



**REPORT**  
**of the**  
**OMBUDSMAN**  
**Annual Report for 1998**

**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 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 SY Mohamed  
Ombudsman

Office of the Ombudsman  
39 Brickdam, Stabroek  
Georgetown  
GUYANA

Tel: 61211, 62294  
21st May, 1999

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 1998.

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.

Your obedient servant,<sup>1</sup>

  
SY MOHAMED  
OMBUDSMAN

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**1****INTRODUCTION****Commonwealth Regional Workshop in St. John's Antigua**

A high-level Regional Workshop on 'Strengthening National Ombudsman and Human Rights Institutions in the Caribbean' was held in St. John's Antigua and Barbuda from March 9 to 12, 1998.<sup>1</sup> The Workshop was sponsored and organized by the Commonwealth Secretariat in collaboration with the Office of the Ombudsman of Antigua and Barbuda.

The Workshop comprised of representatives from Ombudsman and Human Rights Institutions, Regional and International, from Antigua and Barbuda, Bermuda, Guyana, Haiti, Jamaica, St. Lucia, Trinidad and Tobago, as well as representatives of the Governments of the Commonwealth of Dominica and St. Kitts & Nevis, the Ombudsman of Argentina, Canada, Pakistan, Peru and South Africa. Also in attendance were a former Ombudsman of Barbados, representatives of the Caricom Secretariat, the International Labour Organisation, the General Secretariat of the Organisation of American States (OAS), the Canadian Human Rights Commission, the Inter-American Commission on Human Rights of the OAS and the Non-Governmental Caribbean Human Rights Network.

The aim of the Regional Workshop was to bring together senior-level officials of the offices of the Ombudsman in the Region, in order to update them on developments in the Ombudsmanship, discuss problems facing the institution and potential solutions to them, and review possible support for these countries still considering establishing similar bodies. The

workshop also accommodated selected top-level policy makers from the governments concerned and provided them with leading expert opinions on options open to small countries intending to strengthen their oversight institutions.

At the Workshop I delivered two papers, one on the 'Role of the Ombudsman in Guyana' and the other 'Management Problems of the Ombudsman and Human Rights Institutions in Guyana.' In my paper on the role of the Ombudsman in Guyana I said, *inter alia* -

In 1965 the International Commission of Jurists was invited to then British Guiana to enquire into the racial imbalance in the Public Service. In its Report the Commission 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.<sup>2</sup>

In pursuance of the Report of the International Commission of Jurists, the Ombudsman was established in the Independence Constitution of Guyana of 1966.<sup>3</sup> It was the first constitutionally enshrined Ombudsman system in the Western Hemisphere.<sup>4</sup>

2 International Commission of Jurists, Report of the British Guiana Commission of Inquiry (1965) 119 and 195

3 The Guyana Independence Order 1966 (SI 1966 No. 575) Schedule 2 Article 52

4 Sir Shridath Ramphal, The Review International Commission of Jurists, Special Edition No. 57 of 1996 in Memoriam Niall Mac Dermot OBE (Mil) CBE, QC at 67

The Ombudsman is appointed by the President acting after consultation with the Minority Leader for a term of four years, and has consistently been a judge of the High Court or a lawyer. The office is independent, and provides informal, speedy, reliable and free services to the general public. His term of office may be renewed.

The Ombudsman is empowered to investigate administrative action taken by a government department, including local authorities, public corporations and statutory bodies. The office, however, is prohibited from investigating a number of complaints, including those against the Service Commissions and those which can be adjudicated in civil or criminal courts.

Approximately 350 cases are received annually, of which over 50% is outside of the Ombudsman's jurisdiction, and are from persons who are generally incapable of asserting themselves or cannot afford to pursue legal remedies. In such cases advice and referrals to appropriate agencies are provided. The Ombudsman's office is situated in the capital Georgetown, and annual visits are made to the other two counties. Complaints are initiated by the complainant, or his duly authorised agent, the President or other authorised government official, or the Ombudsman himself. The Ombudsman has no investigating staff, and investigates all complaints through correspondence.

Recommendations are made to the offending department or institution. The Ombudsman has no power to order or impose sanctions. The last resort in an effort to resolve a Case in the National Assembly, to which the Ombudsman makes a special report.

Other management problems included the indifference on the part of some Heads of departments and other agencies in replying to correspondence of the Ombudsman, the lack of compliance to his recommendations, lack of an office outside the capital city Georgetown thus necessitating an unacceptable reliance on the use of the office of statutory

bodies, inadequate and poorly trained staff and the lack of investigation officers.

I chaired Session 8 of the Workshop with Dr. Jorge Santistevan de Noriega, Ombudsman Peru (Vice President I.O.I. Latin America and the Caribbean) as the discussant.

**The inordinate delay in bringing a prisoner to trial.**

The report of the Director of Prisons dated 99-01-31 shows a prisoner has been incarcerated for about 7 years before he was brought to trial. This is preposterous and outrageous. This is however not bad when compared with other countries with vast financial and legal resources. The problem of delay in bringing an accused to trial within a reasonable time is universal and exists in other jurisdictions. In *Director of Public Prosecutions v Bell* Lord Templeman said -<sup>6</sup>

The solution is not necessary to be found in an increase in the supply of legal services by an appointment of additional judges, the creation of new courts and the qualification of additional lawyers. Expansion of legal services necessarily depends on the financial resources available for that purpose. Moreover, an injudicious attempt to expand an existing system of courts, judges and practitioners, could lead to deterioration in the quality of the justice administered and to the conviction of the innocent and the acquittal of the guilty. And the task of considering these problems falls on the legislature of Jamaica, mindful of the provisions of the Constitution and mindful of the advice tendered from time to time by the judiciary, the prosecution service and the legal profession of Jamaica.

In Trinidad and Tobago, a sister Caricom country, the appellant<sup>7</sup> was charged in December 1985 with the murder of his wife; he was subsequently committed to stand trial for

5 Arraigned before a judge and jury

6 32 WIR 317 at 327

7 *Seuraj Sookermany v Director of Public Prosecutions* 48 WIR 346

manslaughter in 1986, but in 1993 he was indicted for murder of his wife and the trial was first listed for March 1994. The period between committal and trial was about eight years. He claimed that to try him after such a long delay would be a breach of his constitutional rights.

In another case<sup>8</sup> from the same country, the appellants were charged for wounding in February 1981 and the matter came up for hearing in March 1994 that is, thirteen and half years after alleged offence was committed.

These cases occurred in a territory where the number of High Court Judges was increased from sixteen to twenty and the Appeal Court Judges from six to nine, the increase in the number of magistrates, the extension of a computerised system of recording and transcribing court proceedings, the shortening of long vacation and the strengthening of the staff of the Director of Public Prosecutions.<sup>9</sup> The solution to this problem is not the increase of judges as mentioned by Lord Templeman.

In both cases the Court of Appeal of Trinidad and Tobago and the Privy Council refused the applications for a stay of the proceedings. The Court held that the accused right to be tried in a reasonable time must in every case be balanced against public interest and, the Court in performing this balancing exercise, might properly take into account the prevailing system of legal administration, the prevailing economic, social and cultural conditions, including any scarcity of financial resources. The interest of the society in requiring an accused to stand trial outweighs any injury which he has suffered to his interest as a result of the delay. The Court should only order a permanent stay of the proceedings in exceptional circumstances if satisfied that the accused would suffer actual prejudice in his defence by reason of the delay and that such prejudice could not be effectively remedied at the trial. This heavy burden the accused in both cases were unable to do.

<sup>8</sup> Director of Public Prosecutions v Jaikaran Tokai 48 WIR 376

<sup>9</sup> Note 7 supra at 363

The Court further held that a distinction should be drawn between those Constitutions which guarantee a right to a fair trial within a reasonable time as in Guyana and Jamaica and, those like that of Trinidad and Tobago which guarantee only a right to a fair trial. In the event of long delay in bringing an accused person to trial, complaint by constitutional motion in advance of the trial is more readily regarded as an appropriate remedy for a breach of a constitutional right to a fair trial within a reasonable time, whereas if the common law principles are to be applied to determine whether a trial would be fair the matter is primarily one for the trial judge who may in exceptional circumstances grant a stay but who must otherwise bring to the jury's attention all matters arising out of the delay which tell in favour of the accused.

The reasons given by the Court in both cases favour the interest of the public rather than the accused. The accused has a constitutional right to be 'afforded a fair hearing within a reasonable time.' In *Minister of Home Affairs v Fisher*<sup>10</sup> the Privy Council held when interpreting the fundamental rights and freedoms provisions of Bermuda, "call for a generous interpretation avoiding what has been called 'the austerity of tabulated legalism' suitable to give the individual the full measure of the fundamental rights and freedoms" referred to in the Constitution.

In spite of the robust and reasoned ruling in the above cases, no attempt should be made to defend or excuse these delays. The unconscionable delay in both cases is inexplicable and shocking. 'It is a reproach to those responsible for the administration of justice and indeed to the society as a whole.' Public officers who are responsible to bring an accused to trial must always try to do so in the shortest possible time and, not to take advantage of the heavy burden placed on the accused to prove exceptional circumstances.

10 (1979) 3 ALLER 21 at 25 and 26

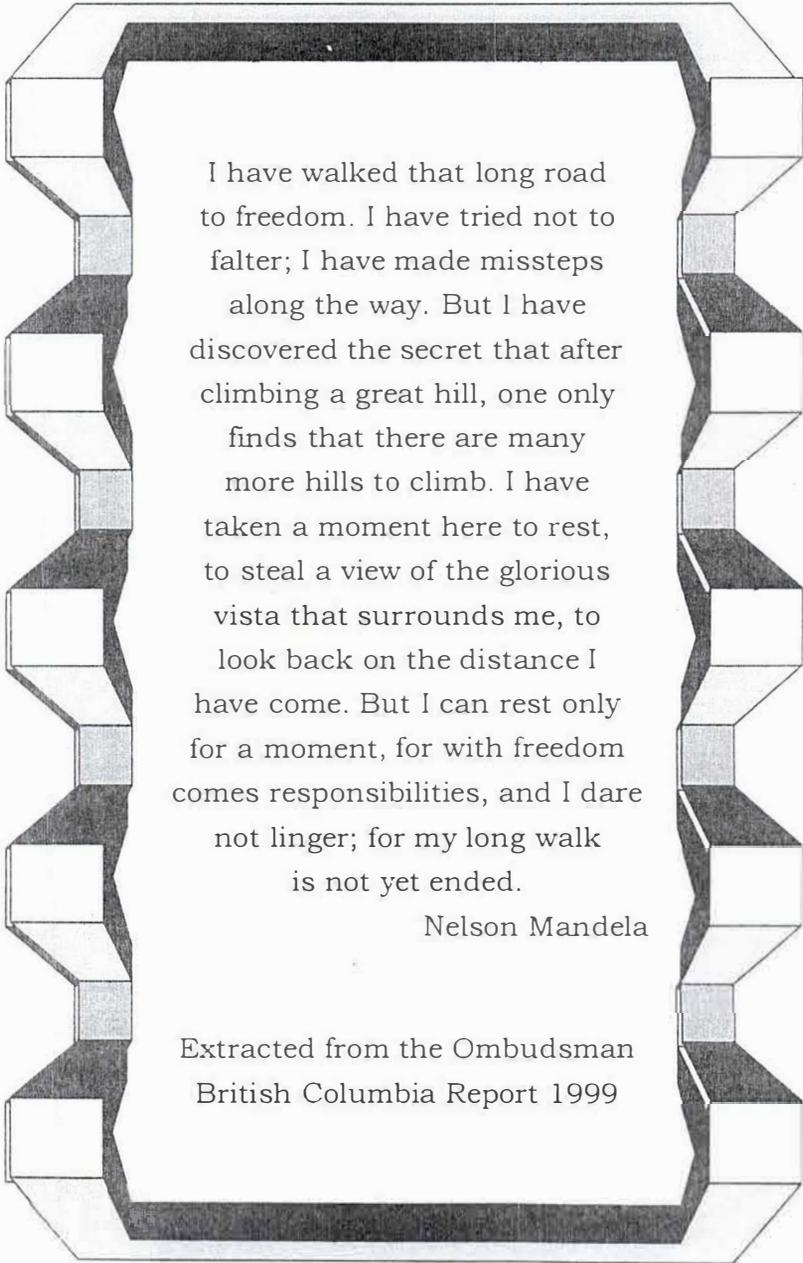
The question is for how long the Court will continue to adopt this position. This inordinate delay is intolerable. In *Pratt v Attorney General of Jamaica*<sup>11</sup> the Privy Council held that to carry out an execution of a death sentence more than five years after conviction is inhuman and degrading punishment. The Privy Council subsequently reduced this yardstick of five years and held that a period of four years and ten months between conviction and execution of death sentence is still cruel and unusual punishment.<sup>12</sup> The Privy Council again went further and granted a limited stay of execution for two condemned murderers in Trinidad and Tobago until their petitions were considered by human rights bodies.<sup>13</sup>

Let us hope that the Court will one day revisit this matter and say that to keep a prisoner beyond a certain period without trial is unconstitutional and grant a permanent stay.

11 (1993) 3 WLR 995

12 *Guerra v Baptiste* 47 WIR 39, *Rickleby v Minister of Public Safety and Immigration* 47 WIR 9

13 *Stabroek News* Thursday March 4, 1999, a decision on this point is to be given anytime by Mr Justice Carl Singh



I have walked that long road to freedom. I have tried not to falter; I have made missteps along the way. But I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb. I have taken a moment here to rest, to steal a view of the glorious vista that surrounds me, to look back on the distance I have come. But I can rest only for a moment, for with freedom comes responsibilities, and I dare not linger; for my long walk is not yet ended.

Nelson Mandela

Extracted from the Ombudsman  
British Columbia Report 1999

## 2

### REVIEW OF THE YEAR 1998

Under the Constitution the Ombudsman holds the office of Ombudsman for a period of four years from the date of his appointment.<sup>1</sup> On the 30th September, 1998 my first term of office ended. On the 1st October, 1998 I began my second term of office. It was an honour and privilege to serve the public those who come within and outside of my jurisdiction during my first term of office. I am looking forward for the continued assistance both from the public and public officers. All I ask that public offices respond to my correspondences promptly. If they do not the public will lose confidence in the Office. The public wants prompt and swift remedy to their complaint.<sup>2</sup>

During my first term of office from 1st October, 1994 to 31st December, 1998 I received fourteen hundred and fifty complaints.

The complaints for the year 1998 were as follows:-

- (a) 67 within my jurisdiction
  - (i) a summary of some of these complaints fully investigated is in Chapter 3;
  - (ii) 27 are still under investigation;
- (b) 180 outside of my jurisdiction

Article 191(3), Appendix B at 41.

2 See page 21 Under the caption Delay in answering my correspondences

The complaints disposed of in 1998 were as follows:-

Justified	15
Not justified	19
Withdrawn	06
Jurisdiction declined -	04
No jurisdiction	176

The complaints outside of the Ombudsman's jurisdiction

- (a) Law Courts - the complaints against the courts; include too many postponements, failure to get a date for hearing after a request for hearing was filed 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.'<sup>3</sup>
- (b) Prisoners - they complained of waiting in prison for a longtime before a hearing in the High Court or in the Court of Appeal; the relevant authorities were accordingly informed. Complaints by prisoners are also high in certain jurisdiction. In Fiji fifty-four complaints out of two hundred and sixty-two were complaints from prisoners.<sup>4</sup>
- (c) Certain institutions complaints were not investigated because the Constitution precludes the Ombudsman from carrying out investigations against certain institutions<sup>5</sup> and in certain matters,<sup>6</sup>

3 Article 193(iii)

4 Twenty-fifth Annual Report Ombudsman Fiji

5 Article 192(6)

6 Article 192(3) and article 193

public is the boss. I have from this day decided to begin and to end my letters as stated above.

The Ombudsman is a friend of the public and to public officers at the same time. The high percentage of complaints against Government departments rejected by the Ombudsman shows justification for the official action taken. It is apposite to refer to the observation of Professor KWR Wade speaking of the Parliamentary Commissioner for Administration (Ombudsman) of England said<sup>9</sup> -

So for the time being the Commissioner's productivity factor, if I may so describe it, may be taken to be about 10%. One would like to think that this modest figure is due to the standard of public administration in Britain. However that may be, there are those who say it is excessively wasteful to hold a hundred investigations in order to remedy ten grievances.

But this overlooks an important factor. In the 90 negative cases the Commissioner is by no means doing nothing. He is explaining to the *administré*, as the French call him, that in fact the official action was right, even though this was not understood and a sense of injustice resulted. This is a valuable service, since it is just as desirable to remove genuine grievances where the action is right as where it is wrong. In all his investigations, accordingly, the Commissioner is pouring oil on some point of friction between government and citizen. Government departments are, generally speaking, very good at avoiding mistakes. What they are often not good at is explaining themselves. In the Ombudsman they have, as to nine-tenths of him, a public relations officer who justifies their doings to those who are most aggrieved at them. This shows that the public service ought to look on the Ombudsman as a friend rather than an enemy. He is a lightning-conductor for bona fide grievances and will keep the departments out of many political storms in the long run.

### **Accommodation**

In 1995 the Public Service Appellate Tribunal (Tribunal) ceased to function. The building was renovated to accommodate the Land Court which now occupies the middle floor. The Office

<sup>9</sup> The Ombudsman: The Citizen's Defender, The Law and the Commonwealth a collection of occasional papers for the Fourth Commonwealth Law Conference, New Delhi, India

of the Ombudsman was able to get some more space and occupied three rooms of the top floor. One room is occupied by the Ombudsman and two rooms by his staff. Last year the Tribunal was resuscitated. The top floor was re-arranged to accommodate the Tribunal.

One room of the top floor was taken away from the Ombudsman and given to the Tribunal. The staff of the Ombudsman is crowded in one room, half of the size of the two rooms it previously occupied. The Office Assistant now sits in the corridor.

The Ministry of Works promised to carry out some extension but funds were not available.

The bottom floor is occupied by the Guyana Bar Association and Police Complaint Authority.

### **Parliamentary Select Committee**

I invite the National Assembly to establish a Parliamentary Select Committee which will deal with matters pertaining with the Ombudsman's report<sup>10</sup> and the working of the office of the Ombudsman. Such a Committee exists in the United Kingdom, Trinidad and Tobago, New Zealand and elsewhere.

### **Office of Professional Responsibility**

This is an internal body of the Police Force which investigates complaints against the Police. It is separate from the Police Complaints Authority. I have referred cases to the Responsibility which were brought to my office.

10 The Committee may inquire why Ministries are not replying to the Ombudsman's letters and implementing his recommendation.

**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.

**Commissioner of Lands & Surveys hits the Ombudsman for seven**

The Commissioner of Lands & Surveys continues to hit the Ombudsman this time he hits him for seven. The Commissioner has seven complaints which have been referred to him. These complaints have not been settled and several reminders were sent to him. Some of these complaints are two years old.

**Acknowledgements**

I acknowledge with thanks the Reports of my colleagues from several countries which provided me with useful information about the nature and variety of complaints of their offices. The International Ombudsman Institute situated at the Law Centre, University of Alberta, Edmonton, Alberta, Canada, sends a Newsletter to keep me in touch with all major developments in the world of Ombudsman. I hope with my limited financial resources to reciprocate by sending my Report to them.

BUDGET OF THE OFFICE  
OF THE OMBUDSMAN G\$ 6,842,000

**Expenses**

Salaries and Allowances	5,795,000
National Insurance Scheme	97,000
Stationery and Cleaning Materials	79,000
Fuel and Lubricants	103,000
Transport, Travelling & Postage	310,000
Telephone Charges	75,000
Other Services Purchased	224,000

<b>Grand Total</b>	<b>6,683,000</b>
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<b>Balance</b>	<b>159,000</b>
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G\$ 179 = US \$1

**Staff of the Office of the Ombudsman**

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

**3****SELECTED COMPLAINTS  
SUMMARIES****Ref No. 2/98 - Complaint against the President**

Mr Eusi Kwayana by letters January 14 and 15, 1998 asked me 'to investigate under article 192 of the Constitution whether the President, Mrs Jagan by her conduct during the events of December 19, 1997', at the appointed Swearing-In Ceremony at State House committed grave faults of administration in that she -

- (i) knowingly treated marshals of the High Court of the Supreme Court of Judicature of Guyana, members of the Public Service of Guyana, in the execution of their duty with hostility, or a show of hostility and disrespect; and
- (ii) treated the document, that is, an order nisi of the Chief Justice served on her, with disdain and contempt.

Mr Kwayana subsequently submitted an affidavit dated January 23, 1998. His affidavit did not satisfy the requirements of the Statutory Declaration Act Cap 5:09. I was expecting his affidavit to follow up and develop on the complaints contained in his letters aforesaid, but this did not happen. There was a lamentable lack of evidence in his affidavit. It provided no evidence to support the allegations in his aforesaid letters. There was a complete omission to mention the events he referred to in (i) and (ii) above. It was therefore not unreasonable for me to conclude that he had no evidence to support his allegations and, this was enough for me to decline jurisdiction to conduct the enquiry he requested. This finding effectively disposed the

matter. I, however, proceeded to consider his complaints because I did not want him to feel that he had received something less than justice.

Mr Kwayana did not identify any specific provisions of the article 192. There are ten paragraphs of the aforesaid article and I find none to support his complaints.

Complaints (i) and (ii) above, could be dealt with together because they arose out of the same facts. The aggrieved persons in the matter were the marshals of the Supreme Court and the Hon Chief Justice. Mr Kwayana was making representation on their behalf.

Under paragraph 2(a) of article 192 the Ombudsman may investigate a complaint by a person alleging that he has sustained injustice in consequence of a fault in administration. Under paragraph (7) of the said article the complaint may be made by the aggrieved person himself or, if he is for any reason unable to act for himself, he may authorise someone to represent him. Neither his letters nor his affidavit stated that he was authorised by the marshals or by the Hon Chief Justice to make these complaints on their behalf.

Under paragraph 2(b) of article 192 the President, a Minister or a member of the National Assembly or of the National Congress of the Local Democratic Organs may request the Ombudsman to investigate a complaint on behalf of a person or body of persons who may have sustained any injustice. Mr. Kwayana was not one of those persons mentioned above who might request the Ombudsman to investigate a complaint.

Mr Kwayana therefore had no *locus standi* to request an enquiry of the complaints to which he referred. He did not have 'sufficient interest in the subject matter of the complaint' according to paragraph (4)(d). The very article to which he referred did not allow him to intervene.



The investigative powers of the Ombudsman are stated in article 192(f) which says -

Subject to the provisions of this article, the Ombudsman may investigate any action taken by any department of Government or by any other authority<sup>1</sup> 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.

The above provision provides for the happening to two events

- (a) the action must be taken by the President, Ministers etc, on behalf of a department of Government or any other authority; and
- (b) the action taken must be 'in exercise of the administrative functions of that department of Government or authority'. This has been interpreted to mean that the action must be in the course of and for the purposes in the implementation of the policy of that department of Government or authority<sup>2</sup>.

With respect to (a) above neither Mr Kwayana's letters nor his affidavit said that President Jagan, at the time of the appointed Swearing-In Ceremony at State House, was acting on behalf of a department of Government or authority. At that time there was no assignment of responsibility for the administration of any department of Government or authority according to

Authority means certain corporations or statutory boards. Schedule Ombudsman Act Cap 19:02

2 (1987) 13 CLB 201-202

Article 107 of the Constitution. President Janet Jagan was therefore, not acting on behalf of a department of Government or authority. She was at State House as he said, between the hours of 4 p.m. to 6 p.m. for the 'appointed Swearing-In Ceremony' not as an officer of any department of Government or authority.

With respect to (b) assuming President Janet Jagan was at State House at the appointed Swearing-In Ceremony either as a Minister or officer of a department of Government or an authority, her conduct, as he alleged, that is, treating the marshals with hostility and disrespect and the order *nisi* with the disdain and contempt could not be deemed actions taken in the course of and for the purposes in the implementation of the policy of that department of Government or authority.

To hold that the events that occurred on December 19, 1997 at the appointed Swearing-In Ceremony at State House come under paragraph (a) and (b) is to defeat the intention of the legislature by not giving the words of article 192(1) their ordinary and natural meaning.

It is a misconception that the Ombudsman has jurisdiction over all complaints made by a member of public and that every such complaint made to him would receive positive results. The Ombudsman's investigative powers are circumscribed and confined by the Constitution - the fundamental and supreme law of the nation. He is bound to confine his exposition within the letter of the Constitution. He cannot act outside the Constitution. If he does, his acts would be null and void. For the above reasons, I find that Mr. Kwayana has not established a *prima facie* case against President Janet Jagan to impel me to conduct the enquiry he requested.

I ended my opinion by referring to what the Hon. Chief Justice Desiree Bernard said in recent constitutional case - if the law is on your side, regardless of the identity of the litigant you will win; if the law and judicial precedent are against you, you will lose.

**Ref No. 3/98 Complaints against the Prime Minister**

Mr. Eusi Kwayana by letters of January 14 and 15 asked me to investigate under article 192 of the Constitution the following 'complaints against Hon. Mr. Sam Hinds, former President of the Co-operative Republic of Guyana for action he took, or caused to be taken during his term of office' in that -

- (i) no swearing-in took place at the Swearing-In Ceremony for the President Elect on December, 1997 at 4:30 p.m. at State House. The former President has not apologised to the nation for any error made in connection with the invitation; and
- (ii) the taking of the oath of office by Mrs Jagan, as the Head of State on December 19, 1997 was a secret ceremony without the presence of the press, a representative number of Guyanese, foreign representatives, photographic documentation and that she was sworn in either prematurely or irregularly.

He claimed that Mrs. Jagan took the oath of office on December 19, 1997 some hours before the appointed Swearing-In Ceremony referred to (i) above and the taking of the said oath by Mrs Jagan was a secret ceremony etc.

He subsequently submitted an affidavit dated January 23, 1998 .

His affidavit did not satisfy the requirements of the Statutory Declarations Act Cap 5:09. I was expecting his affidavit to follow up and to develop on the complaints of his letters of January 14 and 15, 1998 but this did not happen.

3 He submitted one affidavit with respect to this complaint and his complaint against President Janet Jagan at page 27 supra

There was a lamentable lack of evidence in his affidavit. It provided no evidence to support the allegations in his aforesaid letters. There was a complete omission to mention the events to which he referred in (i) and (ii) above. No mention was made in his affidavit what action the Hon Samuel Hinds took with respect to (i) and (ii) above. His name was not mentioned in his affidavit. It was therefore not unreasonable for me to conclude that he had no evidence to support his allegations and, this was enough for me to decline jurisdiction to conduct the enquiry he requested. This finding effectively disposed of the matter. I however, proceeded to consider his complaints, because I did not want him to feel that he had received something less than justice.

Mr Kwayana did not identify any specific provision of article 192. There are ten paragraphs of the aforesaid article and I find none to support his complaints.

With regard to (i), Mr Kwayana correctly referred to the Hon Mr Sam Hinds, former President of the Co-operative Republic of Guyana. He recognised this also when he said in his other letters of 14th and 15th January, 1998 that 'Mrs Janet Jagan took the Oath of Office on December 19, 1997 some hours before the appointed Swearing-In Ceremony at State House' between the hours of 4 p.m. and 6 p.m. as President of the Co-operative Republic of Guyana'. Mr Hinds was therefore not holding any official position in Government on December 19, 1997 at 4:30 p.m. at the appointed Swearing-In Ceremony at State House.

Mrs Jagan was declared elected as President under article 177(2) some hours before the appointed Swearing-In Ceremony at State House and assumed office of President under article 97(1) by operation of law. Under article 92, Mr Hinds therefore ceased to be President and become an ordinary person. So where 'no swearing took place at the Swearing-In Ceremony' at State House on December 19, 1997 at 4:30 p.m. as stated by him, if Mr Hinds had anything to do with it, it did not occur during his

term in office as President, he was acting in his personal capacity and did not on behalf of a department of Government or any authority under article 192(i). The Ombudsman is not concerned what a private person does; he is concerned of an action taken by an officer of a department of Government or authority against a private person in the normal course of business of that department of Government or authority.

With regard to (ii), the arguments advanced at (i) above apply equally to this complaint. The investigative powers of the Ombudsman are stated in article 192(1)<sup>4</sup>. According to this article the action must be taken by the President, Ministers and other officers 'in exercise of the administrative functions' of a department of government or authority. Neither of his letters nor affidavit stated that Mr Hinds was acting on behalf of a department of Government or authority. I find nothing in his letters or affidavit from which I could infer that he was so acting. If Mr Hinds took any action in the secret taking of the Oath of Office by President Jagan when she took the oath of Office some hours before the appointed Swearing-In Ceremony at State House he was not acting on behalf of a department of Government or authority, or deemed to have taken an action in the course of and for the purposes in the implementation of the policy of a department of Government or authority.

The Ombudsman is a creature of the Constitution. His powers and jurisdiction are derived from the Constitution. He cannot decide an issue on his own frolic. He must follow the Constitution - the fundamental and supreme law of the nation. I find Mr Kwayana complaints against Mr Hinds were without merit, 'trivial, frivolous and vexatious' under article 192(4)(b)(c) of the Constitution and he did not establish a *prima facie* case against Mr Hinds to impel me to conduct the enquiry requested.

<sup>4</sup> This article is examined at p 28-29 and the arguments there are relevant to this complaint, see p 43 for a complete reading of this article

**GUYANA POLICE FORCE****Ref No. 15/98 Lance Corporal**

The Commissioner of Police in his letter of 1998-07-10 to me, says that the Divisional Commander reported the lance corporal's absence 'and he was deemed to have illegally withdrawn from the Force and was accordingly struck off the strength of the Force.' The Commissioner's letter of 1995-08-17 to the lance corporal also says he illegally withdrawn from the Force in contravention of section 37A (1)(b) of the Police Act Cap 16:01, and was struck off the Force 'under the provisions of article 212(3) of the Constitution.' Section 37(1)(b) of the Police Act says that an Inspector, Sub-ordinate Officer or Constable who withdraws from the Force without notice or consent is liable on a summary conviction to a fine or imprisonment. The lance corporal claims that during the aforesaid period of absence he was granted leave of absence by an inspector, his supervisor. No disciplinary or criminal charge was preferred against the Lance Corporal.

**Ref Number 21/98 Sergeant**

The Commissioner's letter of July 24, 1998 to me says that the Sergeant was identified as a suspect, he stayed away from work and did not produce any sick leave for the days he was absent. The Sergeant, however, claims that he delivered a medical certificate to the Deputy Superintendent, his Supervisor to cover the period of his absence. The Deputy Superintendent denied receiving the medical certificate. He was subsequently deemed to have illegally withdrawn from the Force under s 37A(1)(b) of Police Act Cap 16:01 which he says that an Inspector, Sub-ordinate Officer or Constable who withdraws from the Force without notice or consent is liable on a summary conviction to a fine or imprisonment.

The Commissioner letter of 1991-09-18 to the Sergeant also says that he invoked article 212(3) of the Constitution and struck him off the Force. No disciplinary or criminal charge was preferred against the Sergeant.

**Ref Number 30/98 Constable**

The Commissioner's letter of 1998-05-01 to me, says that the constable contended that he submitted his application for annual vacation leave to a sergeant who authorised him to proceed on leave. The sergeant denied this and said that the constable did not report for duty as he was required to do on 27th March, 1996. The Commissioner concluded by saying that he did not believe that the sergeant permitted the constable to proceed on leave and that the constable walked off the job and as such absconded and his services were properly terminated. There were four disciplinary charges, of absence without leave, which were still pending against the constable. These charges were similar to the one for which he was dismissed. Notwithstanding these charges the constable continued to work with the Force. It is while working with the Force that the Commissioner concluded that 'the constable walked off the job and as such absconded and his services were properly terminated.' No disciplinary charge was preferred against the constable.

Whenever an allegation of an offence against the discipline of the Force is made against a member of the Force, the Police (Discipline) Act, Cap 17:01 (hereinafter referred to as 'the Act') must be invoked to meet such an allegation. Section 4 of the Act sets out a list of offences against discipline. Section 5 lays down the procedure to be followed in an investigation of the offences against discipline. Section 6 sets out the procedure to be followed in an inquiry of a charge against a member of the Force who may select a member of the Force to assist him in presenting his defence. He may also call witnesses to testify on his behalf. The Schedule to the Act prescribes the powers of punishment to

be imposed by the Police Service Commission in relation to members of the Force above the rank of Inspector and to the Commissioner of the Police in relation to members of the Force below the rank of Inspector. One of the punishment, in both cases, is that of dismissal from the Force. This procedure was not followed by the Commissioner in any of the cases mentioned above.

The allegation against the lance corporal, sergeant and constable was absent from duty without leave which falls under section 4(n) of the Act. The Commissioner ought therefore to have followed the procedure laid down under the Act and laid charges against them which would have resulted in an enquiry being held and would have accorded them a hearing. He was bound to give them a hearing under the Act before he passed any sentence on them. He could only dismiss them from the Force in accordance with the provisions of the Act. The principle of natural justice must all times be followed. He did not do so. If he had followed the procedure under the Act he would have been able to dismiss them from the Force under the Powers of Punishment as stated in the Schedule, if the allegation was established against them. He could have also considered their previous misconduct to determine the appropriate punishment.

In the case of lance corporal and the sergeant, the Commissioner also invoked article 212(3) of the Constitution to dismiss them, here again he was required to give them a hearing before he dismissed them.

I sent to the Commissioner a copy of a decision of the Court of Appeal in *Kemp Roberts v Attorney General* where it was held that he cannot dismiss a member of the Force under a statutory provisions without a hearing under the Act, when it is alleged that the member committed a disciplinary offence against the Force. The provisions of the Act must be followed to allow an errant member of the Force to have an opportunity to be heard before any punishment is handed down against him. The

**NATIONAL INSURANCE SCHEME****Ref No. 25/98 Denial of Pension**

The complainant says that she worked at LBI Estate from 10th August, 1976 to 31st January, 1996 and did not receive old age pension. I referred her matter to the NIS for investigation. The NIS replied by saying that the complainant is in receipt of old age pension from 30/4/98 and has been paid from 14/3/95.

**Ref No. 16/98 The receipt of Survivors' Benefits**

The complainant's husband died while working as a carpenter at a sawmilling company. She applied for survivors' benefits at a local office but without success. I wrote the National Insurance Scheme in Georgetown. After sometime the complainant telephoned my office to say that she was receiving the survivors' benefits.

**Ref No. 19/98 Denial of Invalidity Benefit**

The complainant applied for both sickness and invalidity benefits. Her application for sickness benefit was successful but not her application for invalidity benefit because the medical referee opined that her condition was not likely to be permanent. She appealed to the Medical Board against the medical referee's decision. The Board allowed her appeal and deemed her an invalid. She is therefore now in receipt of invalidity pension from 6th April, 1998.

**Ref Number 13/98 - Denial of Invalidity Benefit**

The complainant applied inter alia, for invalidity benefit. The NIS says he was seen by the Medical Board who referred him to be examined by a Medical Officer. He did not attend that examination. As a consequence, there was no ruling on his invalidity status and his claim was deemed abandoned. But the complainant says that he did attend the examination but saw a senior nurse who told him that he was an invalid and to ex-

change his NIS card, which he did. He was given a new number. I wrote NIS and asked it to arrange another appointment for him to see the Medical Officer. The NIS accepted my suggestion and an appointment was made for him to see the Medical Adviser who advised that the claimant be deemed an invalid. He was therefore given a sum of \$108, 140.00 as arrears as invalidity benefit.

#### **Mayor and Councillors of the City of Georgetown**

Two employees of the Mayor and Councillors of the City of Georgetown (City) were dismissed under certain provisions of the law which provided for a punishment, other than dismissal. I informed the City of the above. After sometime the City replied that it re-instated the two employees.

#### **Guyana Electricity Corporation**

##### **Ref Number 40/98 Disconnection of Electricity**

The complainant paid twenty-one thousand, six hundred dollars (\$21,600.00) to the Guyana Electricity Corporation (Corporation) as connection fees for the supply of electricity to her home. The meter was installed and the Corporation supplied her with electricity from 7th May, 1998. On 23rd May, 1998 in her absence the Corporation disconnected her supply of electricity.

The Corporation claims that the supply of energy was disconnected because the complainant's father, the previous owner of the property, had tampered with the meter in a manner to prevent the meter from duly registering the quantity of energy supplied and the Corporation estimated the sum fraudulently consumed by the complainant's father was \$440,429 and if the complainant paid that sum the energy would be restored to her home.

The Corporation case is based on suspicion. It claims that the property was transferred to the complainant and her brother by their father and, that the alleged transfer was not in good faith. But the transfer was done openly - it was advertised in the Official Gazette, the complainant's father paid all taxes due to effect the transfer. The Corporation should have opposed the transfer when it was advertised but this, it failed to do.

If the allegation by the Corporation is true it should proceed to collect the money from the complainant. The Corporation is not without remedy it claims that the complainant's father is presently in the home. If this is so, why can't they proceed against him. It has threatened to take action against the father and the complainant, but it has not done so far.

The Corporation entered into a contract with the complainant on 7th May, 1998 for the supply of electricity. The complainant had to supply proof of ownership of the property, this she did. The Corporation supplied her with electricity for two (2) weeks and then unilaterally broke that contract and disconnected her supply of electricity. The complainant does not owe the Corporation any money, if she did, she owed it for the two weeks and is willing to pay for the two weeks. The Corporation is penalising the complainant because of its failure to prosecute the father or to oppose the transfer of the property as stated above. The complainant spent about eight months in darkness trying to get the Corporation to reconnect her home with the supply of electricity. She failed to achieve this and left the country in disgust. She was a re-migrant Guyanese.

## APPENDIX A

### Statistical Summary of Complaints

1998	Justified	Not Justified	Pending	Jurisdiction Declined	Withdrawn	No Jurisdiction	Total
Mayor & City Council	2						2
Guyana Defence Force (GDF)	1	3	1	1			6
Bureau of Statistics			1				1
Prisoners						36	36
Public Trustee	2		2				4
Magistrate Court	1						1
Court (High)						13	13
Legal Practitioners						12	12
Customs & Excise				1			1
Region 3			1				1
Ministry of Health				1			1
Ministry of Labour		1					1
Ministry of Agriculture	1	1	1				3
Ministry of Works					1		1
Ministry of Finance					1		1
National Insurance	7	3	7				17
Guyana Water Authority (Guywa)		1			1		2
Guyana Electricity Corporation (GEC)					1		1
Guyana Post Office Corporation (GPO)			1	2			3
Guyana Fisheries Limited		2					2
Office of the President		1					1
Office of the Prime Minister		1					1
Mards Rice Milling Complex Limited		1					1
Georgetown Sewerage & Water Commissioners		1					1
Customs Anti Narcotic Unit					1		1
Private Advice & Miscellaneous						110	110
Ministry of Transport		1					1
Central Housing & Planning Authority			4				4
Lands & Surveys			1				1
Guyana Police Force		3	7				10
Sea Defence	1						1
Registrar, Supreme Court			1				1
Charity						2	2
Insane						3	3
	15	19	27	4	6	176	247

## APPENDIX B

### Extract from the Constitution of the appointment: etc of the Ombudsman

#### 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 functions of any public officer and shall not, without 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.

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 com-

plainant 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 Public Service Appellate Tribunal, 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 any 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 dis-

continue 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.

Ex luded  
matters

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 investigating crime, including action taken with respect to passports for either of those purposes;
- (iii) the commencement for 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 sub-paragraph (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;

194.(1) After conducting an investigation under this Subtitle the Ombudsman shall inform the department of 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 report 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 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 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 -

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 investigations 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.

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 or origin, political opinions, colour or creed).

# APPENDIX C

## Map of Guyana

