. Most theorists argue that analysis of qualitative data is always a daunting and challenging task and this was confirmed by the researcher as the analysis of the qualitative data collected proved to be challenging indeed, as there were no set, clear or accepted convention to guide the researcher Robson (1993).

The researcher used deductive and inductive approaches with the use of content analysis to identify themes and sub-themes by a process of conceptualization or cognitive mapping. This procedure enabled the researcher to overcome such challenges as reducing, structuring and detextualising the data, an approach approved by Lindoff (1995) and Collis and Hussey (2009). The researcher was able to convert the text to diagrams and illustrations with the use of relevant mind mapping applications. The researcher's choice to use non-quantifying methods of analysis was due to a desire to keep the research true to the phenomenological (interpretivist) paradigm. The non-qualifying method utilized allowed for continuous data analysis throughout the research an enabled data reduction, categorizing and coding, thus the researcher was able to explain how the data helped to answer the research question and meet the objectives of the study. This analysis of data with the use of grounded theory permitted the building of theory which can be applied to similar settings as the unit of analysis.

### **3.30 Analytical Procedure:**

To manage the data collected and to maintain methodologic rigour, the data collection tool (master questionnaire) designed was informed by the conceptual framework which emerged after the review of the literature. The questionnaire was structured to identify themes and sub-themes. The data collected was given a unique code to match the themes and sub-themes thereby enabling summarizing, categorizing and identifying patterns on which pertinent quality interpretations were made. The Quasi-judicial method was also applied in analysing the data since a large cross section of the data was of legal in nature and it is a method used in analysing data in the legal profession. The use of this method provided a framework for the analysis of legal documents as it helped the researcher to examine and re-examine the data collected from the judgements and the interviews with the participants (the evidence and to seek explanation which fit the data). Also, this permitted close examination of the sources of evidence as well as the evidence itself double checking for consistency and accuracy (*this is*

*analogous to legal cross examination in the case of personnel testimony*) (Collis and Hussey 2009).

### **3.31 Evaluation of the Analysis:**

Chapter 4 presents the data from the research and analysis of the data. The researcher in order to evaluate the strengths and weakness of the quality of the analysis employed the technique recommended by Lincoln and Guba (1985) and Lininger (1994). In the case of Lincoln and Guba they suggested four (4) criteria: Credibility, Transferability, Dependability and Confirmability. In terms of credibility, the researcher was able to ascertain that the research was conducted in such a manner that the subject of the enquiry was identified and described. The researcher being a practitioner in the field of Human Resource Management has been involved in the field of study for well over thirty (30) years and has immersed herself in the research over a protracted period of time to collect the relevant data. The researcher opines that the research has transferability as the findings from the research can be applied to another situation which is sufficiently similar to the units of analysis. The research was conducted in a systematic and methodological way in that the processes were well defined and documented, therefore the findings are dependable. The study has confirmability in that the research process was fully described and the findings from the research flowed from the data. Lininger (1994), agreed with the criteria established by Lincoln and Guba, but also added saturation, meaning-in-context and recurring patterning. In terms of these criteria, the researcher as previously mentioned, fully saturated herself and understood the phenomenon under investigation. The participants in the study are people employed within the field of Law and Human Resource Management and understood the context in which the research was conducted. Also, recurrent patterns were observed and the research was able to look at the judgements from Judicial Review over a period of fifteen (15) years to discern patterns of expressions and actions over time. In addition, the study was validated by discussion of the analysis and findings with the participants to gauge their opinions and reaction. This process helped to lend validity to the conclusions drawn at the end of the study.

### **3.32 Limitations of the methodology- strengths/weaknesses**

Any methodology chosen for the conduct of research inherently has its strengths and weaknesses. Some writers suggest that to offset this, there should be a combination of multiple methodologies to collect data in a single study Curran and Blackburn (2001). For the purpose of this study, multiple qualitative methodologies were adopted. While it has been

discussed previously the reason for the selection of the chosen qualitative methodologies as the preferred choices for this particular research, it is imperative that the strengths and weaknesses are elucidated to show whether or not they have impacted the study. Further, any limitations of the chosen methodologies would be highlighted. In terms of strengths, qualitative methodology is good at generating new ways of seeing existing data, in that it permitted the researcher to construct a theory from the data collected. It is called the discovery of theory in data Atieno (2009),

In as much as the purpose of the study was to understand whether judicial review was transforming the practice of Human Resource Management in the Public Service of Trinidad and Tobago, this method helped in gathering rich details to discern central themes and analysis of the concerns and views expressed by the participants. Further, qualitative data methodology allowed the researcher to collect narratives which were essential to get the views and opinions of participants to ascertain their understandings of the subject matter under inquiry. With respect to the limitations of the qualitative methodology adopted, it is a fact that it is difficult to assign linguistic features which were identified in the data. While this method allowed for fine distinctions to be drawn it was difficult to place the data into a finite number of classifications. Moreover, the main disadvantage of qualitative methodology is that the findings from the research cannot be extended to a wider population with the same degree of certainty as with that of quantitative analysis. This is so, because the findings of the research were not intended to discover whether there were statistically significant or due to chance Ateino (2009). Nevertheless, it was never the intent of this research to test the findings statistically as the researcher was only interested in determining for the most part whether Judicial Review was affecting Human Resource Management practices as they relate to the functions of the Service Commissions and Service Commissions Department. In addition, no other Public Service organization has had the brunt of Judicial Review applications filed against them like these two (2) entities.

In relation to phenomenology, it has been recognised that its strengths permitted the researcher to effectively gather data with respect to the experiences and perceptions of individuals from the own perspectives. Due to its interpretive dimension, data gathered enabled it to be used as a basis for practical theory which can inform, support or challenge policy and action (Lister 1991). It is particularly useful in case studies, and in the instant research (case study) it allowed the researcher to interact with the participants to discern the

strengths from the inferences made by them. This increased as factors and utterances recur with more than one participant. Its adoption allowed the utilization of interviews as well as analysis of the texts contained in the Judicial Review Judgements, which with the help of Hermeneutics allowed cross-referencing of the findings from the interviews, Spradley (1979) and Plumber (1993).

One of the disadvantages of this methodology is that it generated a large quantity of interview notes and tape recordings, all of which had to be analysed. This necessitated reading and listening to a large of quantity of narratives to identify key themes and issues from each interview and the text from the Judicial Review Judgements. With the help of Mind-mapping Software, the researcher was able to aggregate and organize the data. On the other hand, grounded theory, while it has its strengths, as enunciated earlier, in support of its usage, in this research it can be an exhaustive process. It principally entails the process of extracting and encompassing concepts which were not an easy task during the coding and analysing of data. Further, Myero and Anells (1996) argue that the theory generated from grounded theory is generally low level theory, while Charmez (1989) cautions that if one is not careful in selecting the sample, it has a high potential for methodological error. She suggested the use Purposive Sampling. The researcher used Purposive Sampling to ensure methodological rigor of this methodology. Bonoliel (1996) suggests that if proper sampling is not utilized it might result in lack of conceptual depth. He advocates the use of more than one data sources to nullify this effect. The researcher used interviews as the main source of primary data, however secondary data obtained from the judgements of the Courts was cross referenced with the primary data for methodological rigor.

With respect to case study, the strengths have already been enunciated earlier in the chapter, however despite the advantages of the case study methodology, which allowed the researcher to explore and investigate Judicial Review and its impact on Public Service Human Resource Management, at the micro level there are some disadvantages to in uses. Yin (1984) states that case study methods provide very little basis for scientific generalisation since they use a small number of subjects, some conducted with only one subject. He states that the common question is “How can you generalize from a single case”? In addition he confirms that case studies are often labelled as being too long, difficult to conduct and produces massive amounts of documentation which renders them difficult to code and analyse. Further, that they lack rigor and there is a tendency for the researcher to have a bias interpretation of the



data. These disadvantages of the case study in terms of methodological rigor were negated as the researcher used several methods in interpreting and analysing the data.

The researcher also used Hermeneutics, the strengths of which have already been mentioned earlier in the chapter. One of the shortcomings of this approach according to Taylor (1990) is that the researcher takes on the role of an interpreter in a reiterative process of re-labelling and re-analysing data in a hermeneutical circle since the meaning of any part of a text cannot be understood without reference to the other part. He argues that this necessitates reading complete texts to attach meaning to part thereof. For this reason it is not a methodology widely used in business research. He recommends that the researcher remains flexible and that it can be used with other qualitative methods. Notwithstanding its weakness it was very useful in interpreting the Law contained in the Judicial Review Judgements and it was complementary to the other qualitative methods used in the research. Whatever the limitations and weaknesses identified in the methodologies adopted in the study, their strengths far outweighed their weaknesses and limitations. Finally, the weaknesses and limitations identified have not significantly impacted the outcome of the research in any meaningful way.

## **Chapter 4**

### **Data Presentation**

#### **Introduction**

This chapter presents the data collected as a result of interviews conducted over the period November 2015 – March 2016. The data is qualitative and fits the nature of the research paradigm. The structured questionnaire which was designed to conduct the interview was fashioned to answer the specific Research Questions identified hereunder. This permitted a structured approach to the collection of the data. The data was then coded to discern the themes and sub-themes emerging from the narratives of the participant's responses by a process of deduction and induction, cognitive/ reflection and the application of the relevant mind mapping application "Free Mind".

**4.1 Central Research Question:** - Has Judicial Review been transforming the Practice of Public Service Human Resource Management in Trinidad and Tobago?

#### **4.2 Ancillary Questions:-**

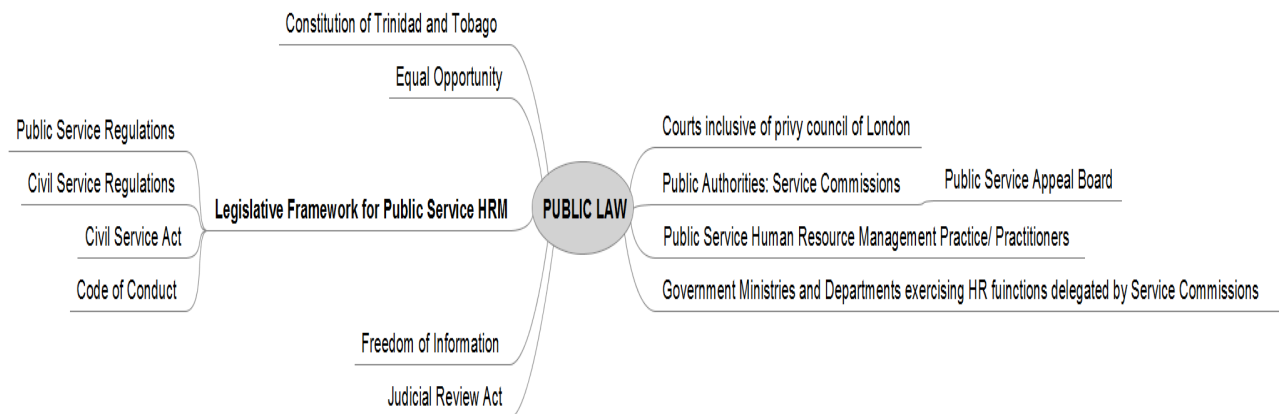
- i) How does Public Law Influence Human Resource Management in the Public Service?
- ii) What amendments should be made to the Legislative Framework that governs the Practice of Human Resource Management?
- iii) What really is the role of the Courts in the practice of Public Service Human Resource Management?
- iv) Have Judicial Review judgments forced the Service Commissions and the Service Commissions Department to examine their Human Resource Management processes/ practices?
- v) What change and transformation are required in light of Judicial Review judgments?
- vi) What strategic model should be designed for Human Resource Management in the Public Service?

vii) Is an understanding of Public Law crucial to the practice of Human Resource Management in the Public Service?

This chapter is divided into eight (8) sections; sections one (1) to seven (7) present the findings with respect to the seven (7) ancillary questions. Further, section eight (8) presents a summary and reflection on the findings to show how they relate to the central research question. That is, has Judicial Review been transforming the practice of Public Service Human Resource Management in Trinidad and Tobago?

#### 4.3 Public Law – The Impact on Public Service Human Resource Management

The diagram at Figure 13 depicts the response from the interviews conducted in relation to the first ancillary question. Which is; *how does Public Law Influence Human Resource Management in the Public Service?*



**Figure 13: The Impact on Public Service Human Resource Management**

*Source: Researcher's Interpretation*

#### **4.4 Public Law, the Impact on Public Service Human Resource Management in Trinidad and Tobago:**

This ancillary question centres on whether Public Law influences Human Resource Management in the Public Service. The participants were unanimous in their comments that it did. They felt that Public Service organizations engaged in the practice of Human Resource Management must do so within the parameters of the legislative framework that governs their practice. In addition, the Constitution of the Republic of Trinidad and Tobago established the Service Commissions; it also gives them the power to exercise their functions. According to Senior Counsel, one of the respondents, “Public Law is Law related Public Administration. Public Service Human Resource Management is a Public Administration function to manage public officers. The Public Service legislative framework is a product of Public Law.” Senior Counsel’s view was in general agreement with the views expressed by other participants who cited the respected Public Service Institutions and the various pieces of legislation that have their genesis in Public Law. All the participants indicated that these Laws, Regulations are part of the Laws of Trinidad and Tobago, and that Public Service organizations like the Service Commissions, Government Ministries and Departments are duty bound to execute their Human Resource Management functions in accordance with the Law.

These views are in congruence with Ganz (2001) who argued that all decision making powers of Public Authorities are derived from the Parliament. He further states that these Public Authorities must operate within the guidance laid down by framework documents which govern the policy to be followed. The Attorneys at Law who were interviewed stated categorically that the mere fact that Public Service Human Resource Management decisions are susceptible to the Courts by way of Judicial Review is a clear indication that Public Law (Administrative Law) is influencing them. They also emphasized that the Freedom of Information Act (2000) places several obligations on Public Service Human Resource Management Practitioners in the discharge of their duties. Any failure on the part of these officers to disregard the directions contained in the Judicial Review Act and the Freedom of Information Act can result in the matter being referred to the Courts for their deliberations by the aggrieved public officer.

The matter of the jurisdiction, function and responsibility of Service Commissions and by extension Human Resource Management Practitioners have been highlighted in the case of *Endell Thomas v the Attorney General of Trinidad and Tobago* [1982] AC 113, PC. Although

this case predated the period of the Judicial Review cases being investigated by the study, several of the Attorneys at Law interviewed were of the firm opinion that it provides vital lessons for Service Commissions. In that judgement Lord Diplock stated that the Police Service Commission's function falls into two (2) classes;

1. To appoint police officers to the Service, including their transfer and promotion and confirmation of appointment.
2. To remove and exercise disciplinary control over them

He reiterated that the Commission had no power to lay down terms and conditions of Service as this was for the Legislature. This was reinforced in the case of *Cooper and Balbosa v Police Service Commission*[2005] (PC 47) where Lord Hope of Craighead echoed the views of Lord Diplock in the previous case and stated that the sole responsibility for the conduct of examination for the appointment and promotion of police officers lies with the Commission. He concluded that in light of part nine (9) of the Constitution of Trinidad and Tobago in particular, it must be understood that it is the Commission and not the Executive to appoint Examination Boards in the Public Service.

The Attorneys at Law stressed that these two (2) cases highlight the level of administrative jurisdiction exercised by the Courts to ensure that Service Commissions and Human Resource Management Agencies operate within their legal boundaries. In this instance, to review their decisions by way of Judicial Review to determine whether they had exceeded or abused their power. It can be argued that Public Law regulates the decisions of Public Bodies like Service Commissions through the Courts which have an inherent supervisory jurisdiction to control them by reviewing the manner in which their decisions are made. Since the Service Commissions by their very functions are engaged in Human Resource Management in that, they appoint, promote, transfer and remove officers from the Public Service and exercise disciplinary control over them, it can be deduced that their Human Resource practices are influenced by Public Law through the mechanism of their legislative framework. Public Law also places an obligation on Public Bodies in the exercise of their powers to observe the principles of procedural fairness, natural justice, legality, rationality and procedural propriety. Service Commissions and Public Service Human Resource Management Practitioners are obliged to observe these principles in their decision making processes.

One participant referred to the Public Service Appeal Board, which is established by the Constitution to permit a public officer to make appeals with respect to the outcome of

disciplinary procedure against him. In this participant's opinion, the Constitution, which is created by Administrative/Public Law, sets out the parameters for the operation/ function of this Board. It is only empowered to hear appeals as a result of the disciplinary process and cannot exceed its jurisdiction by entertaining appeals which fall outside this scope. An officer aggrieved with any other decision cannot refer his matter to the Board, but if he wants redress he must go to the Courts. Arguably Public Law has defined what type of appeal can be heard by this Public Service appellant body which hears Human Resource Management Matters.

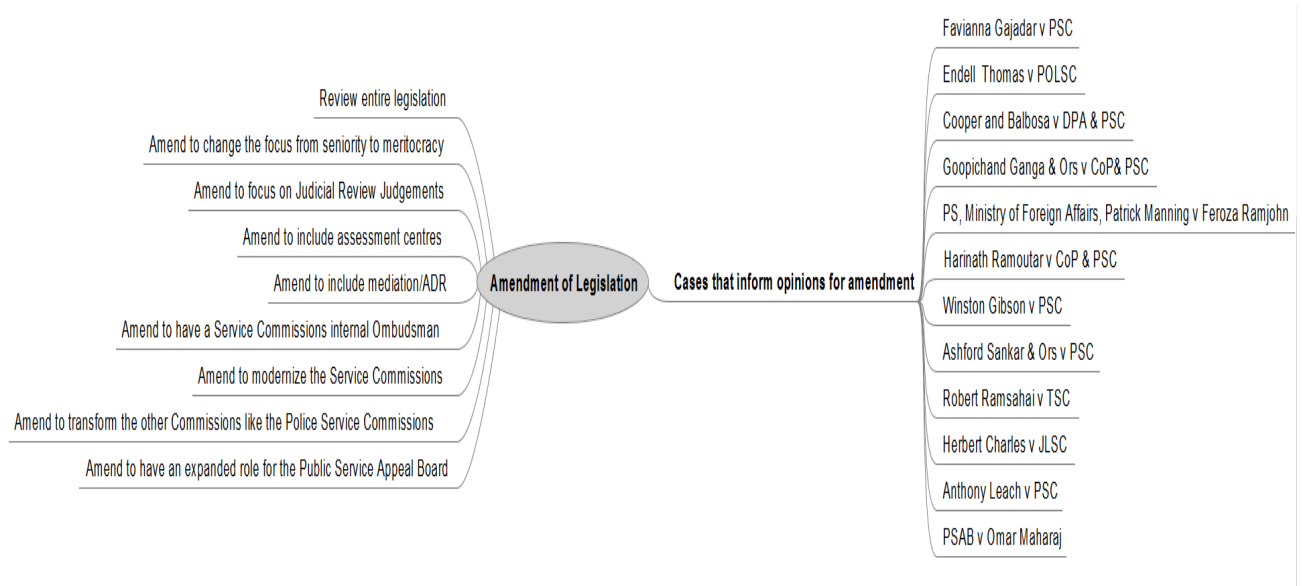
Even the Public Service is a creature of the Constitution and it is controlled by Public Law, the Civil Service Act, the Code of Conduct and the Public Service Commissions Regulations, which all define the manner in which it should conduct itself. Public Law also lays down terms and conditions of Service for public officers. The Code of Conduct in particular places certain restrictions on public officers with respect to political activities as the Public Service is established as a non-partisan organization to execute the policies of Government. Public officers are therefore expected to be neutral in their undertakings and must observe all Laws that impact on their performance of public duties. The legislative framework which regulates Public Bodies also regulates the behaviour of public officers. A public officer exercising any Human Resource Management function must comply with the Law that defines his behaviour and failure to do so can result in disciplinary action being taken against him in accordance with the code of conduct and the Public Service Regulation which are all instruments of Public Law.

In summary it has been demonstrated by the arguments enunciated by the participants thus far that Public Law influences Human Resource Management in the Public Service. It was stated that Public Law is Law pertaining to Public Administration to control and keep Public Authorities from acting in excess of the Law or their legal bounds. As Service Commissions and Government Ministries and Departments are all Public Bodies they are bound to act within the Law. Similarly Human Resource Practitioners who carry out their delegated duties on behalf of the Commissions must also do so within the Law, the legislative framework which consist of the Laws and Regulations which regulate the functions of the Commissions, other Human Resource Agencies and Human Resource Practitioners as they engage in performing their Human Resource Management function. The legislative framework is mandatory in its application. The Commission and other Human Resource Practitioners cannot make policies (even if they are desirable to practice contemporary Human Resource Management) which are contrary to Law. If such policies are formulated and then proved to

be inconsistent with the legislative framework it would be deemed null and void and contrary to the Law. Arguably, Public Law plays an influencing and major part in the practice of Human Resource Management in the Public Service.

#### **4.5 Legislative Framework for Public Service Human Resource Management - Proposed Amendments**

The diagram at Figure 14 depicts the responses from the interviews conducted in relation to the second ancillary question. Which is; *what amendments should be made to the legislative framework that governs the practice of Human Resource Management?*



**Figure 14: Proposed Amendment to Legislative Framework that governs the practice of Public Service HRM**

*Source: Researcher's Interpretation*

In light of the views expressed by the participants in respect of the first ancillary question they were asked about proposed amendments they would like to be made to the legislative framework. The respondents who were Human Resource Management Practitioners in Ministries and Departments outside the Service Commissions Department felt that the Commissions should review the entire legislations as it was outdated and inconsistent with modern Human Resource Management. The Attorneys at Law who were interviewed felt that the various pieces of legislation that form the legislative framework were “good Law” except where some may have been in existence for a number of years like the Public Service

Regulations which have been formulated since 1966, can be reviewed to address the present nuances and context of the Public Service Human Resource Management environment. One Senior Counsel was of the opinion that in as much as Judicial Review speaks of alternative remedy, in that a person must exhaust all avenues to redress his concerns before making application for Judicial Review. The Commission can consider amending the Regulation to include in the creation of an Internal Ombudsman to treat with officers' complaints. This view is supported by several authors on Judicial Review, such as Woolf et al (2007), Ramlogan (2007) and Fordham (2004). These authors state that Judicial Review is regarded as inappropriate where suitable alternative arrangements exist. Should the Regulations be amended to include this provision as suggested by learned counsel, it should go a long way to resolve public officers' dispute and serve as a mechanism for judicial restraint.

Fordham (2004) in particular argues that in some contexts alternative remedy if included under particular legislative provision can be a special mechanism and an exclusive means of challenge so that Judicial Review is effectively ousted. One Senior Counsel however cautioned that the existence of alternative remedy does not necessary precludes the jurisdiction of the Court, as it must be so expressed in clear words in Law. The Ombudsman as suggested can be a workable mechanism to restrain the number of Judicial Review applications by public officer. Once it is legislated it will place a duty and obligation on the Commissions, Human Resource Management Practitioners, and public officers themselves. Alternatively another view by the senior counsel, who represents the Service Commissions, was that there is a need to expand the role of the Public Service Appeal Board. The Board's function at present in accordance with the Constitution is to hear and determine appeals with respect to disciplinary action taken against public officers. In as much as the Board's role and functions are only limited to the disciplinary aspect of Human Resource Management and the Commissions are also engaged in appointment, promotions and transfers, the Board's function could be expanded to include appeals with respect to these other Human Resource decisions. If the legislation is amended to include this expanded role for the Public Service Appeal Board it should provide an avenue or Alternative Remedy to treat with the complaints and grievances of public officers without them having to refer to the Court by way of Judicial Review.

There is a general perception that the Public Service is too focused on seniority in making appointments and promotions. Some writers on the Public Service of Trinidad and Tobago have argued that this has contributed to a culture of mediocrity and promotes inefficiency.



Several of the Human Resource Management Practitioners were of the opinion that the Regulation should be amended to focus on meritocracy rather than seniority. They cited the case of *Gopichand Ganga and others v the Commissioner of Police and the Police Service Commission* [2011] (UKPC28) which the Commission won. The Commission used a point system to effect promotion in the Police Service, however, Mr Ganga and others filed for Judicial Review on the grounds that the use of the point system was illegal and irrational. The Privy Council ruled that even if the point system was properly to be regarded as flawed in some aspect, it was not irrational or illegal as it was connected to Regulation 20 of the Police Service Commissions Regulations. The Privy Council agreed with the Court of Appeal in Trinidad that even if there were some flaws in the point system, it was not cast in stone but was simply a basis on which a proper assessment of each criteria of the Regulation could have been evaluated. The Human Resource Management Practitioners stated that this case highlighted the fact that the Commissions can use mechanisms to focus on meritocracy rather than seniority. This in their mind confirmed that the Commission Regulations should be amended accordingly.

The Human Resource Management Practitioners in support of their views also cited the case of *Ashford Sankar and others v the Public Service Commission and Hermia Tyson-Cuffie v the Public Service Commission* [2011] (UKPC28). In this case the Privy Council ruled that the Assessment Exercise (ACE) was a carefully prepared and presented process and was not inconsistent with the Regulation. In the Board's opinion, the ACE was a process designed to test core skills which an appointee to the post of Deputy Permanent Secretary should have. For the Privy Council it was not a required skill lying outside those which would be covered by the general criteria of merit and ability referred to Regulation 18 (1) of the PSC Regulations. It can be argued that the Regulations although not explicitly stated make provision for the Commissions to use both the point system and the ACE to assess public officers for promotion. If the ACE were to be included in the Regulation and there are other methods of assessment that become available to assess candidates in the future the Commission might be restricted from using them. The Commission therefore should not limit themselves by including one specific mode of selection mechanism in the Regulation. If it is so amended it might hinder the Commission's use of new and emerging modalities for assessment. This, notwithstanding the Regulation should be amended to shift the focus away from seniority as suggested by Human Resource Management Practitioners.

Both legal officers and Human Resource Management Practitioners suggested that the Regulation should be reviewed to include the lessons from the Judicial Review judgements. They all agreed that it was an ideal approach to affect amendments to the Regulations. They cited two Hallmark cases among others that cemented their thinking. The first case that of *Harridath Ramoutar v Commissioner of Prisons and the Public Service Commission* [2012] (UKPC29) where the Privy Council were arriving at its decision as to whether the Commission had acted unlawfully in not considering Mr. Ramoutar's eligibility for the office of Chief Prison Welfare Officer as he did not meet the requirements of the office as detailed in the job description. The Board stated that job specification and description have no statutory status, it is a Government document agreed with the relevant professional association for the Prison Service. The Human Resource Management Practitioners all felt that this ruling has been having serious repercussions in the Public Service which had always relied on job description for years to assist in determining suitability of persons for offices. Certainly the relevant legislation should be amended to include job description in the Regulation, as in the interim the commission has had to adopt innovative ways to assess public officers without focusing too much on the job description which are not part of the Laws of Trinidad and Tobago. The other case mentioned is that of *Favianna Gajadhar v The Commissioner of Prisons and the Police Service Commissions*.

The Human Resource Management Practitioners who also indicated the entire legislative framework should be reviewed and also advocated the modernisation/reformation of Service Commissions. They suggest that the Constitution of the Republic of Trinidad and Tobago should be amended to change the structure, function and mandate of the other Commissions. In a similar manner as the Police Service Commission was reformed in 2006. That Commission by legislative reform has been reduced to a monitoring, evaluation, oversight and appeal mechanism and is only responsible for appointment to the two (2) most senior positions in the Police Service, that of Commissioner and Deputy Commissioner of Police. Apart from that it serves as an appellant body to hear appeals with respect to decisions taken by the Commissioner of Police who has full responsibility for making appointments, promoting, disciplining and transferring all other police officers in the Service.

Some of the respondents however cautioned that the revised legislation that gave effect to this reformed Police Service Commission is fraught with errors and had stymied the effort of that Commission to appoint a substantive Commissioner of Police. Maybe, if a reform of Service Commissions is to occur there might be valuable lessons to be learnt from the challenges

encountered by the reformed Police Service Commission. This matter need not detain us in any way and should be the focus of another study. It is however noteworthy that the views expressed by these participants have been the subject of much debate both in Trinidad and Tobago and in the wider Caribbean. Arguments for and against Service Commissions have saturated the literature on this subject.

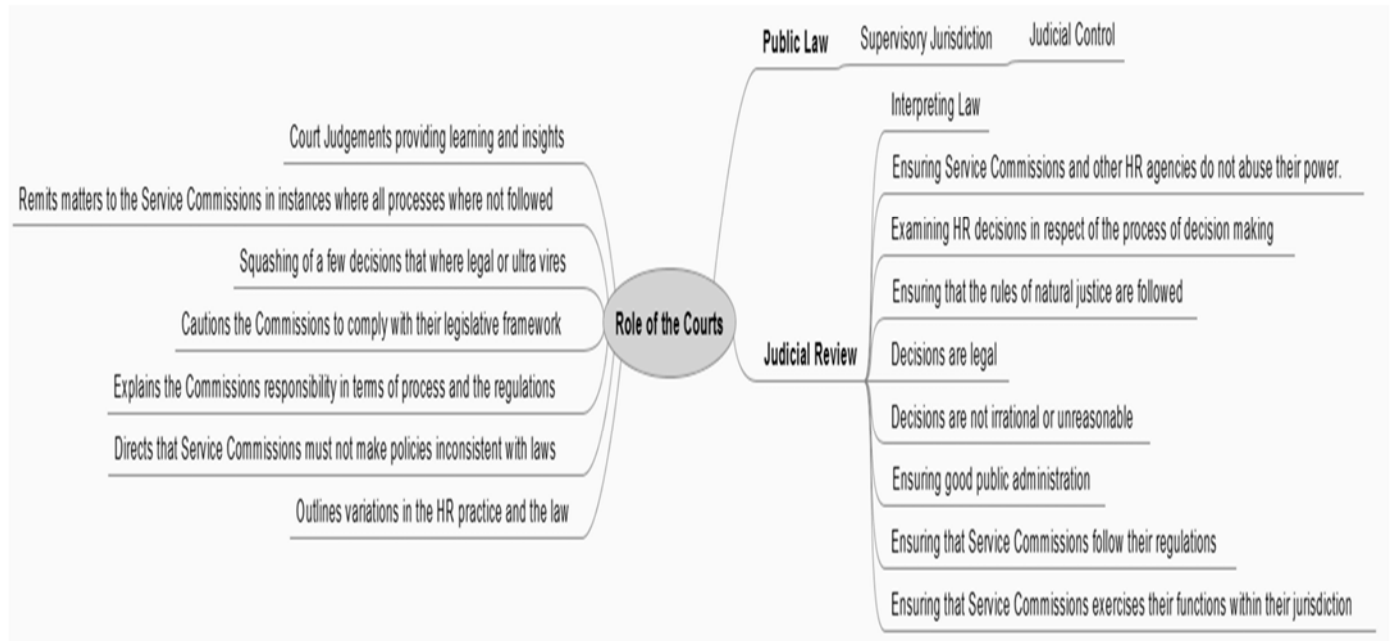
Kenneth Lalla, Senior Counsel and former Chairman of the Police Service Commission and Public Service Commission and member of Judicial and Legal Service Commission, in 2013 in his book *'The Public Service and Service Commissions'* lamented that although calls for reforming Service Commissions have been quite vocal within recent times, those in the vanguard have so far failed to identify specifically the areas to be addressed. He expressed the views that Service Commissions should be allowed to grow and develop. Lalla's views were in contrast to those expressed by Nunes at a CARIDAD conference in St. Lucia in 2009 and those voiced by Gordon Draper as far back as 2000, who opined that Service Commissions were monstrosities and should be abolished due to their dismal record. For Draper, in particular he stated that they were insensitive and dilatory and that their procedures were too cumbersome and steeped in too much Regulation. Nunes and Draper were firm in their thinking that Service Commissions were anachronisms and a hindrance to change and transformation of the Public Service.

Whether Service Commissions should be abolished or reformed, it is the responsibility of the Executive to take that decision. If the Commissions are to be modernised /reformed, this can only happen with the appropriate amendments to the Constitution and the legislative framework that governs their operations. It can be argued that the time is right to reopen the dialogue in this regard. The researcher is of the opinion of this study might be the catalyst toward this transformation initiative.

#### **4.6 The Role of the Courts in the practice of Public Service Human Resource**

##### **Management:**

The conceptual map, Figure 15 represents the response to the ancillary question, *what really is the role of the Courts in the practice of Public Service Human Resource Management?* This question was posed to the participant to gauge what they taught was the specific role of the Courts in the practice of Public Service HRM.



**Figure 15: The Role of the Courts in the practice of Public Service HRM**

*Source: Researcher's Interpretation*

All participants stated that the Court was playing a significant role in the practice in the Public Service HRM. While their answers were all in the affirmative, they varied according to their professions/disciplines. The Attorneys at Law were very legalistic in their responses, the senior counsel representing the Service Commission stated quite categorically that the role of the Court is supervisory and that its supervisory jurisdiction is based on Administrative/Public Law. For him the Court's role is to promote good Public Administration, which it does by way of the Judicial Review Act to regulate the conduct of Public Authorities.

Senior Counsel's views are supported by Woolf et al (2007) and Fordham (2004) who both argued that the role of the Court is to ensure that Public Bodies make decisions that are legal and within their jurisdiction. Another Attorney at Law stated that in as much as there is a legislative framework that governs the practice of Public Service Human Resource Management and this framework has its genesis in Public Law; Public Law defines a role for the Court. Further, the legislative framework directs how the Commissions and Human Resource Management Practitioners must perform. The Courts will intervene when there are breaches or perceived breaches that are contrary to the framework. Senior Counsel was in agreement with the opinion expressed by the junior legal officers, he further opined that the Courts provide supervisory jurisdiction and judicial control and interpret Laws by ensuring that Public Service Agencies like Service Commissions do not abuse their power. The Court also ensures that the rules of natural justice are followed and that decisions made by Public Bodies and public officers such as Service Commissions and Human Resource Management Practitioners are not illegal, irrational and unreasonable.

All the legal participants agreed that the Courts ensure that proper decision making processes and procedures are followed. These views are not contrary to those expressed by Lalla (2013), Woolf et al (2007) and Fordham (2004) it can be argued that the Courts play a major role in providing supervision and guidance to Human Resource Agencies. In the case of *Patrick Manning v Ferosa Ramjohn and Prime Minister Patrick Manning and the Public Service Commission v Ganga Persad* [2011] (UKPC20), the Privy Council in arriving at a decision commented that the Prime Minister in both instances acted otherwise than in good faith, in that the decision making process employed by him was unfair. The Privy Council cautioned that whenever a decision is to be taken against someone on the basis of an allegation, fairness demands that they be given an opportunity to meet it that is they have a right to be heard (the whole question of natural justice). For the Attorneys at Law this is a classic example where the court gave guidance of what should be done where allegations have been made against someone and the person is negatively impacted by these allegations.

The Human Resource Management Practitioners on the other hand spoke of the Courts provide learnings and lessons by their judgements. In most cases, they felt that the major function of the Court was interpreting Laws and Regulations to bring clarity where ambiguity exists. The Courts in their opinion play a critical role in explaining to the commissions and Human Resource Management Practitioners their obligations and responsibility in terms of the process and procedures as outlined in the various pieces of legislations and regulations

that inform Human Resource Management practices. In variable the courts in their view were playing a key role in outlining where there might be variances in Human Resource Management practices and the Law. For these Human Resource Management Practitioners in particular lessons and learnings from the Judicial Review judgement have forced them to examine carefully and to proceed with caution when making Human Resource decisions to ensure that the processes are in keeping with what is contemplated by the various Laws and Regulations. These findings/sentiments expressed are consistent with those stated by the legal officers, in that the Court's role is that of supervision and control.

It has been established by the Privy Council that the jurisdiction of the court is to control administration by way of Judicial Review. With respect to Service Commissions with the promulgation of the Judicial Review Act in 2000 and the subsequent removal of the Ouster Clause, the supervisory jurisdiction of the Court has expanded significantly. On the basis of these findings one can argue successfully that the Courts are playing a key role in Public Service Human Resource Management. Former Chief Justice of Trinidad and Tobago Michael De la Bastide Sc. in a paper he presented in 2006, titled '*Judicial Supervision of Executive Action in the Commonwealth Caribbean*', commented on what he termed Judicial Activism in the region. He lamented that many recent decisions of the Courts in the Commonwealth Caribbean seem to reflect a higher level of judicial activism in the field of Public Law than was previously evident. De la Bastide however opined that judges are not well equipped to make policy decisions which are better left with those whose business it is to make them. He continued that judges too must obey the Law and must respect the rights of public officials and authorities to exercise their decision making powers which the Laws have invested in them. He stated that excessive interferences by the Judges in the business administration will create loss of efficiency and effectiveness in administration, not to mention frustration and tension.

Former Justice De la Bastide's views are instructive in determining the specific role that the Court is playing in the practice of the Public Service HRM. In light of the concerns enunciated by the former Chief Justice it is a well-established fact that the Court in the exercise of its supervisory jurisdiction may squash a decision of an Administrative Body on an application for Judicial Review if such decision is illegal, that is if the decision is a mistake in Law, or if the Administrative Body acted in excess of its jurisdiction Woolf et al (2007) and Lalla (2013) also echoed De la Bastide's views that an institutional limitation of the Court is lack of relative expertise as the reviewer of facts or the merits of the decision, is

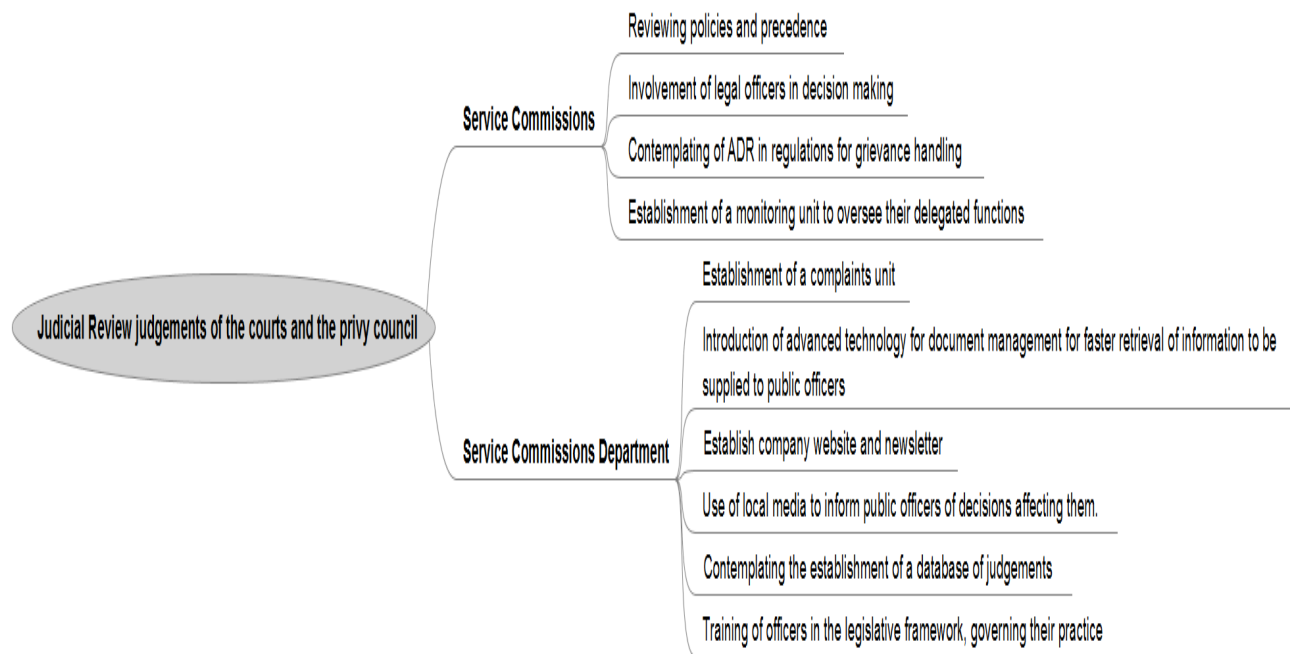
not routinely permitted in Judicial Review, these are some matter which are best resolved by those with specialist knowledge connected with the issue. The Court generally takes the view that the Judicial Review is not an appeal from a decision but a review of the manner in which the decision was made.

Several authors on Judicial Review have argued that it would be an error to think that the Court sits in judgement not only on the correctiveness of the decision making process but also on the correctness of the decision itself. It can be reasoned therefore that the role of the Court is not to substitute their decision or opinion for those of Public Authorities unless there is a fundamental error in Law. The Court will therefore have an inherent authority to squash Human Resource decisions if they fall outside the realm of the Law. It can be reasonably argued that the courts have a role in the practice of Public Service Human Resource Management as Service Commissions Department and other Human Resource Agencies must practice their Human Resource function/duties as Public Service organizations within the Law. They are therefore subject to the rule of Law and under the jurisdiction of the Court. It is clear, that the Courts are signalling that there needs to be a partnership between the Courts and Public Service organizations like Public Service Commissions. Arguably, Law and Lawyers can no longer be seen as separate to the process of Administration, they are an integral part of it. Public Administrators, especially those carrying out Human Resource Management functions must be aware of the legal implications of their decisions and have Lawyers involved in the early stages of the decision making process to provide advice and to aid in interpreting the Laws that impact their practice. In the absence in such approaches it might well result in the preponderance of Judicial Review matters and heavy financial burden to the State.

One Human Resource Management practitioner reasoned that with the role that the Court plays in public Human Resource Management, it might result in changing the behaviour of those public officers who are engaged in Human Resource Management practices. The extent of the change, while it may be open to debate, the findings from the next ancillary question can provide useful information on the extent that Judicial Review is impacting Human Resource Management processes in the Service Commissions and the Service Commissions Department in Trinidad and Tobago.

#### **4.7 Judicial Review Impact on Human Resource Management Processes/ Practices in the Service Commissions and Service Commissions Department in Trinidad and Tobago:**

The findings in this section; Figure 16 provides answers to the ancillary question, “*Have Judicial Review judgements forced the Service Commissions and the Service Commissions Department to examine their Human Resource Management processes/practices?*” This question focused on the Judicial Review judgements of the Courts of Trinidad and Tobago and the Privy Council of London over the past fifteen (15) years with respect to matters filed by public officers against Service Commissions. The answers to this question should provide valuable insights about the extent to which the judgements have been impacting Human Resource Management practices in the Service Commissions and the Service Commissions Departments.



**Figure 16: Judicial Review impact on HRM processes/ practices in the Service Commissions and Service Commissions Department in Trinidad and Tobago**

*Source: Researcher's Interpretation*



The Human Resource Management Practitioners argued that their answers were influenced not only by the judgements of the Courts but the various roles that they ascribed to the Courts. They were all unanimous that the Service Commissions have to critically examine the judgements to ascertain the learnings and lessons from them and implement changes on the basis of those lessons. The judgements should explain what to transform, but first one has to discern what the messages are from the judgments in relation to the Human Resource processes and practices. The Human Resource Management Practitioners provided answers first in relation to impact on the Service Commissions and this was followed by their responses to the Service Commissions Department. In relation to the Service Commissions the participants stated that they should review all their policies and precedents established over the years as some maybe in conflict with and contrary to the Law and Regulations. Some of the practitioners indicated that they are influenced in their answers when they examined the Commission's policy in relation to abandonment of office and the Court's decision in the Favianna Gajadhar's case.

One of the Senior Counsels noted that it would be imperative that the Commission examine all of their policies and precedents over the years as the Courts have always cautioned that the Commission should not make policy contrary to Law also that the Commissions must not make policies that fetter their discretion. He also stated that the judgements provided compelling reasons why the Commissions needed to involve legal officers very early in their decision making process. In light of the very litigious environment in which the Commissions now operate, both legal officers and Human Resource Management Practitioners were in general agreement that there was an urgent need for the Commissions to examine the decision making processes to ensure there was full compliance with the Law bearing in mind that Judicial Review always speaks to the process of decision making and not to the decision itself. They all agreed that Judicial Review was indeed having an impact on the operation of the Service Commissions.

At a regional conference of Service Commissions held in October 2014, at which the researcher was present, one member of the Service Commissions of Trinidad saw the need of simplifying the disciplinary process now applicable in the Public Service. To this end, she argued that the Commission should contemplate the introduction of an Alternative Dispute Resolution Mechanism (ADR) in the Regulations. In support of her argument she suggested that ADR could be a useful tool to handle very simple matters that will not attract penalties of dismissal and as such they could be handled by Ministries and Departments where the

incident may have occurred. She also articulated that this ADR could be used to handle complaints of officers without them having to take Judicial Review action. Further, that even if the officer contemplated Judicial Review it could be resolved at the pre-action protocol stage, as the legal officers of the Service Commissions Department could be involved in bringing solutions. This would lessen the number of officers having to go to Court seek redress.

Another member of the Commission noted that although it had established a complaint unit in 2006 in response to the number of representations and complaints received by public officers in relation to its functions, there are several concerns in respect to its operations. Many of the respondents were of the view that this unit should comprise a legal officer to provide the necessary guidance in reviewing an officer's complaint. This approach is consistent with alternative remedies suggested by the Courts as a means of resolving people's complaints before they broach the court Wade and Forsyth (2000) and Woolf et al (2007). The Human Resource Management Practitioners observed that although the Commission had established a monitoring and evaluation unit in 2006 to oversee the additional functions which they delegated to Line Ministries and Departments, and had prepared a manual of guidelines for the discharge of these functions, the officers to whom the functions have been delegated have been committing several breaches. The Commissioner, who was interviewed, stated that although reports have been submitted by this unit, which confirm the several breaches of noncompliance the Commission have been engaged in constant training and development to treat with these issues.

On the other hand the participants felt that the Service Commissions need to focus more on training and development to build capacity among the officers in the Service Commission Department and other Human Resource Management Practitioners engaged in exercising their duty in respect of the legislative framework. Many of the Human Resource Management Practitioners questioned whether the mid-level and junior officers within the Services Commissions Department had been apprised of the judgements and whether they had the requisite competencies to provide advice to other public officers and the general public. In response the Human Resource Management Practitioners within the Service Commissions indicated they were in the process of compiling a database of judgements which can be easily accessible to all Human Resource Management Practitioners in the Public Service. One of the fundamental concerns expressed both by the legal officers

interviewed and Human Resource Management Practitioners was the Service Commission handling of requests for information under the Freedom of Information Act FOIA (2000).

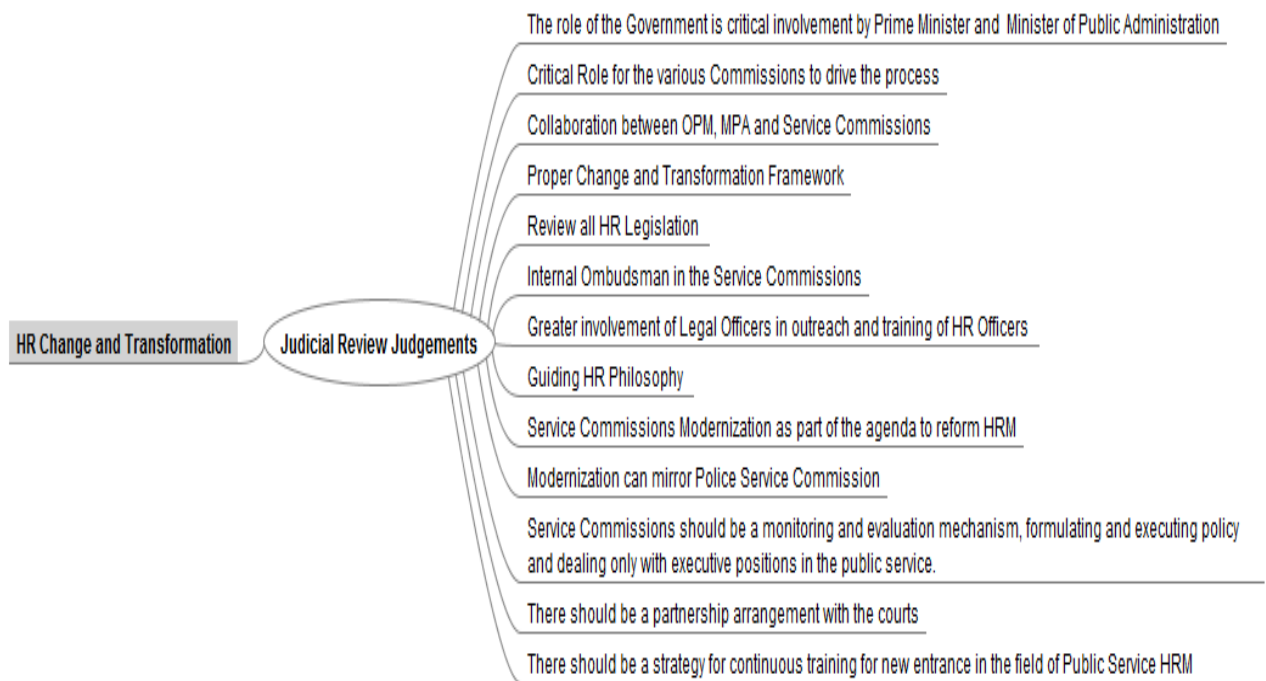
The Human Resource Management Practitioners within the Service Commissions Department indicated that the Service Commissions Department has the largest number of requests for information under the FOIA (2000). This puts a tremendous burden on the resources of that organization to retrieve information as in some instances an officer can request information about himself spanning 30-40 years and such information would necessitate the searching of archival records which is an onerous exercise. In light of the tight timelines stipulated by the FOIA (2000), aggrieved officers sometimes become frustrated and rush to the Courts without giving the organization sufficient time to retrieve the information. In most instances, the officers cited the delay on the part of the Commission as breaches in observing the stipulated time frame. The Courts have been ruling that the Commissions should supply the information as much as possible in accordance with the tenets of the Act. The case of *Ashford Sankar v Public Service Commission* HCA CV 2006- 00037 is relevant. To address this problem the Service Commission has introduced a Document Management System with the aid of advanced technology for a faster retrieval of information. It is hoped that this will alleviate the problem that now exists.

The Human Resource Management Practitioners also stated they are using the local media inclusive of the daily newspapers to inform officers who cannot be located about Service Commission's decisions affecting them, especially in instances where the Commission makes a decision to declare the officer to have resigned his office in accordance with Regulation 49 of the Public Service Commissions Regulations. In light of the *Favianna Gajadhar* judgement, the Commission has instructed that the Services Commissions Department make every effort to hear from the officers in order that they are given the opportunity to make representation to the Commission's proposal to abandon them in keeping with the judgement of the Court.

The Service Commissions and the Service Commissions Department has also established a website so that individuals can have access to information in accordance with the FOIA (2000) and quarterly newsletters are issued informing public officers of changes in policies and precedents set. The legal officer of the Commission indicated that on February 6<sup>th</sup> 2015 a workshop was held at the Service Commissions Department to apprise officers of the learnings from several landmark judgements that had been impacted on the performance of that organization. Further she stated that this provided an opportunity for the officers to ask

questions and clear their doubts in relation to their duties. There are plans to continue the training with other groups of officers within the organization and to extend the training to other Human Resource Management Practitioners outside the Service Commissions Department. She reasoned that this will avoid the pitfalls alluded to in the judgements of the Courts. In summary therefore it can be argued that the Judicial Review has been impacting on the processes and practices within the Service Commission and the Service Commissions Department by creating awareness that there must be strict compliance with the processes and practices enunciated in the various pieces of legislation underpinning Human Resource Management practice.

#### **4.8 Judicial Review and Change and Transformation of Public Service Human Resource Management in Trinidad and Tobago:**



**Figure 17: Judicial Review and Change and Transformation of Public Service HRM in Trinidad and Tobago**

*Source: Researcher's Interpretation*

Figure 17 depicts the participant's views with respect to the change and transformation that are necessary in light of the role of the Courts and their judgments. The participants provided answers to the ancillary question; *"What change and transformation are required in light of the Judicial Review judgements?"* It is apparent that there must be change and transformation of public Service Human Resource Management as it relates to the functions of Service Commissions. This section of the chapter explores the elements that participant argued were essential to any initiative aimed at transforming Public Service Human Resource Management as practised by the Service Commissions. All those interviewed were in agreement that if the desired change and transformation were to occur there must be strategic leadership driving the initiative. The role of the Prime Minister was seen as key to the process as he must be the champion for the change and such change should also have the involvement of the Minister of Public Administration and the Chairmen of various Commissions in a partnership arrangements. This change and transformation can only happen within a specified framework with each partner being assigned specific responsibility.

The participants believed that the success and failure of the past should be taken on board in designing the change initiative. Some participants were of the view that stakeholder involvement was vital to this initiative, that consultation with the Opposition was critical as change might necessitate amendment to the Constitution of Trinidad and Tobago and the Opposition's support would be required to affect those amendments. The Human Resource Management Practitioners in particular suggested that any effort to transform Human Resource Management in relation to the Service Commissions should be part of a holistic approach to transform Human Resource Management in the Public Service. They argued that the disorganized/ uncoordinated and fragmented nature of the present practice being distributed across several agencies in the Public Service was rather dysfunctional and an impediment to Strategic Human Resource Management. The participants were united in their belief that the absence of a well-crafted Human Resource Management philosophy has crippled prior attempts at reform and this must be the first step in the process of change. This should be followed in their opinion by an entire review of the various pieces of legislation to match the new Human Resource Management philosophy that can promote contemporary Human Resource Management. In amending the legislation they all argued that a flexible approach should be taken so that the legislation can cater for any eventualities or exigencies that may occur within the Human Resource Management context. The views, opinions expressed by these Human Resource Management Practitioners are in congruence with the

theories of Human Resource Management and those expressed by a former Deputy Chairman of the Public Service Commission that the Rules and Regulation should be bundle of principles that meet the needs of the employee and employer, rather than strict rules and Regulation that do not contribute to an enabling environment.

All the persons interviewed stated emphatically that the Commissions need to establish an internal Ombudsman. They felt that ADR, although it may be a good mechanism for treating with disciplinary matters it will not be as effective as the Ombudsman who will be able to treat with the many issues and complaints of public officers. In support of their argument they pointed to the fact that over the years there have been several delays in the decision making process at the level of the Commissions which they argue took too long due to the number of matters that are placed before them. They suggested that this delay has contributed to the number of aggrieved officers in the Public Service who for the most part felt that their representations even when they were reviewed by the Commissions invariably the Commissions' first decision remained unchanged without being provided with adequate reasons for the Commissions' reluctance to alter their previous decision. The Attorneys at Law postulated that such a mechanism like an internal Ombudsman must be staffed with a combination of legal officers and Human Resource Management Practitioners; this should bring a level of sobriety, balance and trust to the Public Service. This internal Ombudsman will also be in keeping with the alternative remedy suggested by the FIOA and authors with respect to Judicial Review.

All participants were in unison that Service Commissions needed to be modernised. They all felt that the present structure and mandate of the Commissions might well be a hindrance to the modernisation of Human Resource Management and it was time to put the full management of public officers in the hands of Permanent Secretaries and Heads of Departments with the requisite safe guards to ensure compliance with the Regulations. The participants all suggested that the approach taken in 2006 to reform the Police Service Commission was an ideal one. If the other Commissions are modernised along the lines being suggested, it would facilitate a decentralisation of functions to Line Ministries and Departments. The Commissions they added should not be so heavily involved in appointments, promotions and discipline in respect of all positions in the Public Service. Their continued involvement in having to provide these services for over 65,000 officers have resulted in serious bottlenecks, slow delivery time, undue delay, high levels of inefficiency and a dissatisfied Public Service and by extension citizens of Trinidad and Tobago. The legal

officers in particular cited the case of *Leach v the Public Services Commission* (HCA 1002 of 2004) where the Judge in ruling on the matter of unreasonable delay and irrationality on the part of the Commission agreed with Mr. Leach that the Commission's decision to prefer charges against him four (4) years after the Commission of an alleged offence, had been an abuse of process, unfair, irrational and unreasonable. In a similar case that of *Paula Barrimond v The Public Service Commission* (HCA S1301 of 2005) Ms. Barrimond filed for Judicial Review in relation to the Commission's to prefer a charge against her six (6) years after the Commission of the alleged offence, the Judge declared that the applicant had been treated unfairly. He quashed the Commission's decision to proffer charges against the officer, as in his learned opinion the unreasonable delay had compromised the applicants ability to defend herself. He concluded that the delay was penalty in itself.

The participants alluded to the fact that the role of the Commissions should be mainly monitoring and evaluating the performance of Ministries and Departments in respect of their functions that which should be devolved not dedicated to line Ministries and Departments. They indicated that the Commissions should also be empowered to hear appeals with respect to the decisions taken by Ministries and Departments as a result of the devolved functions. This will restrict the Commissions' powers to Human Resource matters in relation to Senior Executive positions in the Public Service, that are, those requiring consultation with the Prime Minister. Also there was agreement that they should be a training and development strategy for continuous training and development once the Commission's functions have been devolved as suggested. This training strategy they argued will be able to train Permanent Secretaries, Heads of Departments, and Human Resource Management Practitioners about the revised legislative framework and also apprise new entrants in the field of Public Service Human Resource Management about their roles and responsibilities in accordance with the Legislative framework. If this is implemented, it should facilitate the sharing of knowledge and the transfer of learning to Senior Managers and HR Practitioners about the requirements of the practice of Public Service Human Resource Management.

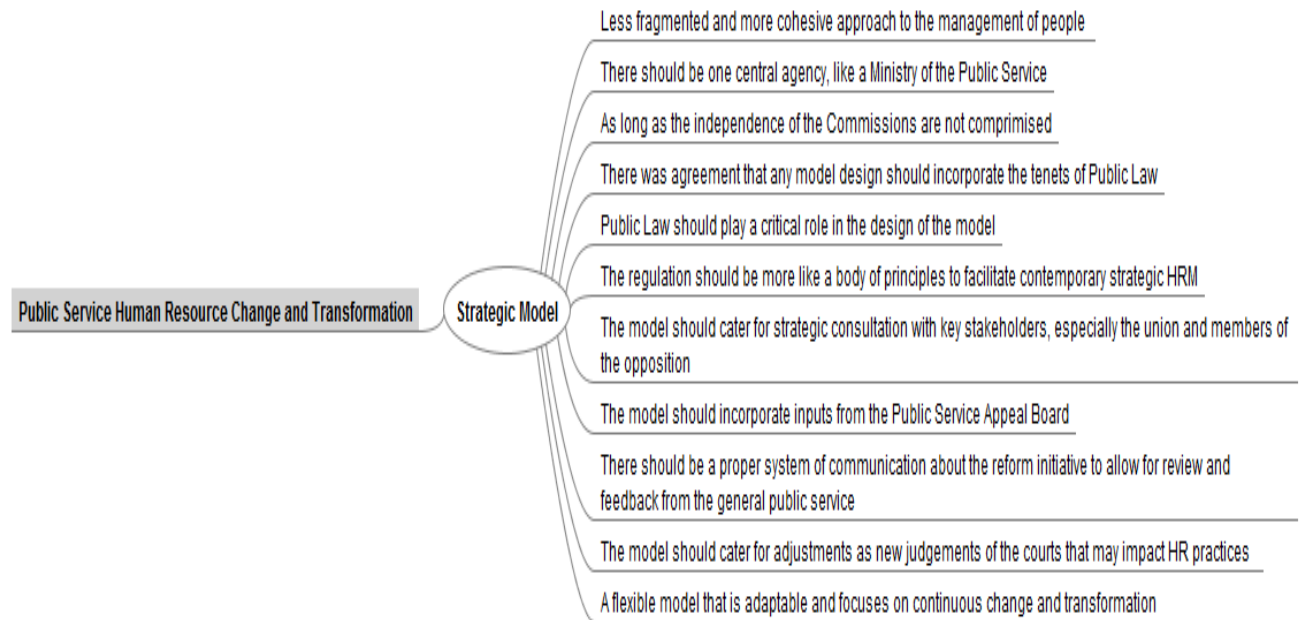
When one summarizes the suggestions made by the participants on change and transformation of Public Service Human Resource Management, it is evident that this can only occur within a proper change and transformation framework. The 2009 Queensland model of change (Figure 11) is advocated as one of the best framework for the management of change, Lewin (1992) suggested that it can be a useful guide in designing a change initiative. Other models as those advocated by Kotter (2008) and Jicks and Sun (2009)

(Figures 8) can also be guides in fashioning an appropriate model. What these models have in common is that they all emphasize the importance of leadership in change and transformation. Their views are in sync with those expressed by the participants. Due to the level of legislative changes that are anticipated based on the findings, it is imperative that the Prime Minister engages in dialogue with all critical stakeholders including the Opposition who as stated before support is essential for the level of Constitutional amendment required if the Services Commissions are to be modernised like the Police Service Commission.

For the change and transformation to occur, communication with Human Resource Management Practitioners Ministries and Departments has to be an integral part of the reform agenda. Carnal (2003), Cummings and Worley (2015) and Lewin (1999) are all advocates of this approach. They all posit that communication is important to gain peoples involvement and lessen resistance to change and getting the much needed “*buy in*”. Whatever the model that is agreed upon, one cannot implement change and transformation without placing emphasis on the importance of the culture of the Public Service. This cultural dimension is important in that if change is to be effectively managed, the framework to execute such should pay cognisance to the culture of the Public Service. The findings with respect to the next ancillary question should provide the preliminary answer to the elements of the strategic model for the transformed Public Service Human Resource Management.



#### **4.9 Elements of the Strategic Model for the Practice of the Reformed Public Service HRM in Trinidad and Tobago:**



**Figure 18: Elements of the Strategic Model for the Practice of the Reformed Public Service HRM in Trinidad and Tobago**

*Source: Researcher's Interpretation*

The findings which are reproduced in graphic format above Figure (18) are the responses to the ancillary question; “*What strategic model should be designed to execute the reformed Human Resource Management in the Public Service?*” The answers provide invaluable insights about the various elements that should constitute a model for the delivery of Public Service Human Resource Management in Trinidad and Tobago. There was unanimity in that all those interviewed complained about the disjointed nature of the practice of Human Resource Management in the Public Service. As previously stated, the participants intimated that it is necessary to have a less fragmented and more cohesive approach to the management of people in the Public Service. The present systems they lamented, with Human Resource Management being distributed across several disparate agencies chief among them the Service Commissions Department and the Personnel Department was highly untenable. The

participants all reasoned that this was one of the main contributors for the difficulties and dysfunctionalities in Human Resource Management in the Public Service. In many instances, they articulated that the Service Commissions were stymied in taking a decision on a matter as it had to wait on a ruling from the Personal Department on some issue that fell within the domain of that Agency that is clarification on a Terms and Conditions of Service. Additionally, matters with respect to the creation of positions and organizational structures must be referred to the Management Consultancy Division on the Ministry of Public Administration and finally the Office of the Prime Minister for Cabinet's approval. One participant even jokingly said "It is amazing that the public Service and even Human Resource work in this chaotic arrangement". He suggested that if he managed his home like that it would collapse.

Arguably, the participants suggested that this dysfunctional approach to the management of people was one of the major hindrances to Human Resource Management transformation as it was inconsistent with what is postulated by many Human Resource Management theorists like Armstrong (2007) Torrington et al (2008) to name a few. These theorists all advocate that there must be a coherent strategic approach to the management of people in an organization. The management of people they continued should be executed within a Human Resource Management Planning framework, which treats with all Human Resource issues with respect to individuals from entry to exit in any given organization. The participants were firm in their belief that there should be one central agency responsible for Human Resource Management in the Public Service that can be called the Ministry of the Public Service. The Human Resource Practitioners suggested that it may be advisable that the Prime Minister heads this Ministry. However the Legal Officers cautioned that if that suggestion is to be effectively operationalised, the independence of Service Commissions should not be compromised. They were adamant that any other way would expose Service Commissions to the vagaries of the politics of the country. One Senior Counsel emphasised that in small Island States like Trinidad and Tobago the *raison d'être* for the establishment of Commissions is still valid. An opinion expressed by Lalla Senior Counsel (2013).

All participants were united in their opinion that Public Law should be an integral part of the model for the practice of Public Service Human Resource Management. They all recommended that it should guide the formulation of the Human Resource philosophy and any policy designed to modernise Human Resource Management. Public Law, they argued should inform the amendment to the legislative framework, bearing in mind the lessons of the

judicial judgements of the Courts. There should be engagement in meaningful consultation with stakeholders in the design of the Human Resource philosophy and policy to ensure all nuances of the Laws are covered. In the case of the Civil Service Regulations, they caution that consultation with the recognized association for public officers, Public Service Association (PSA) is mandated by Law and the input from that organization would be essential.

In discussion with the Attorneys at Law engaged as a consultant by the Ministry of Public Administration and the Service Commissions to amend the Civil Service Regulations and the Public Service Regulations respectively as part of the 2013 initiative to modernize the Human Resource architecture of the Trinidad and Tobago Civil Service she commented that the intention was to make the current legislation as ‘au courant’ as possible with contemporary Human Resource Management practices. When questioned further she indicated that she saw no objection to developing a policy or set of principles that could be utilized to inform the amendment to the Regulations. A view similarly expressed by former Permanent Secretary to Prime Minister and Deputy Chairman of the Public Service Commission Ainsley Tim Pow.

There was general agreement that the Service Commissions should have a policy setting out the principles and procedures that should be applied to recruitment and selection based on merit. Such policy should include specific criteria and procedure for the process. The Attorney at Law stated that she was in agreement with that proposal but added that the Service Commissions needed to develop procedures and protocols for monitoring and auditing the use of such merit based selection process. She felt that the monitoring, auditing and oversight unit that was created by the Commissions in 2006 can be used to specifically monitor and audit that on an annual basis to ensure that the recruitment and selection procedure being applied was utilizing the merit based principle.

The Commission should also determine the appeals process relating to grievances emanating from appointments from promotion. The Attorney at Law added that the main point is that any policy designed would have to include penalties and sanctions for officers who act outside of the merit based recruitment and selection policy. Finally, she said that the Public Service Commissions Regulations and the Civil Service Regulations should be amended to correlate with the policy developed by Service Commissions. There was consensus that the role/mandate of the Public Service Appeal Board should be enlarged to treat with all appeals, in addition to disciplinary appeals as a result of Service Commissions’ decision. However,

the participants pointed out that if this suggestion is entertained that the present composition of the Board will have to be reviewed. At present it is staffed by only Attorneys at Law with a retired Judge as the Chairman. Some of the specific comments from the Human Resource Practitioners were:

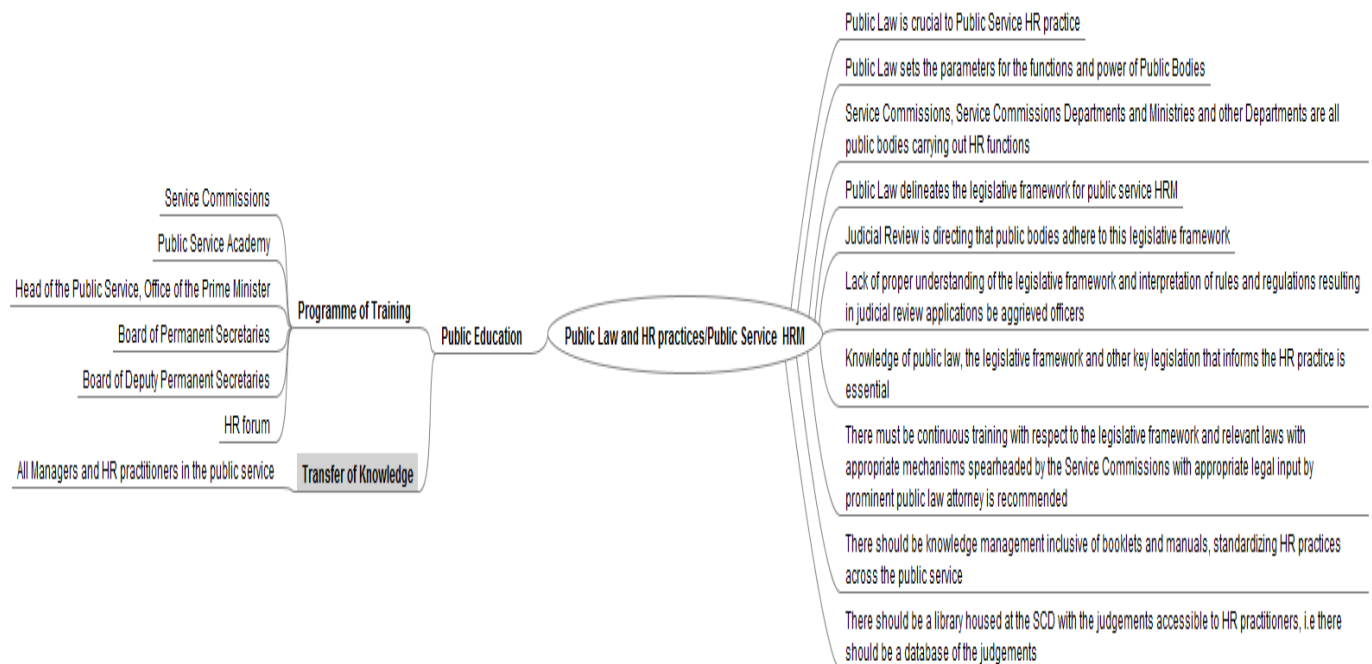
- “Make sure that there are persons with Human Resource expertise on the Board”
- “There should be someone with general management experience and knowledge of the public service”
- “There should be someone with industrial relations knowledge and expertise”

The participants all agreed with the previous recommendation made by the Attorney at Law that the appeal process should be well crafted and set out in a policy document. Senior Counsel for the Service Commissions Department also advised that the suggestion to expand the role of the Public Service Appeal Board would necessitate an amendment to the Constitution of the Republic of Trinidad and Tobago which would require the support of the Opposition. If this is achieved it would serve as a kind of alternative mechanism envisaged by the Judicial Review Act 2000. There was a general view that the model should encompass a mechanism for continuous review and assessment. In this way it will promote a flexible approach to the management of people. Also, this would cater for any adjustments in systems and processes as a result of new judgement from the Courts.

In conclusion, the main assumption resulting from the findings in relation to ancillary question six (6) *what strategic model for the reform of public service Human Resource Management?*, rest on the belief that there must be a coherent approach to Human Resource Management in the Public Service. Several of the participants questioned the continued role of Service Commissions in Public Service Human Resource Management and spoke extensively of the need to modernize them for greater efficiency. While this is not the focus of the study, this concern has permeated the discourse/interviews while gathering information on the phenomenon under investigation. There was a recognition that Public Service Human Resource Management is underpinned by Public Law due to the legislative framework the guides the practice, however the respondents opined that the legislative framework must be reformed like a body of principles to promote the practice of contemporary Human Resource Management. Also, in light of the preponderance of Judicial Review applications it was felt that if the Regulations did not contain so many strict processes to be followed it might allow some leverage and flexibility in their application. For the participants therefore the model as

envisaged should be flexible enough while containing elements that signal clear differentiation of structure and function between policy formulation, monitoring, evaluation and oversight. Most importantly, there should be a proper mechanism for continuous feedback to enable change and transformation.

#### **4.10 Public Law and the practice of Human Resource Management in the Public Service of Trinidad and Tobago:**



**Figure 19: Public Law and the practice of Human Resource Management in the Public Service of Trinidad and Tobago**

*Source: Researcher's Interpretation*

The preceding section presented the findings in relation to the type of model that is envisaged to facilitate the practice of the reformed Public Service Human Resource Management. The discussion thus far points to the fact that there is recognition that an understanding of Public Law is critical to the practice of Public Service Human Resource Management. Fig 19 displays the findings relative to the ancillary question number 7; “*Is an understanding of Public Law crucial to the practice of Human Resource Management in the Public Service?*”

The Human Resource Practitioners interviewed indicated that there was always some kind of knowledge that Public Law was integral to Public Service Human Resource Management, but they are now aware of the extent to which it informs and shapes the practice. While the Attorneys at Law stated that they were always aware of the extent to which Public Law shaped and fashioned Human Resource Management in the Public Service, the participants were all of the view that the present litigious Human Resource environment due to the passage of the Judicial Review Act 2000 and the removal of the 'ouster clause', Service Commissions, and to a lesser extent Permanent Secretaries and Heads of Departments have been having their human resource decisions challenged in the Courts on a regular and ongoing basis. One Senior Counsel opined "that if the question is taken in its true sense then the word understanding implies having a thorough knowledge of, to comprehend or to have knowledge of a body of facts", for him it is the fact of knowing. He stated that would form the basis for his answer. He suggested that Human Resource Management Practitioners, while not expecting them to know Public Law as an Attorney of Law would, they are expected to have a working knowledge on how Public Law relates to the legislative framework that informs Human Resource practices in the Public Service.

Senior counsel continued by elaborating that public officers not just Human Resource Management Practitioners should know the Law as every public officer engaged in exercising public function must do so within the boundary of the Law, (Public Law). He cautioned that Human Resource Management Practitioners in particular, must know all aspects of their practice and the corresponding Law and the connectivity to the practice. Other Attorneys at Law felt that one just had to examine the various pieces of legislation; especially the new ones like the Judicial Review Act 2000 the FOIA (2000) and the Equal Opportunities Act 2000 are all Public Law instruments impacting on or are designed to produce not just good Human Resource practices but good Public Administration. Arguably, they opined that Service Commissions and public officers are in the business of Public Administration and just as a Doctor, a Lawyer, a Dentist must know the rudiments of the Law applicable to their profession, by a process of induction, public officers must know Public Law, if they do not, then they are susceptible to making fundamental breaches that can have dire consequences. The view was expressed that Public Service Human Resource Management Practitioners must have an understanding of Public Law to the extent that they must realize that the legislative framework is a comprehensive code that must be followed. One has to take into account all the tenets of Public Law especially the issue of Natural Justice. The Senior

Counsel who represents the Service Commissions lamented that he did not want to be blasphemous but the legislative framework is your “Bible”. It is a guide; it is the product of Public Law. He pointed to the case of, PS Ministry of Foreign Affairs & Patrick Manning v Feroza Ramjohn and Prime Minister Patrick Manning and The Public Service Commission v Ganga Persad Kissoon [2011 UKPC20]. The details of these cases have already been discussed in Chapter 5.

All Attorneys at Law agreed that Service Commissions and Human Resource Management Practitioners can only act or make decisions within the jurisdiction that is, in accordance with the Law (Public Law). They must know the Law to recognize when their action can be deemed ultra vires. If they do act outside the Law, then it would lead others to question the validity of their Administrative position. Public officers must know when they are making illegal decisions that are decisions contrary to Law. The Human Resource Management Practitioners were in agreement with the views espoused by Senior Counsel and other Attorneys at Law. For the Attorneys at Law in particular, one of them stated;

***“Speaking generally, all regulations that define a practice in the Public Service fall within the domain of Public Law, as such, public officers must know the Law that defines not only their particular practice, but in as much as they have to manage people, they must know the Law relevant to the management of people in the Public Service, which is Public Law. At the end of the day good public Administration and good Human Resource Management practices rest on the application of the principles of Public Law”.***

There was consensus that Public Service Human Resource Management Practitioners must have a good working knowledge of Public Law as they are required to interpret Regulations to apply to Human Resource Management scenarios. If there is any ambiguity in the Law, they should seek inputs from Attorneys at Law trained in Public Law to aid in the decision making process. To be a successful Human Resource Management practitioner one must have a relationship with the Law that governs the practice.

When asked how this knowledge/understanding of Public Law could be permeated throughout the system thereby ensuring that all senior managers and more significantly Human Resource Management Practitioners have a working grasp of Public Law. They all answered that there needs to be a type of continuous training/ knowledge management to facilitate the process. Public officers need to be made aware of the content of the various

Regulations as well as be cognisant about their duties and obligations as set out therein. The can be achieved, the participants suggested, through a designed Training and Development Program orchestrated by the Service Commission with appropriate legal input and in partnership with the Public Service Academy with the Ministry of Public Administration. Also, the creation and publication of manuals and booklets, informing public officers of the various Laws and their functions in relation to those Laws are paramount. There should be standardization in practices in terms of the processes to follow in making Human Resource Management decisions. These processes should be in congruence with the directive of the relevant legislation. Additionally, all the judgements in respect of the Service Commissions should be stored at the Service Commissions library to enable easy access to these documents. Alternatively, all the judgements can be placed on the Service Commission Department website.

In designing this specific role for the Service Commissions Department, the participants suggested that this approach is a method of being involved in Public Education for Human Resource Management Practitioners. Senior Counsel was of the firm mind that the head of the Public Service and Permanent Secretary to the Prime Minister should be part of the Public Education Trust. This is the most senior public officer in the Public Service who in addition to her functions as Permanent Secretary to the Prime Minister and Head of the Public Service sits as the Chairman of the Board of Permanent Secretaries. She is therefore in an ideal position to collaborate with the Service Commissions and the Service Commissions Department to ensure the training of Permanent Secretaries and Heads of Department. The other participants agreed with this suggestion and they insinuated that many of the Human Resource issues that have risen stem from a lack of knowledge and experience by senior managers. They reiterated that senior managers should be trained with respect to all legislation relating to the Public Service Human Resource Management including the Code of Conduct. Also the training should extend to the Human Resource forum, a body constituting of Human Resource Management Practitioners so that they can be trained to better prepare them for advancement in the Service.

What emerged from these findings is that an understanding of Public Law is essential for effective discharge of its Human Resource function in the Public Service. A Human Resource practitioner or for that matter anyone engaged in the discharge of Human Resource functions must have an understanding/ a good working knowledge of the Law, thereby ensuring that



they are taking the right decision and following the process and procedures defined by the relevant legislation. Judicial Review, which is a Public Law remedy, places certain obligation on a public officer in discharge of a particular public function. The public officer must have knowledge of the Law to discharge his function effectively and within the Law. If no such body of knowledge exists in the mind of such a person they would not be aware of their obligations and responsibilities and therefore their action when taken can be in breach of the Law. Intrinsic to the practice of a public function like Public Service Human Resource Management, are ones obligations, responsibilities and the constraints placed on them by the relevant legislative framework. Fundamentally, Public Law sets the parameters for the function and powers of Public Bodies, public officers and Human Resource Management Practitioners. These officers must have knowledge of this fact. Also, good knowledge of all Public Law Legislation that impact Human Resource Management practices especially the Judicial Review Act. This is paramount, as Human Resource Management Practitioners must understand the consequences if they fail to adhere to the Rules, Regulations, processes and procedures defined by the Law.

#### **4:11 Themes emerging from the findings:**

This section of the chapter will provide a summary of the key findings, emerging issues and themes identified in the preceding section. In light of the response received in respect of the seven (7) ancillary questions, one of the major issues that emerged is that Human Resource Management as practiced in the Public Service is underpinned by Public Law. The first theme that has risen is that Public Law prescribes the parameters for Public Service Human Resource Management. It establishes the Public Service, the Public Bodies and sets the legislative framework for their operation. It also delineates a role for the Courts to ensure that Public Bodies discharge their duties within the Law that was being achieved in accordance with the Judicial Review Act.

The second theme that emerged through the discourse was the extent to which, because of the Public Law element of the Public Service it was impacting the practice of Public Service Human Resource Management. It was evident that all Human Resource decisions must be made within the various processes as defined by the legislation that delineates the practice. Also, any breaches or perceived breaches were subjected to the Courts. In as much as it had been discerned that the legislative framework informs Human Resource Management practices in the Public Service, some of the chief issues highlighted were the amendments

that should be effected as a result of the judgements of the Courts of Trinidad and Tobago and the Privy Council of London.

The main theme was amend/review the entire Regulation, also amend the legislation to modernise/ transform Service Commissions. These themes and issues that came to light are connected to the themes and findings of the first question, in that it was suggested that due to the nature of Public Law and the Judicial Review Act the Courts play a significant role in the practice of Public Service Human Resource Management. The Courts have supervisory jurisdiction over Public Service organizations. As mentioned earlier, Public Bodies are subjected to the ordinary Courts; it is the cornerstone of the rule of Law. The theme therefore is that the Court plays a critical role in Public Service Human Resource Management through Judicial Review. In this way, the Courts by way of judicial control restrict administrative action to ensure that there is no abuse of their powers. The role of the Court is protecting the citizens against Public Authorities. It acts as a safeguard protecting the public interest ensuring Public Bodies are not above the Law. The Courts also protects the rights of those affected by administrative action. This view is shared by Fordham (2004).

The next theme/issue that surfaced was that the Judicial Review judgements are changing or have changed Human Resource Management practices and procedures in the Service Commissions and Service Commissions Department. These have forced those organizations to review all policies and precedents and they have put measures in place to treat with the shortcomings and breaches identified in the judgements. There is a link with the issues that emerged from the next question, as the judgements have signalled an urgent need to transform Public Service Human Resource Management. As the focus of the study is the Human Resource Management practices and processes of the Service Commissions and the Service Commissions Department, the issues that came to light are what should be the scope of this reformation initiative that is required in light of the judgements/rulings of the Courts. The major themes/issues for most participants were the urgent need for a Human Resource philosophy, legislative reform and modernisation of Human Resource Management. Also the findings pointed to the fact that there should be an introduction of some form of alternative remedy, the establishment of an internal Ombudsman within the Service Commission Department. This it was felt should meet the alternative remedy as was suggested by the Judicial Review Act.

For the participants, if changes are to occur in Public Service Human Resource Management it must be implemented within a change and transformation framework and informed by the lessons of the past. These are the successes and the failures of previous reformed initiatives. In terms of the strategic model for the reformed Human Resource Management, the major theme was that there must be a coherent approach to the management of people. There should be one agency maybe a Ministry of the Public Service as long as the independence of the Commissions is not compromised. Also, another theme is that the other Service Commissions should be modernised/transformed like the Police Service Commission into a monitoring and evaluation mechanism. Further there should be an expanded role for the Public Service Appeal Board to treat with all appeals of Service Commissions' decisions thereby providing an avenue of redress for public officers other than the Courts. Another theme that surfaced is that Public Law is an integrated part of Public Service Human Resource Management and informs all Laws that impact the practice, further; moreover, there is a need for continuous training a system of knowledge management to apprise senior managers inclusive of Permanent Secretaries, Heads of Departments and Human Resource Management Practitioners of the Laws that inform their functions. Finally the issues and themes will form the basis of the discussion in the next chapter. The conceptual framework which was designed and the literature reviewed will form the guide for the analysis of the findings in the next chapter.

## **CHAPTER 5**

### **Theoretical Contribution of the Research**

#### **Introduction**

This chapter provides an analysis of the findings presented in chapter 4. It consists of four (4) sections. Section one provides a discussion of the findings from the preceding chapter, in relation to the answers obtained from the seven (7) ancillary questions. The findings and the implications for the literature that underpinned the study are also enunciated. Section two reflects on the conceptual framework presented in Chapter 1 to determine to what extent it may have impacted on the findings. Section three examines the data collection methods adopted during the conduct of the study to determine the impact if any on the findings. Section four provides a summary/ analysis of the findings to assess to what extent it supported or challenged what may have been enumerated in the literature review that underpin the study. Further this section evaluates the impact that the conceptual framework and data collection methods had on the findings.

#### **5.1 Findings and Answers in relation to the Research Questions:**

On the basis of the findings presented in Chapter 4 with respect to the research questions a summary of the findings in relation to each one is given and the answers provided would be discussed. The first question: “How does Public Law influence Human Resource Management in the Public Service? “The findings revealed that Public Law has been influencing the practice of Public Service Human Resource Management as it sets the parameter for the exercise of the Human Resource Management function in the Public Service. The Constitution of the Republic of Trinidad and Tobago, the Supreme Law of the land establishes Service Commissions and gives them their constitutional powers of making appointments, promotions, transfers and removing officers and exercising disciplinary control (1976 Constitution Republic of Trinidad and Tobago). The various codes of conduct, also the Public Service Regulations 1966 Chapter 1.01 of the Laws of Trinidad and Tobago, The Civil Service Regulations 1966 Chapter 23.01 of the Laws of Trinidad and Tobago, the Judicial Review Act of 2000, the FOIA (2000) and the EOA of 2000 all form the Legislative framework and have their genesis in Public Law and ultimately they are the Laws of Trinidad and Tobago.

The Judicial Review Act in particular provides for the Courts to have supervisory jurisdiction over Public Bodies like Service Commissions (Lalla 2013). Further, the Court through Judicial Review is a mechanism to oversee Public Bodies by reviewing the decisions of Public Bodies to ensure that they are made within their legal boundaries that is they comply with the Laws and Regulations Wade and Forsyth (2000). This has also been reinforced by the Courts of Trinidad and Tobago in the case of Dr. Colin Furlonge v PS Ministry of Health HCA #CA 2098 of 2000 J. Jamadar. J. Jamadar stated categorically that the Public Services Regulations set out a detailed code for appointment among others in the Public Service. This was first established in the Privy Council matter of Rajkumar v Lalla [2001] (PC 1 of 2000) In this case the Privy Council Lord Woolf said that "*when Regulations state that certain things shall be done, the intention is for compliance*" Further it has been established that the Public Service is made up of Public Bodies, staffed by public officers who carry out public functions Wade and Forsyth (2000). In as much as Human Resource Management is a function discharged by Human Resource Management Practitioners in the Public Service, they are carrying out a public function which is subject to the rule of Law (Public Law). Also Lalla (2013) states that the Public Service in Trinidad and Tobago is like the British Service in that it functions by and under Law in addition it was established by the Civil Service Act 1966 Chapter 23:01 of the Laws of Trinidad and Tobago. He stressed that the Public Service is governed by Public Law.

The Judicial Review Act 2000 is a Public Law remedy which imposes a legal duty on Public Bodies or persons (public officers) to give reasons for their decisions at the request of any person who may be affected by their decisions. Service Commissions are Public Bodies and as a consequence, are subjected to the provision of the Act Lalla (2013). Lalla's views are affirmed by Woolf et al (2007). The findings and the answer to the first question, is on the affirmative.

It is evident that the legislative framework should be amended; more fundamentally, the consensus is that it should be reviewed in its entirety. At the first glance this is the answer to the second ancillary question: *What amendment should be made to the legislative framework that governs the practice of Human Resource Management in the Public Service?* While the reasons advanced for such a conclusion may be diverse, some of the views expressed as stated earlier is that the current legislative framework is too restrictive, outdated, archaic and a hindrance to Human Resource Management modernisation. Adam Smith, in his report on

the Modernisation of the Public Service in 2008 echoed similar sentiments. He is supported in his thinking by Ainsley Timpow, former PS to the Prime Minister and Head of the Public Service and Deputy of the Public Service Commission who laid many of the deficiencies in the Public Service at the feet of the legislation. He was of the view that the legislation should be scrapped in its entirety and replaced by a body of principles. Writers like Gordon Draper (2001), Deryck Brown (2008) and Paul Sutton (2009) have all complained about the legislative framework that exists in the Public Service. For them this old Colonial relic should be reviewed in its entirety. The main point is that the legislation should be reviewed/amended and due cognisance must be given to the Judicial Review judgements which are at present impacting Human Resource Management practices as a result of the role of the Court. If the learnings from the judgements are taken on board, the legislation might be so amended to enable the practice of contemporary Human Resource Management.

An analysis of the findings revealed that the present Public Service Commission Regulation should be amended to cater for a system of meritocracy for appointments and promotions in the Public Service. The cases of *Ashford Sankar and others v The Public Service Commission* *Hermia Tyson-Cuffie v The Public Service Commission* (Privy Council Appeal Nos 0045 and 0074 of 2010) [2011] (UKPC27). *Gopichand Ganga and others v the Commissioner of Police and the Police Service Commission* (Privy Council Appeal No. 0046 of 2010 [2011] (UKPC28) support this approach. In the decided cases, the Privy Council ruled in favour of the Public Service Commission and the Police Service Commission respectively. In the cases the Privy Council ruled that the assessment centre methodologies and the point system used by the Police Service Commission to assess candidates for promotion were aligned to criteria laid down in the respective Regulations that are the Public Service Regulations and the Police Service Regulations respectively. Such actions on the part of the Commissions was not illegal, irrational or procedurally unfair, the Commissions acted legally in using the ACE and the point system to determine the merits of the individual for promotion. It can be argued therefore that the present Regulations permit appointments and promotions by merit as long as fair assessment methodologies are applied. Whatever amendment is made to the Regulations to focus on a system of merit for appointment and promotion it should be crafted as discussed earlier in the previous chapter.

One of the central points is that the Regulations should be amended to include an internal Ombudsman as a grievance handling mechanism, this view is supported by the literature in

that Woolf et al (2007) advocate that where disputes do arise Public Authorities should offer internal methods of handling complaints. There should be a range of alternative dispute resolution services so that different types of disputes can be resolved fairly, quickly, efficiently and effectively without the expense and formality of the Court. If this suggestion is adopted it could lessen the number of Judicial Review applications as public officers might be able to have their issues/complaints suitably addressed, without having to refer to the Court to seek redress.

The essential point made is that the legislation should be amended to modernise Service Commission, similar to what was done in 2006 with the Police Service Commission as mentioned earlier. The Constitution of the Republic of Trinidad and Tobago was amended to achieve this outcome. A similar approach will have to be taken if this is to be achieved, however, in the case of the Judicial and Legal Service Commission, the Chief Justice sits as Head and Chairman of the Commission. It stands to reason therefore that this model may not be able to be applied in its entirety that Commission as it will be a case of ‘himself unto himself’, which some argued even exist at present as the Chief Justice is the Head of the Judiciary and the Magistracy and is responsible for the management of these entities as well as he sits as a Judge in the Court of Appeal. Further, there is a general view in some quarters that this appears to be a conflict of interest as he sits as Head of the Judicial and Legal Service Commission. This topic is not the focus of this study, but the findings and outcome of this research could be the catalyst for the transformation of that Commission.

Another view advanced was that appropriate amendments should be made to the Constitution of Trinidad and Tobago to expand the role of the Public Service Appeal Board to enable it to treat with all appeals in respect of the Commission’s decisions. This is an admirable suggestion as it would provide another avenue to treat with officers' complaints and issues and could well have a positive impact in that it would be able to curtail the level of Judicial Review applications and judicial activism referred to by former Justice De la Bastide (2006). Although the Freedom of Information Act provides a role for the Ombudsman no such role is defined in relation to the Judicial Review Act (2000). Also this expanded role as envisaged for the Public Service Appeal Board could provide an alternative mechanism as contemplated by the Judicial Review Act (2000).

The prevailing perception that occupied the discourse was that the legislation should be amended to cater for the lessons/ learnings from the Judicial Review judgements. This is commendable as these judgements have been contributing to new learnings in the field of Public Service Human Resource Management. The Human Resource Management Practitioners in particular cited the case of *Harinath Ramoutar v Commissioner of Prisons and the Public Service Commissions* [2012] (UKPC 29) and *Favianna Gajadhar v Public Service Commission*, Civil Appeal No, P170 of 2012. In the case of *Harinath Ramoutar*, the Privy Council ruled that job description and job specification have no place in stature they are working documents of the Government and cannot be used by the Public Service Commission to assess threshold suitability for acting appointment to an office. The Commission must follow what is prescribed in Regulation 26 of its Regulations. In the case of *Favianna Gajadhar* the Court of Appeal ruled that the purpose of the inquiry that Regulation 49 contemplates before a decision is taken is not to confirm a provision but to seek the truth and to act fairly and justly within the parameters of the Regulations (the Law). It is a matter of fulfilling the natural justice and fairness requirement and is not always a one off affair.

It can be concluded that on the basis of the findings as detailed in the previous chapter that the legislative framework should be reviewed/amended to cater for the suggestions identified. It is imperative that there should be an awareness that any amendments to the legislation can only occur with the appropriate requisites stakeholder consultation, the support of the Opposition and within a proper change and transformation framework. Also, the framework chosen would inform the appropriate strategies to be adopted.

The findings in relation to the ancillary question three (3) which is *what really is the role of the Courts in the practice of Public Service Human Resource Management?* The answers enunciate that the Court is playing a significant role in the practice of Human Resource Management in the Public Service. The findings obtained, build on those acquired with respect to ancillary question one (1). By way of illustration it was evident by the answers given, that Public Law is influencing/impacting on Public Service Human Resource Management, as Public Law sets the parameter for the practice through the legislative framework. In as much as Judicial Review is a Public Law remedy to ensure that Public Bodies obey the Law Ganz (2001). Public Bodies like Service Commissions are subjected to the supervision of the Courts. It can be reasoned that the functions performed by these entities



and the officers employed within them are subjected to the control of the Courts (Wade and Forsyth 2000). Indeed Human Resource Management as practiced by the Service Commissions is a public function susceptible to the Courts by way of Judicial Review. The findings suggest and are supported by writers such as Ganz (2001) and Woolf et al (2007) that the Courts play a major role in the practice of Public Service Human Resource Management. To put it quite succulently the Courts have supervisory jurisdiction over the action of Public Bodies like Service Commissions it ensures, that they work within the confines of the Law that define their operations Fordham (2007) and Lalla (2013).

As was stated at length in chapter four (4) the Courts apart from providing supervisory jurisdiction also acts as an interpreter of the legislation that informs the practice Woolf et al (2007). The Courts have been explaining the Commissions' role in terms of the correct process and procedures to follow in relation to the legislative framework. The findings also allude to the fact that Public Law defines the role of the Court. Several writers in Public Law, Administrative Law and Judicial Review example, Ganz (2001), Wade and Forsyth (2004), Ramlogan (2007) and Woolf et al (2007) clearly state the role of the Courts with respect to administrative decision. They argued that through Judicial Review by its very nature the Courts can check whether the decision of the administrative agency has trespassed the limit set by Law. These writers further suggest that even when Administrative Agencies act within the powers granted to them the courts can check whether their decisions were arbitrary, unreasonable or procedurally improper. As interpreter, the Courts interpret the Laws in relation to its construction and meaning (see Civil Appeal No, P170 2012) Favianna Gajadhar v PSC CV2110-01100 and Vijai Bhola v Attorney General of Trinidad and Tobago and the Police Service Commission.

The Attorneys at Law spoke of Judicial Activism and the role of the Court in relation to the number of Judicial Review cases filed in Trinidad and Tobago, they expressed concern of the competence of the Court to adjudicate on matters falling outside the Law which are best left to Administrative Bodies. These views were also expressed by De la Bastide as mentioned earlier. Although there were concerns expressed in this regard, the findings undoubtable illustrate that the Courts have a role in the practice of Public Service Human Resource Management due to the existence of the Judicial Review Act. It is clear also, that the role of the Court has tremendous benefits in preventing possible abuse of power by Administrative Agencies like Service Commissions, Government Ministries and Departments. To express it in the words of Woolf et al (2007)' "The Courts ensure that there is good Public

Administration.” For the purpose of this paper good Public Administration means, good Public Service Human Resource Management.

Analysis of the findings in respect of ancillary question four (4) which is; “*Have the Judicial Review judgements forced the Service Commissions and Service Commissions Department to examine their Human Resource Management processes/ practices?*” point to the following. The answers to this question arguably confirms to the fact that the Judicial Review judgements are impacting on the processes and practice of the Service Commissions and the Service Commissions Department. Essentially, in light of the Judicial Review judgements over the period 2000- 2015 (15 years), there have been a significant impact on the work of the two entities. They have been reviewing not only the processes and procedures but have undergone some organizational restructuring to improve the quality of their service delivery and response time. In 2006, the Service Commissions Department was re-designed to establish a Complaints Unit to treat with the many complaints made by public officers with respect to the Commissions decisions or lack thereof. One of the participants indicated that although the complaints unit was established the jury was still out on its effectiveness due to the number of officers who have filled for Judicial Review over the years thereby indicating their level of dissatisfaction. The Attorneys at Law interviewed in relation to this matter indicated that the Complaints Unit should be modified so that it operates as an internal Ombudsman. This should provide independent oversight on the work of the Commissions and would be consistent with the views expressed by Woolf et al (2007) in relation to the fact all public service organizations should have a means of solving employee complaints and issues and should not rely on the Court as the only mechanism to resolve issues. Moreover, the Court should be the last resort when all other alternative mechanisms fail.

It was revealed that the Service Commissions Department has established an Electronic Document Management System as well as a Monitoring and Evaluation Unit. The Document Management System, it has been argued would aid with fast retrieval of information and documents for persons seeking information in relation to the Freedom of Information Act (2000). The Monitoring and Evaluation Unit has been established to oversee the functions delegated by the Public Service Commissions, officers from the Service Commissions Department are also embedded in Ministries and Departments to assist in taking actions with respect to the delegated functions. These initiatives are all testimony to the impact of the Judicial Review judgements on the processes and practice of the Service Commissions and

the Service Commissions Department. The Department has also embarked on the training of officers in the legislative framework to ensure that they fully understand the various pieces of legislation that relate to their function.

There is a general understanding that senior officers and Human Resource Management Practitioners need to be better trained to equip them to discern when their actions or lack thereof can result in Judicial Review applications by aggrieved public officers. This training intervention is to address a lack of understanding by Human Resource Management Practitioners of the Laws that inform their practice. This approach is in keeping with what is suggested by Woolf et al (2007), when they commented that senior administrators show a surprising ignorance of elementary legal principles, a lack of appreciation of the impact of legal consideration on administrative problems involving either considerable financial loss or embarrassment to the State. The strategy adopted by the Service Commissions with respect to the training of officers, should go a long way to apprise Human Resource Management Practitioners of the Law and its consequences. One can only hope that due to the learnings from the judgements they might result in some changes in behaviours by public officers and better decision making processes and practices. Further, this should force Human Resource Management Practitioners to comply with the Law, that is, adhere strictly to the tenets, principles, processes and procedures stipulated in the legislation.

Arguably, if the judgements of the Courts have been impacting on the work of the Service Commissions and the Service Commissions Department, it stands to reason that some change and transformation is evident as it relates to Public Service Human Resource Management. This brings the findings and the answer to the next ancillary question into focus. The fifth ancillary question, “*what change and transformation are required in light of the Judicial Review judgements?*” The answers to this question are varied, bearing in mind the level of scepticism that exists about change and transformation initiatives in the Public Service of Trinidad and Tobago. Notwithstanding this dilemma, the participants were of the view that they were cautiously optimistic that change and transformation of Public Service Human Resource Management can occur if it is designed and implemented properly. They envisaged that any change must be driven at the level of the Service Commissions themselves in collaboration with the Prime Minister and the relevant line Minister. They saw a key role for the Chairmen of the Commissions, Strategic Leadership; they argued is very important to any change initiative to transform Public Service Human Resource Management. In the absence

of this leadership and political will by the Prime Minister, the change that is required would not occur. These concerns are shared by several theorists on Change and Transformation Kotter (1996), Carnal (2000) and Sun (2009). They have all stressed the importance of leadership in the management of change. It cannot be overstated that change must be undertaken within a change and transformation framework, with proper diagnosis of the critical issues to plan the intervention in order to achieve the desired outcome. Apart from some structural changes like the creation of an internal Ombudsman already discussed in Chapter four (4), the central view that was evident during all interviews is that the Service Commissions in their present format were not designed or mandated to deliver Contemporary Human Resource Management.

The Public Service Commission at a workshop in 2014 has started a discussion on the way forward towards its modernization, among the key issues discussed were the review of the Public Service Regulations and a modernization of the Commission. It is the researcher's understanding that efforts in this regard have already begun. The modernization of Service Commissions like the Police Service Commission has already been illuminated in Chapters one (1) and four (4). Should this occur, this would signal the Government's intentions to transform Public Service Human Resource Management. These views on Service Commissions modernization add to the ongoing debate of the continued relevance of Service Commissions to the Human Resource Management landscape of the Public Service. Writers like Draper (2001), Nunes (2009), and Sutton (2009) have all expressed over the years their disgust about Service Commissions as they term them relic of the old colonial era. They have all concluded that they are dysfunctional, and a hindrance to change and transformation and should be abolished. Lalla (2013) on the other hand, has stated categorically that they are essential in small island states like Trinidad and Tobago, to insulate public officers from the political directorate of the day.

Essentially, there was a general perception, that if Service Commissions are modernized, there should be some form of partnership arrangement with the Courts in light of their role in the practice of Public Service Human Resource Management. This it was argued would allow the Courts not to be seen as an adversary but an ally towards good Public Administration. This is consistent with the opinion expressed by Fordham (2004). The results of the findings provide the answer to the fifth ancillary question and make the case for what should be transformed in respect of Public Service Human Resource Management, much of the findings point to radical change in terms of a revolution in the way that Human Resource Management

is practiced by the Service Commissions. It should be reiterated, that while modernization of Service Commission is not the objective of the study it would be an injustice not to mention that it had occupied several of the discourse as information was gathered for this study. The most striking point for most of the participants was the factor driving the need for change at the present time was the preponderance of Judicial Review applications against Service Commissions and the inefficiencies in the configuration of the present Human Resource Management system.

It has long been suggested that the whole system of Public Service Human Resource Management should be decentralised, placing the entire responsibility for the management of people in the Public Service in the hands of Permanent Secretaries and Heads of Departments. While this is laudable idea, there still remains a high level of apprehension on how this is to be achieved. This brings us to ancillary question number six (6) *“What should be the elements of the strategic model for the practice Human Resource Management in the Public Service?”* The answers to this question show that there should be a more cohesive and less fragmented approach to the management of people. There is significant support for the establishment of one central agency as mentioned in Chapter 4 as long as the independence of the Commissions is not compromised. The model for Strategic Public Service Human Resource Management should be driven by an overarching Human Resource philosophy and unpinned by Public Law. Further, it should cater for the Judicial Review Judgements and nuances of the Public Service, bearing in mind the very volatile and litigious environment that now exist. The Regulation should be more flexible like a body of principles and there should be an expanded role for the Public Service Appeal Board which should be used as a mechanism for alternative remedy as contemplated by the Judicial Review Act. Details of this have already been discussed in Chapter 4.

With respect to the seventh ancillary question, *“Is an understanding of Public Law crucial to the practice of Human Resource Management in the public Service?”* The findings reveal that there is consensus that a good working knowledge and understanding of Public Law is essential for the effective practice of Public Service Human Resource Management. This is true not only for Human Resource Management Practitioners engaged specifically in carrying out Human Resource functions, but for all senior officers, who in addition to their professional duties are required to manage people in the Public Service. They all should know the Law that relates to the management of people in the Public Service. A good

understanding of the Principles of Public Law will enable Human Resource Management Practitioners and senior managers to appreciate that when they are making decisions, in the exercise of their powers, they must be cognisant of the decision making process. Also, attention must be paid to the scope and substance of the decision. They must realise that even when they exercise discretionary powers, they are not immune from Judicial Review (Woolf et al 2007). Human Resource Management Practitioners in particular should know Public Law and especially the Judicial Review Act (2000), to have some basic information about the Judicial Review process and to understand what precautions they should take to avoid the risk of their decisions being challenged in Court (Woolf et al 2007). It has already been established that if senior officers inclusive of Human Resource management Practitioners do not have an appreciation of elementary Legal principles to know when their actions are in breach of the Law, they would not be aware when their actions can have due consequences, including Judicial Review applications by public officers who are aggrieved with their decisions.

It stands to reason that knowledge of Public Law is essential, as there is recognition that it provides the overarching framework for Public Service Human Resource Management practice. Human Resource Management Practitioners ought to know that they are vested with power and duties by the Law which enables them to perform their function. They must have knowledge of the Law to discern when their actions may infringe the rights of others. There must also be a realisation that if they abuse their powers; act in excess of the Law, act capriciously, arbitrarily, irrationally, or unreasonably, then their actions would be subjected to the supervision/control of the Court in accordance with the Judicial Review Act (2000). Service Commissions and Human Resource Management Practitioners in the exercise of their function must observe the principles of Natural Justice; they must understand the Law that defines their practice to know if a decision is validly made, as it is the Law that empowers them to make decisions. All public decisions has a Public Law element, therefore, in as much as Service Commissions and Human Resource Practitioners are performing Human Resource functions within the Public Service, their decisions has a Public Law element. It goes without saying that a good understanding of Public Law is crucial to the practice of Human Resource Management in the Public Service.

## **5.2 Reflection on Conceptual Framework – Impact on the findings:**

Theorising is an essential part of research; it gives shape and structure to a study. The conceptual framework which was developed after a review of the literature was useful in developing theories that explain the patterns and relationships that emerged from the findings. Ideally it prepared the researcher to conduct the study, in that it assisted in the methodology that was adopted in the conduct of the research. The conceptual framework therefore provided a basis for the assessment of the findings from the research. It also simplified the research task and helped to focus on the issues that would germane to the research questions. It was therefore the road map for the study Fisher (2010). Although the conceptual framework was designed to guide the research, some of the findings revealed issues that were not previously discussed in the literature review as they were not considered relevant to the study at that point in time. In as much as these concepts were raised during the interviews it caused the researcher to interrogate and cross examine the literature to determine why these issues/concepts were not examined earlier in the literature review. This caused an adjustment to the literature review accordingly.

In relation to the findings, one of the Senior Counsels informed that he had concerns and also the Legal Fraternity in Trinidad and Tobago with the level of Judicial Activism that exists in the Judiciary, especially in light of the high level of Judicial Review Applications against Service Commissions. In support of his concerns he provided the researcher with a paper presented by the Rt. Mr Justice de La Bastide, President of the Caribbean Court of Justice entitled, *“Judicial Supervision of Executive Action in the Commonwealth Caribbean”*. This paper was delivered at a lecture in Barbados in 2006. In this paper, the learned judge stated that Trinidad and Tobago had the highest volume of Public Law litigation, and almost the sharpest increase in that litigation in recent years. He lamented, that many recent decisions of the Courts in the Commonwealth Caribbean tend to reflect a higher level of Judicial Activism in the field of Public Law than was previously evident. This information necessitated a further search of the literature on Judicial Review to gain a better understanding of the concept of Judicial Activism as it related to the phenomenon under investigation.

Although the issue of the Public Service Appeal Board was discussed in the literature review, it was mainly to show the relationship of this entity to the practice of Human Resource Management in the Public Service. The findings revealed that the participant was of the opinion that the role of the Public Service Appeal Board could be expanded as stated in

Chapter 4. This view compelled the researcher to search for writings in support of or against the views expressed. The literature review was therefore amended to reflect the views of the writers in this regard.

Notwithstanding the limitation of the literature review in this regard and by extension the conceptual framework, such omissions did not impact negatively on the findings. This is so as the participants were allowed to give their views and opinions freely, in relation to the questions posed to them. This opened discussion was essential to gather all the relevant facts and this can be attributed to the methodology and data collection methods adopted during the research. It can be argued successfully that the revelations of the participants added to the richness of the findings. Further, as the participants discussed issues relative to the questions asked, they cited particular cases in support of their opinions, some of which were not originally discussed in the literature review in Chapter 2. It was therefore prudent that a review of these cases is undertaken and they were therefore included in the literature review. Two (2) of these cases predated the period of the study, in that they were judgements given prior to 2010. These cases were *Endell Thomas v Police Service Commission* [1982] Ac 113, PC and *Herbert Charles v The Judicial and Legal Service Commission* [2001] UKPC 26. These judgements were hallmark decisions and provided useful insights for Attorneys in Public Law and Human Resource Practitioners in particular.

In terms of the findings, the conceptual framework helped in the formulation in the subsidiary questions that were posed to the interviewees to answer the relevant research questions. On the basis of the findings it has already been established that leadership is key to any change and transformation initiative in any organization Kotter (2009), Sun (2009) and Carnal (2009). Further, the Service Commissions are Public Service Organizations established by Public Law that is the Constitution of the Republic of Trinidad and Tobago. As Public Service Organizations, they are subject to the rule of Law Ganz (2001), Wade and Forsyth (2004) and Woolf et al (2007). The findings confirmed that Service Commissions, other Government Ministries and Departments and Human Resource Practitioners are all subjected to Public Law and by extension the Judicial Review Act and other pieces of Public Law Legislation. Also as identified in the conceptual framework (Figure 1), the findings show Public Law informs the legislative framework that guides the Public Service Human Resource Management Lalla (2013). Also the findings confirmed what is depicted in the conceptual framework, that Public Service Human Resource Management should be driven



by an overarching Human Resource philosophy Draper's Report (2001) and Adam Smith Report (2009).

For the effective management of change it must be implemented within a change and transformation framework, the findings substantiate this assumption, as many writers Draper (2001), Smith (2009) and Nunes (2009) have all agreed that a structured and well managed approach had been absent in previous attempts at reform. This they surmise may have been the main reason why change and transformation in the Public Service has been for the most part illusory. The most important finding that emerged is that the legislative framework must be a part of the reform agenda Draper (2001) and Smith (2009). Further that the judgements of the Court should be considered in the reform initiative. It was argued that the framework that should be designed for Public Service Human Resource Management should focus on transforming the Public Service Human Resource Management system. In that the fragmented approach which now exists and is highly dysfunctional was seen as a hindrance to effective Human Resource Management.

The conceptual framework proved very useful in that it helped to identify the critical issues/concepts previously mentioned in this chapter. It enabled the obtaining/finding of relevant data to answer the research questions, and to meet the main objectives of the study. These findings as a result of the conceptual framework, assisted in providing answers to explain why and how the phenomenon was occurring. More essentially, the conceptual framework assisted in obtaining relevant findings, in that it highlighted the need to ask questions pertinent to the specific concepts identified in the conceptual framework.

### **5.3 Research Findings Methodological Choices / Data Collection Methods:**

This section of the chapter discusses the findings in relation to the methodology adopted to collect the data. It reflects on how the choice of data collection methods may have impacted on the findings. Unquestionably, data analysis is the most complex and daunting task of any research project, the choice of the research methods adopted can impact positively or negatively on the findings as the process to transform raw materials to findings must engage a systematic process, therefore data collection is most critical.

As the study is geared mainly to discern whether Judicial Review was transforming Human Resource Management practices in the Public Service of Trinidad and Tobago, the choice of

data collection matches the researcher's physiological assumption which is interpretivism. This assumption is subjective in nature and supports the adoption of a qualitative approach to data collection. Also, the researcher's epistemological stance was best suited to the use of qualitative methods, as the study was designed to capture data to obtain a better understanding of the interactional processes as they manifested themselves during the study, a view held by Wainwrights (1979). Further, the researcher was only interested in gaining insights into the assumptions and truth about the reality of the phenomenon under study.

The researcher was not interested in gathering numerical data as would have been the case if quantitative methodologies were utilized in the study. This approach is designed specifically for the identification and description of variables with a view to establishing relationship between them. The quantitative researcher therefore is interested in larger population; therefore the sample is greater as a prerequisite to test validity and reliability and to make generalization Roberts (2004). On the other hand purposive sampling was ideal for the qualitative approach adopted during the study Fisher (2009). Bearing in mind the interpretivist nature of the study the researcher was able to deliberately select her sample to gather expert knowledge from persons who could share their experiences about the phenomenon. In this way the findings from the research which although based on the subjective experiences of the participants, enabled the generating of a hypothesis and theories from the answers given. Also the qualitative approach matched the research paradigm and ontological and epistemological assumptions as previously mentioned Collis and Hussey (2009).

The data collection methods enabled the gathering of useful findings as they permitted a deeper investigation of the phenomenon to understand it fully. The interpretivist methodology facilitated the use of interviews which were conducted with the use of a master questionnaire, specifically structured with open ended questions which allowed the participants' freedom of expression; Collis and Hussey (2009) advocate this approach. The conduct of interviews was therefore the most appropriate method to engage the participants to investigate the phenomenon. This face to face contact also permitted the audiotaping of the answers to the research questions, thus enabling every minute detail of the answers to be heard a second time. This phenomenological (qualitative method) allowed the gathering of contextual relevant data. This approach to data collection empowered the researcher to capture the essence of how Judicial Review is transforming the practice of Human Resource

Management. This method allowed extracting findings that provided rich detailed explanation. This granted full access to the knowledge and meanings that the participant ascribed to what was occurring with respect to the subject matter of the study.

The findings can be deemed to be reliable and valid as they reflect the reality of what was happening in respect of Judicial Review and Public Service Human Resource Management. In conclusion it must be emphasized that in relation to the substantive topic, “*Judicial Review Transforming The Practice of Human Resource Management in The Public Service of Trinidad and Tobago*” that is there is a paucity of literature examined on Judicial Review, Human Resource Management and Change and Transformation as a single study. Writers in the field of Law have written extensively on Judicial Review. Their texts are designed for students and practitioners in the field of Law. Similarly, writers on Human Resource Management and Change and Transformation to a lesser extent have written mainly for students and practitioners in the field of Human Resource Management and Management respectively. It was not possible to obtain one writer or text that dealt specifically with the substantive topic of the study, which rendered it impossible to assess whether the findings repudiated what other authors may have written on the specific topic. This research is novel in this respect and in the absence of relevant writings on the specific topic. The findings were not in conflict with what the respective authors may have written on the respective disciplines. The findings are therefore consistent with the views expressed by the various authors in the relevant subject areas.

#### **5.4 Summary of Findings Impact on Conceptual Framework / Data Collection:**

In terms of the conceptual framework and data finding collection method, the findings obtained provided rich answers to the six (6) ancillary questions. Fundamentally, the answers furnished an in-depth understanding of all of the nuances of Judicial Review and the manner that it has been transforming the practice of Human Resource Management in the Public Service. The conceptual framework although it may be deficient in some areas as discussed earlier in this chapter, the choice of the data collection method, that is the Master Questionnaire, with open ended questions, designed to capture the data compensated for such deficiencies. This approach allowed the participants the freedom to discuss matters which they felt were pertinent and germane to the study. The purposive sample used in the study was ideal, in that it allowed the researcher to conduct interviews with experts in the relevant disciplines of the research. In addition these subject matter experts have experienced working

in the area of Public Law, Public Service Human Resource Management and Organization Change and Transformation.

The participants' valuable knowledge and experience contributed to the understanding of the distinctive nature of Judicial Review and how it was transforming Public Service Human Resource Management. In addition, this in-depth information provided all the relevant facts on the topic. If the researcher had adopted a quantitative approach to the study, this would not have generated the kind of data to fully understand, to make sense, to answer the research questions and meet the objectives of the study. The data collected from a quantitative approach is mainly in statistical form. It was not the intention of the researcher to collect statistical findings like the number of Judicial Review Applications filed over the period 2010-2015 or the number of rulings in the Service Commissions' favour. Such statistical data would not have helped or contributed to answering the research questions or meeting the aims of the study.

The next chapter which is the final one of the thesis will discuss the conclusion drawn as a result of the findings presented in Chapter 4 and an analysis of the findings enunciated in Chapter 5. In drawing conclusions the researcher will examine each of the ancillary questions to show how the findings of each of the 6 questions, contribute to answering the central research question that is, *“Has Judicial been transforming the practice of Public Service Human Resource Management in Trinidad and Tobago?”*

## CHAPTER 6

### Conclusion

#### Introduction

This chapter is the concluding chapter of the thesis. It is divided into Five (5) sections. Section 1 enumerates the answers obtained for the Seven (7) ancillary questions. In so doing an evaluation is undertaken to show how they relate to the literature that underpinned the study. Section 2 provides a critical reflection on the extent to which the substantive, theoretical and methodological aims of the study have been achieved. It also discusses the limitations of the study. The lessons learned from the experience of conducting the study are enunciated. Further, the research design is examined to show if any improvements could have been made to it. Section 3 evaluates the extent to which the answers to the research questions contributed to answering the central research question. Section 4 discusses the issue of future research that might be undertaken in light of the findings of this study. Further there is a discourse, on the manner in which the outcome of the investigation might inform practice and policy in the sphere of Public Service HRM. The final section presents a summary of the contribution of the study to answering the central question and in so doing the researcher reflects on the title of the thesis, to show its connectivity to the entire study. Finally, the contribution to knowledge is illuminated.

#### **6.1 Answers to the Research Questions:**

Change and transformation is inevitable. In order for organizations to stay relevant, there must be a realization that they exist in volatile environments fraught with uncertainty. Organizations and those who are employed in them must change their ways of doing business, their modalities in response to environmental pressures, especially factors outside the organizations for which they have no control. The Public Service of Trinidad and Tobago, Service Commissions and the Service Commissions Department are no different. The question that must be asked is; *“To what extent has Judicial Review been transforming Public Service Human Resource Management practices?”* as they relate to the functions of the Service Commissions of Trinidad and Tobago. The answers to the Seven (7) ancillary questions have provided valuable insights in that regard.

## **6.2 Ancillary Question #1**

### **How does Public Law influence Human Resource Management in the Public Service?**

It is evident that Public Law influences the practice of Human Resource Management in the Public Service of Trinidad and Tobago. It has firmly been established that all Public Authorities are subordinated to the rule of Law (Public Law). Wade and Forsyth (2000) argue that the prime objective of Public Law is to keep the powers of Government institutions like the Service Commissions within their legal bounds. This is achieved through the legislative framework that governs the practice of Public Service Human Resource Management. Over the years several pieces of legislation have been promulgated in an effort to promote good Public Administration the intention of these Laws is to compel Public Authorities like Service Commission to perform their duties in the manner prescribed by the Law.

The most significant of these pieces of legislation is the Judicial Review Act (2000), which gave citizens of Trinidad and Tobago including public officers the right to challenge the decision of Public Bodies in the Court. With the proclamation of this Act there has been a preponderance of Judicial Review Applications against the decisions of the Service Commissions by aggrieved public officers. The judgments of the Courts in Trinidad and Tobago and the Privy Council of London have been impacting on the Human Resource Management practices of the Service Commission and the Service Commission Department. The Courts' influence is evident especially as it relates to the processes adopted by the two (2) entities in their decision making. It should be re-emphasized the Judicial Review is concerned not with the decision itself, but with the decision making process. It is not an appeal from a decision, but a review of the manner in which the decision is made by a public officer exercising administrative or other powers conferred by statute Ramlogan (2007).

It must be borne in mind that Judicial Review is a Public Law remedy to ensure that Public Service decisions like Public Service Human Resource Management decisions are made in accordance with the principles of legality, fairness and rationality and are therefore legally sound. In some instances the Courts will only quash a decision if it is ultra vires and on those occasions it has resubmitted the matter for the reconsideration of the Commission.

It has already been discussed that the Constitution of the Republic of Trinidad and Tobago established the Service Commissions and empowers them with their constitutional responsibility to make appointment, promotion, transfer, removal and exercise disciplinary control over public officers. Also every Law that forms the legislative framework for the

practice of Public Service Human Resource Management has its genesis in Public Law. For example, the FOIA (2000) is another creation of Public Law that sets the parameter for the practice of Human Resource Management in the Public Service. Apart from the Service Commission, Public Law also established several Public Service Organizations, Government Ministries and Departments. It also defines their roles, functions and responsibilities. It also establishes the Public Service and outlines the manner in which public officers should discharge their functions. In as much as Public Service Human Resource practitioners are public officers, they are subjected to Public Law in the discharge of their Human Resource Management function. If Service Commissions or any Human Resource Management practitioner performs a public duty (their Human Resource function) in breach of the Law, legislative framework their action is subjectable to Judicial Review and the supervision of the Court.

### **6.3 Second Ancillary Question:**

This brings us to the answer to the Second (2) question; “*What amendment should be made to the legislative framework that governs the practice of Public Service Human Resource Management?*” The answer confirms that not only should the legislative framework be amended, but it should be reviewed, as it has been in existence for the past 50 years. It is outdated, archaic and cannot promote Strategic Contemporary Human Resource Management, which is critical for the transformation of the Public Service. Further, in light of the judgements of the Courts which have been reinforcing that Service Commissions and HR practitioners must make decisions within their legal boundaries, that is, they must obey the Law that underpinned their practice the legislative framework must be reviewed. It has only been amended in an ‘ad hoc’ manner on the basis of emerging nuances of the Public Service. What is required at this juncture is a holistic review of the Public Service Commissions Regulations and the Civil Service Regulations, which are the two (2) major pieces of Regulation for the management of Human Resource in the Public Service.

The Public Service Regulations which sets the parameter for the exercise of the function of the Service Commissions with the exception of the Police Service Commissions should be specifically reviewed to address the issues of promotions and appointments to the Public Service. In so doing the focus should be on meritocracy as the main criteria for appointment and promotion rather than the heavy reliance on seniority as now prevails. It can be argued that the Regulations already facilitate the making of appointments and promotions by merit: *Ashford Sankar and others v the Public Service Commission, Hermia Tyson-Cuffie v the*

Public Service Commission, [2011 UKPC27] *Gopichand Ganga and others v Commissioner of Police and the Police Service Commissions* [2011 UKPC28]. The Courts made it abundantly clear that the Commissions can utilize assessment centre methodologies and a point system, to assess the merit of officers for promotion. Further, in reviewing the legislation cognisance should be taken of the learning's and lessons from the Judicial Review Judgments. The revised legislation should also make provision for an internal Ombudsman or other relevant alternative dispute resolution mechanisms to hear the complaint of aggrieved officers. This would provide an avenue for them to address their complaints a sort of Alternative remedy as envisaged by the Judicial Review Act. This approach will allow a form of redress and they might see the Court and Judicial Review as a last resort.

It is interesting to note that while the answer indicates that the legislative framework should be amended to include an expanded role for the Public Service Appeal Board, in contrast it suggested a diminished role for Service Commissions in Human Resource Management. With respect to the Public Service Appeal Board, at present it is only empowered to hear appeals in respect of decisions arising from disciplinary actions of the Commissions. The answer intimates that it should also hear appeals in relation to all other decisions made by the Service Commissions. This suggestion should serve as another mechanism for aggrieved officers, thereby lessening their reliance on the Courts for redress. On the other hand, the answer clearly states that Service Commissions should be modernised like the Police Service Commission. In this regard, their role should be reduced to that of policy formulation, oversight, monitoring and evaluation. The Commissions should be restricted to the making of appointments to Senior Executive positions only that is those requiring consultation with the Prime Minister in accordance with the Constitution.

#### **6.4 Ancillary Question #3**

##### **What really is the Role of the Court in the Practice of Public Service Human Resource Management?**

Undoubtedly, Question 3 has been answered. The role of the Court in the practice of Public Service Human Resource Management has been comprehensively elucidated. The Court has supervisory jurisdiction in respect of Human Resource Management decisions made in the Public Service. This has distinctly been revealed due to the fact that Public Law empowers the Court to exercise judicial control over Public Bodies. This means that every action by a Government official must be carried out according to Law. Every action has a legal pedigree



therefore it stands to reason that Human Resource Management decision taken by Human Resource Management practitioners in the performance of their duties have a legal dimension attached to them. If a person or a public officer is affected by a decision of a Public Body, he or she can resort to the Court by way of Judicial Review to seek redress. Further, it has already been explained that the practice of Human Resource Management in the Public Service is conducted within a legal framework which defines the Rules and Regulations for its operationalization. While the Court as a general rule cannot intervene with respect to the discretionary powers to the Commissions which have been conferred upon them by the Constitution of the Republic of Trinidad and Tobago, the Court still has a role to prevent the abuse of such discretionary power Wade and Forsyth (2000).

Wade and Forsyth (2000) further argue that the role of Law has implicit meaning in the sphere of Public Administration. It dictates that everything must be done in accordance with stature. The Law emphasizes that Executive power must be executed within proper guidelines both as to substance and as to procedure. It can be summarized that the (Judiciary), the Courts therefore have a responsibility to ensure that Public Bodies and public officers like Service Commissions and Human Resource management practitioners and senior public officers comply with the Law. The Courts' role is that of Judicial control to oversee executive action to ensure that such action does not breach the Law. The Courts also prevent Public Bodies from acting in excess of their jurisdiction. By way of Judicial Review the Courts will determine the legality of Human Resource Management decisions whether they are made within the limits of their Law. In this way the Courts exercise their inherent power to determine whether Human Resource Management decisions are legal or not. Accordingly, the Court passes judgement on the merits of the action of Public Authorities, as it is a recognizable fact in Law that every power has legal limits. If the Court finds that the power has been exercised oppressively or unreasonably or that there is a procedural failing, the action may be condemned as unlawful Wade and Forsyth (2004).

#### **6.5 Ancillary Question #4**

##### **Have the Judicial Review Judgements forced the Service Commissions and the Service Commissions Department to examine their Human Resource Management process/practices?**

As a consequence of the role ascribed to the Court the answer to the fourth research question confirms that the Service Commissions and the Service Commissions Department have been examining their Human Resource Management processes and practices. To this end the entities have been reviewing their precedents and policies some of which have been in existence for over 40 years, to determine whether they are in conflict with the judgements of the Courts. The Public Service Commission has also established a monitoring and evaluation unit in 2006 to monitor and evaluate the performance of Permanent Secretaries and Heads of Departments with respect to the functions delegated to them. This is to ensure compliance with the Regulations. Further, a complaint unit was also set up in the Service Commissions Department to treat with representations and complaints made by public officers. As explained in Chapter 4 the effectiveness of this unit has been the cause of much discussion and its efficiency has been called into question in several quarters of the Public Service.

More significantly the Teaching Service Commission and the Public Service Commission have been reviewing their Regulations. In the case of the Public Service Commission a consultant has been engaged to undertake this exercise. This consultant is also reviewing the Employer's Regulations which is the Civil Service Regulations. At the time of writing this paper, that exercise had not yet been completed. The introduction of Advanced Information Communication Technology (ICT) methodologies has enabled the Commissions to more effectively treat with officers in light of the obligation placed on the Service Commissions and the Service Commissions Department in accordance with the FOIA (2000), also the judgement of *Favianna Gajadhar v the Public Service Commission* (Civil Appeal No, P170 of 2012). The Commissions have been forced to engage the use of its Internal Communication Unit to communicate with officers by way of the media to ensure that whenever it proposes to take an action that will adversely affect them, and they can be informed in advance if the final decision.

## **6.6 Ancillary Question #5**

### **What changes and transformation is required in light of Judicial Review Judgements?**

The changes in processes and practices bring us to the answer to the fifth question which is varied. The answer to this question affirms that there should be change and transformation of Public Service Human Resource Management in light of the judgement of the Courts and the learnings and lessons there from. Also, Human Resource Management transformation is critical if the Public Service is to be reformed. If the change and transformation is to occur it must be managed and implemented within a change and transformation framework to permit better coordination of the initiative. A view also expressed by Draper (2001), Smyth (2009) and the Ministry of Public Administration's Green Paper (2011). Further, the role of leadership is paramount to change and transformation, the Prime Minister and the various Chairmen of the Service Commissions must spearhead this intervention and there must be collaboration with other stakeholders. As stated, previously there must be a general revision of the legislative framework in order to promote Contemporary Human Resource Management. Also the creation of an appropriate Human Resource philosophy to guide Human Resource Management in the Public Service is a prerequisite to inform the review of the legislative framework. The answer to this question also points to the modernisation of Service Commissions as discussed previously in Chapter 5.

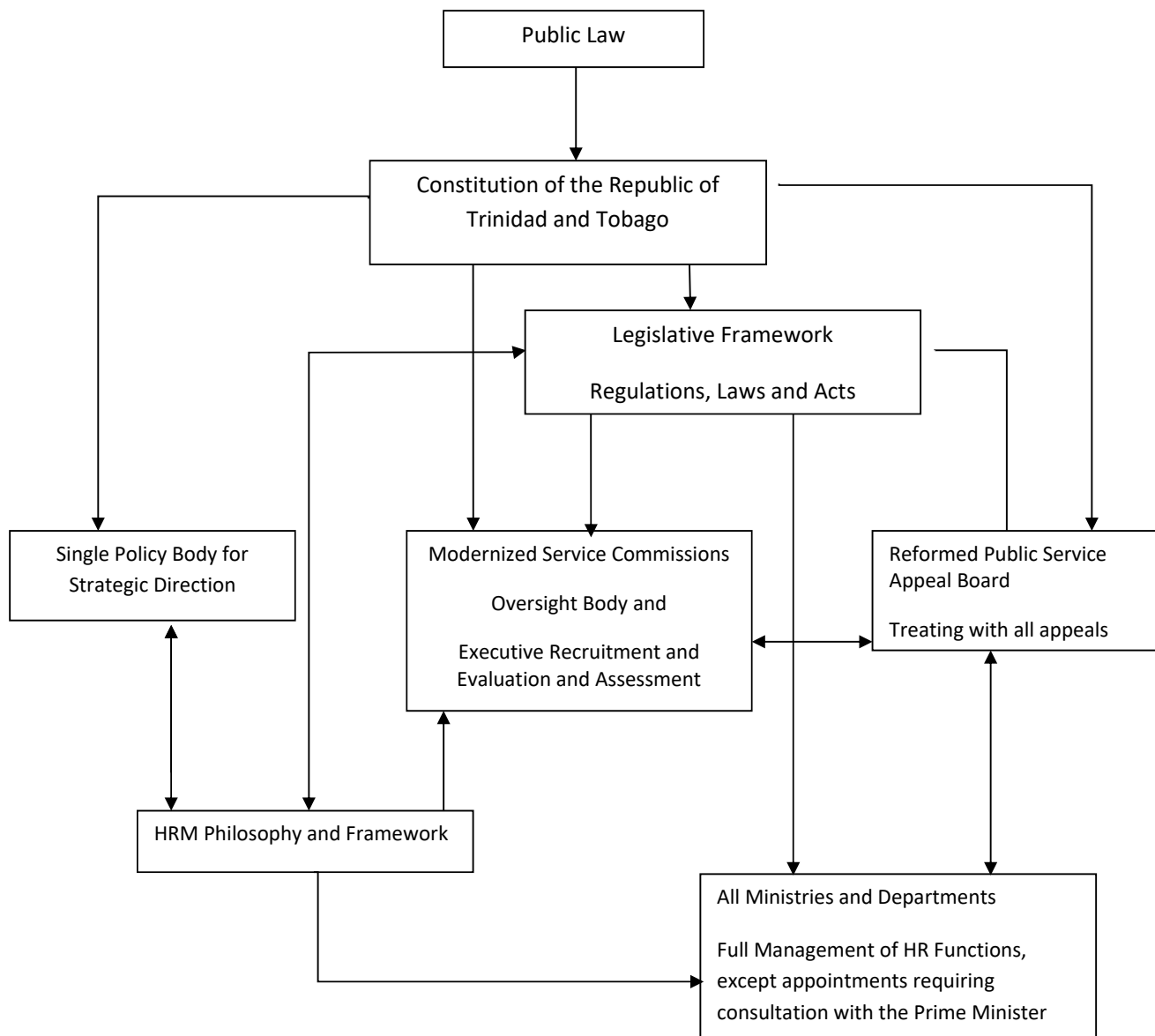
The Service Commissions Department should embark on a strategy of continuous training not only for the present HR practitioners but also for new entrants in the field. The details of this approach have already been elucidated nevertheless; this training program should address gaps in the knowledge of HR practitioners in respect of the Laws governing the practice so as to avoid the risk of challenge with respect to their decisions. This should contribute to improving the quality of decision making and the processes by which the decisions are made. Also, promote compliance with the Law. The answer also indicates that Service Commissions need to have a partnership with the courts. This approach is supported by Woolf et al (2007) who advised that there should be a partnership between Public Authorities and the Courts. He argued that if the spirit of the Court's judgement is to be embraced and translated into administrative practice, the Courts need to show sensitivity to the task of officials in their particular context. It is also important for the Court to articulate principles in such a way as to provide meaningful guidance to public officials.

### **6.7 Ancillary Question #6**

#### **What strategic model should be used for the practice of Human Resource Management in the Public Service?**

The answer to the sixth question is varied. The most significant part of the answer is that the fragmented dysfunctional nature of the practice of the Human Resource Management in the Public Service Management needs urgent attention. There should be a single body responsible for Human Resource Management in the Public Service, as this would lead to a cohesive approach to the management of people in the Public Service. The fragmented approach has contributed to many deficiencies in the Human Resource Management system. Further, there should be a Human Resource philosophy/framework that would contribute or set the foundation for Contemporary Human Resource Management. This philosophy/framework could be used as a guide to inform the review of the legislation that underpinned Human Resource Management. There should be an alignment of the legislative framework with the Human Resource framework/philosophy. In reviewing the legislation the Constitution should be amended after the necessary consultation to transform the Service Commissions like the Police Service Commissions as discussed in Chapter 4. Also, an appropriate amendment has to be made to the Constitution to effect changes to the structure and mandate of the Public Service Appeal Board so it can be deemed a comprehensive appeal mechanism.

The model suggests that a flexible approach should be taken to manage people in the service and to cater for the growing jurisprudence in light of the judgements of the Courts. On the basis of the answers provided in relation to the elements of the model, and the relationship of each element to the other for the effective practice of Public Service Human Resource Management, the model depicted as Figure 20 has been designed.



**Figure 20: Elements of the Predictive Strategic Model for the practice of Human Resource Management in the Public Service of Trinidad and Tobago (Service Commissions Functions)**

*Source: Researcher's Model*

This model relates to the Human Resource Management functions of the Service Commissions and the Service Commissions Department. It points to a flexible approach to the management of people. If adopted, it should facilitate the practice of Contemporary Human Resource Management with respect to the Service Commissions functions.

Unequivocally, the answer to the seventh question; “*Is an understanding of Public Law crucial to the practice of Public Service Human Resource Management?*” is in the affirmative. It is paramount that those engaged in managing people in the Public Service should know that Public Law sets the parameter for the exercise of their functions and gives them the power to do so. Senior managers and Human Resource Management practitioners must know that they should have a working knowledge of the pieces of legislation that govern Human Resource Management practices. If there is an absence of such knowledge or ignorance of the Law and implications of their actions, they would be ill-equipped to discharge their Human Resource functions. Also they would not know how to respond to actual or potential threats of Judicial Review, as they would not be aware of what precaution they should take to avoid their decisions being challenged in the Courts. This view is supported by Woolf et al (2007), who argued that Public Administrators must be aware that all Public Bodies are subjected to the rule of Law and that their actions as they discharge their Public Service function, is subjected to the rule of Law and Judicial Review.

Human Resource Management practitioners and senior managers engaged in carrying out Human Resource functions are more likely to carry out the Law if they understand it and the implication of not doing so. In most Public Service organizations the knowledge of the Law that informs the practice of Human Resource Management is very absent. The answer also suggests that Service Commissions and the Service Commissions Department in partnership with the Public Service Academy of the Ministry of Public Administration and the Office of the Prime Minister should embark on systematic training of all Senior Officials including Permanent Secretaries and Heads of Departments. This is to ensure that they have a good grasp of the Law relating to the management of people in the Public Service. This should contribute to the clarification of their roles and responsibilities and reduce the risk of administrative error, and by extension Judicial Review applications. Human Resource Management practitioners and senior managers managing people must understand that they also cannot formulate policy contrary to Law. They must also understand that they do not have unfettered power as power always has limits. They must be aware that in accordance with Public Law the Courts will enforce those limits even when they exercise their

discretionary powers these must be carried out within the Law. That is they must act lawfully, reasonably and fairly.

Human Resource Management practitioners and senior managers must realize that the power which is entrusted to them is held in trust to be used for the purpose for which it is intended Fordham (2004). Arguably, if Human Resource Management practitioners and senior managers do not have a good understanding of Public Law and the various pieces of legislation that inform the practice of Human Resource Management in the Public Service, they may unknowingly breach the Laws which can justify the Courts' intervention. These officers have a duty to understand the nature of their powers in order to consider how that power should be exercised. They must understand that if they are discharging a public function they must act in the public interest. Also, as decision makers Public Law demands that they do not compromise their function or the function of another Public body by fettering their powers with irrelevant consideration.

#### **6.8 Reflection on the Theoretical and Methodological Aim of the Study:**

This section reflects on the theoretical and methodological aim of the study and discusses to what extent they have been achieved. The theoretical aim of the study which emanated from the constructivism epistemology was to make sense and gain insights as to whether Judicial Review was transforming the practice of Human Resource Management in Trinidad and Tobago. The aim was also to examine the role of the Court in that regard. The researcher's phenomenological and symbolic interactionism stance allowed the researcher being a practitioner in the field of Human Resource Management to gather knowledge and build theory from the data findings and answers to the research questions. On the basis of these findings and answers and the researcher's ontological, epistemological and axiological assumption, it was possible to discern the relevant facts associated with Judicial Review and the manner in which it has been impacting on the practice of Human Resource Management.

The Grounded Theory Method adopted allowed the collection of rich value laden data from the participants who were useful sources of knowledge. These were the subject matter experts who have been working in the field of Public Law and Human Resource Management. Based on the answers obtained from the participants' perspectives, it was able to generate hypotheses from the answers provided in the interviews and the narratives contained in the

judgements. Two (2) of the hypotheses generated as a result of this process were (1) *An understanding of Public Law is crucial to the practice of Public Service Human Resource Management* and (2) *Judicial Review has been transforming Public Service Human Resource Management*. As qualitative research does not test hypotheses it can be reasonably argued that these hypotheses are indeed theories as they represent the beliefs and explanations of what is happening in relation to the phenomenon under investigation. The use of Grounded theory allowed the building of good theories that are true to the context, reality and the processes that led to their production.

As an interpretivist researcher an open approach was taken in the conduct of the study thereby allowing theories to emerge from the research. This was possible as the researcher understood the complexities of this particular research and was able to get a full understanding of how Judicial Review was impacting Human Resource Management practices. This is practitioner's research and the methods used in the conduct of the study were not methodologically rigid. The researcher's shared understanding of the phenomenon made it easy to reflect and interpret the views expressed by the participants, with the help of grounded theory the theoretical aims of the study was achieved. Good theories arose from the explicit and particular circumstances expressed and the interrogation of the data collected, Glazer and Strauss (1987) are supportive of this approach. The methodological aim of the study using qualitative methods was to gain tacit knowledge from interaction with participants to gather relevant information.

The case study methodology provided answers to the question on what was happening in relation to Judicial Review, as well as why that was happening, and how it was impacting Human Resource Management practices. This approach allowed the researcher to investigate a phenomenon that had not been investigated before. This enabled the researcher to sample purposively in order to gather much data as possible by a process of induction, the data collected was analysed to make sense of it to explain, and describe the manner in which Judicial Review was transforming Human Resource Management practices. Also, as mentioned previously, theories were grounded in the data collected as there was no prior theory to explain this phenomenon. The case study approach used was adopted as the researcher's aim was to understand Judicial Review and how it relates to the Service Commissions and the Service Commissions Department. This method supported the others utilised in the study and matches the interpretivist paradigm. The exploratory case approach was ideal in that in the absence of theory and a deficient body of knowledge, in relation to



Judicial Review and its impact on Human Resource Management in the Public Service, it allowed the generation of new knowledge and the creation of theories unique to the phenomenon under investigation. By conducting this exploratory case study, it was possible to interview experts on this subject. This allowed flexibility, in that the researcher also used Purposive sampling to gather data from expert participants.

The use of Hermeneutics as a methodology permitted the researcher to focus on the interpretation and understanding the texts in the judgements of the Court. Hermeneutics is applied to research in Law to understand the reasons behind the judgements and statutes considered during the study. This was particularly useful to discern the lessons/learnings from the judgement to determine whether they were actually informing Human Resource Management processes and practices in the Service Commissions in the Service Commissions Department. The researcher in examining the narratives in the judgement became an interpreter adopting a reiterative process to fully understand the judgement. Although Hermeneutics is not a widely used methodology in business research, it was essential to utilise it as the very legal aspect of the enquiry dictated its use to treat with the legal dimension.

#### **6.9 Limitations/Delimitations of the study:**

This study was designed to evaluate whether Judicial Review has been transforming the practice of Public Service Human Resource Management. To achieve this objective, seven ancillary questions were formulated to gather data so that the findings could be assessed to determine whether this was actually happening. The seven ancillary questions have already been fully illuminated early in this chapter. The study examined Judicial Review in relation to Human Resource Management practices of the Service Commissions and the Service Commissions Department. The focus of the study did not extent to Human Resource Management practices of other Human Resource Management Agencies in the Public Service as the number of Judicial Review applications filed against those agencies is miniscule. Service Commissions have been the object of the majority of Judicial Review applications filed by public officers due to the very nature of the Human Resource functions of these entities.

As the research focused on Judicial Review applications and Judgements in respect of the Service Commissions and the Service Commissions Department only participants familiar with that phenomenon were interviewed to get their insights. It was not expedient to extend the purposive sample to include Human Resource Management practitioners in other agencies who could not have added any vital information to the study. Also, Attorneys at Law who have experience in Public Law and have represented the Commissions or have represented clients against the Commissions have been interviewed. It was not necessary to interview Attorneys at Law with no knowledge of this phenomenon. While it can be argued that the views of the participants omitted from the study may have generated some data, it would not have been the value rich data as provided by the expert participants who had knowledge of the phenomenon in respect of the Service Commission and the Service Commission Department. Further, the findings of the research indicated that the Service Commissions needed to be reformed if they have to remain relevant to Human Resource Management in the Public Service. Details with respect to this matter have already been enunciated in the study. The matter of the modernization of Service Commissions was not the focus of the study and therefore heavy emphasis was not placed on that emergent issue although it pervaded several of the discourses with the participant.

#### **6.10 Lessons learned from the study:**

This study which began some five (5) years ago has provided cogent insight into the whole concept of Judicial Review, in that the subject is related to Public Law and is reserved for study in that sphere. The researcher is a Human Resource Management practitioner and is quite familiar with Human Resource Management theories, construct framework and model, therefore understanding and interpreting theories and models in that field and that of Organizational Development was a much easier task than interpreting narratives in legal documents in relation to Judicial Review judgements. What proved useful throughout the researcher's engagement with the legal aspect of the research is the fact that the researcher being a former head of the Service Commissions Department, worked in a quasi-judicial environment, and has some knowledge and experience from interacting and learning from Senior Counsel in Public Law. This interaction contributed to the acquisition of some competencies to interpret and understand the Law.

Moreover, the researcher was able to draw on the knowledge gained from her undergraduate and postgraduate studies where she pursued as part of her elective, courses in Business Law, Employment Law, Contract Law, Employment and Administrative Law. The knowledge gained from these courses was useful in understanding the judicial judgement and to discern the learnings and to assess the manner in which they was impacting the practice of Human Resource Management in relation to the Service Commission. Although the researcher had been exposed to Judicial Review Judgements in the past fifteen (15) years, the researcher never interrogate the judgements as had to be done in order to do this research. Generally, the judgements would have been taken at face value in terms of whether the Service Commissions had won or had lost a matter, and in most instances the judgements would not have been read in their entirety to follow the reasoning behind the judgements. This was left to the Attorneys at Law of the organization to analyse the judgements and to advise the technical staff wherever the organization may have been in breach or otherwise of the Law. During the conduct of the research in order to pose relevant questions, especially to Attorneys at Law, it was imperative that the researcher had a fairly good understanding of the issues outlined in each case to make sense of the judgements.

#### **6.11 Answers to ancillary research question/contribution to answering central research question:**

This section of the chapter proffers answers to the central research question which is “*Has Judicial Review been transforming the practice of Human Resource Management in the Public Service of Trinidad and Tobago?*” An evaluation of the answers to the seven ancillary questions will be discussed to determine to what extent they have contributed to answering the central research question. In assessing the contribution of the answers to the seven ancillary research questions, emphasis will be placed on the degree of certainty and generalisability of the answers provided.

The answer to the first ancillary question affirmed that Public Law influence the practice of Human Resource Management in the Public Service; in that it established legislative framework that governs the practice of Human Resource Management in the Public Service. It is through Public Law that Public Organizations like the Service Commissions and the Service Commissions Department and the general Public Service have been constituted. The several other pieces of legislation like the EOA (2000), the FOIA (2000) and more

importantly the Judicial Review Act of (2000) are all creations of Public Law. Moreover, Human Resource Management practitioners are duty bound to work in accordance with the tenets of the Law. It was established that due to the Judicial Review Act the actions of public officials like Human Resource Management practitioners are subjected to the Court as they perform a public function. Furthermore, since the promulgation of the Judicial Act (2000), there has been a preponderance of Judicial Review Applications by public officers aggrieved with the Human Resource decisions of the Service Commissions. The judgements in respect of those decisions have reinforced the fact that Public Law is transforming Human Resource Management practices, in that in many instances the Courts have remitted matters to the Commissions for re-examination of their decision making processes and their decisions in light of breaches of the Laws identified.

In light of this revelation the answer to the second ancillary question highlights that the legislative framework that governs Human Resource Management should not only be amended, it should be holistically reviewed. This should be undertaken in relation to the lessons and learnings from the judgements of the Court and to allow a more flexible approach to the management of people, thereby promoting Contemporary Human Resource Management. This should facilitate a general modernization of the Public Service as it has been recognized that Human Resource Management reform is critical to the whole Public Service reform agenda. It has also been acknowledged that the revision of the legislative framework as discussed in chapter 4 is being driven to some extent by the number of Judicial Review applications and resulting judgements in the past fifteen (15) years. Undoubtedly, the answer to this question establishes a link to the central research question.

The answer to the third question aids in answering the central research question as it confirms that the Courts have been playing a significant role in the practice of Human Resource Management in the Public Service and by extension has been transforming the practice. The answer to this ancillary question clearly illuminates that the Courts' role is that of judicial supervision, in that they provide oversight of administrative action by way of Judicial Review. This means that the Courts are charged with the responsibility of adjudicating upon the manner of the exercise of public power. The Court ensures that Public Bodies like Service Commissions make decisions within the Law and that such decisions not only observes the principles of natural justice, but are legal, rational and procedurally correct in terms of the process employed in arriving at such decisions. The empirical evidence gathered in relation to the answer to this question affirms without a doubt that the role of the Court by way of

Judicial Review is transforming the practice of Human Resource Management in the Public Service.

It has been explicitly explained that in light of the Court judgements that the Service Commissions and the Service Commissions Department have been reviewing not only their processes and practices, but their precedents and policies which have been in existence for several years. It has been discerned that the Commissions have embarked on several initiatives in light of the Courts' ruling; chief among them is that they have commissioned a review of the Public Service Regulations. The review is expected to take cognisance of the learnings from the judgements so that the Regulations can promote Contemporary Human Resource Management. Certainly, this illustrates the answer to the fourth ancillary question shows that Judicial Review has been transforming Human Resource Management practices in the Public Service.

The answer to the fifth ancillary question distinctively signifies that change and transformation are required in light of the Judicial Review judgements. It is of interest to note that the major change that was preferred was the modernisation of Service Commissions as several concerns were expressed about their continued relevance to Public Service Human Resource Management. As mentioned earlier, this is not the focus of the study and should inform future research. It is noteworthy however that while the Judicial Review Judgements have not made direct reference to that fact; it has successfully argued that the judgements speak to improvements that can be implemented in relation to the Human Resource Management functions of the Commissions. The several matters/issues that should be addressed in a change and transformation agenda for Human Resource Management have been exhaustibly illuminated in previous chapters. The answers given in relation to the question about change and transformation in light of the Judicial Review Judgements state categorically that Judicial Review have been transforming Human Resource Management practices in the Public Service.

Undoubtedly, the answer to the sixth question identifies the strategic model that should be adopted in light of the Judicial Review judgements it also state of imperatives about the change and transformation that are required to address gaps in the present Human Resource Management systems and practices. The answer spoke to the elements of the strategic model depicted at (Figure 19); Chapter 5. One of the major elements of that model is that it should be it was informed by an overarching Public Law framework which gives credence to the

truism of the critical role Public Law plays in the practice of Public Service Human Resource Management. Another significant element of the model is that although it speaks to a diminished role for the Commissions, it advocates that they should be given the role of making policies, monitoring and evaluation of the performance of Permanent Secretaries and Heads of Departments who should be given greater responsibility for the management of people. Further, the model suggests an expanded role for the Public Service Appeal Board. It is envisaged that this should provide an avenue to hear appeals with respect to all Human Resource Management decisions thus providing an alternative mechanism to treat with officers' complaints. This approach is complimentary to the tenets of the Judicial Review Act (2000). Undeniably, the answer to this question shows that Judicial Review is transforming Human Resource Management practices in the Public Service.

This focuses our attention to the seventh and last ancillary question. The answer attests to the fact that an understanding of Public Law is crucial to the practice of Human Resource Management in the Public Service. In as much as there is recognition that senior public officials and Human Resource Management practitioners must have an understanding and working knowledge of the Laws that inform Human Resource Management practices. The Service Commissions and the Service Commissions Department in particular have been engaging legal officers very early in their decision making process, in addition the judgements of the Courts speak to a paucity of knowledge among senior officials and Human Resource Management practitioners about basic legal principles underpinning Human Resource functions in the Public Service. The absence of such knowledge has been suggested as one of the main reasons for the growing frustration of public officers with their HR decisions and hence many of them have resorted to the Courts to seek redress by way of Judicial Review. Due to the judgements of the Court, the answer to this question confirms the need for an urgent Public Education Training Intervention/Knowledge Management Scheme aimed at building capacity among senior officials and Human Resource Management practitioners in order that they can be imbued with the requisite competencies to have a better appreciation/understanding of the legislative framework and the various pieces of legislation that govern Public Service Human Resource Management. The answer to this final question unequivocally exemplifies that Judicial Review is transforming the practice of Human Resource Management in the Public Service.

When one carefully examines the answers to the seven ancillary questions, it is abundantly evident that the Judicial Review Act (2000) has been transforming the practice of Public

Service Human Resource Management. It should be restated that prior to the promulgation of that Act the Constitution of Trinidad and Tobago provided for an 'Ouster Clause' excluding the jurisdiction of the Courts to enquire into the validity of any decision made by Service Commissions. However, it was later established that notwithstanding the 'Ouster Clause' the courts subsequently ruled that the 'Ouster Clause' did not limit the powers of the Court where the Commission acted ultra vires of the Law. Even then, the numbers of public officers seeking redress from the Courts were miniscule. Due to the increase in the number of officers who now file Judicial Review applications and the resultant judgements, the Courts by their inherent judicial control due to Judicial Review have been issuing rulings which have been causing the Commissions to reconsider their decision making process and decisions. Further, the Commissions have been making adjustments and amendments in their policies, precedents, and systems and general procedures and practices in light of these judgements, a clear indication of the effect Judicial Review has been having on Human Resource Management in the Public Service.

#### **6.12 Implications of Future Research:**

The purpose of this study was to ascertain to what extent Judicial Review has been transforming the practice of Public Service Human Resource Management. The particular focus was the impact of Judicial Review on the functions of the Service Commissions and the Service Commissions Department. The investigation undoubtedly revealed that Judicial Review has been transforming the Human Resource Management functions/practices of those organizations. The findings revealed that there is a high level of disenchantment with the Service Commissions in Trinidad and Tobago. Concerns have been expressed about their usefulness for many years, but during the discourse with participants, they intimated that there was a general view that they should be modernized. Among the reasons advanced for this opinion was the fact that there was consensus that they were the major contributor to delays, mismanagement, misadministration and a hindrance to effective Human Resource Management and Public Service Reformation.

In addition, there was unison that due to the centralised approach to Human Resource Management, of which the Service Commissions were a part, there were resultant delays as they are ill-equipped in relation to structure, competence and capacity to treat with Human Resource issues in respect of over 86,000 public officers. It was unanimous that the Service

Commissions should be modernised in a similar manner as the Police Service Commission which was transformed in 2006. The present Police Service Commission has been reduced to performing functions of monitoring, oversight and evaluation; also they are responsible for appointing only the Commissioner and Deputy Commissioner of Police and all matters incidental to that appointment. In addition they act as an appellant body with respect to decisions made by the Commissioner of Police. While issues relating to whether Service Commissions should be transformed or abolished as stated earlier was not one of the objectives of the study, these findings are instrumental and signal the need for further research in that regard. This study can therefore be a catalyst for future research. If such a research is undertaken, it will provide empirical evidence on whether Service Commissions should be abolished as some have argued or whether they should be modernised as the findings from this study suggests. Whatever the outcome of such a study it should provide valuable information and contribute to a policy direction in that regard.

### **6.13 Implication of the Study for Practice and Policy:**

To what extent do research findings inform practice and policy is always debatable, especially in instances when the research is not commissioned by a particular organization which may not have a vested interest in it. However, it can be successfully argued that the findings from this study can inform the formulation of policy innovation and improvement in Human Resource Management practices. In order to proffer any suggestions/recommendation with respect to the formulation of policy or improvement in practice, it is imperative that the hypothesis and theories that emerged from the study be restated:

*Hypothesis: An understanding of Public Law is crucial to the practice of Public Service Human Resource Management.*

*Theory #1 - Public Law underpins Human Resource Management practices in the Public Service or conversely, Public Law provides the overarching framework for the practice of Human Resource Management*

*Theory #2 -Prescriptive Human Resource Management models cannot delineate Human Resource Management practices for the Public Service due to the legislative framework that governs Public Service Human Resource Management.*



From a perusal of the findings and analysis as detailed in Chapters 4 and 5, it is clearly evident that Public Law plays a significant role in Public Service Human Resource Management. Also, it has been established that an understanding of Public Law is crucial to the practice of Public Service Human Resource Management. Moreover, the hypothesis and theory Number 1 make it manifestly clear that senior public officials and Human Resource Management practitioners should have a working knowledge of the legislative framework and other Public Law legislation that inform the practice. The researcher suggests that as part of the Government's Training Policy for the Public Service, a program of training should be developed to equip senior officials and HR Practitioners with the requisite knowledge and competences to know and understand the legislative framework and other Public Law legislation relevant to the practice of Human Resource Management. This program of training should specifically be geared to train officers about their roles and functions as defined by the Law. This would aid in the development of a community of practice which can be standardized across the Public Service. The training programs should be facilitated by Attorneys at Law who have an understanding of Public Law and competent senior officials trained in Public Service Human Resource Management, in particular, senior officials and Human Resource Management practitioners should be exposed to training with respect to the Judicial Review Act (2000) and its attendant consequences. This approach is supported by eminent Jurist Fordham (2004).

In addition whether the Service Commissions are abolished or modernised, it is the researcher's view that in instances when persons are appointed to the Commissions, they should undergo some form of orientation/training to apprise them of the Laws impacting on their functions. This should result in the making of good Human Resource Management decisions that do not offend the Law. Furthermore, in selecting persons as members of the Commission, the Constitution should be amended to ensure that the Commissions comprise of persons with relevant certification in Human Resource Management, Public Law, Management and relevant Public Service experience. This should impact positively in reducing the number of Judicial Review applications.

In terms of Theory number 2, *Prescriptive Human Resource Management models cannot delineate Human Resource Management practices for the Public Service due to the legislative framework that governs Public Service Human Resource Management.* It is evident from the discourse that Human Resource Management theories while they speak about recruitment, selection, promotion and discipline, such issues in the Private Sector are

carried out in the absence of a legislative framework defined by Public Law. Private Sector Human Resource Managers have more flexibility to make decisions in relation to the management of people. It stands to reason that this differentiates Private Sector Human Resource Management practices from Public Service Human Resource Management. While theorists like Armstrong (2007) and Storey (2010) advocate models for Human Resource Management and speak of best practice in Human Resource Management, there is no mention of a legislative framework or pieces of Public Law legislation that informs or inhibits the systems, procedures and practice as postulated by these renowned Human Resource Management theorists. It is with this in mind that the model designed at Figure 19, which is an integrated model for the practice of Human Resource Management in the Public Service of Trinidad and Tobago is being proposed as a solution to some of the issues and nuances of Human Resource Management in the Public Service. This model recognizes the importance of Public Law and the various pieces of Public Law legislation that inform Human Resource Management. They are all incorporated in the design of the model.

This model also addresses the issue of an alternative dispute resolution mechanism within the Service Commission Department to treat with the complaints of officers. It also suggests an expanded role for the Public Service Appeal Board to enable it to hear all appeals. Other details with respect to the model have been clearly elucidated in Chapter 5. This model can be beneficial in guiding and shaping Human Resource Management practices in the Public Service. The central point of the model is that once senior officers understand the implication of using the model and they are trained to have knowledge of the Law that underpins Human Resource practices, they should be able to make good decisions. The use of the model will guide Human Resource Management practices. Essentially, it is being recommended that Human Resource Management practitioners and senior officials engaged in managing people should discharge their functions with this model in mind, as it emphasises compliance with the legislative framework and Public Law legislation guiding Human Resource Management practices.

Whatever the potential benefits that might redound from this model in relation to Public Service Human Resource Management, it requires changes to be made to the existing structure and function of the Service Commissions, Service Commissions Department and the Public Service Appeal Board. More importantly it involves changes in behaviour and attitude in the officers involved in managing people. This signals that Public Service Organizations will have to undergo a sort of Cultural Revolution or paradigm shift. The training

recommended should contribute to better behaviours and attitudes and building the required competences. The researcher envisages that there might be some level of resistance from officers who may not want to submit themselves for the requisite training, to alleviate this, training should be made mandatory. These initiatives as recommended speak to Public Service reform which must be implemented within a change and transformation framework as recommended by authors like, Carnall (2003), Senior and Flemming (2006), Cummings and Worley (2015) and Burnes (2014). This approach necessitates that the process be driven by the Prime Minister providing strategic leadership with the collaboration of the various Chairmen of the Commissions. The importance of communication and stakeholder consultations would be essential to the success of this initiative. There should be a proper system of monitoring and feedback to key stakeholders every step of the change process. It is also necessary to consult with the Opposition as the Constitution of the Republic of Trinidad and Tobago will have to be amended to give effect to some of these proposals. Finally the success and failures of past initiatives should be examined to inform the appropriate approaches that should be adopted for these initiatives.

#### **6.14 Contribution to Knowledge**

This research shows that HRM as practiced in the Public Service is unique and not like that practiced in Private Sector Organizations. Further, it explains that Public Service Human Resource Management is underpinned by its legislative framework which has its genesis in Public Law. It has established that Public Service Human Resource Management is practiced in a very litigious environment where the Courts of Trinidad and Tobago and the Privy Council of London play a major role due to the Judicial Review Act. The research reveals that the Courts have Supervisory Jurisdiction over Public Bodies like Service Commissions and by extension Public Service Human Resource Management Practices.

Additionally, the research has successfully argued that prescriptive Universal HR Models designed by renowned HR theorists cannot dictate the practice of Public Service Human Resource Management. On the basis of the findings the Predictive Public Service HR Model; Figure 19, has been designed for the practice of Public Service HRM to lessen the number of Judicial Review applications. Also, the hypothesis and the theories that emerged from the findings (see section 6.13) can be used as a guide to inform policy with respect to Public Service Human Resource Management. Moreover, this research will create a better

understanding of Public Service Human Resource Management for HR Management practitioners, senior public officials and students in the field of Human Resource Management would benefit tremendously from the knowledge generated by this study.

#### **6.15 Conclusions/ Closing Thoughts:**

This section of the paper enunciates to what extent the study has answered the research question and achieved the aim of the research. It has been established that Judicial Review has been transforming the practice of Human Resource Management in the Public Service. It is also evident that Public Law provides the overarching framework for the practice of Human Resource Management in the Public Service, due mainly to the legislative framework that governs the practice. Further, it has been explicitly illuminated that an understanding of Public Law is critical to the practice of Human Resource Management in the Public Service. Additionally while Human Resource Management frameworks and models advocated by eminent Human Resource theorists among them Armstrong (2009) and Storey (2010) are useful in illustrating how Human Resource Management should be practiced, such universal frameworks and models cannot be applied to Public Service Organizations, like the Service Commissions, Service Commissions Department, Government Ministries and Departments. These universal models would have to undergo a significant amount of adjustments for them to be applicable to Public Service Organizations due to the context in which these organizations operate and the legislative framework and other pieces of Public Law legislations that inform the practice.

It has been successfully argued that in as much as prescriptive frameworks and models of Human Resource Management cannot be adopted within the Public Service context, a new framework/model must be designed to reflect the realities and nuances of the Public Service. It is being advocated that the predictive model for Human Resource Management Figure 19; Chapter 5, which was designed by the researcher as a result of the findings of the research, is best suited to guide Human Resource Management in the Public Service. The model depicts all of the prerequisites that must be considered in making good Public Service Human Resource Management decisions that is decisions that can stand the scrutiny of the Courts, once due cognisance is paid to the element of the model. Service Commissions, senior officials and Human Resource Management practitioners as they discharge their Human Resource functions can rest assured that their decisions would satisfy the tenets of Public

Law, in that they would meet the principles of legality, rationality and procedural propriety. In so doing, their decisions would be within the parameters of the Laws that guide Human Resource Management practices in the Public Services.

This research has also illustrated that in order for Public Service Modernisation, especially Human Resource Management transformation to occur, it must be implemented within a change and transformation framework as advocated by the theorists and models in that particular field. Details of the approaches to be adopted have already been illuminated in Chapters 4 and 5. Most of the models speak of the importance of leadership in driving and championing any change initiative. The researcher agrees and the study has clearly illustrated that not only should the Prime Minister lead such a change initiative but the critical support of the Opposition is required due to the nature of the change and transformation, and the fact that it necessitates Constitutional Reform. Additionally, the support of the Opposition is required as change and transformation envisages a continuous process and due to the history of change and transformation in Trinidad and Tobago coupled with the country's volatile political climate and frequent changes in Government, it would be essential to get the collaboration of the Opposition so that there is joint agreement on the way forward. If this approach is adopted, it should contribute to some level of continuity should there be a change in Government in the next General Election which is due in 2020.

The research has enumerated on the fragmented approach to the practice of Human Resource Management in the Public Service and has undoubtedly argued that it should be addressed by the creation of a single Human Resource Management agency, such as a Ministry of the Public Service which will articulate the policy direction for Human Resource Management. The research acknowledged that previous writers on Human Resource Management have alluded to such an idea as a solution to some of the problems and issues caused by the dysfunctional and disjointed approach to Public Service Human Resource Management. However, this research goes further, in that while it argues that such an approach is desirable (see predictive model Figure 19); this in no way should compromise the independence and integrity of Service Commissions. It is not the purpose of this research to articulate the modalities that should be adopted in bringing this idea fruition. Clearly, this should be the subject of future research in this regard. Furthermore, as previously discussed, research has enunciated that there is prevailing view that Service Commissions are no longer relevant to the Public Service Human Resource Management landscape; however it is not the intent of

this research to pronounce negatively or positively on this assertion. This matter undoubtedly can also be the focus of another study to verify the veracity of such an assertion.

In conclusion the research has answered the research questions and met the aims of the study in that it has;

1. Answered the central research question and all seven ancillary questions in that it has proven that Judicial Review has been transforming Human Resource Management practices in the Public Services,
2. Shown that Public Law influences the practice of Public Service Human Resource Management,
3. Clearly illuminated the role of the Court in the practice of Human Resource Management in the Public Service,
4. Stated how the Service Commissions and the Service Commissions Department have been reviewing their processes and practices as a result of the Judicial Review Judgements,
5. Outlined the change and transformation that are required in light of the Judicial Review Judgements,
6. Designed the strategic Model for Public Service Human Resource Management, and
7. Demonstrated that an understanding of Public Law is crucial to the Practice of Public Service Human Resource Management.

Finally, in as much as Judicial Review has been transforming Human Resource Management in the Public Service, Senior Public Officials and Human Resource Management practitioners must have a good understanding of Public Law to familiarize themselves of the sources of their authority. In addition, they must understand the consequences of Public Law whenever they exceed their jurisdiction, act irrationally, procedurally unfair, or do not observe the principles of natural justice. There must be a realization that any breaches in this regard cannot promote good administration and by extension good Human Resource Management. Failure to follow the Law that governs Human Resource Management practices would only result in Judicial Action/Judicial Review applications against them.

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## **APPENDICES**

**JUDICIAL REVIEW ACT**

**CHAPTER 7:08**

**Act  
60 of 2000**

**Current Authorised Pages**

<i>Pages (inclusive)</i>	<i>Authorised by L.R.O.</i>
<i>1– 15</i>	<i>..</i>

UNOFFICIAL VERSION

*L.R.O.*

UPDATED TO DECEMBER 31ST 2015

**Note on Subsidiary Legislation**

This Chapter contains no subsidiary legislation.

**CHAPTER 7:08**

**JUDICIAL REVIEW ACT**

**ARRANGEMENT OF SECTIONS**

**SECTION**

**PART 1**

**PRELIMINARY**

1. Short title.
2. Commencement.
3. Act binds the State.
4. Interpretation.

**PART 2**

**JUDICIAL REVIEW PROCEDURE**

5. Application for judicial review.
- 5A. Appointment of persons to investigate.
6. Leave of Court.
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8. Remedies.
9. Alternative remedies.
10. Interlocutory applications.
11. Delay in applying for relief.
12. Private law action.
13. Power of Court to convert private law action into public law action.
14. Application to be made a party to proceedings.
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**PART 3**

**MISCELLANEOUS**

17. Stay of proceedings.
18. Injunction to restrain person from acting in office.
19. Power of Court to modify or enforce order.
20. Natural justice.

ARRANGEMENT OF SECTIONS—*Continued*

**SECTION**

21. Remit to tribunal, etc.
22. Enforcement of judgment.
23. Appeals.
24. Rules.
25. Transitional provision.



**CHAPTER 7:08**

**JUDICIAL REVIEW ACT**

**An Act to provide for an application to the High Court of the  
Supreme Court of Judicature for relief by way of judicial  
review and for related matters.** 60 of 2000.

[\*ASSENTED TO 13TH OCTOBER 2000]

**PART 1**

**PRELIMINARY**

- 1.** This Act may be cited as the Judicial Review Act. Short title.
- 2.** This Act came into operation on 6th November 2000. Commencement.  
[270/2000].
- 3.** This Act binds the State. Act binds the  
State.
- 4.** In this Act— Interpretation.

“Court” means the High Court of the Supreme Court of  
Judicature;

“action” includes inaction.

**PART 2**

**JUDICIAL REVIEW PROCEDURE**

**5.** (1) An application for judicial review of a decision of an  
inferior Court, tribunal, public body, public authority or a person  
acting in the exercise of a public duty or function in accordance  
with any law shall be made to the Court in accordance with this  
Act and in such manner as may be prescribed by Rules of Court. Application for  
judicial review.

(2) The Court may, on an application for judicial review,  
grant relief in accordance with this Act—

- (a) to a person whose interests are adversely affected  
by a decision; or

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\*See section 2 for date of commencement of this Act.

(b) to a person or a group of persons if the Court is satisfied that the application is justifiable in the public interest in the circumstances of the case.

(3) The grounds upon which the Court may grant relief to a person who filed an application for judicial review includes the following:

- (a) that the decision was in any way unauthorised or contrary to law;
- (b) excess of jurisdiction;
- (c) failure to satisfy or observe conditions or procedures required by law;
- (d) breach of the principles of natural justice;
- (e) unreasonable, irregular or improper exercise of discretion;
- (f) abuse of power;
- (g) fraud, bad faith, improper purpose or irrelevant consideration;
- (h) acting on instructions from an unauthorised person;
- (i) conflict with the policy of an Act;
- (j) error of law, whether or not apparent on the face of the record;
- (k) absence of evidence on which a finding or assumption of fact could reasonably be based;
- (l) breach of or omission to perform a duty;
- (m) deprivation of a legitimate expectation;
- (n) a defect in form or a technical irregularity resulting in a substantial wrong or miscarriage of justice; or
- (o) an exercise of a power in a manner that is so unreasonable that no reasonable person could have so exercised the power.

(4) An applicant is not limited to the grounds set out in the application for judicial review but if the applicant wishes to rely on any other ground not so set out, the Court may, on such terms as it thinks fit, direct that the application be amended to specify such other ground.

(5) Subject to subsection (1), sections 6(1) and 11, a person is entitled, when making an application for judicial review under subsection (2)(b) or (6), to make the application in any written or recorded form or manner and by any means.

(6) Where a person or group of persons aggrieved or injured by reason of any ground referred to in paragraphs (a) to (o) of subsection (3), is unable to file an application for judicial review under this Act on account of poverty, disability, or socially or economically disadvantaged position, any other person or group of persons acting *bona fide* can move the Court under this section for relief under this Act.

**5A.** (1) Where an application is filed under section 5(2)(b) or (6), the Court may suspend the hearing of the matter for such time as it considers just, and appoint a person or such number of persons possessing such training or qualifications as the Court considers just and as the circumstances warrant, to investigate the facts of the complaint or matter and to submit a report on its finding to the Court within such time as is specified by the Court.

Appointment of persons to investigate.

(2) Such report shall be made available to the parties to the action who shall be entitled to be heard in respect of the report and make whatever application to the Court in respect of the report that they consider just.

**6.** (1) No application for judicial review shall be made unless leave of the Court has been obtained in accordance with Rules of Court.

Leave of Court.

(2) The Court shall not grant such leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

**7.** (1) Notwithstanding section 6, where the Court is satisfied that an application for judicial review is justifiable in the public interest, it may, in accordance with this section, grant leave to apply for judicial review of a decision to an applicant whether or not he has a sufficient interest in the matter to which the decision relates.

Leave of Court in public interest.

(2) Upon the filing of an application for leave under subsection (1), the Registrar shall immediately cause notice of the application to be published on two days in each of two daily newspapers circulating in Trinidad and Tobago.

(3) A notice under subsection (2) shall name the applicant, state the decision which is the subject matter of the application, describe the nature of the relief being sought, and any other relevant matter, and invite any person with a more direct interest in the matter to file a similar application, or to apply to be joined as a party to the proceedings, within fourteen days of the last publication of the notice.

(4) Where no one files a similar application or applies to be joined as a party within the time specified in subsection (3), the Court may grant leave to the applicant.

(5) Where an application is filed within the time specified in subsection (3) and the Court is satisfied that—

- (a) the person applying (“the second applicant”) has a more direct interest in the matter than the first applicant; and
- (b) the first applicant does not possess any special expertise or ability that will materially enhance the presentation of the case,

the Court may refuse to grant leave to the first applicant and grant leave instead to the second applicant, but in that event the second applicant shall not be liable to pay the costs of the first applicant.

(6) Where an application to be joined as a party is made by more than one person within the time specified in subsection (3), the Court may grant leave to such applicant or applicants as it thinks fit.

(7) In determining whether an application is justifiable in the public interest the Court may take into account any relevant factor, including—

- (a) the need to exclude the mere busybody;
- (b) the importance of vindicating the rule of law;

- (c) the importance of the issue raised;
- (d) the genuine interest of the applicant in the matter;
- (e) the expertise of the applicant and the applicant's ability to adequately present the case; and
- (f) the nature of the decision against which relief is sought.

(8) Where an application is filed under section 5(6), the Court may not make an award of costs against an unsuccessful applicant, except where the application is held to be frivolous or vexatious.

8. (1) On an application for judicial review, the Court may grant the following forms of relief: Remedies.

- (a) an order of *mandamus*, prohibition or *certiorari*;
- (b) a declaration or injunction;
- (c) an injunction under section 19; or
- (d) such other orders, directions or writs as it considers just and as the circumstances warrant.

(2) A declaration may be made or an injunction granted under this subsection in any case where an application for judicial review seeking such relief has been made, and the Court considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by orders of *mandamus*, prohibition or *certiorari*;
- (b) the nature of the persons and bodies against whom relief may be granted by such order; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration to be made or injunction to be granted, as the case may be.

(3) In any law—

- (a) reference to a writ of *mandamus*, prohibition or *certiorari* shall be read as reference to the corresponding order; and

(b) reference to the issue or award of any such writ shall be read as reference to the making of the corresponding order.

(4) On an application for judicial review, the Court may award damages to the applicant if—

(a) the applicant has included in the application a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that, if the claim has been made in an action begun by the applicant at the time of making the application, the applicant could have been awarded damages.

(5) The Court, having regard to all the circumstances, may grant in addition or alternatively an order for restitution or for the return of property, real or personal.

Alternative remedies.

**9.** The Court shall not grant leave to an applicant for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision, save in exceptional circumstances.

Interlocutory applications.

**10.** (1) An interlocutory application may be made in an application for judicial review and the Court may make any interlocutory order, including an order for discovery of documents, interrogatories or cross-examination, and may grant any interim relief as it thinks fit.

(2) The Court may, at any stage of the application for judicial review, direct that the proceedings to which such application relates shall be stayed until further notice.

Delay in applying for relief.

**11.** (1) An application for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.

(2) The Court may refuse to grant leave to apply for judicial review if it considers that there has been undue delay in making the application, and that the grant of any relief would cause substantial hardship to, or substantially prejudice the rights of any person, or would be detrimental to good administration.

(3) In forming an opinion for the purpose of this section, the Court shall have regard to the time when the applicant became aware of the making of the decision, and may have regard to such other matters as it considers relevant.

(4) Where the relief sought is an order of *certiorari* in respect of a judgment, order, conviction or other decision, the date when the ground for the application first arose shall be taken to be the date of that judgment, order, conviction or decision.

**12.** Where the Court is of the opinion that an inferior Court, tribunal, public body or public authority against which or a person against whom an application for judicial review is made is not subject to judicial review, the Court may allow the proceedings to continue, with any necessary amendments, as proceedings not governed by this Act and not seeking any remedy by way of orders of *mandamus*, prohibition or *certiorari*, and subject to such terms and conditions as the Court thinks fit.

Private law action.

**13.** Where the Court is of the opinion that a decision of an inferior Court, tribunal, public body or public authority against which or a person against whom a writ of summons has been filed should be subject to judicial review, the Court may give such directions and make such orders as it considers just to allow the proceedings to continue as proceedings governed by this Act.

Power of Court to convert private law action into public law action.

**14.** (1) Any person who has an interest in a decision which is the subject of an application for judicial review may apply to the Court to be made a party to the proceedings.

Application to be made a party to proceedings.

(2) The Court may —

(a) grant the application either unconditionally or subject to such terms and conditions as it thinks just;

- (b) refuse the application; or
- (c) refuse the application but allow the person to make written or oral submissions at the hearing.

Application in respect of failure to make a decision.

**15. (1) Where—**

- (a) a person has a duty to make a decision to which this Act applies;
- (b) there is no law that prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision,

a person who is adversely affected by such failure may file an application for judicial review in respect of that failure on the ground that there has been unreasonable delay in making that decision.

**(2) Where—**

- (a) a person has a duty to make a decision to which this Act applies;
- (b) a law prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision before the expiration of that period,

a person who is adversely affected by such failure may file an application for judicial review in respect of that failure on the ground that the decision-maker has a duty to make that decision, notwithstanding the expiration of that period.

**(3) Without prejudice to section 8, on an application for judicial review under this section, the Court may make all or any of the following orders:**

- (a) an order directing the making of the decision;
- (b) an order declaring the rights of the parties in relation to the making of the decision;
- (c) an order directing any of the parties to do, or to refrain from doing, any act or thing, the doing, or the refraining from the doing, of which the Court considers necessary to do justice between the parties.



**16.** (1) Where a person is adversely affected by a decision to which this Act applies, he may request from the decision-maker a statement of the reasons for the decision.

Application for reasons for decision.

(2) Where a person makes a request under subsection (1), he shall make the request—

- (a) on the date of the giving of the decision or of the notification to him thereof; or
- (b) within twenty-eight clear days after that date,

whichever is later, and in writing.

(3) Where the decision-maker fails to comply with a request under subsection (1), the Court may, upon granting leave under section 5 or 6, make an order to compel such compliance upon such terms and conditions as it thinks just.

### PART 3

### MISCELLANEOUS

**17.** The Court may at any stage direct that proceedings to which an application for judicial review relates shall be stayed until further order on such terms and conditions as the Court may direct.

Stay of proceedings.

**18.** (1) Where a person brings proceedings alleging that another person is not entitled to act in an office to which this section applies, the Court may—

Injunction to restrain person from acting in office.

- (a) grant an injunction restraining that other person from so acting; and
- (b) if the case so warrants, declare the office to be vacant.

(2) This section applies to—

- (a) a public office;
- (b) an office created by any written law;
- (c) an office in which the public has an interest; and
- (d) any other office as the Court considers it is in the public interest to grant relief.

Power of Court  
to modify or  
enforce order.

**19.** (1) The Court may, at any time before the proceedings are concluded, of its own motion or on the application of any party, revoke, vary or suspend the operation of any Order made by it under this Act.

(2) Without prejudice to any other law, the Court shall have such incidental or ancillary powers to enforce any Order or judgment it makes under this Act.

Natural justice.

**20.** An inferior Court, tribunal, public body, public authority or a person acting in the exercise of a public duty or function in accordance with any law shall exercise that duty or perform that function in accordance with the principles of natural justice or in a fair manner.

Remit to  
tribunal, etc.

**21.** If, on an application for judicial review seeking an order of *certiorari*, the Court quashes the decision to which the application relates, the Court may remit the matter to the Court, tribunal, public body, public authority or person concerned, with a directive to reconsider it and reach a decision in accordance with the findings of the Court.

Enforcement of  
judgment.

**22.** (1) Subject to subsection (2), where an order has been made or a judgment given in favour of a person who brought an application under section 5(2)(b) or (6) and who, for any reason, is unable to enforce the order or judgment, any other person is entitled to enforce that order or judgment on behalf of that person.

(2) Where a person seeks to enforce a judgment or order under subsection (1) on behalf of a successful applicant, he shall first obtain leave of the Court.

Appeals.

**23.** (1) A person aggrieved by a decision of the Court, including an interlocutory order, under this Act is entitled to appeal that decision as of right to the Court of Appeal.

(2) An appeal shall lie from a decision of the Court of Appeal referred to in subsection (1), as of right to the Judicial Committee of the Privy Council.

**24.** The Rules Committee, established under section 77 of the Supreme Court of Judicature Act, may make Rules to give effect to this Act.

Rules.  
Ch. 4:01.

**25.** Nothing in this Act shall apply to proceedings which began before the commencement of this Act.

Transitional  
provision.

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## APPENDIX 2

### LAWS OF TRINIDAD AND TOBAGO

#### *Constitution of the Republic of Trinidad and Tobago*

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#### Chap. 1:01

[Subsidiary]

#### *Public Service Commission Regulations*

to apply shall not prejudice the consideration of the claims of all eligible public officers.

Appointments to  
be by  
competition  
within the  
particular  
service.

**14.** Whenever in the opinion of the Commission it is possible to do so and it is in the best interest of the particular service within the public service, appointments shall be made from within the particular service by competition, subject to any Regulations limiting the number of appointments that may be made to any specified office in the particular service.

Advertisement  
of vacancies.

**15.** Where the Commission considers either that there is no suitable candidate already in the particular service available for the filling of any vacancy or that having regard to qualifications, experience and merit, it would be advantageous and in the best interest of the particular service that the services of a person not already in that service be secured, the Commission may authorise the advertisement of such vacancy.

Selection  
Boards.

**16.** (1) The Commission may from time to time appoint one or more Selection Boards to assist in the selection of candidates for appointment to the public service and the composition of any such Board and the form in which its reports are to be submitted shall be in the discretion of the Commission.

(2) On consideration of any report of a Selection Board, the Commission may, in its discretion, summon for interview any of the candidates recommended by such Board.

Examination  
Boards.

**17.** (1) All examinations to be held under these Regulations shall be set and the papers marked by such Examination Board as may be appointed for the purpose.

(2) The Director shall be responsible for the conduct of examinations set under subregulation (1).

Principle of  
selection for  
promotion.

**18.** (1) In considering the eligibility of officers for promotion, the Commission shall take into account the seniority, experience, educational qualifications, merit and ability, together with relative efficiency of such officers, and in the event of an equality of



efficiency of two or more officers, shall give consideration to the relative seniority of the officers available for promotion to the vacancy.

(2) The Commission, in considering the eligibility of officers under subregulation (1) for an appointment on promotion, shall attach greater weight to—

- (a) seniority, where promotion is to an office that involves work of a routine nature, or
- (b) merit and ability, where promotion is to an office that involves work of progressively greater and higher responsibility and initiative than is required for an office specified in paragraph (a).

(3) In the performance of its functions under subregulations (1) and (2), the Commission shall take into account as respects each officer—

- (a) his general fitness;
- (b) the position of his name on the seniority list;
- (c) any special qualifications;
- (d) any special courses of training that he may have undergone (whether at the expense of Government or otherwise);
- (e) the evaluation of his overall performance as reflected in annual staff reports by any Permanent Secretary, Head of Department or other senior officer under whom the officer worked during his service;
- (f) any letters of commendation or special reports in respect of any special work done by the officer;
- (g) the duties of which he has had knowledge;
- (h) the duties of the office for which he is a candidate;
- (i) any specific recommendation of the Permanent Secretary for filling the particular office;
- (j) any previous employment of his in the public service, or otherwise;

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*Public Service Commission Regulations*

- (k) any special reports for which the Commission may call;
- (l) his devotion to duty.

(4) In addition to the requirements prescribed in subregulations (1), (2) and (3), the Commission shall consider any specifications that may be required from time to time for appointment to the particular office.

Promotion to  
Administrative  
Class.  
Ch. 23:01.  
Sub. Leg.

**19.** Promotion to the Administrative Class as prescribed by the Civil Service Regulations shall be determined by the order of merit in an examination fixed for the purpose, and such examination shall be open to all officers in the Civil Service holding an office not lower than that of Principal Officer or other comparable office.

Seniority lists to  
be kept  
up-to-date.

**20.** (1) The Director shall keep up-to-date seniority lists of all officers holding offices in the several grades in the public service.

(2) The Permanent Secretary or Head of Department shall keep in the prescribed form, up-to-date seniority lists of all officers holding offices in the several grades in his Ministry or Department, for the purpose of making recommendations for promotion and acting appointments.

(3) The seniority of an officer shall be determined by the date of his appointment to the particular grade within the range in which he is serving. The seniority of officers promoted to the same grade from the same date shall be determined by their seniority in their former grade.

(4) Where officers have entered the particular service within the public service by competitive examination and are appointed to the same grade in a range with effect from the same date, the relative seniority of such officers shall be determined according to their performance in such examination.

Seniority of  
officer to be  
reckoned from  
date of  
appointment or  
reappointment.

**21.** The seniority of an officer who voluntarily resigns from the public service and is subsequently reappointed to it shall be reckoned from the date of his reappointment.

## APPENDIX 3

### Laws of Trinidad and Tobago

### Constitution of the Republic of Trinidad and Tobago

#### Chapter 1:01

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#### Police Service Regulations

Promotion  
to an office  
in the  
Second  
Division  
[79/1995]

15. (1) The Commissioner shall after taking into account the criteria specified in Regulation 20 submit to the Commission a list of officers in the Second Division-

- a. Whom he considers suitable for promotion to an office; and
- b. Who are not being considered for a promotion yet but who have served in the Service for a longer period in an office, or who may have more experience in performing the duties of that office, than the officers being recommended;

(2) The Commissioner shall also advise those officers referred to in subsection (1) (b) of their omission from the list for promotion, together with the reasons for such omission.

(3) An officer who is advised under subregulation (2) may make representation on his own behalf to the Commission within fourteen days of being so advised and the Commission may invite him for interview on the basis of his representations.

(4) The Commission shall advise those officers making representations under this regulation of the outcome of their representations.

(5) The Commission may, after considering the representations made, endorse, or otherwise, the recommendations of the Commissioner when promoting an officer.



## APPENDIX 4

1362

*Fire Service (Terms and Conditions of Employment) Regulations, 1998*

Age limit for  
candidate

11. (1) For the purpose of determining the age of a candidate for admission into the Service, there shall be deducted from the candidate's actual age—

- (a) a period of national or military service or service in a protective service, not exceeding two years; or
- (b) any period of continuous service not exceeding two years, in a civil capacity under the State including acting or temporary service or service in a statutory authority,

where such service immediately precedes the date of application for entry into the Fire Service School.

Chap. 35:50  
Chap. 13:02  
Chap. 15:01

(2) For the purposes of these Regulations, "Protective Service" means the Fire Service as established by the Fire Service Act, the Prison Service as established by the Prison Service Act and the Police Service Act established by the Police Service Act.

Employment  
of pension-  
ers and others  
on contract

12. (1) The Minister after informing the appropriate recognized association may employ a person, including a pensioner, on contract for a period not exceeding five years if he is satisfied that the person or pensioner is in possession of essential experience or technical qualifications which make him particularly useful to the service.

(2) For the purpose of this regulation a "pensioner" means a person who is in receipt of a pension.

Age limit for  
Service

13. A person who has attained the age of thirty-five years but who is under fifty years of age and who has previous service in the Service which under the Fifth Schedule to the Act may be deemed to count for Pension purposes may be re-employed in an office in the Service.

Examinations  
board

\*

14. (1) An Examinations Board appointed in writing by the Minister shall—

- (a) set and conduct at least once a year the examination which is to be passed by an officer prior to appointment to an office in the Service; and
- (b) assess each examination paper submitted.

(2) A candidate shall apply in writing to sit an examination referred to in subregulation (1) and shall undergo an examination conducted by the Examinations Board.

(3) A candidate shall be placed in order of merit by the Examinations Board according to his performance in that examination.

(4) A candidate for an examination conducted by the Examinations Board shall be required to pay such examination fee as may be determined by the Minister by Notice in the *Gazette*.

(5) Payment of the examination fee shall be made at the office of the Comptroller of Accounts, Port-of-Spain or at any District Revenue Office, and the official receipt for such payment shall be attached to the application referred to in subregulation (2).



(6) An officer may sit for any examination conducted by the Examinations Board in respect of an office.

15. (1) A candidate selected for appointment by the Commission to the office of Firefighter, other than a graduate of the Fire Service School, who is selected for appointment within twenty-four months of graduation, shall be required to pass a medical examination specifically designed for persons required to respond to the physical and psychological demands of an office in the Service as a qualification for appointment.

Medical  
examination

(2) The examination referred to in subregulation (1) shall be conducted by an appropriately qualified person appointed by the Chief Fire Officer.

(3) Where a person is recruited from outside Trinidad and Tobago, he shall undergo and pass a medical examination to be conducted by a recognized medical practitioner of the country where he is recruited before he leaves the country from which he is recruited.

## PART II

### PROBATIONARY PERIOD

16. Where an officer is transferred from the Service to an office in another Service of the Government, the Chief Fire Officer shall take immediate steps to ensure the release of such officer to assume duties in his new office on the date fixed by the appropriate Service Commission.

Chief Fire  
Officer to  
release  
trans-  
ferred officer

17. (1) Subject to this Part, an officer on first appointment to the Service shall serve a probationary period of twelve months.

Probationary  
period

(2) Subject to this Part, an officer who is appointed on promotion to office shall serve a probationary period of six months in the office to which he is promoted.

(3) Where an officer is transferred to the Service from another Service of the Government and the exigencies of that Service preclude his assumption of duties in his new office on the date fixed by the appropriate Service Commission, the period of probation commences from the date of assumption in his new office.

X 18. (1) Where an officer is appointed to an office in which he has performed the duties whether in an acting capacity or on secondment for periods of equal or longer duration than the period of probation prescribed in regulation 17 immediately preceding the appointment, the officer shall not be required to serve a probationary period. X

Variation of  
probationary  
period

(2) where an officer is appointed on promotion on probation to an office in which immediately preceding the promotion he has acted for a period less than that prescribed in regulation 17 that period of acting service shall be offset against the probationary period.



## APPENDIX 5

### LAWS OF TRINIDAD AND TOBAGO

#### *Constitution of the Republic of Trinidad and Tobago*

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#### Chap. 1:01

[Subsidiary]

#### *Public Service Commission Regulations*

Permanent Secretary or Head of Department shall forward such representations in their original form to the Director.

(4) Where a vacancy occurs in an office and an acting appointment falls to be made for a period not likely to exceed twenty-eight days as a result of sudden illness or other very special circumstances, the Permanent Secretary or Head of Department may appoint an officer to act for such period and the provisions of subregulations (1), (2) and (3) shall not apply to such acting appointment.

Principles of selection for acting appointment not as prelude to appointment.

\* 26. (1) Where an acting appointment falls to be made otherwise than as a prelude to a substantive appointment, the officer appointed shall—

- (a) as a general rule be the senior officer in the Ministry or Department eligible for such acting appointment;
- (b) assume and discharge the duties and responsibilities of the office to which he is appointed to act.

(2) In submitting any recommendations for an acting appointment, the Commission shall examine whether the exigencies of the particular service would best be served by transferring an officer from another district next in line of seniority to act when there is an officer in the same district who is capable of performing the duties of the higher grade, and in such examination the question of additional Government expenditure for travelling and subsistence allowances and other expenditure shall be borne in mind.

Permanent Secretary to submit recommendations in advance.

27. The Permanent Secretary or Head of Department shall submit, well in advance, recommendations for acting appointments to permit of their consideration by the Commission before the date on which the acting appointment is intended to become effective, but the Commission may waive the provisions of this regulation where the necessity to submit recommendations has been occasioned by sudden illness, or very special circumstances or in any other circumstances which the Commission may consider appropriate.

## APPENDIX 6

### LAWS OF TRINIDAD AND TOBAGO

*Education*

**Chap. 39:01**

**11**

“Teachers’ Register” means the register required to be kept under section 47 for the registration of persons who were registered as teachers under the former Education Ordinance, and of such other persons qualified for registration as teachers under this Act and the Regulations;

Ch. 14, No. 1.  
(1950 Ed.).

“Teaching Service” means the unified Teaching Service established under section 53;

“trade union” means an association which is registered as a trade union under the Trade Unions Act.

Ch. 88:02.

#### GENERAL

3. The powers conferred on the Minister by this Act shall be exercised so as to ensure—

General  
purposes of  
Act.

- (a) the promotion of the education of the people of Trinidad and Tobago, and the establishment of institutions devoted to that purpose by means of which he shall thereby contribute towards the development of the human resources, physical, mental, moral and spiritual of the community;
- (b) the establishment of a system of education designed to provide adequately for the planning and development of an educational service related to the changing needs of the community;
- (c) the effective execution of the education policy of the Government.

\* 4. (1) The Minister is responsible for securing the purposes set out in section 3 and for the due administration of this Act and in the exercise of the powers conferred on him by this Act, the Minister may do all things necessary or convenient for the purpose of carrying out his responsibilities under this Act.

General  
responsibility of  
the Minister.  
[77 of 2000].

(2) In addition to the several duties imposed on the Minister by this Act, the Minister shall be responsible for—

- (a) devising a system of education calculated as far as possible to ensure that educational and vocational abilities, aptitudes and interests of the children find adequate expression and opportunity for development;

L.R.O. 1/2006

UPDATED TO DECEMBER 31ST 2009



- (b) conducting schools and establishing, managing, maintaining and assisting schools in accordance with Regulations to be made by him from time to time;
- (c) (*Repealed by Act No. 77 of 2000*);
- (d) assisting needy pupils so as to enable them to participate in the facilities offered by the education system.

Powers of the  
Minister.

5. For the purpose of the performance of his responsibilities under this Act the Minister may—

- (a) require the attendance of children of compulsory school age at schools established and conducted under this Act;
- (b) regulate the operation of private schools;
- (c) make provision for the professional training of teachers for the entire system of public education, and lay down standards which are applicable to the recruitment of teachers, their training and conditions of service;
- (d) constitute committees or other bodies to advise him from time to time on educational and related matters;
- (e) prescribe curricula, textbooks and practices in all public schools so as to ensure conformity with national standards of education;
- (f) establish and disestablish schools including schools for technical education and inaugurate classes and discontinue those classes;
- (g) do all such other things as may be found expedient from time to time for the carrying out of his responsibilities for education and training.

System of  
public  
education.

6. (1) The system of public education shall be organised in three stages, that is to say—

- (a) primary education which shall consist of full-time education suitable to the requirements of junior pupils;

## APPENDIX 7

### LAWS OF TRINIDAD AND TOBAGO

*Constitution of the Republic  
of Trinidad and Tobago*

**Chap. 1:01**

**85**

*Public Service Commission Regulations*

**[Subsidiary]**

**22.** In any case not covered by regulation 20 or 21, the Commission shall determine the seniority of the officer.

Commission to  
determine  
seniority.

**23.** The Commission may authorise payment to an officer of a commencing pay at an incremental point higher than the minimum in the scale attaching to the office to which he is appointed or promoted.

Commencing  
pay.

**24. (1)** The Permanent Secretary or Head of Department shall ensure that any recommendation made in relation to an acting appointment as a prelude to a substantive appointment shall be based on the principles prescribed in regulation 18.

Principles of  
selection for  
acting  
appointment as  
prelude to  
appointment.

(2) Where, in the exigencies of the particular service, it has not been practicable to apply the principles prescribed in regulation 18, an officer selected for an acting appointment in consequence of a recommendation made under subregulation (1) shall not thereby have any special claim to the substantive appointment.

(3) In considering the claims of eligible candidates for a substantive appointment, the Commission shall take into account the claims of all eligible officers.

\* **25. (1)** Where an acting appointment falls to be made whether as a prelude to a substantive appointment or not, the Permanent Secretary or Head of Department shall notify those officers within the Ministry or Department who are eligible for consideration.

Permanent  
Secretary to  
notify eligible  
officers of  
vacancy.

(2) The Permanent Secretary or Head of Department shall, after notification as required by subregulation (1), allow a period of seven days to elapse before forwarding any recommendations in relation to such acting appointment, for the purpose of allowing the officers of the Ministry or Department to make representations on the filling of such vacancy.

(3) Where representations have been made by or on behalf of any officer in the Ministry or Department, the



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Permanent Secretary or Head of Department shall forward such representations in their original form to the Director.

(4) Where a vacancy occurs in an office and an acting appointment falls to be made for a period not likely to exceed twenty-eight days as a result of sudden illness or other very special circumstances, the Permanent Secretary or Head of Department may appoint an officer to act for such period and the provisions of subregulations (1), (2) and (3) shall not apply to such acting appointment.

Principles of selection for acting appointment not as prelude to appointment.

26. (1) Where an acting appointment falls to be made otherwise than as a prelude to a substantive appointment, the officer appointed shall—

- (a) as a general rule be the senior officer in the Ministry or Department eligible for such acting appointment;
- (b) assume and discharge the duties and responsibilities of the office to which he is appointed to act.

(2) In submitting any recommendations for an acting appointment, the Commission shall examine whether the exigencies of the particular service would best be served by transferring an officer from another district next in line of seniority to act when there is an officer in the same district who is capable of performing the duties of the higher grade, and in such examination the question of additional Government expenditure for travelling and subsistence allowances and other expenditure shall be borne in mind.

Permanent Secretary to submit recommendations in advance.

\* 27. The Permanent Secretary or Head of Department shall submit, well in advance, recommendations for acting appointments to permit of their consideration by the Commission before the date on which the acting appointment is intended to become effective, but the Commission may waive the provisions of this regulation where the necessity to submit recommendations has been occasioned by sudden illness, or very special circumstances or in any other circumstances which the Commission may consider appropriate.

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*Constitution of the Republic  
of Trinidad and Tobago*

**Chap. 1:01**

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*Public Service Commission Regulations*

[Subsidiary]

\* 28. In submitting recommendations for acting appointments, Permanent Secretaries and Heads of Departments shall state the reasons why officers, if any, are being passed over.

Permanent Secretary to state reasons for passing over officers.

29. (1) Where the Commission proposes to transfer an officer, the Commission shall, except where the exigencies of the particular service do not permit, make an order of transfer in writing and shall give not less than one month's notice to an officer who is to be transferred.

Transfers.

(2) An officer who is aggrieved by an order under subregulation (1) may make representation to the Commission for a review of the order in accordance with subregulation (3).

(3) Where an officer desires to make representation to the Commission for a review of an order made under subregulation (1), he shall give notice in writing to the Permanent Secretary or Head of Department within seven days of the receipt of such order and shall submit, with the notice, his representations in writing.

(4) The Permanent Secretary or Head of Department shall, within seven days, forward any representations made to him in writing under subregulation (3), together with his comments thereon to the Commission.

(5) The Commission shall consider the representations of the officer and the Permanent Secretary or Head of Department submitted to it under subregulations (3) and (4) and shall communicate its decision in writing.

30. (1) Notwithstanding that an officer in respect of whom an order has been made under regulation 29(1) has made representation under subregulations (2) and (3) of the said regulation, the officer shall assume his duties on transfer pending the review of the order by the Commission.

Officer to assume duties pending review of transfer order.

(2) Where the order of transfer involves the exchange of an officer in an office in a grade to another office in the same grade, the officer shall not assume his duties on transfer pending the review of the order by the Commission.

Exception.

## **APPENDIX 8**

### **INTERVIEW RESEARCH QUESTIONNAIRE**

Title: Judicial Review –Transforming the Practice of Public Service HRM Management Practices

#### **Research Question 1:**

##### **How does Public Law influence Human Resource management in the Public Service?**

1. The Judicial Review Act (2000) gives public officers the authority to challenge the decisions of the Service Commissions in the Courts of Trinidad and Tobago and the Privy Council of London. The view has been expressed that judicial review is transforming the practice of Human Resource Management in the Public Service of Trinidad and Tobago. Do you agree, Yes or No? Give reason for your answer.
2. In 2002 Carla Herbert; Senior Council advised in the case of Rattinsingh vs The Public Service Commission that there is a need for Senior managers to familiarize themselves with the sources of their authority, not only in the technical areas but also in the area of Human Resource Management . They should also familiarize themselves with the consequences of public law, as to when they exceed their jurisdiction, act irrationally, or with bias or fail to deliver on legitimate expectations or make bad decisions. May I have your comment on this statement?
3. She further commented that the Commissions may wish to design its structure consistent with the philosophy of early intervention in grievance management pertinent to its function. May I have your comments?

If you agree with Ms. Herbert, how should this structure be designed?

4. Public Law concerns law governing relations between the individual and public bodies and relations between different public bodies such as central and local government. The Courts have developed a body of substantive principles of public



law to ensure that public bodies do not exceed or abuse their powers and that they perform their duties. It speaks of natural justice or procedural fairness, illegality, irrationality, and procedural impropriety.

In light of the above, can you tell me how each of the tenets can influence Human Resource Management Practices?

5. Are there clear obligations placed on public bodies like Service Commissions?
6. Do you think that knowledge of the tenets of Public Law is a prerequisite for the effective practice of Public Service Human Resource Management? Yes or No? Give reasons for your answer.
7. What critical knowledge should Public Service HR Practitioners possess and why?
8. The legislative framework that governs the public service is informed by public law. They are; the Public Service Regulations and the Civil Service Regulations. Do you think that they are adequate for the practice of Strategic/ Contemporary Human Resource Management? Yes or No? Give reasons for your answer.

## **Research Question 2:**

**What amendment should be made to the Legislative Framework that governs the practice of Human Resource Management?**

1. Can you cite a particular instant / Case that informs your thinking?
2. As a HR Manager /Practitioner / Legal Officer are you familiar with the legal framework that governs the Public Service? In your opinion do you have a working knowledge or a good knowledge?

What informs your opinion?

3. In the case of the Public Service Regulations 1966 are there any amendments that should be made and why?
4. Many observers including the Prime Minister and HR Practitioners are of the view that Service Commissions are a hindrance to effective HR Management. They suggest that the present model that defines the practice of HRM is outdated and no longer relevant to the public service. May I have your comments? In so doing can you site a specific case to support your thinking?
5. The Police Service Commission of Trinidad and Tobago, apart from having the responsibility for the appointment of the Commissioner and Deputy Commissioner of Police has been reduced to a monitoring and evaluation mechanism. It also acts as an appellant body in respect of all HR decisions of the Commissioner of Police. Should other Service Commissions be so designed, Yes or No? Give comments according to your answer.

If you answered in the affirmative, how can this be achieved bearing in mind the appropriate amendments to the existing legislation that must be made?

### **Research Question 3:**

#### **What really is the role of the Courts in the practice of Human Resource Management?**

1. Since the promulgation of the Judiciary Act of 2000, several public officers have filed for judicial review with respect to the decisions of the Service Commissions, that is, they have been challenging these decisions in the Courts of Law of Trinidad and Tobago and the Privy Council of London. What role do you think the Courts and the Privy Council is playing in the practice of Public Service HRM?

Is there a particular case that stands out to you and why? Tell me in your opinion how this Court matter has impacted the practice of HRM? Are there any learnings for HR Managers/ Service Commissions from this particular case?

2. When one examines the Judgements of the Courts, the judgements tend to place heavy emphasis on the issues of Natural Justice, Fair Play and Legality in respect of the action of Public Administration. In some instances the judges comment on legitimate expectation of public officer. Comment on each of these issues and explain why they are important to the practice of public service HRM?
3. Judicial Review speaks to the process by which the decision is made not the decision itself; it's the whole issue of procedural impropriety. Why is this so essential for good public administration/ good HR Practices?
4. In the case of Sahadeo Maharaj v the Teaching Service Commission, the Commission confirmed a wrong date of appointment of the officer, which was a date earlier than the actual date of his appointment to the office .The officer, relied on the error to advance his case for promotion ahead of his seniors. The Commission sought to correct the error but the officer challenged its decision, the matter was determined by the Privy Council which spoke to the decision itself, which the law lords said was illegal and should be corrected. Why was this done? As Judicial Review does not necessarily speak to the decision itself, but the process.
5. Over the years public officers have filed for judicial review on the following grounds;
  - i. Breach of officers fundamental rights
  - ii. The Commission has exercised jurisdiction it does not have
  - iii. The Commission has acted outside its lawful function
  - iv. Unfair dismissal
  - v. Failure to comply with mandatory direction
  - vi. Policy contrary to law
  - vii. The Commission did not make an independent judgment in proper delegation of authority
  - viii. Abdication of function

- ix. Bad faith
- x. Breach of legitimate expectation
- xi. Decision tainted by bias
- xii. Errors in form or procedure lacking in substance

Taking each item separately and bearing in mind the function of Service Commissions, what is the significance of these to the practice of HRM?

6. The Courts and the Privy Council have ruled on the matters previously mentioned and a perusal of the judgements have revealed the following themes with respect to breaches in law;

- i. Fair treatment
- ii. Acting contrary to law
- iii. Error of Law
- iv. Failure to carry out mandatory directions
- v. Policy contrary to law/ regulations
- vi. Decision maker must make independent decision
- vii. Improper delegation of authority
- viii. Bad faith
- ix. Principles of Equity
- x. Acting outside or in excess of jurisdiction
- xi. Taking in account irrelevant consideration
- xii. Decisions tainted by bias
- xiii. Unreasonable delay
- xiv. Perusing improper motives
- xv. Improper finding of facts

In your opinion, how significant are each of these breaches to the Commissions' function and the practice of HRM?

How may have the breaches prejudiced the rights of public officers?

What are the messages in these judgements?

How can these breaches be avoided in the future? e.g. what mechanisms can be put in place?

7. In the judgements in the case of *Endell Thomas v The Police Service Commission* and *Balbosa and Cooper v The Police Service Commission* the Privy Council pronounced on the power and jurisdiction of Service Commissions, how have these judgements impacted the Service Commissions in the performance of their duties?

In your opinion what were the main issues/ learnings from the judgement?

The Privy Council also spoke extensively of 'Ultra Vires', why is this issue important to the Commissions in the performance of their duties and by extension HR Practices?

8. In several matters the judgements speak extensively of legal rights, the Constitution of Trinidad and Tobago and fair hearing as they relate to disciplinary matters. Why are these issues important to the discipline component of HRM? Does any particular case come to mind? Tell me about it and show how it relates to the issues?

9. Section (121) of the Constitution of the Republic of Trinidad and Tobago provides that before the Public Service Commission can make appointments to certain senior positions in the public service it must first consult with the Prime Minister and if the Prime Minister signals his/her objection to the appointment cannot be made.

In the case of *Ganga Persad Kissoon v the Prime Minister and the Public Service Commission*, the Privy Council ruled in favour of Mr. Kissoon in relation to the limits of the Commissions power and the exercise of the Prime Minister's veto.

Several issues were highlighted in the judgement;

- i. The right of public officers to be treated fairly
- ii. A Prime Minister should not act unreasonable
- iii. Public officers have a right to be heard / the issues of due process
- iv. Public officers have a right to know the reason(s) why a Prime Minister objects to their appointment.

How in your opinion this judgement has shaped the way the Commissions should act in exercising their function in accordance with Section (121) of the Constitution of the Republic of Trinidad and Tobago? What are the implications for HR Practices in this regard?

Although the Privy Council ruled that the decision of the Prime Minister to veto the appointment of Mr. Kissoon was wrong, the Court did not set aside the judgement. What in your opinion are the differences in this case and the case of *Sahadeo Maraj v Service Commissions*?

10. Regulation 49 of the Public Service Regulations provides that a public officer can be declared to have abandoned their office if they have been absent from duty without cause or reason for one (1) month. In the case of *Faviana Gajadhar v The Public Service Commission* the Courts ruled that the Commissions was wrong to declare her to have abandoned her office although she had been absent for more than a month and she had failed to provide reasons for her absence. The Courts ruled that the Commission did not follow the rules of natural justice and that a more detailed process should have been followed before taking action against the officer. The Court spoke said that the Commission was under a duty to satisfy itself of the officer's intention to abandon office and this can only be obtained from hearing from the officer.

May I have your comments and tell me what implications do you think this should have for abandonment of office?

11. Regulation 24 of the Public Service Commission provides for acting appointment, not as a prelude to permanent appointment. It place emphasis on seniority, eligibility and suitability. Two (2) cases come to mind *Collin Furlonge v Permanent Secretary Hamid O'Brian* and the Public Service Commission and *Harridath Ramourtart v The Public Service Commissions*. The Courts of Trinidad and Tobago and Privy Council respectively, pronounced on the following matters;

- i. The issue of seniority
- ii. The rights of every officer to be considered

- iii. The Commission must give consideration to every eligible officer
- iv. The issue of eligibility
- v. The issue of Job Specification in the case of Ramoutar
- vi. The difference between Regulation 24 and 26

May I have your comments on these issues?

In both cases the Courts and the Privy Council ruled that the Commission must comply with its Regulations, also the Commission must act in accordance with the Law. Any decision taken outside its Regulation/ the law is illegal. May I have your comment?

What is the impact for HR practice?

12. There are two (2) significant judgements where the Privy Council ruled in favour of Service Commissions. The first one dealt with the Assessment Centre for Deputy Permanent Secretaries in the case of Hermia Tyson Cuffy and Ashford Sankar v The Public Service Commission. These officers argued that the Commission had acted contrary to its Regulations in using Assessment Centre Methodologies to select them for the position of Deputy Permanent Secretary. It was argued by the Attorney at Law for the Commission and agreed to by the Privy Council that the Commission could have used Assessment Centre Technologies in accordance with Regulation (14) and (18) of the PSC Regulations.

Why do you think the Service Commissions won the matter?

In your opinion, what were the learnings from that case?

In the second case Gopichand Ganga and others v The Police Service Commission the Privy Council ruled in the Commissions' favour and confirmed that the Commission could have used a point system for promotion as it done in accordance with the criteria as laid down in its Regulation.

What was also significant about this judgement?

13. There seems to be a link between the Freedom of Information Act (2000) and the Judicial Review Act (2000) in relation to how they impact the practice of Public Service Human Resource Management. May I have your comments?

Several officers have filed for judicial review when denied information in accordance with the Freedom of Information Act. In most cases the Courts have ruled in favour of the officer and have stressed in their judgement the issue of public interest and good public administration. Why is this so?

#### **Research Question 4:**

#### **Have Judicial Review Judgements forced the Service Commissions and the Service Commissions to examine their Human Resource Management Processes/ Practices?**

1. With the passage of the Judicial Review Act in 2000 was any structural adjustment made to the Service Commissions Department to deal with officers' complaints / representation? In your opinion, what were the challenges, failures and success to date?

In terms of processes, what has been changed and why?

Are there any future changes in process/ procedures contemplated?

In terms of interpreting/ understanding the core judgements, what is in place to inform HR Practices within and outside the Service Commissions Department? Has it been effective? If yes, give reasons, if no, give reasons.

Have the judgements been taken into account in defining any amended procedures or processes?

2. Do the Service Commissions take the judgements of the Courts/ Privy Council into consideration before making their decisions? If your answer is in the affirmative, how is this achieved? What has been the outcome?



Are the Courts/ Privy Council judgements taken into consideration in the formulation of policies and setting precedence for the practice of HRM? How is this done?

Can you cite a recent policy/ precedent where this was done?

3. Do the Legal Staff of the Service Commissions Department play a role in the formulation of these policies? If yes, what is the input of the Legal Staff?

What mechanism is in place for checks and balances to ensure compliance with your policies, regulations and precedence?

Would you say that all decisions of Service Commissions are taken within the legal framework that governs the practice of Public Service HRM? How is this achieved?

Are specific laws/ judgements cited when decisions are taken and circular memoranda are issued by the Service Commission Department to line Ministries and Departments?

4. In terms of delegation of authority to line Ministries and Departments the Public Service Commission is still sued when there is an alleged breach of Regulations. What is in place to ensure compliance with laws and policies? How is it working?

What more can be done in light of the Judicial Review Act (2000)?

#### **Research Question 5:**

**What changes and transformations are required in light of the Judicial Review Judgements?**

1. Give details of the kinds of changes and transformation that are required in light of the Judicial Review Judgements.
2. Should there be a role for the Executive? If your answer is yes what role and why? If your answer is no, why?

3. Should this change and transformation be tied to the general matter of Public Service Reform? How and why?
4. What sort of framework should be in place to manage this HR transformation? Which should be the critical agencies involved, what should be their roles and why?
5. Are Service Commissions still relevant to the practice of Human Resource Management on the basis of answer give reasons?
6. If Public Service Commission, Teaching Service Commission and Judicial and Legal Service Commission are to be modernized what should be done and why?
7. Can the Police Service Commission be used as the model for this modernization? On the basis of your answer give reasons.

**Research Question 6:**

**What Strategic Model should be used to bring about a change and transformation in Human Resource Management in the Public Service?**

1. Human Resource Management gurus like Armstrong, Thornhill et al have argued that there should be a coherent strategic approach to the practice of Human Resource Management. How can this be achieved bearing in mind the fragmented nature of the practice of Public Service HRM?
2. If I were to suggest that any model to be designed for the practice of Public Service HRM must be guided not only by the tenets of strategic HRM but also the principles of Public Law do you agree or disagree? On the basis of your answer give reasons.  
If public law informs the practice of public service HRM, what sort of strategic model should be designed and why? How should it be implemented?
3. The Regulations that underpin public service HRM were promulgated in 1966 and these have undergone only minor amendments to date. Can Contemporary Strategic

HRM be practiced in the Public Service against the backdrop of an antiquated legal framework? Yes or No? On the basis of your answer give reasons.

4. If there has be a Legislative Reform agenda for the practice of HRM, who should spearhead this initiative and why?
5. What kind of consultations should be conducted? How should they be done and why?
6. Should the judgements of the Courts of the Privy Council be taken onboard in amending the Regulations?

**Research Question 7:**

**Is an understanding of Public Law crucial to the practice of Human Resource Management in the Public Service?**

1. May I have your views? Give reasons for your answer.

If your answer is in the affirmative, what mechanism/approach should be used to ensure that HR Practitioners in the public service have the requisite knowledge of public law?

2. Which agency should spearhead this process and what should be its specific roles and functions?
3. What specific role should the Service Commissions and the Service Commissions Department play in ensuring that HR practitioners and senior officials are trained in understanding the legislative framework that govern their practice and the tenets of Public Law?