

GUYANA

Part 2

The Ombudsman

52. (1) For the purpose of conducting investigations in accordance with the provisions of this Part of this Constitution, there shall be an Ombudsman.
- (2) The Ombudsman shall be appointed by the President acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.
- (3) The Ombudsman shall not perform the functions of any public office and shall not, without the approval of the Prime Minister 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.
- (4) 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
- (5) The provisions of article 118 of this Constitution (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.

53. (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 Ministers, officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority on or after 26th May, 1966.

(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 a Minister or a member of the National Assembly 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 person or body of persons has or may have sustained such injustice.

(3) The Ombudsman shall not investigate under this Part—

(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 described in the First Schedule to this Constitution:

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 19(1) of this Constitution (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 Part, 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, the Ombudsman 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 complaint 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 and the Police Service Commission shall not be regarded as departments of Government.

(7) For the purposes of paragraph (2)(a) of this article 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 authorized to represent him.

(8) Any question whether a complaint or a request for an investigation is duly made under this Part or any law enacted in pursuance of article 55 of this Constitution 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 "action" includes failure to act and "action taken" shall be construed accordingly.

54. (1) After conducting an investigation under this Part 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 Part in pursuance of a complaint or a request for an investigation made by a Minister or a member of the National Assembly, 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 reasons therefor.

(3) Where the Ombudsman has made a recommendation under paragraph (1) of this article and within a reasonable time there-after 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 Part.

55. 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 Part, including (without prejudice to the generality of the foregoing power) provision—

(a) for the procedure to be observed by the Ombudsman in performing his functions;

(b) for the manner in which complaints and requests for investigation shall be made to the Ombudsman and for the

payment of fees in respect of any complaint or investigation; and

(c) for the powers, duties and privileges of the Ombudsman or of other persons or authorities with respect to the obtaining or disclosure of information for the purposes of any investigation or report by the Ombudsman.

56. In this Part—

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

“fault in administration” includes, without prejudice to its generality, any contravention of article 15 of this Constitution (which relates to discrimination on grounds of race place of origin, political opinions, colour or creed).

Subtitle 2

The 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.

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 person 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.

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—

(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.

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).

CHAPTER 19:04

OMBUDSMAN ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Mode of complaint.
3. Procedure in respect of investigation.
4. Evidence.
5. Disclosure of certain matters not to be required.
6. Secrecy of information.
7. Proceedings not to be questioned or to be subject to review.
8. Proceedings privileged.

9. Power of entry on premises.
10. Delegation of powers.
11. Reports.
12. Offences.
13. Prescription of authorities subject to the Ombudsman's jurisdiction.

SCHEDULE-Authorities subject to the Ombudsman's jurisdiction.

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An Act to make provision for matters supplementary and ancillary to those provided for by Part 2 of Chapter V of the Constitution of Guyana.

[9TH SEPTEMBER, 1967]

1. This Act may be cited as the Ombudsman Act.
2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.

(2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place where the writer is detained.
3. (1) Where the Ombudsman proposes to conduct an investigation under article 53(1) of the Constitution he shall afford to the principal officer of the department or authority concerned an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make, orally or in writing as deemed sufficient by the Ombudsman, representations relevant to the matter investigated.

(2) Every such investigation shall be conducted in private.

(3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit.

(4) If, during or after any investigation, the Ombudsman is of opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority to which article 53 of the Constitution applies, the Ombudsman may refer the matter to the authority competent to take such disciplinary or other proceedings against him as may be appropriate.

(5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.

(6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person, out of moneys provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed in the Sixth Schedule to the Criminal Law (Procedure) Act, so, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this subsection, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.

4. (1) Subject to this section and section 5, the Ombudsman may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him any such information, and to produce any documents or

papers or things which in the Ombudsman's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any department or authority, and whether or not such documents, papers, or things are in the custody or under the control of any department or authority.

(2) The Ombudsman may summon before him and examine on oath-

(a) any person who is an officer or employee or member of any department or authority to which article 53 of the Constitution applies and who in the Ombudsman's opinion is able to give any such information as aforesaid; or

(b) any complainant; or

(c) any other person who in the Ombudsman's opinion is able to give any such information;

and for that purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of Title 21 of the Criminal Law (Offences) Act (which relates to perjury).

(3) Subject to subsection (4) no person who is bound by the provisions of any enactment, other than the Official Secrets Acts, 1911 to 1939 (or any Act of the Parliament of Guyana replacing the same in its application to Guyana), to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be

required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.

(5) Subject to subsection (4) every person shall have the like privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things, as witnesses have in any court.

(6) Except on the trial of any person for an offence under Title 21 of the Criminal Law (Offences) Act in respect of his sworn testimony, or for an offence under section 12 of this Act, no statement made or answer given by that or any other person in the course of any inquiry by, or any proceedings before, the Ombudsman under the Constitution of this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(7) No person shall be liable to prosecution for an offence against the Official Secrets Acts, 1911 to 1939, or any enactment, other than this Act, by reason of his compliance with any requirement of the Ombudsman under this section.

5. (1) Where the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing—

(a) might prejudice the security, defence or international relations of Guyana (including Guyana's relations with the Government of any other country or with any international organisation);

(b) might involve the disclosure of the deliberations of Cabinet; or

(c) might involve the disclosure of proceedings of Cabinet, or of any Committee of Cabinet, relating to matters of a secret

or confidential nature, and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

(2) Subject to subsection (1), no rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall apply in respect of any investigation by or proceedings before the Ombudsman.

6. A person who performs the functions appertaining to the office of the Ombudsman or any office or employment thereunder—

(a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any of the provisions of articles 53 and 54 of the Constitution:

Provided that no disclosure made by any such person in proceedings for an offence under section 12 of this Act, or under Title 21 of the Criminal Law (Offences) Act and by virtue of section 4(2) of this Act, or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or the provisions of section 3(4) or section 11 of this Act, shall be deemed inconsistent with any duty imposed by this paragraph; and

(b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the preceding proviso.

7. No proceeding of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no

proceeding or decision of the Ombudsman shall be liable to be challenged, reviewed, squashed, or called in question in any court.

8. (1) Except in the case of proceedings for an offence under section 12(d), no proceedings, civil or criminal, shall lie against any person appointed to any office, or to perform any functions, referred to in section 6 for anything he may do or report or say in the course of the exercise or intended exercise of his functions under the Constitution or this Act, unless it be shown that he acted in bad faith.

(2) Anything said or any information supplied or any document, paper or thing produced by any person for the purpose or in the course of any inquiry by or proceedings before the Ombudsman under the Constitution or this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

9. (1) The Ombudsman may, for the purpose of executing any provisions of article 53 of the Constitution but subject to this section, at any time enter upon any premises occupied by any department or authority to which the article applies and inspect the premises and, subject to sections 4 and 5 of this Act, carry out therein any inquiry or investigation that is within his jurisdiction for the said purpose.

(2) Before entering upon any such premises the Ombudsman shall notify the principal officer of the department or as the case may require the authority by which the premises are occupied.

(3) The Attorney-General may from time to time by notice to the Ombudsman exclude from the application of subsection (1) any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence or international relations of Guyana (including Guyana's relations with the Government of any other country or with any international organisation).

10. (1) With the prior approval in each case of the Prime Minister, functions hereinbefore assigned to the Ombudsman may from time to time, by direction under his hand, be delegated to any person who is appointed as mentioned in section 8(1) of this Act.

(2) No such delegation shall prevent the exercise of any power by the Ombudsman.

(3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.

(4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

11. The Ombudsman may from time to time in the public interest publish reports relating generally to the exercise of his functions or to a particular case or cases investigated by him, whether or not the matters to be dealt with in such reports may have been the subject of a report to the Assembly.

12. Every person who—

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or

(d) in a manner inconsistent with his duty under section 6(a) deals with any documents, information or things mentioned in that paragraph,

is liable on summary conviction to a fine of five hundred dollars and to imprisonment for six months.

13. (1) The authorities mentioned in the Schedule are authorities to which article 53 of the Constitution applies.

(2) The President may, by order, amend the Schedule by the addition thereto or deletion therefrom of any authority or the substitution therein, for any authority, of other authority.

SCHEDULE

AUTHORITIES SUBJECT TO THE OMBUDSMAN JURISDICTION

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 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.

THIRD SCHEDULE (Section 12)

Matters Not Subject to Investigation

1. The commencement or conduct of civil or criminal proceedings in any court of law in Jamaica or before any international court or tribunal.
2. Any action done with respect to orders or directions to the Jamaica Defence Force or members thereof, or any proceedings under the Defence Act.
3. Action taken by the Minister responsible for extradition.
4. Any decision or action of a Service Commission relating to the appointment, removal and disciplinary control of any person.
5. The grant of honours, awards and privileges under the National Honours and Awards Act.