

R E P O R T
of the
O M B U D S M A N

for the period
1st October, 1994 to 31st December, 1995

**Presented 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 any member of the public by a 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.**

Hon. Mr. Justice S Y Mohamed
Ombudsman

Office of the Ombudsman,
39, Brickdam, Stabroek,
Georgetown,
GUYANA,
TEL: 61211, 62294

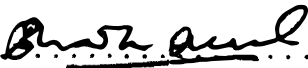
19TH FEBRUARY, 1996

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

Dear Sir,

I have the honour to submit to the National Assembly, through you, a general report on the performance of the functions of the Office of the Ombudsman for the period 1st October, 1994 to the 31st December, 1995 in accordance with article 194(4) of the Constitution of the Co-operative Republic of Guyana.¹

Yours sincerely,


.....
S Y MOHAMED
OMBUDSMAN

1. Article 194(4) says the Ombudsman must annually lay before the National Assembly a general report on the performance of the functions of his office. I assumed office on 1st October, 1994, this report therefore covers the period 1st October, 1994 to 31st December, 1995.

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1

INTRODUCTION

The Office of the Ombudsman was first established in Sweden just under two centuries ago. The Swedish Constitution of 1809 contained a provision for the election by Parliament of an Ombudsman whose function was to supervise, in his capacity as a representative of Parliament, the observance of laws and regulations by public officials and to take legal action against those who had, in the execution of their official duties, committed offences or neglected their obligations. On March 1, 1810 the first Ombudsman was elected.¹

Following the Swedish system, a Parliamentary Ombudsman was included in the Finland Constitution Act 1919. In Denmark, the Danish Parliament in 1954 passed an Act setting up an office of a Parliamentary Commissioner. The Norway's Parliamentary Ombudsman came into force in January 1, 1963.² Since then there has been a continuous growth of the Office of Ombudsman. An Ombudsman can be found in nearly every Commonwealth and non-Commonwealth country.³

1 Ulf Lundvik, *The Ombudsman in the Provinces of Canada* (1981), International Ombudsman Institute (1981) 1-5, the word Ombudsman means simply attorney or representative and has a widespread use; D R Saxena, *Ombudsman (Lokpal) Redress of Citizens Grievances in India* (1987) 32-103; S Y Mohamed *Constitutional Law of Guyana* unpublished, Chapter on Ombudsman.

2 D R Saxena *op cit.* 70, 84 and 99.

3 (1981) 7 CLB 1458; *Directory of Ombudsman* International Ombudsman Institute 1995.

New Zealand was the first Commonwealth country to have an Ombudsman in 1962, followed by Guyana and Tanzania in 1966.⁴ In England, when the Labour Government Party came into power in 1967 it established the Office of the Ombudsman under the name of Parliamentary Commissioner of Administration in 1967.⁵ Thus the United Kingdom Parliament gave Guyana in its Independence Constitution of 1966⁶ an Ombudsman before it gave one to itself in 1967.

In the Commonwealth Caribbean, Guyana was the first to have an Ombudsman in 1966.⁷ Trinidad and Tobago and Jamaica both obtained independence in 1962, four years before Guyana attained its independence but the Office of the Ombudsman came years after; Trinidad and Tobago in 1976⁸ and Jamaica in 1978.⁹ Dominica¹⁰, Barbados¹¹ and Antigua and Barbuda¹² are among the Commonwealth Caribbean countries that have Ombudsmen.

In 1965 the International Commission of Jurists in its Report said that the then government of British Guiana accepted the principle of an Ombudsman to be invested with constitutional authority to investigate cases of mal-administration including racial discrimination where it would not be desirable or reasonably practicable to invoke the constitution in the courts as a mean of redress. The procedure in such cases should be simple, swift and inexpensive. The Commission in its Report cited in support for the establishment of the Office of Ombuds-

4 Ulf Lundvik *op cit* 1-5, note 10 at p 4; D R Saxena *op cit* 115-132: New Zealand has a deputy Ombudsman Parliamentary Commissioner: Sir Guy Richardson Powles was the first Parliamentary Commissioner

5 D R Saxena *op cit* 133-173; Ulf Lundvik *op cit* 105; International Ombudsman Institute Directory of Ombudsman Offices (1995) there are now two Parliamentary Commissioners for Administration, in 1974 three Commissioners for Local Administration were appointed, one with three Commissioners for England, one with a Commissioner for Wales 1975 and one with a Commissioner for Scotland.

6 Article 52 Guyana Independence Order 1966 (SI 1966 No (575) Schedule 2

7 Note 6 supra; now articles 122 and 191 to 196 of the Constitution of the Co-operative Republic of Guyana 1980

8 The Republic Constitution of Trinidad and Tobago 1976 Act No 4 of 1976

9 The Ombudsman Act 1978

10 Dominica Constitution Order 1978; Dominica Ombudsman is called - Parliamentary Commissioner, there is a Deputy Parliamentary Commissioner

11 Ombudsman Act 1980 (No 68 of 1980)

12 Ombudsman Act 1994

man, the Report of Professor S A De Smith Constitutional Commissioner for Mauritius who advocated the appointment of an Ombudsman in Mauritius.¹³

In pursuance of the Report of the International Commission of Jurists, the Office of the Ombudsman was established in the Independence Constitution of 1966.¹⁴

In Guyana, before the establishment of the Office of the Ombudsman, certain functions of that Office were in a modest way performed by the Attorney General's Chambers. A legal officer of those Chambers was specially assigned to deal with complaints from the public including complaints against government departments and government agencies. This service was not provided by statute, it lacked statutory sanction but, it however provided some relief for the ordinary man.

The Ombudsman has been described as the most popular constitutional innovation in the democratic world. He acts as an independent watch-dog over government departments, government agencies and their officers.¹⁵ He oversees through complaints, their doings, non-doings and mis-doings. He investigates and reports upon citizens' grievances against acts of the Government. He is the guardian against injustice and hardship which result from mal-administration and of hardship inflicted by administrators.¹⁶ He is looked upon as the 'Citizen's Defender' or the 'Complaints Man'.¹⁷ His effectiveness depends simply on the power of publicity.¹⁸

Appointment of the Ombudsman

The Ombudsman in Guyana is appointed by the President acting after consultation with the Minority Leader. He vacates

13 International Commission of Jurists Report of the British Guiana Commission of Inquiry - Racial Problems in the Public Service (1965) 119; Mauritius first Ombudsman was appointed in 1970 - a judge from Sweden Mauritius 18th Annual Report of the Ombudsman

14 Notes 6 and 7 *supra*

15 (1985) 11 CLB 995

16 (1979) 5 CLB 219-220

17 41 MLR 446; A Cutting Edge The Parliamentary Commissioner and the MPs (1990) 53 No 6 MLR 745

18 (1981) 7 CLB 1458

his office at the expiration of four years from the date of his appointment¹⁹ but he can be re-appointed. The Constitution does not prescribe the qualification of the Ombudsman but all the appointees so far, I am happy to say, have been lawyers. The general trend is to appoint persons with legal qualification.²⁰

The salaries and allowances of the Ombudsman are charged on the Consolidated Fund and are of the same level of that of a Justice of Appeal.²¹ The salary, allowances and other terms of service cannot be altered to his disadvantage after his appointment.²² He enjoys the same security of office as that of a judge in that he can be removed from office only for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause whatsoever or for misbehaviour and only after a tribunal has been appointed by the President to enquire into the matter and, has recommended to him that the Ombudsman ought to be removed.²³

Jurisdiction

The Ombudsman investigates any action taken by a department of Government or authority or by the President, Ministers, Officers or members of such department or authority in the exercise of the administrative functions of such department or authority upon a complaint made to the Ombudsman by any person or body of persons alleging that the complainant has sustained injustice in consequences of a fault in administration of such action.²⁴

The Ombudsman may also investigate a complaint of a contravention of any of the fundamental rights and freedoms guaranteed by the Constitution.²⁵

19 Article 191

20 D R Saxena *op cit* 198 and 206

21 Guyana Independence (Adaptation and Modification of Laws (Emoluments) Order 1966, No 38 of 1966; the Constitutional Offices (Remuneration of Holders) Act, Cap 27:11; in Trinidad and Tobago the salary and allowances of the Ombudsman are linked to that of a Justice of Appeal

22 Articles 222

23 Articles 191(4) and 225

24 Articles 192(1) (2)

25 Articles 192(3) (ii)

The authorities are certain statutory bodies which exercise certain essential public service on behalf of the State. They are as follows²⁶ -

Central Board of Health
 Central Housing and Planning Authority
 Sea Defence Board
 Drainage and Irrigation Board
 Public Corporations established under the Public Corporations Act, Cap. 19:05
 Guyana Rice Development Board
 Guyana Electricity Corporation
 National Insurance Board
 City Council, Town Council and other town councils and district councils, within the meaning of the Municipal and District Councils Act, Cap 28:01 and local authorities under the Local Government Act, Cap 28:02

The President, a Minister, a member of the National Assembly, or a member of the National Congress of Local Democratic Organs may request the Ombudsman to investigate a complaint on the ground that a person or body of persons may have sustained injustice. The Ombudsman may investigate a matter *ex proprio motu* in circumstances in which he considers that he ought to investigate on the ground that a person or body of persons may have sustained injustice.²⁷

The Ombudsman may in his discretion refuse to investigate a complaint which is frivolous or vexatious or where the complainant had knowledge of more than twelve months before the complaint was received by the Ombudsman.²⁸

The Judicial Service Commission, the Public Service Commission, the Teaching Service Commission, Police Service Commission²⁹ and certain other matters are excluded from the Ombudsman's jurisdiction.³⁰

26 Schedule Ombudsman Act Cap 19:04; the jurisdiction of the Ombudsman has not been extended since 1971

27 Article 192(2) (b)(c)

28 Article 192(4)

29 Article 192(6)

30 Articles 192(6) and 193

2

REVIEW OF THE PERIOD 1994 - 1995

Complaints Received

On the 8th January, 1994 the Honourable Mr Justice Baburam A.A., Ombudsman, died. The Office of the Ombudsman was vacant until the 1st October, 1994 when I was appointed Ombudsman. This report therefore covers the period 1st October, 1994 to 31st December, 1995.¹ During this period I received a total of 553 complaints; 71 for the period 1st October 1994 to 31st December, 1994 and 482 for the year 1995. I inherited a few unfinished matters from my predecessor.

In 1967 the first full year of operation of this office 161 complaints were received; this represents an increase of 199% complaints in 1995. In 1992, 434 complaints were received, this represents an increase of 11% complaints in 1995. In 1992 and 1995 the staff of this office remains the same. The increase in the number of complaints calls for an increase of staff, and better accommodation for the Office of the Ombudsman.

¹ Note 1 at 5 ante.

Three hundred and thirty-two complaints were made by persons who just walked into the Office of the Ombudsman.

The complaints for the period 1st October, 1994 to 31st December, 1995 were as follows -

- (a) 140 within my jurisdiction
 - (i) a summary of some of these complaints fully investigated is in Chapter 3;
 - (ii) 50 are still under investigation;
- (b) 413 outside of the Ombudsman's jurisdiction.

The complaints disposed of were classified as follows -

Justified	21
Not justified	24
Rectified	32
Withdrawn	13
Jurisdiction declined	128
No Jurisdiction	285
Total	503

The complaints outside of the Ombudsman's jurisdiction -

- (a) **Law Courts** - 93 complaints were received against the courts; these include too many postponements, disappearance of files, failure to get a date for hearing after a request for hearing was filed, a decision not given after one year the case was concluded and delay in hearing of appeals and trials because records are not typed. These complaints were referred to the relevant authority.

I am precluded by the Constitution from investigating the 'commencement or conduct of civil or criminal proceedings in any court',²

- (b) **Prisoners** - 16 complaints were received from prisoners; they complained of waiting in prison for a long time before a preliminary inquiry or for a hearing in the High Court and in the Court of Appeal; the relevant authorities were accordingly informed,^{2a}
- (c) **Certain institutions** - 11 complaints were not investigated because the Constitution precludes the Ombudsman from carrying out investigations against certain institutions^{2b} and in certain matters,^{2c}
- (d) **Police** - 44 complaints were received against the police; these include police not taking action after a complaint was lodged, police harassment and the use of force, these cases were referred to the Police Complaint Authority. The police however have assisted persons at my request,
- (e) **Legal Practitioners** - 63 complaints were received against legal practitioners; these include failure to appear in court to represent their clients; too many requests for postponements, practitioners do not communicate with their clients, as a result clients do not know the position of their matters. In some of these cases I spoke to the practitioners concerned who were able to supply me with information which I passed on to the complainants. In other cases, I referred the complainants to the Legal Practitioners' Committee to make a complaint against the practitioner. A complaint is pending before the Committee since 1993; the report

▼ 2 Article 193(iii)

2a Note 2 supra

2b Article 192(6); Ref No 6203/95 at 36 post

2c Article 193; Article 192(3) (4)



of the Committee is missing; and

- (f) **Private matters** - 173 complaints were received from members of the public who used this Office to obtain advice which are of a private nature; these include dispute between neighbours, among members of a family, landlord and tenant and transactions of a business nature.

There are still certain state entities that are not within my jurisdiction. I received complaints against them. I however, entertained the complaints where they had merit and took up the cause of the complainants against those entities. I am happy to say that there were successes.³ I am hoping my jurisdiction would be extended to cover these entities.

Investigators

The Ombudsman has no investigator to carry out field investigation. My predecessor has requested the appointment of investigators. His request was not determined. I took up the matter which is now being considered by the Public Service Ministry.

Delay

The investigation of the Ombudsman is done by correspondences. Some correspondences are answered within a reasonable time, others are answered after several reminders while others are not answered. Some Heads of Government departments and other agencies through error or indifference have little regard for the correspondences of the Ombudsman. Some of them, it appears to me, look upon the Ombudsman as a 'meddler' med-

³ Ref No 6275/95 at 45 post; Ref No 6140/95 at 47 post; the Ombudsman's jurisdiction has not been extended since 1971

dling in their internal affairs. On few occasions in those cases where my correspondences were not answered, I decided the matter on the evidence available before me.⁴ On one occasion where my correspondence was not answered after several reminders, I exercised my statutory powers by summoning the secretary of a corporation to appear before me to produce the documents pertaining to the matter I was investigating. The secretary again did not appear. I then filed a complaint in the magistrate's court against the secretary for his failure to appear before me and to produce the documents. After the complaint was filed and served on him, he complied by supplying the information previously requested. I therefore withdrew the complaint against the secretary.⁵

The question of delay to reply to the Ombudsman's correspondences by ministry and corporation is not something new; it has been in existence since the establishment of this Office. In his first Annual Report in 1967 the first Ombudsman Mr. Gordon Gillette said:

While I continued for the most part to receive willing cooperation from officers of the Ministries and Departments, as time went by there seemed to be growing tendency in some cases to regard communications from my office as not so urgent in consequence of which my investigations were held up while officers took their time to reply or in a few cases even failed to reply to requests for information. I, therefore, considered it necessary, in a circular issued to all Permanent Secretaries and Heads of Departments towards the end of the year, to draw their attention to the occurrence of these delays and the extent to which they were impeding the effective performance of my functions.

4 Ref No 6174/95 at 29 post; Ref No 6061/95 at 33 post

5 Ref No 6051/94 at 38 post

The function of the Office of the Ombudsman is to provide simple and speedy investigation of complaints of a fault in the administration of Government departments and other authorities. This function can be effectively performed with the co-operation of Heads of Government departments and other authorities. A complainant wants a speedy remedy to his complaint. Let us try to meet him.

There have been delays also in implementing my recommendations. Even after a recommendation was made, a public officer sought to put forward evidence which he should have done before my recommendation. I, however, considered the evidence and ruled accordingly.⁶ Because of the failure to implement my recommendation a complainant was forced to agree on a compromise.⁷

Where there is delay in implementing a recommendation; complainants have expressed the view that my recommendation is not seriously taken by public officers and that my office is ineffective. I, therefore, earnestly appeal to those concerned that serious consideration be given to implement my recommendation speedily, otherwise the public may lose confidence in the Office of the Ombudsman.

Apart from the court, the Office of the Ombudsman is the only institution where an individual can apply for redress for a wrong done to him. But the court is slow, complicated and expensive; the Office of the Ombudsman is fast, simple and free of cost.

6 Ref No 6061/95 at 33 post; Ref No 6174/95 at 29 post

7 Ref No 6174/95 at 29 post

Special Report

During the year I submitted one special report to the National Assembly where a corporation failed to implement my recommendation.⁸

Visits to Berbice and Essequibo

The Ombudsman has no office outside of Georgetown. Citizens living in remote areas are sometimes deprived of the services of this Office; they find it difficult to make use of their constitutional right to make a complaint to the Ombudsman. For this reason during the year I visited New Amsterdam, Suddie and Anna Regina on the Essequibo Coast to meet members of the public who for some reasons could not travel or write to the Office in Georgetown.

The people in those areas should not be deprived of the services of the Ombudsman. They should be encouraged to make use of such services. They must not be allowed to suffer. The visits to those areas were a tremendous success.

Staff

The staff of the Office of the Ombudsman are public officers who are appointed by the Public Service Commission, an independent body, over which I have no jurisdiction. They are paid out of public funds. The staff, which consists of eight, including the Ombudsman, is in adequate to cope with the increasing number of complaints.

A greater part of my time is spent in interviewing complainants, giving on the spot advice and referring complainants

⁸ Ref No 6040/94 at 39 post

to the relevant authorities on matters outside of my jurisdiction. This has been a rewarding experience.

Education

In order to educate and to make the public aware of the functions of the Office of the Ombudsman, the results of few of my investigations were published in the local newspapers. I appeared also on the television and on a radio talk show where I explained the functions of the Office. The listeners participated in the radio talk show by asking questions which were answered by me. It was a success. Education on the functions of the Office is an ongoing exercise and every effort will be made to continue this exercise and to spread it as widely as possible to every member of the community.

Overseas visitors

During the year I received a team from the Carter Centre Emory University, Atlanta, Georgia, USA which enquired into the functions of the Office of the Ombudsman.

Acknowledgement

I acknowledge with thanks the Reports of my colleagues from several countries which provided me with useful information of their offices. I hope with my limited financial resources to reciprocate by sending my Report to them.

Accommodation

The Office of the Ombudsman is housed in a three-storeyed building, 39 Brickdam, Stabroek, Georgetown. The Office was moved to its present position in July, 1994. Before the removal,

the aforesaid building was and is still occupied by the Public Service Appellate Tribunal (Tribunal) and the Police Complaint Authority (Authority). The Tribunal occupied the first and second floors and the authority occupied the ground floor of the said building. In order to accommodate the Office of the Ombudsman the Tribunal gave the Ombudsman three rooms, one on the first floor and two on the second floor and the Authority gave the Ombudsman one room on the ground floor. So the Office of the Ombudsman, with a present staff of eight persons, is scattered in four rooms on three floors of the said building. This affects effective communication and administration of the staff. A member of my staff is presently sharing a room with the staff of the Tribunal. The building is presently being extended and it is hoped that additional space will be provided to the Office of the Ombudsman.

Budget of the Office of the Ombudsman	3,030,000
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Expenses

Salaries	2,499,000	
Stationery & Cleaning Materials	64,000	
Electricity	NIL	
Travelling	222,000	
Telephone Charges	10,000	
Repairs & Servicing Office		
Equipment	24,000	
Miscellaneous	4,000	
	<hr/>	
Grand Total		2,823,000
		<hr/>
	Balance	208,000
		<hr/>

Staff of the Office of the Ombudsman

Ombudsman
 Secretary to the Office of the Ombudsman
 Typist clerk III
 Administrative Assistant
 Accounts clerk II
 Typist clerk II
 Office Assistant
 Cleaner
 Ombudsman's chauffeur

3

**SELECTED COMPLAINT
SUMMARIES****MINISTRY OF FINANCE****Ref No 5931/93 - Request by an officer for increased pension**

The complainant, a pensioner, complained that her pension was not increased since 1990. She claimed it is the practice to increase the pension of pensioners by the same percentage of increase in salary given to government employees. On investigation, it was discovered that the complainant was given the same increase in pension as was given to government employees. The complainant was informed of this. I did not hear from her. I assume that she is receiving the increased pension.

Ref No 6097/95 - Request by an officer to receive his pension

The complainant started to work as a labourer of the Pure Water Supply Services at the Ministry of Works which was taken over by the Guyana Water Authority (GUYWA). He rose to the position of foreman and worked for over thirty (30) years until his retirement in 1991. On his retirement he was given a gratuity but no pension. He complained to me about this. I represented his cause to the relevant authority. With the introduction

of the regional system his services with GUYWA were absorbed by the Region. At first both GUYWA and the Region disclaimed that the complainant was their employee. The Accountant General eventually informed me that his superannuation benefits would be finalised shortly. But it was later discovered that he is not entitled to a pension because he was a daily paid worker and did not work the required amount of days each year. I am still pursuing the matter.

Ref No 6215/95 - Wrongful dismissal of an officer by the Ministry

The complainant was employed by the State Planning Secretariat, which was absorbed by the Ministry of Finance. Some employees of the Secretariat were transferred to the Ministry of Finance, while others, included the complainant, were sent on leave with full pay pending posting by the Public Service Commission. The complainant was on such leave for about two months when he was given one month's notice of termination of service by the Ministry. He was not offered any position by the Public Service Commission. He complained to me that he was not interested in reinstatement but should be compensated for wrongful termination of his service. He had ten (10) years' service and was claiming two (2) months' salary for each year.

I was not satisfied that his assessment of compensation was correct. To claim twenty (20) months' salary is tantamount to saying that he was entitled to twenty (20) months' notice. The measure of damages, would depend on the length of notice required to terminate his service. The length of notice should be reasonable and not arbitrary. A person is not entitled to make a profit out of a breach of contract. I was not satisfied also that there was any consideration for the salary he received pending posting by the Public Service Commission.

There was also a dispute of facts in the matter whether the officer who offered him full pay with leave pending posting by the Public Service Commission had the authority to do so.

I therefore declined jurisdiction and advised the complainant to seek his remedy in the Court. Under article 192(3) (a) the Ombudsman shall not investigate any action in respect of which the complainant has or had a remedy by way of proceedings in a court.

Ref No 5888/93 - An officer not receiving information of his pension

The complainant writing from Ontario, Canada complained that he wrote the Accountant General several letters informing him that he had not received his pension. He received no response.

I wrote the Accountant General about his complaint who said a monthly pension of three thousand, three hundred and forty-four dollars and seventy-two cents (\$3,344.72) was approved and that he could collect the pension from his bank. I informed the complainant and he replied to me as follows:-

It seems that since I left Guyana the politeness and courtesy I grew accustomed to has departed from the normal everyday practice usual to expect from public service employees especially those in senior positions.

I know that there is still an avenue where these lapses in discretion can be addressed and, if in the future I would need your help I will contact you, knowing that you would act.

I am heartened by his reply.

Ref No 6093/95 - An officer not receiving information of his superannuation benefits.

The complainant who is receiving medical attention abroad, complained that he had not received his superannuation benefits. He wrote the Permanent Secretary, Ministry of Trade and Tourism and the Accountant General but did not receive any favourable reply.

I wrote the Accountant General, who after sometime, informed me that the complainant's benefits were paid over to his agent in Georgetown. His agent confirmed this and thanked me for the interest I took in the matter and said after a number of years action is now being taken for the 'public officer to receive his gratuity and pension'.

COMMISSIONER OF INLAND REVENUE

Ref No 6000/94 - Refund of withholding tax on interests earned at commercial bank

The complainant complained that his son, a non resident of Guyana is entitled to a refund of the withholding tax deducted from the interest earned from his son's savings at a commercial bank in Georgetown. His son has no other income in Guyana. A person is not required to pay income tax if his income is less than \$144,000 per year. The interest earned on his son's savings is less than the \$144,000. He therefore claimed that since his son's income is less than \$144,000, the withholding tax deducted from the bank should be refunded to him.

His complaint was referred to the Commissioner of Inland Revenue. The matter is continuing.

MINISTRY OF EDUCATION

Ref No 6151/95 - Request for overtime wages

The complainant complained that he worked overtime as a security guard at a primary school in Georgetown, and was not paid for the said overtime. The Ministry of Education contended that the complainant was employed as a contractor of a security service and took on a part-time guard who worked for him to guard the primary school. The Ministry also claimed that the complainant provided security services at a printery and was therefore not physically present at the primary school to earn overtime pay.

The Ministry of Labour investigated the complainant's claim and recommended that he be paid the overtime. The Ministry

was apparently reluctant to pay the complainant the overtime as recommended by the Ministry of Labour. The complainant sought my assistance and denied the allegation of the Ministry. The Ministry subsequently informed me that on the advice of the Attorney General's Chambers it would pay the complainant ninety-seven thousand dollars (\$97,000.00).

The complainant was accordingly informed of the above.

Ref No 6183/95 - Caretaker of secondary school refused to be transferred

A caretaker of a secondary school was transferred by the Ministry of Education to another school. The caretaker protested against the transfer. He said that he had been at the present school for over eighteen (18) years, his record of service is excellent and a transfer would not be in the interest of his family. The new school is about half a mile from the present school. I investigated his complaint and found that one of his implied terms and conditions of employment was that he could be transferred to any school. If the Ministry is denied the right to transfer him the whole system of Government would be at a stand still. The caretaker was informed accordingly.

Ref No 6174/95 - Wrongful dismissal of part-time lecturer

The complainant was a part-time lecturer since 1990 at the Government Technical Institute (hereinafter referred to as 'GTI') of the Ministry of Education (hereinafter referred to as 'the Ministry'). He received a letter dated 1995-03-07 from the acting Principal (hereinafter referred to as 'the Principal') which read as follows:-

We regret to state that you are no longer needed as a part-time lecturer at the GTI to teach English with effect from 7th April, 1995.

Your behaviour is atrocious to students and Administration. We thank you for your service.

The complainant said that he was not placed on a disciplinary charge and was not given an opportunity to be heard. A

member of the National Assembly asked to investigate the dismissal of the complainant.

By letter dated 23rd May, 1995 I informed the Principal of the complainant's allegation. I received no reply.

On the 26th June, 1995 after a reminder from me by letter dated 23rd June, 1995 the Principal replied by saying that the complainant was a part-time lecturer, he 'was very abusive to Administration, Lecturers and Students' and was given one month's written notice of termination of his service. He also sent me a copy of the 'Rules and Regulations governing the conduct of part-time classes' and a report on the complainant's attitude to students at GTI. The Principal did not answer the complainant's allegation as contained in my letter of 23rd May, 1995 that is, the complainant was not placed on a disciplinary charge and not given an opportunity to be heard. By letter dated 29th June, 1995 I asked the Principal again for his response on the complainant's allegation. By letter dated 5th July, 1995 the Principal replied by saying that my 'letter dated 23rd May, 1995 was sent to the Deputy Chief Education Officer (Technical) for perusal'. He did not again answer the complainant's allegation.

By letter dated 20th July, 1995 I wrote the Deputy Chief Education Officer (Technical) and informed him of the Principal's letter of the 5th July, 1995. I did not receive a reply. On the 4th August, 1995 I called the Deputy Chief Education Officer (Technical) and he told me that he would ask the Principal to reply to my letter of 23rd May, 1995 on the complainant's allegation. Again, I did not receive a reply.

The Principal and the Deputy Chief Education Officer (Technical) did not respond to the complainant's allegation. Their replies so far on the matter were evasive. They have no answer to the complainant's allegation.

It is the principle of natural justice that a person against whom an allegation is made must be given notice of the allegation and a reasonable opportunity to answer the allegation. In this case the complainant was given neither.

A person is entitled to a hearing before any disciplinary action is taken against him, especially if such an action is likely

to affect his reputation and his ability to earn a living in the future. If the complainant was to apply for a job; he would be asked by his prospective employer where he last worked. He would be obliged to tell him. The prospective employer would then ask the Principal about the complainant's performance at GTI. The Principal would naturally repeat the contents of his letter of 95-03-07 to the prospective employer. That is a damaging allegation to make on a matter of which the complainant was not given a hearing. The complainant's future life is destroyed.

This was exactly what happened. The complainant applied to the Teaching Service Commission for a teaching position and was told that his application would not be considered unless the allegation made against him by the Principal was cleared.

The Principal had provided me with 'Rules and Regulations Governing the conduct of part-time classes'. It is stated in the said Rules and Regulations that 'the Civil Service Rules as published by the Public Service Ministry shall take precedence in all matters notwithstanding anything that may be stated in or implied by these Rules and Regulations'. The Public Service booklet 1993, provided that before any disciplinary action is taken against an employee he 'should be given a hearing in order to state his/her case, before any outcome is decided'. Here again the principle of natural justice is enshrined in the 'Rules and Regulations Governing the conduct of part-time classes'. The Principal failed to obey this provision which governed the employment of the complainant.

In view of the above, I recommended that the dismissal of the complainant was a nullity and that the -

- (a) Teaching Service Commission should consider the complainant's application as if he was never dismissed by the Government Technical Institute; and
- (b) Government Technical Institute pays the complainant from the date of his dismissal to the date of his employment by the Teaching Service Commission.

- (c) If for any reason the complainant is not employed by the Teaching Service Commission; the complainant be reinstated by the Government Technical Institute without loss of benefits.

It turned out that the Teaching Service Commission did not employ the complainant and the Ministry did not implement my recommendation but contended after my recommendation that the complainant was a contractor and was therefore not entitled to a hearing. Assuming he was a contractor, there was included in the contract of employment of the complainant 'the Rules and Regulations Governing the Conduct of Part-Time Classes' - the Civil Service Rules - which provided that they 'shall take precedence in all matters' notwithstanding the conditions stated in the 'Rules and Regulations Governing the conduct of Part-Time Classes'. So even in a contractor's terms of employment as in the complainant's case a hearing was provided for. The complainant was not given a hearing.

Finally, it turned out that the complainant did not sign a contract with GTI. The complainant had been on the job since 1990, and in the absence of a formal contract, he reasonably expected that his employment would continue and that he would be given a hearing to defend himself if an allegation was made against him. GTI by its failure to observe the rules of natural justice did not act fairly towards the complainant when it decided to terminate his employment for a cause. The question was one of fairness and justice.

The complainant became impatient of the Ministry's failure to implement my recommendation; he therefore offered a compromise which was accepted by the Ministry as follows -

- (i) the Ministry would pay the complainant six (6) months' salary;
- (ii) the Ministry would withdraw the allegation stated in GTI's letter of 95-03-07; and
- (iii) the complainant would tender his resignation.

The complainant has not taken up his compromise.

GUYANA DEFENCE FORCE**Ref No 6061/95 - Wrongful dismissal of a private
by the Force**

The complainant an ex private of the Guyana Defence Force (hereinafter called 'the Force') was dismissed from the Force after a trial for the offence of larceny. He claimed he was not given a fair hearing and the case against him was based solely on suspicion. He was in the Force for about nine years.

The Force accused the complainant, a caterer, of conniving with a civilian employee to steal ration. The complainant was charged under section 53(a) of the Defence Act Cap 15:01, tried by a senior officer with the rank of Lieutenant Colonel, found guilty and recommended to be discharged from the Force. The recommendation was approved by the Chief of Staff. The complainant applied for a review of his case and the Chief of Staff upheld the discharge.

I requested the Force to provide me with the following information:-

- (i) why the complainant was not tried by court-martial; and
- (ii) a copy of the proceedings of the trial before the senior officer with the rank of Lieutenant Colonel

The Force did not reply to the aforesaid letter although I reminded it by another letter.

I telephoned an officer of the Force, who was handling the matter. He was not there. I left a message and my telephone number on his answering machine. I received no reply. I again called the officer, he told me that he had received my message, but he could not get back to me because I left a wrong telephone number on his answering machine. He, however, told me that there were thefts every day in the Force and it was impossible to try every one by court-martial and the Lieutenant Colonel did not take notes during the trial of the complainant. So he could not provide me with any notes. He told me he would put the above

conversation in writing before the end of the week. I received no written confirmation of the above conversation.

I find that the Force, by not replying to my requests aforesaid had no answer to the complainant's complaint. This was enough to show that the dismissal of the complainant could not stand.

I however, considered the defence raised by the officer in his telephone conversation aforesaid with me. The provisions under which the complainant was charged provided that he should be tried by court-martial. The law gives the complainant that right and that could not be whittled down by the Force. It was no defence for the Force to say that there were too many thefts in the Force and it was impossible to try every one by court-martial. If the legal provision was unworkable, then the Force must see that the provision was amended accordingly, but so long as it remained in the statute book it must be obeyed.

With regard to the Lieutenant Colonel not taking notes, this was indeed alarming. He must take notes of the proceedings. How could anyone say whether the complainant was given a fair hearing? It is only from the notes one could say whether the complainant was given a fair hearing. Further, in the absence of the notes, how could the Chief of Staff properly review the complainant's case?

Since there were no notes of the proceedings, there appeared to be no memorandum of reasons by the Lieutenant Colonel. He must give his reasons for arriving at his decision. He must say what evidence he believed and what evidence he did not believe. It was necessary for the Chief of Staff to have the memorandum of reasons before him when he was considering the review of the complainant's case.

I therefore concluded that the complainant was not given a fair hearing and his complaint must be upheld. I recommend therefore that he be re-instated without loss of any benefits.

The recommendation was implemented by the Force but not after the Force tried to show that under the law the Lieutenant Colonel was not required to take notes and that I had no jurisdiction to entertain the complaint.

**MINISTRY OF LABOUR, HUMAN RESOURCES
AND SOCIAL SECURITY UNIT**

Ref. 6063/95 Request for social assistant

The complainant 57 years of age, unemployed, married and has a child going to school. He was a former employee of the Presidential Secretariat, Department of Special Events and Ceremonies and received no superannuation benefits except NIS invalidity benefits. He appeared to be sick and to be in financial need. He said that he had over ten years service and was entitled to superannuation benefits. I presented his complaint to the secretariat. He, however perceived that this would take some time to finalise.

In the meantime he asked me to present his case for social benefit. This was done, his case was investigated by the Social Security Unit and was given a sum of one thousand and forty-two dollars (\$1,042.00) per month.

He subsequently informed me that he was not pursuing his claim for superannuation benefits. He had consulted a lawyer and was pursuing the matter in court.

**MINISTRY OF PUBLIC WORKS, COMMUNICATIONS
AND REGIONAL DEVELOPMENT**

**Ref. No. 5271/95 - Refusal to accept rates and taxes from
the registered owner**

The complainant owner by transport (freehold) of a certain lot of land on the East Coast Demerara and a house on the said lot of land given to her as gift by her late husband in his lifetime. She was paying rates and taxes for the aforesaid lot of land to the village council which suddenly and repeatedly refused to take the rates and taxes from her but, took them instead from her step-son. She insisted that she was entitled to pay the rates and taxes and the village council should not accept rates and taxes from her step-son. Her complaint was referred to the

Ministry which after examining her complaint agreed to accept the rates and taxes from her and, gave her an undertaking that the rates and taxes paid by her step-son would not be regarded as having any claim to the said lot of land.

TRANSPORT AND HARBOURS DEPARTMENT

Ref No 5696/94 - Dismissal of supernumerary constable

The complainant a temporary supernumerary constable of Transport and Harbours Department complained that he was wrongfully dismissed on 16th September, 1994 because of the loss of a bicycle. His complaint was referred to the Department which replied that:-

- (i) the complainant was dismissed because he was asleep while on duty in the Security's Store Room on 9th July, 1994 and this held up the traffic for about twenty minutes; and
- (ii) he was charged departmentally. He failed to answer the charge but alluded to a statement submitted by him on 4th August, 1994.

In his statement the complainant admitted that he 'took a nap'.

The above information was communicated to the complainant. He did not reply. He was dismissed not for the alleged loss of a bicycle; but for sleeping while on duty which he admitted. He appears to have accepted the response of the Department.

PUBLIC SERVICE COMMISSION

Ref No 6203/95 - Failure to reinstate public officer

The Public Service Appellate Tribunal ordered on 21st August, 1992 that the complainant, an officer of a Region, was not properly dismissed and he is still the assistant Regional Executive Officer of the Region. The Chairman of the Tribunal gave

an oral decision but did not reduce it in writing because he died soon after.

The complainant has not been reinstated. I wrote the Regional Executive Officer on a matter and was told that the question of reinstatement is a matter for the Public Service Commission. An officer of the Public Service Commission told the complainant and me that the matter was sent to the Law Officers for advice.

I wrote the Public Service Commission on the matter. I received no reply. This is the farthest I can go. I do not have any jurisdiction over the Public Service Commission and I informed the complainant accordingly.

NATIONAL INSURANCE SCHEME

Ref No 6225/95 - National Insurance Board not properly constituted

A complainant was examined by a doctor in his private capacity. The doctor subsequently was a member of a medical board which awarded the complainant 20% permanent partial disability. The complainant appealed against the award on the ground that the doctor ought not to have sat on the medical board. The complainant was told that a decision made by a medical board on a medical question is final by virtue of Reg 9 of the National Insurance and Social (Determination of Medical Questions) Regulations Cap 36:01.

A medical question of the medical board is only final when the Medical Board is duly constituted. A decision of a Board that is not duly constituted is a nullity. The National Insurance Scheme agreed and decided that a medical board would be re-constituted to re-examine the complainant. The matter is continuing.

GUYANA ELECTRICITY CORPORATION**Ref No 6051/94 - Refusal to give non-unionised workers the same increase of wages awarded to unionised workers**

The Honourable Mr Justice Prem Persaud was appointed in 1993 Chairman of an arbitration tribunal (hereinafter referred to as 'Justice Persaud Tribunal') to arbitrate into the wages/salaries dispute between the Guyana Electricity Corporation (hereinafter referred to as 'GEC') and the National Association of Agricultural, Commercial and Industrial Employees (hereinafter referred to as 'NAACIE') for those employees represented by NAACIE. The Justice Persaud Tribunal awarded an increase of wages/salaries for the said employees.

The internal security guards of GEC, not members of NAACIE, claimed that the aforesaid award should also apply to them; GEC turned down their claim. A Member of the National Assembly asked me to investigate the complaint of the security guards; he claimed that they are entitled to the award of Justice Persaud Tribunal on the ground that they benefited by a similar award given by an arbitration tribunal headed by Mr Peter Britton S C and they enjoyed the same severance benefits as other GEC workers, although they are not members of NAACIE.

I informed GEC of the security guards' complaint made on their behalf by the Member of the National Assembly. GEC replied by saying that the award of Justice Persaud Tribunal dealt exclusively with a matter concerning the workers represented by NAACIE. The security guards did not form part of the NAACIE bargaining unit and therefore the award did not apply to them.

GEC did not answer to the security guards' claim, that is, they are entitled to Justice Persaud Tribunal award on the ground that GEC extended the Britton Tribunal award to them. I therefore requested GEC to do so. GEC after legal proceedings were instituted against it replied by saying that as a result of the Britton Tribunal award 'Management paid similar increases to Senior Managers, Junior Managers and Junior Staff Employees, both permanent and temporary which included the Security Guards'.

The legal proceedings were withdrawn after I received the above reply. The matter is continuing.

Ref No 6040/94 - Consumer's appliances damaged by high voltage - interpretation of the law

On the 7th November 1994, a complainant complained that Guyana Electricity Corporation (hereinafter referred to as 'GEC') while in the process of raising a consumer's voltage from 220 volts to 440 volts also raised his 220 volts to 440 volts. This high voltage damaged some of his electrical appliances. He claimed compensation in the sum of twenty thousand, nine hundred and sixteen dollars (\$20, 916.00) being the actual cost for repairing his appliances but, GEC in its response mentioned that it has immunity under s 18 of the Electricity Act, Cap 56:01, and offered him an *ex-gratia* payment of three thousand dollars (\$3,000.00). He refused the offer. Section 18 reads as follows:

Except at the instance of the Council pursuant to the provisions of any contract between the Corporation and the Council relating to the supply of energy for the operation of the water supply and sewerage system of the City, the Corporation shall not be liable for any loss or damage occasioned by any failure or deficiency in the availability of any supply of energy howsoever caused.

On 30th November, 1994 I informed GEC that it does not enjoy immunity from legal proceedings under s 18. This section deals with matters solely with GEC and the Georgetown City Council. It does not deal with matters between GEC and a consumer, as in this case. This was decided in *Mc Gregor v GEC* Action No. 2791 of 1993 High Court, Demerara.

GEC acknowledged my letter of 30th November, 1994 by saying that the 'matter is receiving attention, and further correspondence will be addressed to you shortly'. I received no further correspondence from GEC although I reminded GEC by three letters of 9th March, 4th May, and 23rd May, 1995 and two telephone calls to the secretary on 29th March and 19th June, 1995.

I, therefore on the basis of the evidence before me concluded that GEC, had no defence to the complainant's complaint and was liable for the damage done to his appliances and recommended by letter of 21st July, 1995, that he be compensated

in the sum of twenty thousand dollars (\$20,000.00). I gave GEC four (4) weeks until the 21st August, 1995 to compensate the complainant. GEC did not again reply to my letter. On the 21st August 1995. I called the Secretary, who told me that GEC would not be implementing my recommendation.

By letter dated 5th September, 1995 GEC informed me that it referred the matter to its attorney for advice, that is, about nine months after my letter of 30th November 1994, when I first referred the matter to GEC and two weeks after the 21st day August 1995, the last day on which GEC was required to compensate the complainant as recommended by my letter of 21st July, 1995.

On 10th October 1995, I called the Secretary, he was unavailable. His Secretary told me that GEC did not receive a reply from the corporation's attorney. I told her that I could not wait on GEC any longer and would submit a special report to the National Assembly. This I did by letter dated 16th October, 1995 to the Hon Speaker of the National Assembly under article 194(3) of the Constitution.

GUYANA AIRWAYS CORPORATION

Ref No 6009/94 - Request for compensation because flight did not leave on schedule

The complainant bought an airline ticket to travel from Toronto to Georgetown on a particular date to attend his niece's wedding. He had taken four days' special to do so. The flight did not leave as schedule, so he missed his niece's wedding. He claimed from the Corporation compensation for the special leave and for missing his niece's wedding. He wrote the Corporation but received no reply.

He lodged a complaint to me against the Corporation on the matter. I informed the Corporation of his complaint. The Corporation, after some delay, informed me that it would negotiate a settlement with the complainant. The complainant received from the Corporation more than what he had asked for. If he had sought judicial solution, I am certain that he would not have gotten the amount he received. The complainant never told me

of the settlement although he had written me twice on his complaint.

FORESTRY COMMISSION

Ref No 5999/94 - Seizure of forest produce

The complainant was given permission by a company to cut and remove logs over an area of the company's lease of state land. He entered the area and started to cut and remove logs to build cabins to house his workers. His logs were subsequently seized by forest officers and had to pay royalty to the Commission for cutting the logs. He complained about this. On investigation it was discovered that notwithstanding his permission granted by the company to cut and remove logs the complainant had to get the prior permission of the Commissioner of Forests to cut and remove the logs. He was advised therefore to apply for such permission. His complaint had no merit and was accordingly informed.

GUYANA NATIONAL ENGINEERING CORPORATION

Ref No 5726/93 Wrongful dismissal of a mechanical engineer

The complainant was a mechanical engineer within the Technical Department, Planning and Marketing Group of the Corporation. His conditions of employment with the Corporation were governed by 'the Administrative Practice applicable to Management Staff - Professional Category'. He was an experienced engineer having spent about thirty years in this field.

On the 9th June, 1992 the complainant was dismissed by the Corporation for an alleged misconduct. The Corporation dismissed him on a Report of their Security Officer after the Corporation gave him a hearing. I found that the evidence on which the Corporation dismissed him could not stand; briefly for the following reasons:

First, the Corporation dismissed the complainant solely on the findings of the Security Officer Report which was based on evidence of what was told to the Security Officer by several

persons. No statement of those persons were attached to the report. The Report, in the absence of statements, was hearsay and inadmissible evidence. The Corporation therefore could not act on hearsay evidence to dismiss the complainant.

Second, the Corporation gave the complainant a hearing which was as follows -

Upon receipt of the Security Officer Report by the Executive Chairman, a meeting was summoned in the chairman's office, at which the Executive Director, the Administrative Manager and the complainant were present. The Executive Chairman informed the complainant of the contents of the Report and called upon him for a defence of the findings in the Report. His defence was incoherent at times and in fact he could not give no plausible explanation for his alleged misconduct. He was told to return to his office and that he would hear from management during the course of the day.

The above hearing took place on the 9th June, 1992, about 10.00 am and lasted for about 45 minutes. The complainant had no notice of any charge made against him and was not given an opportunity to answer a charge. A hearing that lasted 45 minutes in which he was told 'of the contents of the report' and then and there asked to defend himself was not a hearing. It did not satisfy the principles of natural justice.

Third, the Executive Director, on the 9th June, 1992 about 7.40 a.m. accused the complainant of writing a letter to the President alleging acts of misconduct by the Executive Director. This accusation was supported by a letter dated 9th July, 1992 by an attorney-at-law, written on behalf of the Executive Director to the complainant threatening to take legal action against the complainant because of a letter he wrote on the 8th June, 1992 to the President alleging acts of misconduct by the Executive Director. At the meeting of 9th June, 1992 the Executive Director was present when a decision was taken to dismiss the complainant. There was therefore a likelihood of bias in arriving at the decision to dismiss the complainant. Even if the Executive Director had remained silent throughout the hearing

and did not contribute anything to it; the real likelihood of bias would still exist. Even if the Executive Director was as impartial as he could be, nevertheless, if right thinking persons would think, that in the circumstances, there was a real likelihood of bias on his part, he should not sit. It was not necessary that actual bias should be proved. The matter must be determined upon the probabilities to be inferred from the circumstances in which the Executive Director sat at the meeting of 9th June, 1992.

On the above findings, I held that the dismissal of the complainant by the Corporation could not stand. I recommend that the complainant be reinstated without loss of benefits. The Corporation, after such hesitation and after a period of about three months from the date of my recommendation, reinstated the Complainant. The Corporation did not officially inform me of the reinstatement.

GUYANA WATER AUTHORITY

Ref No 6217/95 - Wrongful dismissal of a craftsman

The complainant was employed by the Guyana Water Authority (Authority) as a craftsman with effect from 17th August, 1994 and his services were terminated by letter dated January 17, 1995 with immediate effect.

This matter was referred to me by the Ministry of Labour, Human Services and Social Security which investigated the matter and recommended the reinstatement of the complainant. For reasons not considered by me in my opinion hereunder, GUYWA refused to implement this recommendation.

The complainant's letter of appointment dated August 19, 1994 stated that he was employed with effect from 17th August, 1994 upon certain terms and conditions. Conditions 6 of the said letter states:

You will be required to serve on probation for three (3) months. On or before the expiration of the probation period your immediate supervising officer will file a probationary appraisal report which will assess whether:-

- (a) you should be confirmed;
- (b) your probationary period should be extended or;
- (c) your service should be terminated;

Condition 14 states:

While on probation you will be required to give one (1) day's written notice of termination. The Authority reserves the right, also, to terminate your service with one (1) day's notice minimum or give one days' pay in lieu of notice.

When confirmed as a regular employee, you will be required to give one (1) months' notice. The Authority reserves the right to terminate your service with two (2) months' notice or give one (1) months' pay in lieu of notice.

According to condition 6, on or before the 18th November the complainant's supervising officer should have filed an appraisal report on him. This apparently was done because the complainant continued to work until the 17th January that was beyond the three months' probationary period. He appeared to have been confirmed on the job. The complainant was therefore entitled to two months' notice of termination of his services or one months' pay in lieu of notice. This was not done because his services were terminated on January 17, 1995 with immediate effect. He was therefore dismissed in breach of the letter of appointment.

If however an appraisal report was done on or before the 18th November, and the probationary period was extended the complainant was still entitled to one days' notice. His services was therefore terminated in breach of the letter of appointment.

The Authority therefore did not follow the terms and conditions of appointment in terminating the services of the complainant either during the period of probation or confirmation.

I advised therefore that the Authority should follow the advice of the Ministry of Labour, Human Service and Social Security and reinstate the complainant, which it did. The Authority however did not officially inform me of the reinstatement.

GUYANA SUGAR CORPORATION LIMITED

Ref No 6275/95 - Attempt to retire a complainant prematurely

The complainant served Guysuco forty-two years of unbroken and faithful service. Guysuco acknowledged this. He started to work on a sugar estate as a porter and rose to his present position - Chemist/Shift Manager - a remarkable feat. He acted several times as an assistant Factory Manager and with his pre-retirement leave and annual leave he was expected to retire in December, 1995.

The complainant was suffering from diabetes for sometime; but that did not interfere with the performance of his job.

In April, 1995 his conditions deteriorated and was admitted to the estate hospital. He was put on the NIS on the 11th April, 1995 for twenty-six weeks which was up on 9th October, 1995 and on half pay by Guysuco from 1st August, 1995 until such time as Guysuco reviewed his case if his illness continued. The complainant's health improved and was willing to resume work. He was not allowed to do so.

The estate's doctor by letter 7th July, 1995 requested the NIS Medical Adviser for an opinion on the complainant's health, who reported that the complainant was 'fit for work on 95-09-07'. The complainant went to the Administrative Manager, showed him the NIS Medical Adviser report and made himself available to work but the Administrative Manager referred him back to the estate doctor.

The complainant perceived that he would be sent on retirement prematurely and this he claimed would affect his superannuation benefits.

The complainant complained to me of the above. I wrote Guysuco on the matter, although I do not have jurisdiction over Guysuco. I informed Guysuco of the complainant's fears and of my own opinion that the complainant in view of his implacable record should be assured of his future even if it meant waving certain terms of his contract. In the meantime the estate doctor admitted him to the estate hospital; he was kept there for nine days. On his discharge; he resumed duties as a Chemist/Shift Manager; he informed me of this and also said that 'his entire family and relatives are very thankful for your sincere help'. Guysuco did not reply to my letter I wrote on behalf of the complainant.

Ref No 6192/95 - Supernumerary Constable wrongfully dismissed

The complainant, ex-supernumerary constable of a sugar estate, was dismissed at Guyana Sugar Corporation (Guysuco) under s 82(6) of the Police Act Cap 16:01 with effect from 15th July, 1992. He appealed to several persons against his dismissal but without success.

Finally he wrote, by letter dated 29th April, 1995, to his Excellency the President protesting against his dismissal. His Excellency referred him to the Minister of Labour, The Honourable Dr. Henry Jeffrey who in turn referred him to me.

According to section 82(6) Guysuco was obliged to give the Commissioner of Police two months' notice in writing to terminate the services of the complainant and, an officer of the police was then required to give one month's notice to the complainant to terminate his services.

These requirements were not followed by Guysuco and the Commissioner of Police. Guysuco letter dated July 09, 1992 terminated the services of the complainant with effect from 15th July, 1992 and informed the Commissioner of Police of that decision. The Commissioner's letter dated 14th July, 1992 to the complainant terminated his service with effect from 15th July, 1992.

Guysuco therefore did not give the Commissioner the two months' notice and the Commissioner in his letter aforesaid gave the complainant one day's notice instead of one month's notice. The Commissioner in his letter also said that the complainant would be paid one month's salary in lieu of notice. Even if this can be interpreted to mean the one month's notice to be given by the Commissioner; the two months' notice by Guysuco to the Commissioner was still required. This was not done and the complainant was therefore dismissed in breach of s 82(6).

Guysuco was informed of the above. The matter is continuing.

LINDEN MINING ENTERPRISE LIMITED

Ref No 6140/95 Request for computation of services

The complainant was employed by Demerara Bauxite Company Ltd (GUYBAU), for fourteen years 1961-1975. In 1975 he was dismissed. In 1978 he returned to GUYBAU, which was then nationalised. He claimed that his fourteen years service aforesaid should be completed with his current years of service.

On investigation it was discovered that one of the terms and conditions of employment signed by him on the 29th May, 1978, with the GUYBAU and which passed on to the new company Linden Mining Enterprises Ltd (Linmine) provided that his employment should be subject to the terms and conditions of the current Collective Labour Agreement and the amendments thereto between the then GUYBAU and the Guyana Mine Worker's Union. Clause 12:5 of the said Collective Labour Agreement between GUYBAU and the Guyana Mine Workers' Union, states:

Continuous service (Seniority) shall be computed in years and days of employment. It shall be based on elapsed time from the date of employment, or if employment has previously been terminated, from the date of re-employment;

So the fourteen years of service could not be added to his current years of service because such service was not continuous. His service was calculated from the date he was re-hired, that is, 1978. The complainant was accordingly informed of the above and was asked for his thoughts. He did not reply. He appears to have been satisfied that his services between 1961-1975 cannot be computed with his current years of service.

APPENDIX A

Statistical Summary of Complaints

	justified	not justified	pending	jurisdiction declined	rectified	withdrawn	no jurisdiction	Total
Lands & Surveys Department	2	2	10		2			16
National Registration Centre					1			1
Ministry of Agriculture			2					2
National Insurance Board		8	8		2	4		22
City Council of Georgetown	2							2
Geology & Mines Commission		1						1
Transport & Harbours Department		1	1	1				3
Guyana Electricity Corporation	1		4		1	1		7
Ministry of Works, Communication & Regional Development	2		2	4	9	1		18
Guyana Police Force	2	3	9	1	2	2	44	63
Ministry of Home Affairs		1	1					2
The Law Courts				93				93
Central Housing & Planning Authority			2		1			3
Deeds Registry								
Guyana Pharmaceutical Corporation		1						1
Guyana Water Authority	1		4	2		3		10
Ministry of Finance	2	1	2	1				6
General Registration Office					1			1
Mahaica, Mahaicony & Abary			1					1
Police Service Commission				1			1	2
Guyana Sugar Corporation	2	1	1				2	6
Private Complaints (Advice)							173	173
Legal Practitioners (Lawyers)							63	63
Guyana Airways Corporation	1							1
Guyana Defence Force	1			1				2
Guyana National Engineering Corp.	1		1		1	1		4
Ministry of Labour	2							2
Ministry of Education	2	2	1		1			6
Simap				1				1
Public Trustee					3			3
Guyana Prison Service		1		16	3			20
Public Service Commission				5				5
Mayor & Town Council (Linden)				1				1
Guyana National Shipping Corp.			1					1
Linmine					1		2	3
National Dairy Development Programme					1			1
Guyana Forestry Commission		1						1
Ministry of Health					3			3
Inland Revenue Department				1				1
Public Service Management - Office of the President						1		1
Guyana Stores Limited		1						1
	21	24	50	128	32	13	285	553

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 a department or authority, being action taken in exercise of the 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 complainant 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 such 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 is 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 an 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 complaint 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 purposes 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:

- (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 or 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 subparagraph (a) of article 192(5);
- (ix) action taken in any country outside Guyana by or on behalf of any officer representing the

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.

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

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.

(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 sustained 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 provision 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 -

Power of Parliament to make supplementary 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.

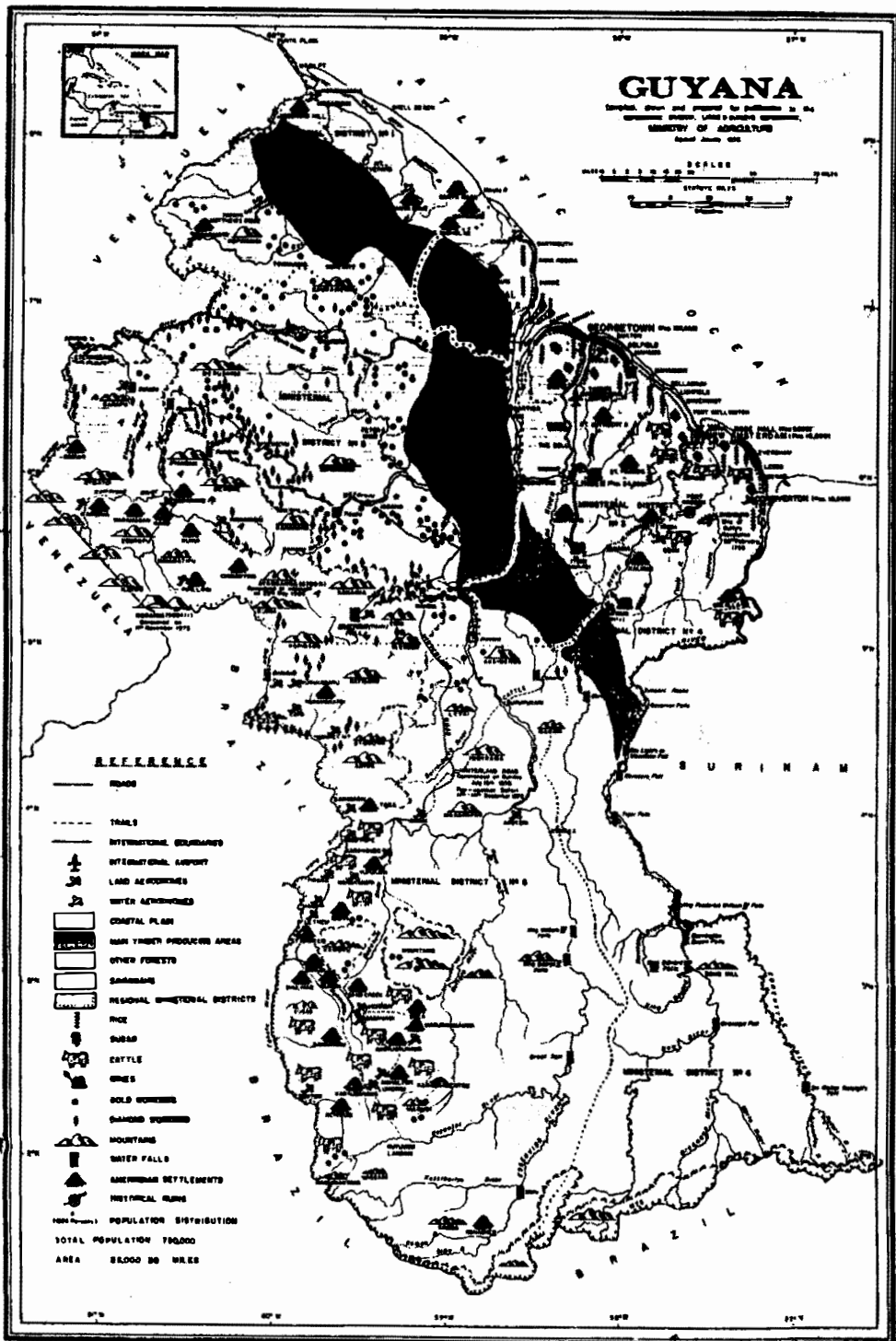
Interpretation

196. In this Subtitle -

"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).

APPENDIX C





APPENDIX D

GUYANA

20 JAN 1964