

R E P O R T
of the
O M B U D S M A N
Annual Report for 1997

**For presentation to the National Assembly pursuant to
article 194(4) of the Constitution of the
Co-operative Republic of Guyana**

MISSION STATEMENT

The Office of the Ombudsman is established to guarantee protection to members of the public against the abuse or misuse of power by the bureaucracy. To achieve this goal the Office is committed and dedicated to the following:-

- (1) to investigate and resolve complaints promptly against injustice done to members of the public by government department and other authority;
- (2) to provide informal, dependable and freely accessible service to members of the public;
- (3) to treat members of the public with courtesy, compassion, honesty and respect their privacy;
- (4) to educate members of the public of the services of the Office of the Ombudsman;
- (5) to be ethical, transparent and accountable;
- (6) to offer guidance to members of the public whose complaints are outside of the jurisdiction of the Office of the Ombudsman; and
- (7) to ensure that members of the public are treated alike and there is no discrimination on the ground of race, place of origin, political opinions, colour, creed or sex.

The Hon Mr. Justice S Y Mohamed
Ombudsman

Office of the Ombudsman
39 Brickdam, Stabroek
Georgetown
GUYANA

Tel: 61211, 62294
1st June, 1998

The Hon D C Jagan, SC, CCH, JP, MP
Speaker of the National Assembly
Parliament Building
Brickdam
GEORGETOWN

Dear Sir,

I have the honour to submit to you my annual general report on the performance of the functions of the Office of the Ombudsman for 1997.

I shall be grateful if you will lay it before the National Assembly in accordance with article 194(4) of the Constitution of the Co-operative Republic of Guyana.

Yours sincerely,

.....
S Y MOHAMED
OMBUDSMAN

CONTENTS

	Page
1. Introduction	9
2. Review of the period 1997	17
3. Selected Complaint Summaries	23
4. Appendix A Statistical Summary of Complaints	32
Appendix B Extract from the Constitution of the appointment etc. of the Ombudsman	33
Appendix C Map of Guyana	41
Appendix D Map of the Caribbean Community Countries and mainland of South America	42

INTRODUCTION

The Sixth International Conference of the International Ombudsman Institute

The International Ombudsman Institute was established in 1978 at the University of Alberta, Edmonton, Alberta, Canada. It is incorporated as a non-profit organisation under the Canada Corporation Act. Its objects include inter alia, the promotion of the concept of ombudsmanship, to encourage its development throughout the world, to encourage and support research in the field of ombudsmanship. It provides educational programmes for Ombudsmen of various countries to meet and exchange information and experience. It collects, stores and disseminates information about the Ombudsman Institution.¹

In October 20 - 24, 1996, 698 delegates - 107 Ombudsmen arriving from 85 countries attended the sixth International Conference of the International Ombudsman Institute in Buenos Aires. Guyana though invited was not represented at the Conference. International Conferences were held before in Edmonton Canada 1978, Jerusalem Israel 1980, Stockholm Sweden 1984, Canberra Australia 1980 and Vienna Austria 1992. It was the first such Conference held in Latin America. At the end of the Conference all delegates subscribed to a Final Declaration as follows:²

1 (1981) 7CLB 1461

2 The Ombudsman and the Strengthening of the Citizens Rights. The challenge of the XX1 Century; Proceedings October 20 - 24, 1996 Buenos Aires, Argentina 149

The following declaration was approved by the delegates participating in the VI International Conference of the International Ombudsman Institute, which took place in Buenos Aires, Argentina, from 20 to 24 October, 1996, and was organised by the IOI - an institution born in 1978 which represents 86 countries throughout the world, divided in six regions: Africa, Asia, Australasia and the Pacific, Europe, Latin America and the Caribbean, and North America.

1. This Conference has reaffirmed the essential characteristics of the Ombudsman institution:
 - Independence
 - Accessibility
 - Flexibility
 - Credibility

The role of the institution is to investigate the complaints submitted by the citizens about presumed human rights violations, cases of injustice, as well as other forms of maladministration on the part of governments and public agencies. They also play a fundamental role in the supervision of administrative activities carried out by governments and public agencies, in order to improve the quality of the administration, to make their actions transparent and to increase the level of accountability.

As a consequence there is a growing need of establishing and developing effective Ombudsman institutions at national level for the protection and promotion of human rights and an equal treatment of the individuals in their dealings with governments and public agencies. Such institutions shall place a special emphasis in the status of women. They shall also provide their support to indigenous people and disadvantaged groups.

2. The Conference paid special attention to the impact of economic programs financed by international organisations and regional development banks on the activities carried out by Ombudsmen, Defensores del Pueblo and Human Rights Commissioners. Thus, such organisations have been requested to develop their programs within the framework of human rights international instruments.

3. It was also considered of fundamental importance that international organs, such as the United Nations, as well as regional organisations, increase their support towards the work of the IOI, so as to define the international scope of the Institute and that of the Ombudsman office at national level. Similar support shall be extended to individual activities at regional and international level performed by Ombudsmen towards the protection of basic human rights.
4. At the request of UNESCO, the Antigua (Guatemala) Declaration on the Culture of Peace and Human Rights, which encouraged the creation of a network of Ombudsmen to support the purposes of such Declaration, was submitted to be ratified by all IOI members present.
5. One of the essential features of the Ombudsman Institution is to support those countries which are trying to establish, develop and maintain their institutions under adverse circumstances. Special consideration has been given to such situation. We cannot accept the fact that in some countries the independence of the institution be challenged or that Ombudsmen be threatened for carrying out their duties on behalf of the people. During the Buenos Aires Conference, some examples illustrating such situation in Latin America were brought to the attention of the delegates including situation of the Commissioner for the Defence of Human Rights for El Salvador, Mrs. Victoria M. Velazquez de Avilez.

Buenos Aires, October 24, 1996

Appointment of Ombudsman

In Guyana the Ombudsman is appointed by the President acting after consultation with the Minority Leader.

In Trinidad and Tobago the Ombudsman is appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. He is an officer of Parliament.

In St. Lucia the Parliamentary Commissioner (Ombudsman) is appointed by the Governor-General acting after consultation with the Prime Minister and the Leader of Opposition. He is an officer of Parliament.

In Antigua and Barbuda the Ombudsman is appointed by resolutions of each House of Parliament. He is an officer of Parliament.

Procedure for Filing Complaints

In Guyana a complaint is made directly to the Ombudsman by the aggrieved person himself or by one authorised by him. The procedure is the same in several countries. In Guyana also the President, a Minister or a member of the National Assembly or of the National Congress of Local Democratic Organs may request the Ombudsman to investigate an action of an officer of a department of Government or certain corporations on the ground that a person or body of persons specified in the request has or may have sustained an injustice.

In some countries - England, France, Hong Kong, the Ombudsman can only consider a complaint which has been referred to him by a Member of Parliament. But Hong Kong has now abandoned this procedure and a complaint may be made directly by the aggrieved person to the Ombudsman. This is also the case in Sri Lanka; previously a complaint had to go to the Ombudsman through Parliament's Petitions Committee.

Complaints in Brief

The complainant bought a property in 1992 with a sitting tenant. He took proceedings in the magistrate court for possession. After thirty-five (35) hearings over a period of two years the magistrate refused him possession. He appealed against the decision of the magistrate on the 24th December, 1994. His appeal cannot be heard because the magistrate has not given his written memorandum of reasons. This was the position when he last checked at my office on 5th August, 1997; two years 8 months since the magistrate gave his decision. I wrote the authority on the matter.

On the 1st October, 1994, a complaint appealed against the decision of the National Insurance Appeal Tribunal to the National Insurance Commissioner. On the 24th July, 1997, I received from the Commissioner a notice which reads 'Decision - This appeal is disallowed.'

The Commissioner is required by law to give a written decision which he has not so far given.³

A prisoner was sentenced by a city magistrate to one month imprisonment for a certain offence. But the warrant committing him to prison stated one year. The complainant complained to me. I uplifted a certified copy of the case-jacket wherein it was stated that he was sentenced to one month imprisonment. I wrote the magistrate about the matter and after a reminder and a personal visit to him; the prisoner was subsequently released after spending about two and a half months extra in prison.

³ Ref.No 92/96 at 23 post

A complainant had to cut grass to feed his cow in pound during the middle of December, 1996, and 25th March, 1997, while the magistrate continued to postpone hearing of a larceny case.⁴

A nine year old son put in lock-up with his mother for one day.⁵

Misrepresentation to obtain a duplicate registration certificate of a motor car.⁶

The Commissioner of Police has not replied to eight complaints referred to him. Reminders were sent and, still no reply. I also spoke to him personally.⁷

The Commissioner of Lands and Surveys has not replied to five complaints referred to him. Reminders were sent and, still no reply.

- 4 Ref No 38/97 at 25 post
- 5 Ref No 17/97 at 24 post
- 6 Ref No 40/97 at 27 post
- 7 This amount has been reduced.

CORRUPTION grows like a tree.

When it is a seedling, you can
Uproot it with your fingers.

A few years later, you will
need a bulldozer.

**LET US UPROOT IT IN
PAPUA NEW GUINEA
NOW!!!**

The Papua New Guinea
Bi-Monthly Newsletter
November, 1995.

2

REVIEW OF THE YEAR 1997

This is my third annual report since I assumed office on 1st October, 1994. It has been an honour and privilege to serve the poor and the under privileged and sometimes the rich. It is the greatest job satisfaction I ever had. It surpassed my previous twenty-eight years of service both as a law officer and a judge. The public confidence in the Office has been increased, and it is greater now than it was ever before. More people are aware of the Office and are making use of it. I am trying, by pointing out to public officers their lapses, to increase the efficiency and fairness of the public service.

During 1997 I received three hundred and eleven complaints, that is twenty-eight less than year 1996, but complaints within my jurisdiction has fallen by one over the year 1996.

The complaints for the year 1997 were as follows:-

- (a) within my jurisdiction
 - (i) 106 a summary of some of these complaints fully investigated is in Chapter 3;
 - (ii) 44 of the above are still under investigation;
- (b) 205 outside of my jurisdiction

The complaints disposed of in 1997 including 50 that were pending in 1996 were as follows:-

Justified	-	22
Not justified	-	23
Withdrawn	-	17
Jurisdiction declined	-	04
No jurisdiction	-	201

In 1997 there were twenty-two complaints justified against Government departments and authorities. The Ombudsman has jurisdiction only over departments of Government, certain corporations and statutory boards.¹ The Public Service Appellate Tribunal, the Judicial Service Commission, the Public Service Commission, the Teaching Service Commission² and the Police Service Commission are not regarded as departments of Government.

Complaints in which jurisdiction were declined under the constitution included -

- (a) the law courts - I am precluded by the Constitution from investigating the commencement or conduct of civil or criminal proceedings in any court;
- (b) prisoners - who complained of waiting in prison over a long period awaiting trial; this delay occurs in the court procedure and the police who are not ready to prosecute the case. Some prisoners have been in prison for over two years and the preliminary inquiries have not yet been concluded. A few prisoners complained of not receiving medical attention. These were reported and corrected.
- (c) where the complaint has a remedy by way of proceedings in court; and
- (d) stale and frivolous complaints.

Complaints in which I had no jurisdiction include legal practitioners, members of the public who sought my advice on matters of private nature and the police which were referred to the Police Complaints Authority; in some of these complaints I wrote or spoke to the police on the complaint. Certain complaints against the police come under my jurisdiction.³

1 Article 192 (1), Schedule to the Ombudsman Act, Cap. 19:04

2 Ref No 73/96 at 29 post

3 Ref No 85/96 at 24 post

One hundred and seventeen complaints were made by persons who walked into the Office of the Ombudsman. Accessibility to the Ombudsman is alive and kicking.

Complaints outside of my jurisdiction continue to exceed those within my jurisdiction.

Public Officers continue not to respond to my correspondences.⁴ Some do only after several reminders. Last year in my report I said⁵ -

A public officer is a powerful person who by the stroke of the pen can jeopardise the liberties of the subject. He must therefore not be afraid to be told of his mistake. It is by pointing out to him his mistake, he will improve his performance. He would be able to discern the differences between right and wrong when considering a problem and, build up a code of conduct in his department to be followed in future cases.

The aim of the Ombudsman is to help public officers in the performance of their duties, to prevent recurrence of mistakes which eventually improve the performance of their department. Public Officers must assist the Ombudsman to achieve this aim. If the Ombudsman fails to achieve this, he would as one Commonwealth Ombudsman said, he would just be spending his time in putting out bushfire.

University of Guyana Students

During the year several students from the University of Guyana visited my office and sought my assistance on certain aspects of their study programme on the powers and duties of the Ombudsman.

4 Ref No 16/95 at 25 post
5 Ombudsman Report 1996 at 19

Accommodation

The Office of the Ombudsman has been able to get some additional accommodation because of certain changes. The ground floor of the three storeyed building is still being occupied by the Police Complaint Authority and the Bar Association Secretariat. The first floor which was occupied by the Public Service Appellate Tribunal is now occupied by the Land Court. The top floor except one room is now occupied by the Office of the Ombudsman.

Commendation

I would like to commend the National Insurance Scheme and the Guyana Prisons Service for replying to my correspondences promptly and for their co-operation. I sincerely hope other government agencies will try to emulate them.

**BUDGET OF THE OFFICE
OF THE OMBUDSMAN**

G\$ 5,093,000.00

Expenses

Salaries and Allowances	3,983,000.00
National Insurance Scheme	70,000.00
Stationery and Cleaning Materials	70,000.00
Fuel and Lubricants	96,000.00
Transport and Travelling	350,000.00
Telephone Charges	17,000.00
Other Services Purchased	200,000.00
Grand Total	4,786,000.00
Balance	307,000.00

G\$150 = US\$1

Staff of the Office of the Ombudsman

Ombudsman
Secretary to the Office of the Ombudsman
Typist Clerk 111
Administrative Assistant
Accounts Clerk 11
Typist Clerk 11
Office Assistant
Cleaner

3

**SELECTED COMPLAINT
SUMMARIES****NATIONAL INSURANCE SCHEME****Ref No 94/96 - Denial of a pension**

The complainant applied for a pension, but was denied one because he did not have the required contributions for pension and there was no record that his employer sent the weekly deductions deducted from his wages to the NIS. He was given a grant instead after working over thirty years as a carpenter at a well known sawmill company. He has been trying to get his pension since 1995.

I wrote the NIS on the matter. After some time it replied by saying that the complainant would 'be accordingly informed when to uplift his pension book'.

Ref No 101/96 - Denial of a pension

The complainant worked at a certain Project of the Drainage and Irrigation Board from 1975 to 1983 and contributed to NIS. He applied for pension but the NIS was unable to locate his records. The Project is now defunct. He, at my request, supplied written statements from four fellow workers who testified that he worked with the Project. The NIS carried out investigation on those statements, and advised that the complainant would be given a pension.

Ref No 92/96 - No written decision of the Commissioner

The complainant appealed on 1st October, 1994 against the decision of the National Insurance Appeal Tribunal to the National

Insurance Commissioner on the 24th July, 1997. I received from the Commissioner a notice which reads 'Decision - This appeal is disallowed'. Regulation 13(9) of the National Insurance and Social Security (Determination of Claims and Question) says -

The decision of the Commissioner shall be in writing and signed by him, and as soon as practicable, copies thereof shall be sent, simultaneously, one to the claimant and one to the General Manager.

The complainant through me, requested a copy of the written decision of the Commissioner. He has not so far provided the complainant with his written decision.

GUYANA POLICE FORCE

Ref No 85/96 - Interdiction from duty

The complainant, a member of the Police Force was interdicted from duty and placed on half pay under section 43A of the Police Act, Chapter 16:01 pending the determination of a criminal charge of 'Simple Larceny' contrary to section 164 of the Criminal Law (Offences) Act Chapter 8:01. The charge against him was dismissed and he was not re-instated. He made several requests for re-instatement but did not hear anything about his requests. He complained to me. I wrote the Commissioner, who after sometime, informed me that the complainant was re-instated and was performing duties at the Tactical Service Unit.

Ref No 17/97 - Mother and son nine years old placed in lock-up

The complainant and her brother had an altercation over certain property. She claims that she and her nine year old son were taken first at the Parika Police Station and then to Den Amstel Police Station. At the latter station she and her son were placed in a cell from 97-03-23 to 97-03-24. Around 5:00 p.m. on 97-03-24 her son was released and she was released the next day 97-03-25.

The Commissioner of Police says that the complainant and her son were taken to the Parika Station but the complainant refused to leave her son with a relative. The complainant and her son were then taken to the Den Amstel Station where the boy was placed on a bench at the Enquiries

Office while she was placed in the lock-up. He further says that another prisoner gave a statement that the boy was not placed in the lock-up with his mother. Around 12:30 on 97-03-23 the complainant's relative came and carried the boy.

Ref No 25/97 - Return of bail money

Two complainants lodged separate sums with the police as bail either for himself or for another person in criminal matters. The criminal proceedings were not instituted and the police failed when requested to return the sums lodged as bail. The complainants reported the matter to me. I wrote the police, who, after sometime, returned the money.

Ref No 38/97 - Complainant cutting grass to feed his cow while case postponed

An accused was charged for stealing the complainant's bull. The accused pleaded not guilty and the police impounded the complainant's buli. The complainant says the bull was not getting enough grass, he had to cut and carry grass nearly everyday for his bull to the pound at Parika Police Station which is situated about two miles from where he lived, during the period around the middle of December, 1996 to 7th April, 1997. During the said period the magistrate postponed the hearing of the matter everytime it was called up because of the failure of the prosecution to get their witnesses. In the meantime the complainant ordeal to cut grass and feed his bull continued. The complainant sought my assistance. I spoke to the Director of Public Prosecutions who intervened as a result there was a speedy resolution of the matter.

Ref No 16/95 - Dismissal of a Corporal

The complainant was placed on criminal charges on the 20th September, 1994; he was never interdicted from duty during the criminal charges, but continued to work. Six months after he received a letter dated 1995-03-03 discharging him from the Force with effect from 1995-02-07 under s. 35(1) of the Police Act Cap. 16:01. No reason was given for the discharge. The criminal charges against him were dismissed. Following the dismissal of the criminal charges the complainant requested his reinstatement without success. I wrote the Commissioner on the 19th March, 1997 on the matter. I received no reply. I sent him reminders on 15th April and 17th July, 1997. I received no reply. In September,

1997 I spoke to the acting Commissioner of Police on all my outstanding matters. He requested a copy of the outstanding matters. This was sent to him. I received a reply dated 1997-09-12 from him saying that measures are 'In place to ensure that you receive responses'. I received no further communication.

My officer spoke to the Commissioner's Secretary on 97-05-06 and 97-10-24 on the telephone on all outstanding matters and was told that they would be looked into. Nothing came out of those telephone conversations.

The Commissioner's failure to reply to my enquiries shows that he has no valid reasons to justify his action for refusing to re-instate the complainant. The complainant committed no offence other than those for which he was charged before the court. In normal circumstances a person is Interdicted from duty, put on three quarters or half pay pending the determination of the charge. This was not done, but instead he invoked his statutory powers to discharge the complainant from the Force. Since the complainant committed no other offence, then obviously, the Commissioner discharged the complainant from the Force under s. 35 for the offence from which he was charged. But the Court dismissed the charge against the complainant.

Section 35 can only be used to dismiss a person from the Force for a cause and this would entitle the person to a hearing before being discharged. This was not done. 'The principles of natural justice cannot be circumvented by utilising a short cut in achieving the desired objective of removing an employee from office. The errant constable or public servant is entitled to be heard before any disciplinary action is taken against him especially if such action is likely to affect his ability to earn a living in the future and any financial entitlements. Dismissal is not an option to be exercised lightly by those who exercise disciplinary control over others'. If the cause for the discharge was the offences for which complainant was charged, as I said before he was not given a hearing. If however the Commissioner relied on the matter before the Court as a hearing, here again the charge against the complainant was dismissed.

From the above, not only the complainant's request for reinstatement was ignored but also that of the Ombudsman. The complainant was coming to my office very often to find out the position of his matter. I could not continue to tell him I was waiting to hear from the Commissioner. This is a poor man's office. The rich may be able to go to

court to seek redress for the wrong done to him but the poor and the underprivileged, sometimes rich too, seek the assistance of this office. If a situation like this continues to occur the public will lose confidence in this office which I am trying to build.

In view of the above, I recommended that the complainant be reinstated without any loss of benefits. I asked the Commissioner to inform me on or before the 31st January, 1998 if he would implement my recommendation. I received no reply again. I sent a reminder. I received a letter dated 1998-04-22 on the above subject which I am now considering.

Ref No 40/97 - Misrepresentation to obtain a duplicate registration certificate

The complainant says that he lent 'Whiteacre' the sum of one hundred and five thousand dollars (\$105,000.00) who gave him his registration certificate of his car to hold until the sum was repaid. 'Whiteacre' only paid the complainant fifteen thousand dollars (\$15,000.00) and since sold the car while complainant is still in possession of the registration certificate.

The Commissioner of Inland Revenue says that a duplicate registration is issued on proof to the Licence Authority if such registration is lost or destroyed. 'Whiteacre' made representation to the Brickdam Police Station that his registration certificate was lost. He was subsequently issued with a duplicate registration certificate. 'Whiteacre' nearest police station is at Leonora.

I informed the Commissioner of Police of the above and asked him to inform me of the results of his investigation. I received no reply from him although reminders were sent to him. I do not have jurisdiction over the Commissioner in any 'action taken for the purposes of protecting the security of the State or of investigating crime'. Notwithstanding the above, out of courtesy, I should have been given a reply to inform the complainant of the result of the investigation. The complainant, I believe, and rightly too, feels that he has not been given justice in this matter.

Ref No 82/96 - Struck off the strength - not reporting for duty

A complainant a former sergeant of the police force was struck off the strength of the force with effect from 1991-09-01 because of his

failure to report for duty on 1991-09-01. He wrote the Honourable Minister of Home Affairs to this effect who by letter dated December, 13, 1993 passed on his complaint to the Commissioner of Police and requested him to communicate with the complainant. He has received no communication from the Commissioner. The complainant asked me to investigate his matter. I wrote the Commissioner but I received no reply.

GUYANA DEFENCE FORCE

Ref Nos 31/97, 34/97 - The taking of Drugs

A few ranks of the Guyana Defence Force were dismissed from the Force on the allegation that they had taken drugs. One rank says that on the 29th May, 1997 he was ordered to take a urine test at Timehri Camp Stephenson GDF. On the 10th June, 1997 he was told that his urine was tested positive for cannabis sativa. On the 11th June, 1997 he went to Camp Ayanganna and another test of his urine which was shown to be negative. On the 13th June, 1997 he had a trial but it was put down for further evidence. Apparently no further evidence was taken and he was Struck-off the strength in the interest of the Guyana Defence Force.

Another rank says that he had a trial and the trial officer dismissed the charge against him. Notwithstanding the dismissal, he was dismissed from the Force.

I wrote the Chief of Staff on the matter. he replied by saying "the matter having been reviewed that a technical legal matter was overlooked in the marching in procedures for the trial of those ranks, and not that the drug tests were flawed. The ranks who were dismissed from the Guyana Defence Force for this matter will therefore be reinstated".

MINISTRY OF LOCAL GOVERNMENT AND REGIONAL DEVELOPMENT

Ref No 15/97 - An unjustified deduction of a sum from an Overseer's salary

An assistant overseer of a Neighbourhood Democratic Council (Council) claimed that the Council deducted from his salary the sum of one thousand dollars (\$1,000.00) without any reason for the deduction.

The Regional Executive Officer (REO) of the Council was informed of the overseer's complaint, who replied by saying that 'at a Council meeting it was decided that (\$1,000.00) one thousand dollars be deducted from his salary because of the amount of times he was absent from duty without approval from the Chairman or Council'.

I requested a copy of the minutes of the Council meeting. The REO replied by saying that 'after perusing the Minutes Book of the said N.D.C. I have been unable to locate any such approval by the said Council'.

I informed the Council that in view of the above the deduction of the sum of one thousand dollars (\$1,000.00) from the overseer's salary was unjustified and should be returned to him. I have been informed that this has not been done.

TEACHING SERVICE COMMISSION

Ref No 73/96 - Dismissal of a Headmaster

The complainant formerly headmaster of a Primary School, was dismissed on 1st June, 1982 from that position. He challenged his dismissal in the Court and was awarded damages. He made representation to the Teaching Service Commission (TSC) to be re-instated but was told that the court did not order re-instatement. He was eventually re-appointed as a trained Grade 1 Class 1 Master with effect from 89-04-07. He retired at this level and his superannuation benefits were calculated at his salary as Trained Grade 1 Class 1 Master although his entire teaching service prior to his dismissal was taken into consideration in calculating his superannuation benefits. He is therefore receiving superannuation benefits calculated at his salary as a trained Grade 1 Class 1 Master. If he was re-instated his superannuation benefit would have been calculated at the time of his retirement at his salary as that of a headmaster.

The court did not order a re-instatement of the complainant but awarded him damages. The court by ordering damages found that he was wrongfully dismissed and therefore opened the way for the TSC to re-instate him. But the TSC instead of re-instating him as a headmaster appointed him as Trained Grade 1 Class 1 Master. TSC did exactly what the court did not order. He remained in the teaching profession and retired at that position. If he was found good to be appointed as Trained

Grade 1 Class 1 Master there was no reason why the TSC could not have re-instated him as a headmaster. The re-employment or re-instatement should have been that of a headmaster and on his retirement his superannuation benefits would have been calculated on his salary as that of a headmaster.

I wrote the TSC to deem his services of Grade 1 Class 1 Master as that of a headmaster to allow him to have his superannuation benefits calculated on the salary as that of a headmaster.

The TSC did not reply to my request although I sent several reminders and made several telephone calls. I do not have jurisdiction over the TSC and could not proceed any further with the matter.

GUYANA ELECTRICITY CORPORATION

Ref No 80/95 - Denial of gratuity

The complainant was employed directly to work on a Rehabilitation project of Guyana Electricity Corporation funded by IDB. He claims that he is entitled to a gratuity of 22 ½% of his basic salary for each completed period of six months of continuous service. He claimed that the general manager had approved of the gratuity. He applied for the gratuity but received no word from GEC.

On 24th August, 1995 I wrote GEC on the matter. GEC replied on 9th November, 1995 by saying that 'no provision was made for gratuity in the complainant's contract of employment'. In another letter of 11th June, 1996 GEC further stated that the complainant was given a project allowance and therefore not entitled to a gratuity. So the complainant according to GEC was not entitled to gratuity because -

- (i) his contract did not provide for the payment of gratuity; and
- (ii) he was paid a project allowance

By letter dated 16th December, 1996 I mentioned to GEC, with regard to (i) that because of the omission to mention gratuity in the complainant's contract that representation was made to the General Manager for all direct employees of the GEC Rehabilitation Project to be paid gratuity.

With regard to (ii) the employees of the following IDB funded project -

Human Resources Development
Health Care Project
Agriculture Project
Education Project and
Simap

received gratuity equivalent to 22 1/2% of basic salary for each completed six months in addition to housing and project allowance. It was because of the employees of the above projects were receiving gratuity that the General Manager approved of the payment of gratuity to the employees of GEC Rehabilitation Project. The Project allowance, which the complainant was receiving, was received also by all employees of IDB funded project. The complainant was therefore given what other employees of IDB funded project was receiving except gratuity.

All IDB funded projects came to an end at the completion of the projects and this was an additional factor taken into account to give to all IDB funded projects employees gratuity.

Guyana Electricity Corporation, after several reminders, finally on 18th September, 1997, sent me a copy of a letter of the Personnel Manager dated November 17, 1972, which explained that 'when the General Manager approved of the gratuity to the complainant he did not have all the facts at his disposal'. So it took GEC two years from the first time I wrote, that is, 24th August, 1995, to give a satisfactory explanation why the complainant was not given a gratuity. These facts were available to GEC. GEC did not do its work.

APPENDIX A

STATISTICAL SUMMARY OF COMPLAINTS

	1997						Total
	Justified	Not justified	Pending	Jurisdiction declined	Withdrawn	No jurisdiction	
Region 2	1		2		2		5
Region 6		1	1				2
Lands & Surveys Department			9	1	1		11
Linden Utility Co-op Society						1	1
National Insurance Board	2	3	6		3		14
City Council of Georgetown				1	1		2
Geology & Mines Commission	1						1
Georgetown Sewerage and Water Commissioners		1					1
University of Guyana					1	2	3
Ministry of Local Govt. & Regional Development	1						1
Guyana Police Force	5	5	10	1	3	10	34
Ministry of Home Affairs		2	1				3
The Law Courts						40	40
Central Housing & Planning Authority	3	1	4			1	9
Guyana Water Authority	1	1	1				3
Ministry of Finance		1	1				2
Mahaica, Mahaicony & Abary		1	1				2
Private Complaints (Advice)						109	109
Legal Practitioners (Lawyers)						15	15
Guyana Defence Force	3	2	1		2		8
Guyana National Engineering Corporation		1					1
Ministry of Labour	3	1	3		1	2	10
Ministry of Education			1		3		4
Public Trustee			1				1
Guyana Prison Service	2					20	22
Ministry of Health		2	2				4
Inland Revenue Department		1					1
Teaching Service Commission				1			1
TOTAL	22	23	44	4	17	201	311

APPENDIX B**Extract from the Constitution of the appointment etc of the Ombudsman****The Ombudsman**

Appointment,
etc., of
Ombudsman.

191.(1) The Ombudsman shall be appointed by the President acting after consultation with the Minority Leader.

(2) The Ombudsman shall not perform the functions of any public office and shall not, without the approval of the President in each particular case, hold any other office of emolument, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.

(3) Subject to the provisions of the next following paragraph, a person holding the office of Ombudsman shall vacate that office at the expiration of four years from the date of his appointment.

(4) The provisions of article 225 (which relate to removal from office) shall apply to the office of Ombudsman, and for the purposes of paragraphs (4) and (6) of that article the prescribed authority shall be the Prime Minister.

Matters subject
to investigation
by the
Ombudsman.

192.(1) Subject to the provisions of this article, the Ombudsman may investigate any action taken by any department of Government or by any other authority to which this article applies, or by the President, Ministers, officers or members of such department or authority, being action taken in exercise of administrative functions of that department or authority.

(2) The Ombudsman may investigate any such action as aforesaid in any of the following circumstances, that is to say -

(a) If a complaint in respect of the action is duly made to the Ombudsman by any person or body of persons, whether incorporated or not, alleging that the complaint has sustained injustice in consequence of a fault in administration;

(b) If the President, a Minister or a member of the National Assembly or of the National Congress of Local Democratic Organs requests the Ombudsman to investigate the action on the ground that a person or body of persons specified in the request has or may have sustained injustice;

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

(3) The Ombudsman shall not investigate under this Subtitle -

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

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

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

(b) any such action, or action taken with respect to any such matter, as it excluded from investigation under article 193:

Provided that the Ombudsman -

(i) may conduct an investigation notwithstanding that the complainant has or had a remedy

by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;

- (ii) shall not in any case be precluded from conducting in the investigation in respect of any matter by reason only that it is open to the complainant to apply to the High Court for redress under article 153(1) (which relates to redress for contraventions of provisions for the protection of fundamental rights and freedoms).

(4) In determining whether to initiate, continue or discontinue an investigation under this Subtitle the Ombudsman shall, subject to the foregoing provisions of this article, act in accordance with his individual judgment and in particular, and without prejudice to the generality of the foregoing, he may refuse to initiate, or may discontinue, any investigation if it appears to him that-

- (a) the complaint relates to action of which the complainant has had knowledge for more than twelve months before the complaint was received by the Ombudsman;
- (b) the subject matter of the complainant is trivial;
- (c) the complaint is frivolous or vexatious or is not made in good faith; or
- (d) the complainant has not a sufficient interest in the subject matter of the complaint.

(5) The authorities other than departments of government to which this article applies are -

- (a) any authority empowered to determine the person with whom any contract or

class of contracts shall be entered into by or on behalf of the Government of Guyana; and

(b) such other authorities as may be prescribed by Parliament.

(6) For the purpose of this article the Judicial Service Commission, the Public Service Commission, the Teaching Service Commission and the Police Service Commission shall not be regarded as departments of Government.

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

(8) Any question whether a complaint or a request for an investigation is duly made under this Subtitle or any law enacted in pursuance of article 195 shall be determined by the Ombudsman.

(9) Where a complaint or request for an investigation is duly made as aforesaid and the Ombudsman decides not to investigate the action to which the complaint or request relates or to discontinue an investigation of that action, he shall inform the person or body of persons who made the complaint or request of his decision.

(10) In this article and in article 193 "action" includes failure to act and "action taken" shall be construed accordingly.

193. The Ombudsman shall not investigate any such action, or action taken with respect to any such matter, as is described hereunder:

Excluded matters.

(i) matters certified by the President or a Minister to affect relations or dealings between the Government of Guyana and any other Government or any international organisation;

- (ii) action taken for the purposes of protecting the security of the State or of investigating crime, including action taken with respect to passports for either of those purposes;
- (iii) the commencement or conduct of civil or criminal proceedings in any court;
- (iv) action taken in respect of appointments to offices of other employment in the service of the Government of Guyana or appointments made by or with the approval of the President or any Minister, and action taken in relation to any person as the holder or former holder of any such office, employment or appointment;
- (v) action taken with respect to orders or directions to any disciplined force or member thereof as defined in article 154;
- (vi) the exercise of the powers conferred by article 188;
- (vii) the grant of honours, awards or privileges within the gift of the President;
- (viii) action taken in matters relating to contractual or other commercial dealings with members of the public other than action by an authority mentioned in sub-paragraph (a) of article 192(5);
- (ix) action taken in any country outside Guyana by or on behalf of any officer representing the Govern-

Government of Guyana or any officer of that Government;

- (x) any action which by virtue of any provision of this Constitution may not be inquired into by any court.

194.(1) After conducting an investigation under this Subtitle the Ombudsman shall inform the department or authority concerned of the result of that investigation and, if he is of the opinion that any person or body of persons has sustained injustice in consequence of a fault in administration, he shall inform that department or authority of the reasons for that opinion and may make such recommendations for action by that department or authority as he thinks fit.

Ombudsman's functions on concluding an investigation, and reports to the Assembly.

(2) After conducting an investigation under this Subtitle in pursuance of a complaint or a request for an investigation made by the President, a Minister or a member of the National Assembly or of the National Congress of Local Democratic Organs, the Ombudsman shall -

- (a) if he is of the opinion that the complainant or, in the case of an investigation conducted in pursuance of such a request, the person or body of persons specified in the request has sustained injustice in consequence of a fault in administration, inform the person or body of persons who made the complaint or request that he is of that opinion and the nature of the injustice that he considers has been sustained.
- (b) if he is of the opinion that the complainant or, in the case of an investigation conducted in pursuance of such a request, the person or body of persons specified in the request has not sus-

tained injustice, inform the person or body of persons who made the complaint or request that he is of that opinion and the reason therefor.

(3) Where the Ombudsman has made a recommendation under paragraph (1) and within a reasonable time thereafter no action has been taken which appears to the Ombudsman adequately to remedy the injustice, he may lay before the Assembly a special report on the case.

(4) The Ombudsman shall annually lay before the Assembly a general report on the performance of his functions under this Subtitle.

195. Parliament may make provisions for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Subtitle including (without prejudice to the generality of the foregoing power) provision -

- (a) for the procedure to be observed by the Ombudsman in performing his functions;
- (b) for the manner in which complaints and requests for investigation shall be made to the Ombudsman and for the payment of fees in respect of any complaint or investigation; and
- (c) for the powers, duties and privileges of the Ombudsman or of other persons or authorities with respect to the obtaining or disclosure of information for the purposes of any investigation or report by the Ombudsman.

Power of Parliament to make supplementary provision.

196. In this Subtitle -

Interpretation.

"complainant" means the person or body of persons by or on whose behalf a complaint under this Subtitle is made; and

"fault in administration" includes, without prejudice to its generality, any contravention of article 149 (which relates to discrimination on grounds of race, place of origin, political opinions, colour or creed).

