



OFFICE OF THE OMBUDSMAN

FOURTH ANNUAL REPORT OF THE OMBUDSMAN (July 1984 - June 1985)



MR. DANIEL P. MAEKE, O.B.E.
Ombudsman

FOURTH ANNUAL REPORT

JULY 1984 - JUNE 1985

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Office of the Ombudsman,
P.O. Box 535,
Honiara,
Solomon Islands.

The Prime Minister,
The Hon. Sir P. Kenilorea,
Office of the Prime Minister,
Honiara,
Solomon Islands.

Dear Sir,

I have the honour to submit my Fourth Annual Report for the period July 1984 to June 1985.

In accordance with Section 98(3) of the Constitution this report will in due course be laid in Parliament.

I have the honour to remain Sir,

Yours faithfully,

D.P. MAEKE (OBE)
Ombudsman

I. GENERAL

Period covered by the Report

This is my Fourth Annual Report in accordance with S.98(3) of the Constitution. "The Ombudsman shall make an annual report and may make such additional report to Parliament as he deems appropriate concerning the discharge of his functions, and draw attention to any defects which appear to exist in the administration or any law".

The report covers the period July 1984 to June 1985. This period witnessed as would be realised, devolution of substantial functions and power by the Central Government to the eight Provinces. It is pleasing to note, greater responsibilities shouldered by the provinces did not give rise to number of complaints brought against them. This state of affairs could either mean, Provincial Executives had, during the reporting period performed their duties well thus, giving no cause to complain or, people were ignorant of the functions of the office.

Contacts with other Ombudsman's offices from other countries increased thereby making the existence of the office with similar institution fostered and widened. Efforts made to persuade Parliament Office in meeting our membership fees to the International Ombudsman Institute unfortunately received cool reception. I am disappointed on this because, I believe being a member to such international organisation the office gains access to greater assistance in the form of useful publications and general information. I am in no way putting the blame on the officer responsible. It is, and I believe, the effect of the instruction from the Ministry of Finance to Accounting officers in all Governmental authorities. I sympathize with the accounting officers because in their preparation for the incoming estimates, they were not given room to manoeuvre to changes which they strongly believe could be made when told - "no increases envisage in the incoming estimates". Confronted with this situation, accounting officers found it very difficult in dividing the same piece of 'stale' cake to please everyone. This I believe is a most unpleasant task. With due respect to the Clerk to Parliament who is the caretaker of my account I hold the view, independent control of my finance must eventuate. In saying this, the office will then be able to negotiate directly with the Ministry of Finance. Control of my own account could also further foster the independent image of the office.

Relationship with members of Parliament

It is important for members of the Legislature to understand the functions and jurisdiction of the office. As being the elected representatives of the people, they have the responsibility to assist individuals who in one way or the other have suffered injustices from unfair administrative actions or errors.

In the effort to "school" the new elected members after the 1984 General Election, I addressed them on 16th November 1984 on the roles, functions and jurisdiction of the office. It was unfortunate many Parliamentarians were not able to attend due to reasons which the Ombudsman and the Clerk to Parliament who kindly arranged the session did not know. I thank the honourable Parliamentarians who contributed to the discussion after my brief talk. Sections 5(6) of the Ombudsman Act states - "he is invited to do so by any Minister or member of Parliament." This is a mandate to all Parliamentarians in an effort to assist those who are genuinely being aggrieved. The causes could be contrary to law, based wholly or partly on a mistake of law or fact, unreasonably delayed, or otherwise unjustly or manifestly unreasonable. Furthermore, Parliament under S.97(1)(3) of the Constitution is given authority to incorporate offices, commissions, corporate bodies or public agencies to come under the jurisdiction of the office. It is a heartbreak to encounter individuals, or group of individuals with genuine grievances approach the office seeking assistance but because of bodies or authorities involved in which the Ombudsman has no authority over, they were directed to appropriate agencies such as, the Labour Division of the Ministry of Labour and Immigration or to the Public Solicitor's office.

It is also in my view Parliamentarians that have a duty in informing people of their respective constituencies of the functions, and procedures in making submissions to the office. It is also important for the members of the Legislature to understand what is required of them in relation to the work of the office. Any institution cannot operate effectively in isolation in its endeavour to fulfil its functions. Assistance, encouragement and co-operation from relevant sections of the community at large are needed if there is to be an effective service.

Responses from authorities and agencies involved

Delay is a cause for frustration. As repeatedly stated in my past annual reports many of the cases investigated could have taken shorter times to finalise if only, Ministries and authorities involved responded in giving or providing the required information in good time. Investigation diaries on many of the cases registered showed that on many occasions, three or four reminders have to be sent at fortnight intervals to bring about any response. Causes for delay could be accounted to inadequate attention given by responsible officers. On the other hand it is gratifying to be able to receive quick responses without having to resort to the sending of reminders.

As stated earlier, the office of the Ombudsman cannot function in isolation. It has to have the support of the members of the Legislature, the public service, Provincial Governments and Statutory Authorities. There is no doubt the impartial investigation and recommendations made though not compulsive led to authorities involved becoming cautious in their administration and decision making. There is however yet room for taking extra care in not repeating what previously had been changed, revised, or altered as the outcome of recommendations made by the office.

Is the impact of the functions of the office warrants its inclusion in the Government machinery or should there be amendments to the governing statutes, necessary to meet challenges of our changing society?

Two schools of thought hovered over the initial establishment of the office in 1981. The 'pessimism' and the 'optimism'. In my First Annual Report July 1981 - June 1982, I had this said of the former - "the office cannot be all things to all people. It is not an instrument for major social reform nor to be a disturber, or a thorn on the side of the Government spear heading major social action." To the latter this is what I said, - "only the future events will tell. It is now twelve months after the establishment of the office and it is now appropriate to make judgement on what it has achieved."

Pessimism and optimism are elements of human nature and either, can contribute to the downfall or growth of any organisation. The office was very much cautious from the beginning the effects of these could play on the establishment and growth of the institution. I thank my staff for their dedicated support and the part played by certain senior officers of the Public Service and other agencies who in one way or the other contributed in many ways in consolidating the operation of the office. It is also opportune for me to thank the Public Solicitor and his staff who have demonstrated faith and trust in the work of the office by referring and accepting a number of cases from this office. Also, I thank the Labour Division of the Ministry of Labour and Immigration in accepting issues referred to them.

Experiences encountered

Functions of the office are enshrined under S.97(1)(a)(b) and (c) of the Constitution -

- (a) enquire into the conduct of any person to whom this section applies in the exercise of his office or authority, or abuse thereof.
- (b) assist in the improvement of the practices and procedures of public bodies.
- (c) ensure elimination of arbitrary and unfair decisions.

The above sections apply to members of the Public Service, the Police and Prison Services, Provincial Governments and any body incorporated by Act of Parliament (Statutory Authorities). S.97(3) does further empower Parliament to include any other offices, commissions, corporate bodies or public agencies subject to the jurisdiction of the office. Experience encountered during my term of office would welcome any move on this direction.

Conduct of Investigation and Publicity

S.9(1)(a) and (b) of the Ombudsman Act outlines procedures on the conduct of investigation where in the opinion of the Ombudsman warrants. It has been experienced that the procedure is too formal, rigid and in practicality consumes a lot of time and effort and is the cause of unwarranted delays.

In the field of publicity, I am very much being restricted by the Oath of the office which prohibited me, except in accordance with the provisions of Chapter IX of the Constitution and the Ombudsman (Further Provisions) Act to divulge any information received by me in the exercise of my duties as Ombudsman to any person. The restriction according to the Attorney General ruling which I unfortunately do not share applies to the distribution of copies of my Annual Reports even after the reports have been tabled in Parliament. In due respect to the Attorney General's ruling I do however distributed copies of the first three annual reports after they have been tabled in Parliament. The restriction denies my office in informing members of the public for whom the office is set up to serve.

Certain percentages of the complaints received were issues appropriately for the Leadership Commission to deal with. This office knowing the set backs on the work of the Commission and the individuals involved being deprived of their rights for possible assistance and remedies, a submission made under S.97(1)(b) of the Constitution, "to assist in the improvement of the practices and procedures of public bodies", on 13th June 1983 to the Hon. Prime Minister. The submission pointed out major weaknesses which contributed to the failure of the Commission and, suggestions made for possible measures taken, to enable the Commission to operate on firm footing. I regret to report no response received from the Government.

In late 1984, fresh efforts made by the office to the Prime Minister's Office on the submission. The officials from the Prime Minister's Office stated, the submission is being considered.

Submission on amendments to the Ombudsman Act covering publicity, delegation of authority, submission to the office in writing, informal procedures and court proceedings was also made to the Government. These submissions appear in appendices A and B respectively.

Why Do People Complain

Man is a complex being having authority over other living creatures. He has the mind and will to master world phenomenons. He is sensitive to his environment and strive to uphold what his rights are. Man establishes organisational means to run and maintain his welfare and, being the builder of such organisation with all its facets he recognises organisational decisions and dealings made outside the norm thereby breed sources of grievances.

Under our so called democratic form of Government, every citizen has the freedom to criticise and complain of failures and short comings of how the Government manages the affairs of the state. Criticisms and complaints genuinely made and in good faith are a beam of fresh light penetrating into dark alleys and crevices of Governmental administration and should not be seen by those in authority as disturbing garbage.

Under S.5(1)(a) of the Ombudsman Act, an individual or body of persons are given the right to complain to the office of the Ombudsman set up under Chapter IX of the Constitution.

Effects of Complaining

Effects of complaints on Governmental authorities and others are manifold and relate to the nature of deeds, decisions, acts, omission etc.

- (a) Caused extra load of work on authorities involved and which, not surprisingly at times, not easily accepted by those concerned.
- (b) Alerted Government officials and other authorities in taking extra care in their work and responsibilities and to a certain degree, resulting in re-looking into established procedures and practices.
- (c) Reconsideration of decisions and actions taken and where seen necessary, amendments instituted and remedial measures applied.
- (d) Compensations and other relevant forms of ~~restriction~~ ^{restitution} given. These would not have been so if complaints were not made.
- (e) Human justices and fairdealings protected.

A number of complainants presumably, due to lack in depth in understanding the work of the office, expect miracles to happen on submission of their grievances and further, expecting heavy penalties for those responsible. Statutory function of the office is merely, the making of recommendations on discovering through investigation made that, actions or deeds by Governmental and Statutory bodies in the opinion of the Ombudsman are either - contrary to law, based wholly or partly on a mistake of law or fact, there is unreasonable delay or the subject under complaint is unjust or manifestly unreasonable.

It would be contrary to the constitutional functions of the office, to recommend taking appropriate disciplinary measures against officers responsible. It is however, the responsibility of the authorities involved, to institute measures as seen fit and in accordance to establish rules and practices.

Many complainants also became disappointed when informed either orally, or in writing that their complaints were not entertained due to time factor, lack of jurisdiction or actions or deeds complained of were administratively procedural and in accordance to established rules and regulations and, in the opinion of the Ombudsman were fair and just. In my First Annual Report (July 1981 - June 1982) on page 6 I said this - "An Ombudsman is neither a court or arbitrator appointed to decide controversial claims; nor is he a lawyer to protect his clients' interests and support his claim within a framework of an advisory system. His duty is not that of a member of a legislature; nor is he in the same position as a civil servant who has been given a responsibility of ensuring the efficiency of the service. He exists first and foremost for the protection of an individual's rights." This he does under his functions enshrined in our Constitution and subsidiary legislations.

During this reporting period a number of cases were left open for lengthy periods. These could have been closed much earlier if authorities involved responded to numerous reminders sent or complainants informed the office that his or her complaint had been attended to satisfactorily. On many occasions the office learned after further contacts made to the complainants that, his case was settled to his satisfaction a month or two earlier and that he was sorry not to inform the office. My concern is that valuable time and energy spent in pursuing these minor matters could have been fruitfully put to good use in other fields of our daily operation. It is my hope authorities concerned will seriously take this issue into consideration.

Dilemma: Many times members of the public genuinely asked the following questions.

What are the functions of the office of the Ombudsman?

What are its powers?

Chapter IX of the Constitution and the Ombudsman Act give answers to the questions.

What proportion of the population have access to the two legal documents is yet another question.

Availability and access to such documents are normally not easy to achieve. An acceptable practice is that those responsible in the supervision and implementation of new legislation and policies is to see that they are brought to the attention of the public. Occasionally and sometimes accidentally, individual members of the public for their first time came to realise the functions and powers of certain Governmental bodies when encountered with the problems when infringing related legislations under jurisdiction of such body.

It is admitted it would be a mammoth and expensive work in conducting educational programmes in publicising the purposes and aims of every new legislation and policies. It is also equally unfair to members of the public to be left ignorant.

Past efforts made in the field of publicity in trying to reach the common people on the functions, jurisdiction and authorities of the office were limited because of lack of adequate funds and supportive services. Hence, it is believed that a high proportion of the people who may have suffered injustices by the administrative dealings of Governmental, Provincial and Statutory Authorities are left unnoticed and unattended to, due to the cloak of ignorance by the common people and an assumption by the authority that the "people" knew but do not care to act.

Same Error Repeated

In my Second Annual Report (July 1982 to June 1983) Case 132/82 of Mr J who opted to commute his annual allowance under the Pension Act to a lump sum payment (27A). In calculating the lump sum the annual allowance was multiplied by the factor 12.59 which corresponds to his age of retirement in 1982. However, in my view the annual allowance should be calculated based on his income, age and length of service in October 1977 when he joined the National Provident Fund (NPF).

After a lengthy course of discussions and correspondence and an opinion from the Attorney General's Chambers, it was agreed the age and factor should relate to the date he joined NPF, not the date he actually stopped working. The case was settled by payments of arrears in June 1983 to Mr J.

In November 1984 Mr B sought help from this office for various reasons and it was discovered that he too, had commuted his annual allowance to a lump sum. A quick inspection of the process used showed that in calculating his lump sum payment, his age at the time he stopped working was again used and not the age at conversion to NPF. In short, the miscalculation corrected in Case 132/82 was repeated. This prompted the office to check the calculations for other people who had frozen their pension entitlements in joining NPF and had subsequently retired and commuted their annual allowance to lump sum payments. Everyone had been done incorrectly that is, the old method which was corrected in case 132/82 was again being used. This was so because there was no written instruction issued to officers concerned. The mistake would have continued if not for Mr B's case which was 18 months later. Since informing the responsible Ministry an appropriate memorandum has been distributed.

The check revealed a total of thirty six one sum lump payments totalling roughly \$12,000 in arrears due to different formula being used.

In my submission to the Permanent Secretary of the Ministry of Finance on 14th December 1984, I stated that justice would demand that those former officers underpaid by reason of the mistake be paid the arrears. In order for the people concerned be made aware of their arrears, it was suggested to the Ministry to publish the list of names in the two weekly newspapers once funds are available.

The list of names was duly published on 3rd May 1985 by the Solomon Star following Parliament's passing of the 1985 Budget.

Staff

The number of staff remain the same -

Ombudsman
Legal Advisor
Senior Investigation Officer
Typist
Cleaner

The First Senior Investigation Officer to the office Mr S Alasia was transferred at the beginning of 1985 to the Ministry of Agriculture and Lands. I thank him for the service rendered to the office and I wish him all the best in his new job. The new Senior Investigation Officer was not appointed until June when Mr Alfred Tuasulia was appointed and transferred from the Cabinet Office. I welcome Mr Tuasulia and I hope he will find his time working in the office useful and enjoyable.

During my absence on leave in March 1985, the Legal Advisor supervised the general administrative responsibilities of the office. I thank her for the extra load of work she had to shoulder besides her normal case work. On the whole I once again wish to thank all the staff of my office for the service rendered to me during the reporting period.

Finance and Accommodation

Ever since the establishment of the office in July 1981 the question of permanent office facilities was raised with appropriate Government authorities on many occasions but to no avail. I can only report in this Fourth Annual Report that I am a born loser on the question of a permanent and adequate office facilities for the office of the Ombudsman. During the reporting period I have been harassed by 'coconut news' of the possibility of my office to surrender the three rooms we are using to the Ministry of Foreign Affairs. This took intensive tone when the new coalition government came into power after the November 1984 General Election. A new pressure came from the Prime Minister's Office to take up office residence in a building on Lengakiki Ridge, recently vacated by the Forum Fisheries Agency. I would have accepted the offer if not, for the difficult access by members of the public to the area. The offer was refused and I am still in the temporary accommodation in the Ministry of Foreign Affairs.

Finance is a life blood stream to any progressive activities. It is stated early in this report that there were no increases on the overall expenditure for the period covered. This state of affairs affected our total operation particularly paying regular visits to Provinces. Planned visits to Provincial Headquarters, educational institution and prisons had to be curtailed and tailored to the amount of money available. Recent increases in both air and sea fares further affected these planned provincial visits.

Tours and Conferences and Speaking Engagements

Ombudsman:

30th July 1984	:	Functions of the Office-Up- Graders, School of Education and Cultural Studies
3rd August 1984	:	Functions of the office - Police Training School
6th August 1984	:	Functions of the office - Betikama High School
7th August 1984	:	Functions of the office - Selwyn College
9th August 1984	:	Functions of the office - Honiara Secondary School
10th August 1984	:	Functions of the office - Honiara Technical Institute
13th August 1984	:	Functions of the office - Tenaru Secondary School
14th September 1984	:	Functions of the office - Vavaya Training Centre
16th November 1984	:	The Ombudsman's office - Newly elected Parliamentarians
28th January 1985	:	Functions of the office - Guadalcanal Provincial Members
13th - 21st May 1985	:	Tour of the Western Province

Senior Investigation Officer

13th - 21st September 1984 : Tour of Temotu and Makira Province.

Legal Advisor

24th - 26th September 1984 : Avu Avu

3rd - 4th October 1984 : Binu and Malatoha

12th - 14th April 1985 : Attended and presented a paper on Human Rights Bodies at the Lawasia Conference on Human Rights held in Suva, Fiji.

During visits to Provinces public talks were conducted by visiting officers to members of the public. We found these talks an opportunity in disseminating general information on the roles of the office. These were made in Pidgin English.

II. CASES HANDLED AND STATISTICS

Total Number of cases brought forward	79
Total Number of cases received	325 (330)
	404 (382)
Total disposed of during the year	346 (303)
Total number of cases pending	58 (79)

Classifications:

Sustained	164 (117)
Not sustained	106 (69)
Discontinued	38 (17)
Not jurisdiction	16 (10)
Referred/Explained	22 (37)
	346

Origins of Complaints

Honiara	119
Western Province	103
Malaita Province	34
Temotu Province	19
Guadalcanal Province	18
Central Province	14
Isabel Province	9
Makira Province	9

Ministries and Authorities Involved

Ministry of Police and Justice	33 (54)
Ministry of Finance	30 (18)
Ministry of Home Affairs & Provincial Government	29 (10)
Western	28 (11)
Ministry of Posts & Communications	24
Ministry of Transport, Works & Utilities	23 (29)
Ministry of Education & Training	22 (22)
Ministry of Public Service	20
Ministry of Agriculture & Lands	17
Private	14 (8)
Prime Minister's Office	13 (26)
Ministry of Natural Resources	12
Ministry of Health & Medical Services	12 (13)
Ministry of Industries & Commerce	10 (5)
National Provident Fund	8
SI College of Higher Education	7

Temotu Province	6 (31)
Malaita Province	6 (15)
National Bank of Solomon Islands	5
Central Province	5 (3)
Ministry of Immigration & Labour	5
Copra Board	4
Isabel Province	4 (8)
Honiara Town Council	4 (3)
Ministry of Foreign Affairs	3
Parliament Office	3
SI Housing Authority	3 (1)
Government Housing Committee	2
Development Bank of Solomon Islands	2 (4)
Guadalcanal Province	2 (6)
Public Service Commission	2
Livestock Development Authority	1 (1)
National Sports Council	1
Electoral Commission	1
KG VI School Advisory Board	1
Makira Ulawa Development Corporation	1
SI Ports Authority	1 (1)

*The numbers in the brackets are for the last reporting period.

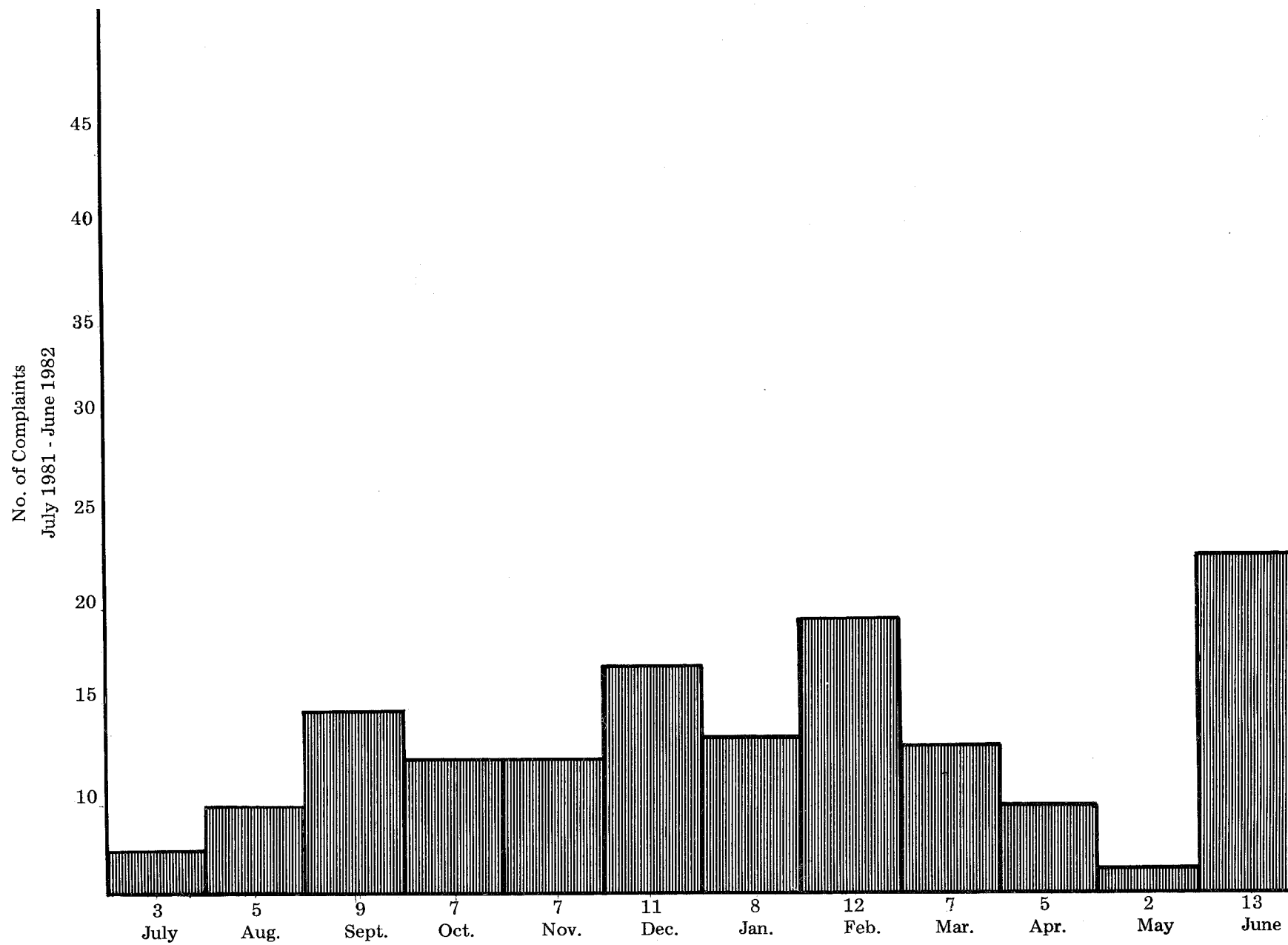
The reporting period (July 1984 - June 1985) ended with a total of 325 complaints opened, five less than the previous period. This is an average of 27 submissions a month. With 79 cases brought forward from the previous reporting period (July 1983 - June 1984) a total of 404 cases received investigatory work for the period resulting in the disposal of 346 cases.

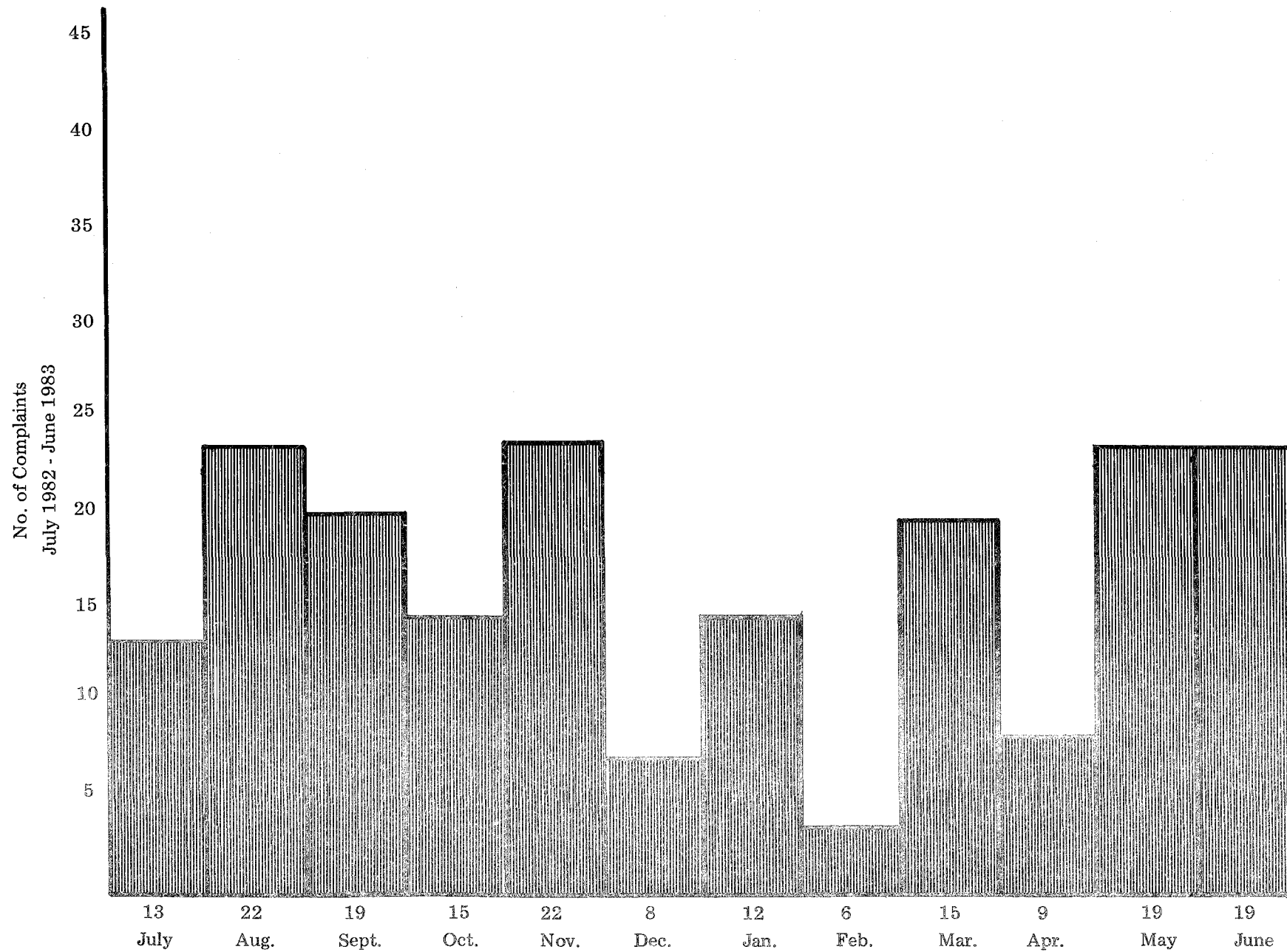
A higher percentage of submissions originated from the Provinces which were visited by staff of this office. Frequent visits to Provinces was not possible due to inadequate finance.

Causes for the one hundred and sixty sustained cases are -

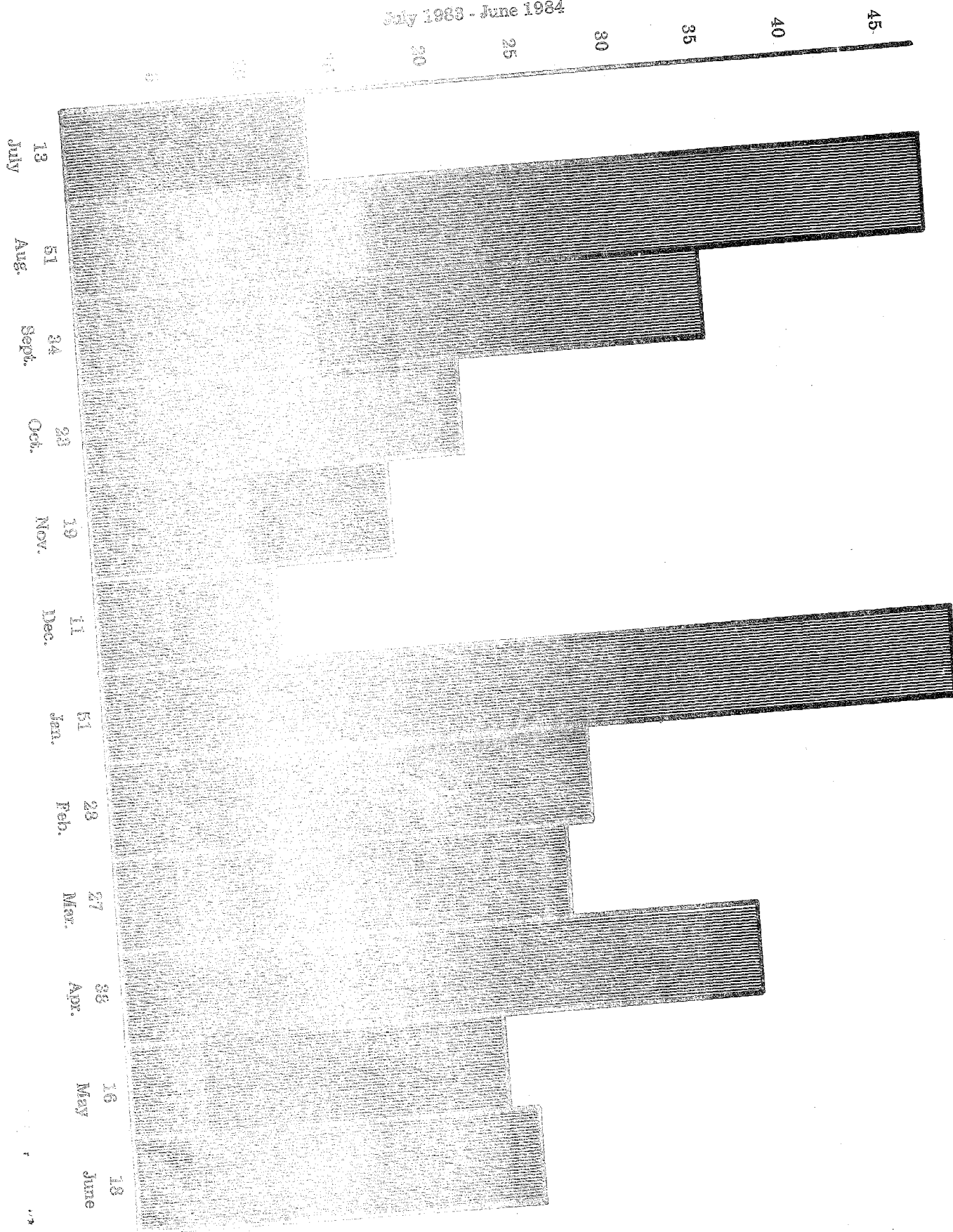
Delay	63
Negligence	53
Mistake of facts	40
Biase	5
Mismanagement	2
*Misfortune	1

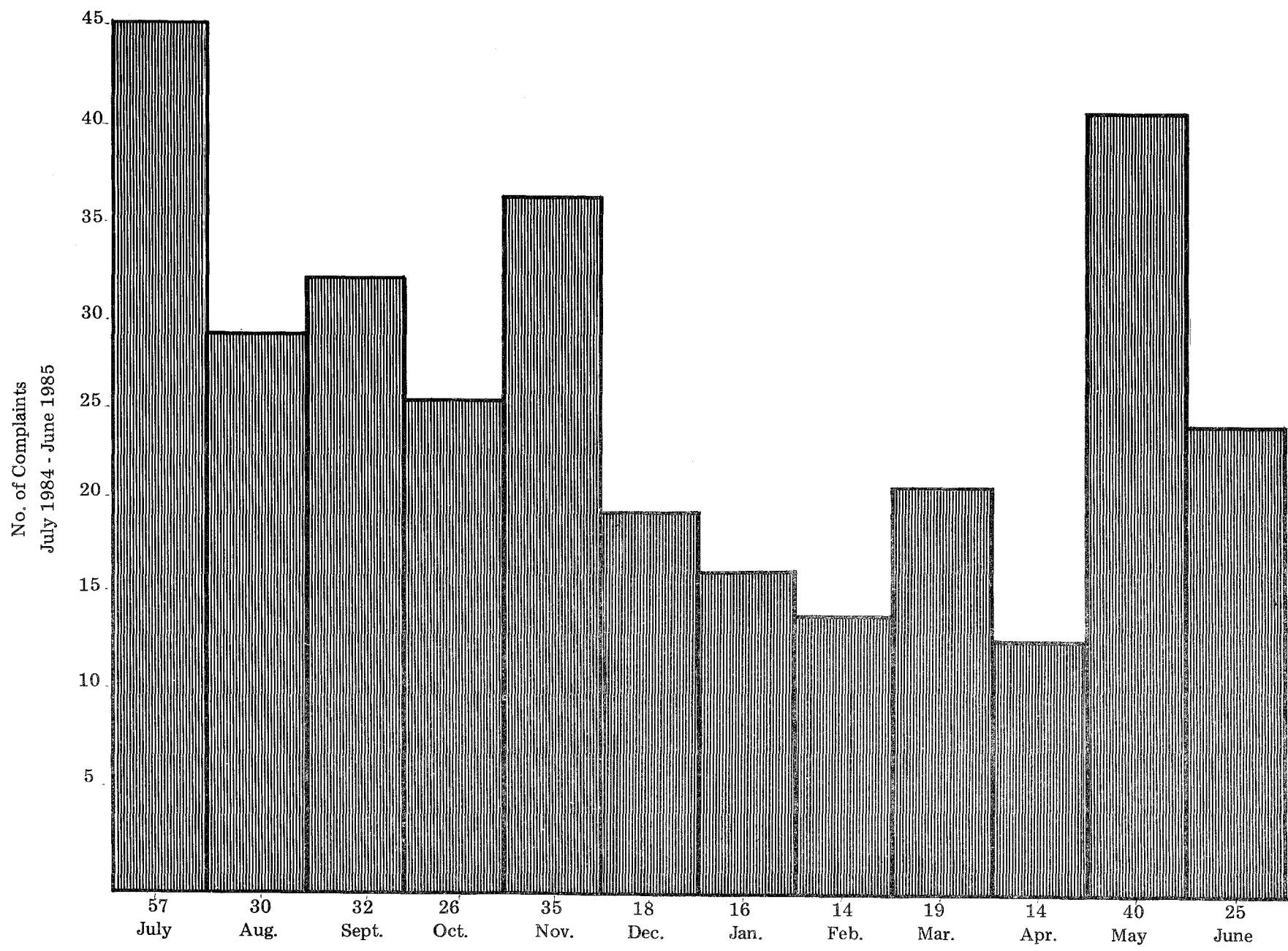
*The Misfortune case is reported in my case summaries, case 63/84





No. of Complaints
July 1983 - June 1984





Monthly Analysis of Cases from June 1982

Period	Outstanding	Received	Disposed	Total	Total Outstanding
June/82	17	13	4	30	26
July/82	26	13	0	39	39
Aug/82	39	22	8	61	53
Sept/82	53	19	13	72	59
Oct/82	59	14	9	73	64
Nov/82	64	23	19	87	68
Dec/82	68	8	12	76	64
Jan/83	64	12	12	76	64
Feb/83	64	6	0	70	70
Mar/83	70	15	2	85	83
Apr/83	83	9	33	92	59
May/83	59	19	18	78	60
June/83	60	19	18	79	61
July/83	61	13	18	74	56
Aug/83	56	52	19	108	89
Sept/83	89	33	35	122	87
Oct/83	87	23	39	110	71
Nov/83	71	19	33	90	57
Dec/83	57	11	18	68	50
Jan/84	50	52	13	102	89
Feb/84	89	28	13	117	104
Mar/84	104	27	38	131	93
Apr/84	93	38	19	131	112
May/84	112	16	28	128	100
June/84	100	18	19	118	99
July/84	99	57	21	156	135
Aug/84	135	30	47	165	118
Sept/84	118	32	27	150	123
Oct/84	123	25	26	148	122
Nov/84	122	36	33	158	125
Dec/84	125	18	19	143	124
Jan/85	124	16	26	140	114
Feb/85	114	14	24	128	104
Mar/85	104	19	8	123	115
Apr/85	115	14	17	129	102
May/85	102	40	11	142	131
June/85	131	21	21	152	131

III. SUMMARIES OF SELECTED CASES

Case 93/83 - Reimbursement of Tuition Fees : Education & Training

This case was opened on 10th October 1983 and closed on 31st August 1984. It was reopened again on 21st May 1985 and finally closed on 21st June 1985 when the Ministry concerned raised payment vouchers for the rest of tuition fees incurred by the complainant.

The case arose from the refusal of the Ministry of Education and Training in re-imbursing the total tuition fees paid by a Police Officer in taking extension courses through the University Centre of the Solomon Islands.

The Ministry's action was based on the contents of Public Service Circular No. 24/82. "paragraph two which reads - "Refunds will only be considered in cases where the course forms part of the scheme of service for the cadre in which the officer is employed, and in the interests of the officer application should be made to this office before he begins his studies giving full details of the proposed course and of the cost of tuition and essential books."

In sighting the circular the officer applied to the Public Service Office (PSO) for refund but was rejected on the grounds that he applied after he had taken the course. He then sought assistance from the Office of the Ombudsman.

The office in taking up the case pointed out to the Public Service that paragraph two of the circular did not say MUST but SHOULD. Therefore his application should be reconsidered in the light of this. The PSO did and ruled that he was eligible for a refund. But as the relevant funds had since been transferred to MET, the officer and the Ombudsman were advised to take up the case with the Ministry. This was duly made and the response by the Ministry was that of the initial response given by the PSO.

Tedious discussions and correspondence was then held with the PSO and MET which in my view were senseless and a waste of human times and efforts which could have been put to good use for other useful purposes. In the end, MET agreed to pay and on 19th June 1985, I was informed payment vouchers were raised and sent to the officer and he was informed in writing to collect the reimbursement at the Sub-Treasury of his duty station.

Case 249 - Unfair Expulsion : College of Higher Education

The Solomon Islands College of Higher Education was established by an Act of Parliament. The prime role of the Institution is to train manpower requirements of the country.

The College complex comprises of the Schools of Education and Cultural Studies, Nursing, Finance and Administration, Industrial Development, Marine Studies and Natural Resources.

The Governing Authority is the College Council which has power to establish Sub-Committees. The Chief Executive is the Director who is answerable to the Council.

Early in 1985 the College experienced one major trouble which erupted during a social function held in the School of Education and Cultural Studies. The incident accounted for disciplinary measures taken against a number of students. One of the victims sought assistance from my office. He was however advised to appeal to the Council which he did but came again when his appeal failed.

In studying the deliberations of the Appeal Committee (Sub-Committee) the reasons reached in upholding the Director's decision on expulsion were reasonable. The complainant was duly informed of my view and closed the case.

Case 287/84 - Delay on confirmation of date of promotion : MAL

An officer of the Ministry of Agriculture and Lands seconded to a Province received a letter of his promotion on trial basis on 17/2/82, for a period of twelve months.

His senior officer on 11/3/85 discovered that the officer after a time lapsed of three years, had not been confirmed or otherwise to the post (L5) for which he had been promoted to on trial for twelve months. The senior officer sympathetic to his staff informed the Provincial Secretary but there was no response (further delay).

The senior officer and the officer concerned brought the issue to my attention during my visit to the Province in May 1985.

My contacts with the Ministries of Agriculture and Lands and the Public Service revealed the failure by the employing Ministry in not making a report at the end of the trial period with recommendation to the Ministry for the Public Service, to be transmitted to the Public Service Commission for consideration.

On 6th May 1985 the officer received a letter from the Public Service saying his promotion to L5, Assistant Field Officer was confirmed but no date given except the traditional vague phrase - "with effect from due date."

I wrote to the responsible Ministry saying, the omission in effect, deprived the officer's seniority succession within the appropriate level (5) of his cadre.

On 9th July 1985 a letter from the Ministry for the Public Service received by my office stating, the officer's substantive promotion to L5 was effective as from 9th February 1982.

Case 63/84 - Lost Passport

The client was born in Vanuatu but holds a French Citizenship. She married a Solomon Islander in 1977 and settled in the Solomon Islands. She did not relinquish her citizenship and possessed a Vanuatu passport. Unfortunately the passport was destroyed when their home caught fire. All along she hoped to return to the country of her birth. The loss of all her family belongings in the fire heightened her desire to return to her homeland but since her parents had left to settle in New Caledonia, she decided to join them there.

She encountered the problem of leaving the country because she had no passport and she cannot be issued with a new one by the Solomon Islands Government because she is an alien. Faced with this problem she approached my office.

The Immigration Department was approached on her behalf and suggested to the Principal Immigration Officer for the Minister of Police and Justice to allow her to leave the country under Section 11(3) of the Passport Act. This was duly made. The worried lady happily left two days after she had approached this office. I thank the Minister for his sympathetic views and quick action.

Case 322/84 - MTC & I

Victim of a clear cut administrative error.

This is a very unfortunate case where an officer was made to refund his total airfare from a Province to Honiara in 1983.

The case arose from an incident when the officer's fiancé's relatives approached his Ministry requesting his immediate return to Honiara to settle certain customary affairs between him and his fiancée.

The officer when contacted by senior officers of the Ministry, gave assurance of his willingness to come to Honiara but by boat which he stated he can afford because, airfares from that particular province is expensive \$155 in comparison to \$30 by boat. When further contacted by the Chief Administrative Officer of the Ministry by phone, he asked who is to meet the airfares and when told that, as it is a personal affairs to him to meet it. He again repeated his willingness to come to Honiara but by boat, and further stated, a boat was leaving the Province for Honiara that same week. On the following day, he received a telegram from his Ministry instructing him to board a plane on the same day and told, his ticket was with the pilot. The officer saw this as an order from his senior officers and duly complied.

The officer submitted his complaint to this office because he felt repayment of the total airfares by deduction of \$31 from his pay per pay period to recover the total airfares was not fair, taking into account his willingness and intention to travel to Honiara by boat.

In taking up the case with his Ministry I was told as the matter is personal in nature and that it was his fiancé's people who requested his presence in Honiara, it is only proper and right that either him or his fiancé's relatives should meet the airfare. In my view the strength of the reason given for the officer to meet the airfares was not right on the following grounds. He was willing and prepared to travel to Honiara but by boat and that there was no urgency to do so. If the safety of the officer's life was in danger as stated by the Ministry and the main reason in flying him in, it is the duty of the Ministry to inform the police who would take appropriate measures if what the Ministry believe could happen. Therefore, action taken by the Ministry is not necessary and revealed weakness by succumbing so easily to the fiancé's relatives request. The Ministry would not accept my recommendation to withdraw its action.

Case 299/84 - Medical Treatment

It took my office almost nine months working on this.

Section 3 of the Constitution gives jurisdiction to the office over administrative dealings of members of the public service, the police force, the prison service, provincial governments and such other offices, commission, corporate bodies or public agencies as may be prescribed by Parliament. No other bodies since the incorporation of the office being further prescribed by the legislature.

Section 145.1(a)(b)(i) of the Constitution reads - "public office", shall be construed -

- (a) as including the office of any judge of the High Court or the Court of Appeal and the office of member of any other court of law in the Solomon Islands, unless the context otherwise requires;
- (b) as not including -
 - (i) the office of any Minister, Leader of the Opposition, Leader of the Independent Members, Speaker or member of Parliament.

Therefore, any decision, order or directive by a Minister is outside the jurisdiction of the office. On 15th April 1984, a police constable made a written submission to my office stating, a young boy seriously ill was admitted at Tulagi Clinic in the Central Province on 30th September 1983. He alleged due to inadequate medical treatment and care given at the clinic, the boy became worse and subsequently was sent across by boat to Honiara on 6th October 1983. He died five days later in the Central Hospital.

My office received the submission on 7th May 1984, and a photo copy of the submission with a covering letter was sent on the same day inviting the Ministry's views and explanations on the case. Three months had lapsed and after four written reminders sent plus several telephone calls before my office received information that an independent investigation by a professional person will be made. On 29th October I was told by telephone that a Commission of Enquiry will deal with the issue. This was a most welcome piece of information. However, on 26th November 1984 after further probing the Ministry my office received a letter stating that a Medical Panel has recently concluded its assessment on the allegations and found there were no substantial evidence to

warrant making formal charges.

In studying the Medical Panel's report on the case I wrote to the responsible Minister on 11th December stating, that the contents of the Panel's report was unreal and lacks depth and pointed out I would consider pursuing formal investigation.

Unfortunately this did not materialise because on 7th January the Permanent Secretary of Health and Medical Services wrote to say that, the Minister has confirmed the Medical Panel's assessment that, "no case to answer on Medical grounds." Under Section 145.1(b)(i) the Office of the Ombudsman has no jurisdiction over decisions made by Government Ministers.

If formal investigation was made I am optimistic findings would certainly revealed substantial truths about the allegations.

Case 27/84 - Suspension from Duties : MAL

The complainant was attached to the Dodo Creek Research Station. On 27th July 1984 he approached this office on the question of his suspension from his duties because reasons were not given him. The contention was false as my initial contact with his Ministry proved that the complainant's letter to Secretary to Cabinet and Public Service on 5th July 1984 admitted the charges brought against him. In fact the charges were conveyed to him in writing on 29th June 1984 by the Public Service Office.

After further research in his records made available to my investigation by the Public Service Office and the Agriculture Division of the Ministry of Home Affairs and National Development. I came to realise and was convinced that the officer does not only disliked the colonial concept but also any authority. There is no doubt the officer felt, he was being suppressed by the activities of his senior officers though information made available to me they did not support his thinking.

In the Public Service Commission's decision to transfer him to field work in any of the Provinces in my view, is a very lenient course of action. In informing the officer of my opinion, I wish him good luck and my sincere hope of useful contribution on his part in the future economic development of our country.

Case 26/84 - Withdrawal of Driving Licence : MTWU

In January 1984 the complainant was posted to the Honiara Technical Institute as a driver by the Ministry of Transport, Works and Utilities. His driving licence was issued to him by the Driving Inspector of the same Ministry.

A report by the Principal of the Institute of his work performance for the past six months showed, he was keen to do his work but, he lacks the skill and experience in handling heavier vehicles. The Principal in substantiating his assessment mentioned three incidents where the driver seriously damaged two vehicles he drove. The incidents were not reported to the Police for possible charges against him. The recommendation by the Principal was for a Trade Test (Driving Test) to be administered to prove his ability and for the Ministry to take him back and replace with a new driver.

The Ministry in receiving the Principal's report informed the complainant that his driving licence will be removed. He then approached my office of his Ministry's intended action. The principal officer of the Ministry was informed by my office that only the court has power to cancel licence for breaking traffic rules. Furthermore, it would seem that those who initially awarded him his driving licence are equally to be blamed. Later, the Permanent Secretary of the Ministry in writing informed my office that the driver was being replaced and withdrawn to the Ministry where he was posted to a different division and to be re-tested in the near future. This case was closed when learned that the driver was satisfied with the Ministry's action.

Certain members of the National Provident Fund encountered problems in withdrawing money after their first withdrawal on attaining the age of fifty.

On 19th October 1984, I made a submission to the Fund on the issue. The following was my initial attempt.

In accordance with S.97(1) of the Constitution and under S.51(1)(c) of the Ombudsman Act, I hereby submit my views on S.21(2) of your Act (NPF Act 1973) - "Any employee who has attained the age of 50 years and has withdrawn any amount standing to his credit in the Fund on the ground that he has reached that age shall not be entitled to withdraw from the Fund any further amount standing to his credit therein until 5 years have lapsed from the date of the last withdrawal."

My view on this particular Section are as follows - The question for consideration is whether a member of the Fund who was still an employee when he attained 50 years and withdraw from the Fund at that time but retired before reaching 55 years is allowed to withdraw his entitlement upon retiring or must he wait the 5 years specified in S.21(2). Under the definition Section, S.2, a "member of the Fund" or "member" means any person to whose credit any amount standing in the Fund and "employee" means, essentially somebody who is employed. Clearly, once a person has retired he is no longer an employee, though he still may be a member of the Fund. Therefore, S.21(2) only applies to employees. An "employee" who has attained.....shall not be entitled to withdraw.....until 5 years. This means if he is an employee and 5 years have not elapsed since his withdrawal at 50 years he cannot withdraw again. Throughout the Act there has been careful use of the words "member" and "employee" because they are quite different words with different meanings. Whenever the Act refers to members of the Fund it means all members, retired or not. Whenever the employee occurs it means somebody who is still working. That person of course be a member of the Fund but not all members are still employed. Section 21(1) shows the distinction very clearly.

If S.21(2) meant that nobody who had withdrawn contributions upon attaining 50 years could withdraw for 5 years it would have said any "member of the Fund" but it does not say that, it says "any employees". The person who retires after he has withdrawn his entitlement at 50 years will be entitled again upon retiring if he can show he has attained the age of forty years and satisfied the Board that he has retired as an employee. That is the effect of the definition of the "date of entitlement" coupled with the provisions of S.13.

The definition of the date of entitlement says "the day (whichever shall first) on which it is proved to the satisfaction of the Board that such member....."

- (a) has attained the age of 50 years; or
- (b) has died; or
- (c) being a woman and has married; or
- (d) has attained the age of forty years.....and has retired.

Just because one has reached one date of entitlement does not stop him from being entitled again when he reaches another date of entitlement unless there is something saying so in the Act. For example a woman may be married at 20 years and is entitled to withdraw (c) above.

She may work again and will be entitled again when she is forty if retired or otherwise she reaches 50 years. Just because she was entitled when married does not mean, she cannot be entitled again when she reaches another date of entitlement. The same is for a person who attained 50 years he has reached a date of entitlement. When he retired, because he has attained 40 years and retired he reaches another date of entitlement. Only if he keeps working does S.21(2) have any effect.

I received the following three views from the Fund's Counsel through the General Manager.

- (1) If an employee attains the age of fifty years of age and exercise his option to withdraw from the fund, he is not entitled to withdraw again until five years have elapsed; even if he ceases to be an employee then.
- (2) When an employee attains fifty years he is entitled to withdraw but he need not do so. He remains so entitled until the date when he subsequently withdraws from the Fund. But once he withdraws (1) herein applies.
- (3) There is no mention of the fifty five years in the NPF Act as stated in your above letter. The five years period mentioned in Section 21(2) need not be counted from the date the employee attains the age of fifty. It is five years from the date of the last withdrawal.

In paragraph four of my submission where 55 years appears, it does not in anyway make reference to the NPF Act. It merely states the possibility of a contributor having reached 50 years and made his first withdrawal at that time but retired before reaching 55 years is allowed to withdraw his entitlement upon retiring or must he wait the five years specified in S.21(2). The above reasoning is made in light of the definitions and meaning of "employee" and "member".

My reply to the Funds letter take the following form - The only departure in my opinions is the last part of your point (1); If an employee attains fifty years of age and exercise his option to withdraw again until five years have elapsed; even if he ceases to be an employee before then." It is my opinion that if he ceases to be an employee before the five years have elapsed then he is entitled to withdraw again.

The real question in interpreting S.21(2) is the word "employee". To say that a person cannot withdraw before the lapse of 5 years even if he has ceased to be an employee is to equate the word "employee" with "member of the Fund."

The funds response to my second letter reiterated the stand taken in its initial reply. In view of little can be gained because of the adamant attitude of the Fund by pressing the question any further, I closed my file and termed it sustained.

This case in my view requires legislature's attention to consider giving the office authority to seek court's declaration on issues where the authority involved and the office clashed in interpreting words and terms of any legislation.

Case 69/84 - Lost Registered Mail : Ministry of Posts & Communications

This case involved a lost mail bag in which the complainant's registered mail containing a sum of \$390.00 was. The mail bag was sent from Tulagi Post Office to the General Post Office in Honiara. where it went missing on 29th March 1984.

The complainant a woman having been informed of the incident approached the officer incharge of the Tulagi Post Office for reimbursement of \$390.00 plus \$3.10 postal costs. She was assured reimbursement will be made under Section 29 of the Post Office Act 1971.

Having waited for a time and receiving no further information on the question of reimbursement from the Ministry the woman wrote to this office seeking assistance on 3rd August 1984.

In taking up her case my staff handling the case had numerous contacts and discussions with the Ministries of Posts and Communications and Finance. The pressing need the officer stressed in the discussions is how best to speed up the process in making reimbursement. It was revealed that the problem in making reimbursement quicker were lack of adequate funds under appropriate head and in ascertaining the total amount of money lost and the names of people whose registered mails got lost by the responsible Ministry.

After a lapse of six months (unnecessary delay) the Ministry informed my office of reimbursement of our clients money is now ready for payment.

In my view reimbursement could have been quicker if the Ministry had allocated a realistic amount of money to cater for such incidents rather than, allocating to the appropriate head only a sum of \$450.00 for the whole of 1984.

Case 78/84 - Made Redundant Not Fair : Central Province

The complainant was employed by the Central Province as an Area Council Clerk for eight years until April 1984 when his service was terminated because of redundancy.

In his submission to the office the complainant stated, he would have accepted of his being made redundant but alleged his post was being filled by a new appointee.

Written information from the Provincial Office denied in replacing the complainant. What in fact had happened in restructuring the administration of the Area Councils with the aim to cut costs was to fully utilized capable and efficient officers. In the process one effect was actual decrease in the number of Area Council Clerks as, one officer was made to service two Area Councils. Therefore, those who are being displaced were terminated because of redundancy under Section 4(1)(1) (b) of the Employment Act and paid Redundancy Pay.

This case was found not justified and the complainant was informed of my views.

Case 74/84 - Accommodation Charges : Industries, Commerce & National Development

This case involved a former employee of the Ministry of Industries, Commerce and National Development who resigned on August 1984, after complying to established procedures in relevant General Orders.

In the second week of August 1984 he arrived with his family in Honiara from one of the provinces enroute for his home village on the east coast of Guadalcanal. His Ministry booked his transit accommodation from 15th - 21st August at the Parliament Rest House and informed Parliament Office to charge expenses (accommodation only) to the Ministry on 13th August 1984. Later, he was told by Parliament Office under instruction from the Ministry of Industries, Commerce and National Development for him to meet his accommodation costs which amounted to \$288.00. He duly met the costs and later sought assistance from this office on this particular issue and also travelling costs for him and his family on a ship from Honiara to his village.

On 22nd August I wrote to the Ministry stating - Under G.0604(3) he is not eligible to claim reimbursement for fares home due to his resignation. On the question of accommodation expenses the Ministry is committed to repay him the money spent due to the arrangements made by the Ministry in accommodating him and his family at the Parliament Rest House. This was not accepted because the officer making the booking held that the officer was going home for his normal annual leave. I then again wrote to the Ministry saying - On 17th April 1984 the officer tendered his resignation to the Secretary for the Public Service Commission. The letter for his resignation was copied to the Chief Commercial Officer and the Registrar of Co-operative Societies. The letter was acknowledge by the Ministry on 19th April 1984. According to comments made on the issue, the letter was seen by five senior officers on 24th April, 30th April and 4th May 1984. It is therefore quite surprising to learn through your office superintendent that he had no knowledge of the officer's resignation when making accommodation arrangements at the Parliament Rest House. In view of the above information I am convinced the Ministry was well aware as from 19th April 1984 of the officer's resignation. Therefore, the Ministry's directive to the complainant in meeting his accommodation expenses was manifestly unreasonable and unjust I then recommend full refund.

On 23rd October 1984 I received the following in writing from the Permanent Secretary of the Ministry - Please accept our apologies. Sir, the payment voucher of reimbursement had been processed on 16th October and its ready for collection by the gentleman. I wrote to our client and closed his case.

Case 48/7/84 - Reimbursement of Rent : Government Housing - Western Province

After a cyclone in April 1982 there were serious landslides in Gizo which resulted in severe damage to four government houses. The complainants who occupied 2 of those houses were advised to move but the only other accommodation was single quarters. Each of the complainants is married with a family and could not fit into the alternative accommodation so they stayed where they were.

The houses could not be repaired so it was agreed that the government would forgo rental payments on the houses.

However in July 1984 deductions for rent were still being deducted from their wages. There was a very serious delay in processing the claims but after 10 months of correspondence by our office the rental payments deducted were reimbursed and no further deductions made.

Case 189/1/84 - Extended Unpaid Leave : Ministry of Lands, Energy & Natural Resources
now Ministry of Natural Resources

The complainant was a non established employee of the Ministry of Lands Energy and Natural Resources. Due to financial difficulties the Ministry gave him together with a number of other non established workers extended unpaid leave with a view to recalling them when the financial situation improved. Some workers offered to go on unpaid leave whilst others who were already on their normal annual leave were told not to return to work until after three months of unpaid leave.

Because the Ministry considered this to be leave and not dismissal, the workers were not paid redundancy payments in accordance with the Employment Act 1981. That Act provides that redundancy payments are not due if the worker is re-employed within 1 month of dismissal. The complainant and one other, with the assistance of the Public Solicitor's Office successfully demanded redundancy payments from the government. The matter was settled out of court. When the other workers who had been put on leave were recalled those who claimed redundancy payments were not because they had "breached the agreement by claiming payments." After unsuccessful negotiations with the Ministry concerned to have the men reinstated we approached the Public Service Office who agreed that where Ministries wished to put workers on unpaid leave for periods of more than one month redundancy payments must be taken into account.

A Public Service Circular was issued to that effect so the system has been improved because of the complaint. The complainant was not however reinstated and the other workers who had been put on leave were time barred from bringing actions for redundancy.

Even though the investigation did not assist the complainants it did bright to light improper procedures which have been remedied.

Case 211/1/85 - Non Appointment : College of Higher Education

Prior to 1985 all tertiary institutions in Solomon Islands came under the Ministry of Education. In 1985 the College of Higher Education Act established a new statutory body, the College of Higher Education to operate the tertiary institutions. There was no direct automatic transfer of the staff of the institutions from Public Service Employment to employment by the College. Each member of staff who wished to remain with the institution had to apply for a new contract. Nearly everyone was retained by the College.

The complainant had worked for several years in one institution which was taken over by the College. He applied for a new teaching contract but was not successful so complained to this office. Investigations showed that the application has been rejected because there had been allegations about misconduct against the complainant whilst in the employment of the Public Service.

There had been a request by his responsible officers to the Public Service Office to investigate the allegations but the investigation was not completed. In effect the complainant's application was rejected on the basis of the allegations which were known to the Selection Committee but had not been fully investigated and had not been put to the complainant to answer.

In a report to the College it was recommended that the complainant be given an opportunity to answer the allegations in an appeal against the decision. The recommendation was not accepted and the complainant is still employed by the Public Service but in a different division.

Case 98/9/84 - Compensation For Gravel : Ministry of Natural Resources

During 1982 the Forestry Division of the Ministry of Natural Resources made an agreement with the complainant's father that instead of paying for gravel used they would gravel an access road to the village.

The gravel was used by the Ministry as agreed but the access road was not gravelled. Some correspondence in 1982 confirmed in vaguest terms, the agreement but no action was taken to gravel the road.

Both the complainants father and the officer who made the agreement are now deceased. We took up the claim and it took about 9 months before an agreement was made.

The Ministry has agreed to pay compensation at the going rate for the gravel (1982) in lieu of finishing the road, because to do the road now would be very difficult.

The complainant is satisfied with that outcome, but we were surprised that the promise had not been kept three years ago.

We closed our file, marked justified.

Case 246/3/85 - Rejection of Late Students : College of Higher Education

The complainant was formerly a secondary student and was on the reserve list for acceptance into the College of Higher Education. Neither he nor his school had been informed that he was on the list.

On 4th March 1985 a service message was broadcast over national radio giving the names of students on the reserve list who had been accepted to the CHE telling them to be at the College by 11/3/85. That deadline was extended to the 15/3/85.

The complainant who is from Choiseul arrived in Honiara on the 27/3/85 and the next day went to complete enrolment procedures at the college but was rejected because he was too late. The problem was that mid March was the time of cyclones in the area and very rough seas. Shipping had been suspended and the 27/3/85 was the soonest the complainant could have possibly arrived in Honiara from Choiseul. Even after putting his case to the college the complainant was refused entrance.

There were lengthy discussions with the senior staff of the college and this office. The academic staff of the college agreed that the term had progressed too far for the late students to be able to catch up. As there were only about 6 students in the same position as the complainant the college agreed to guarantee them places next academic year.

We were satisfied with the compromise and the complainant was happy.

Case 92/84 - Copra Weighing : Port Authority

Investigation on improper copra weighing was made under the authority of S.5(1)(c) of my Act.

Information received from several local producers that they were not satisfied how their copra were being weighed by the Copra Board's agent the Ports Authority. It is therefore felt desirable to look into the issue.

After an inspection visit to the Port's area on 3rd September 1984 where copra for export are graded and weighed, I contacted the General Manager of the Copra Board to discuss with him my findings. I was told he will be discussing the very issue with his counterpart from the Ports Authority and verbally assured I will be informed of the outcome. The assurances was unfortunately not being honoured.

The findings of my visit were sent to the Permanent Secretary of the Ministry of Industries and Commerce which is responsible for the Copra Board. My letter was also copied to the Copra Board and the Ports Authority.

On 21st September the General Manager responded and quite naturally the tone of the letter was protective. He emphatically stressed that the weigher had been long in the job and that he has developed a 'feel' for the weighscale. This is indicative of the impossibility of the weigher making any mistake. This in my view with due respect to the Manager of the Ports Authority is utter nonsense. My view was upheld by a complaint received a month later when a local producer's sixty seven bags of copra were found to be 1000 kilos less than the real weight on re-checking after the responsible Ministry was contacted by my office.

I recently learned weighing and handling of copra is no longer made by the Ports Authority but by a private company.

Case 152/84 - No Effects On Trade Tests : MTWU

Advancements in the field of technical skills and promotion for non-established employees rest with passing of Trade Tests, supervised and administered by the Trade Tests Division of the Ministry of Immigration and Labour. The two main purposes of Trade Tests are one, to upgrade ones skills and secondly for the possibility of promotion. The latter however depends on existence and availability of posts. An employee could possess all the requirements, passing of trade-tests, efficient and capable in his specific field and length of service. However, advancement in his career are being dictated by existence and availability of posts:

Mr A a heavy plant operator with the MTWU made submission to this office in November 1984 alleging that the Trade Tests he successfully took in 1982 had no effect on his career since 1976 when he reached the maximum salary scale on L2.

In contacting his Ministry I was told recommendation for his promotion to L3 had already been sent to the Public Service Office for the Commission to consider. The case was closed when informed of the officer's promotion taking effect as from April 1st 1985.

Case 280/84 - River Water Contamination : Ministry of Natural Resources

In 1981 employees of the Ministry of Natural Resources poisoned certain trees in one of the islands in the Shortlands in the Western Province using arsenic acid. The workers after the operation washed their spraying gears and clothes in the waters of Palakolo and Pia rivers.

Villagers near the rivers discovered sometime later after the operation deaths of fresh water edible fish and shells. The incident was reported and the Ministry took water samples from different points of the two rivers for testing.

On 17th April 1984 one of the villagers from the locality contacted the office bringing my attention to one of his Area Council's Minutes held in 1982 which states - "Six samples were collected from the alleged rivers poisoned and no report has yet been received."

In the course of my investigation the Ministry showed me copies of telexes sent in 1982 to Fiji, Papua New Guinea and Queensland, Australia requesting assistance in carrying out water tests. Positive response received from Queensland, Fiji and Papua New Guinea stated they were unable to assist due to lack of adequate facilities. The Ministry also stated local tests made but results were unsatisfactory.

On 6th September 1984 my office was informed by the Ministry of results had been received from Australia and these showed contents of arsenic acid very minimal. I was also informed that according to the World Health Organisation standard for drinking water not more than 0.05ppm, or 0.05mg/litre. Therefore the results we received are way below the WHO standard or in other words the water is quite safe.

In my response to the information received from the Ministry I sent the following letter to the Permanent Secretary of the Ministry.

I would assume that, if tests were carried out at the time the residents of the area reported that waters of the Palakola and Pia Rivers were contaminated, arsenic presence harmful to animal and human life could be proved. Failure by the Ministry in pursuing persistent steps in carrying out tests in good time deprived the residents of the locality in seeking compensation for the deaths of edible fish and shells.

APPENDIX A

Ombudsman (Further Provisions) Act 1980 - An Analysis

It is one goal of the Ombudsman to have the Act amended in some ways to assist the operation of the office. The main areas of concern are:

1. Publicity
2. Delegation of Authority
3. Submissions in Writing
4. Remuneration
5. Informal Procedures
6. Court Proceedings

As well as those areas there are some minor amendments which could conveniently be made to the Act. The topics listed plus the minor amendments would expediate the work of the Ombudsman without greatly increasing his authority; apart from the extension of publicity and ability to institute court proceedings they formalise what happens in practice and tidy a few areas of the Act. We do not propose to go into the wider question of increasing the jurisdiction of the Ombudsman to take in the work of the Leadership Code. The office has already made a report on the functioning of the Leadership Code Commission and it is for the government of the day to decide what is best with regard to that Commission.

For convenience the main topics will be dealt with separately and the minor amendments together. The actual amendments which the government may wish to make in light of this paper would have to be drafted by an experienced draftsman but the schedule sets out possible amendments in a proposed Amendment Act and a draft of the Ombudsman (Further Provisions) Act 1980 - 1984 incorporating the proposed amendments.

1. Publicity

The proposed amendments to the Act in relation to publicity have two aspects. Firstly they would clarify the position about releasing annual reports and secondly giving a power of publicity. Releasing annual reports to the public is a generally accepted practice by Ombudsmen around the world and until this year was the practice in Solomon Islands. A power of publicity is not very common but is gradually being introduced to different Ombudsmen.

Annual and Special Reports to Parliament

It is the view of the Ombudsman that he has the power to distribute annual reports once they have been tabled in Parliament. That interpretation of the law is strongly supported by the Ombudsmen of the common law countries. There is a problem because that view is not held by the Attorney General and to distribute the reports would be to go against the advice given to the Public Service Office. The options available to the Ombudsman are to distribute the reports despite the opinion of the Attorney General and let the government challenge the action in court, try to have the law clarified or accept the situation as it is. There is some reluctance in acting against the instructions of the Public Service and the opinion of the Attorney General and to let the situation continue indefinitely is equally unacceptable.

The amendment which would be made by S of the proposed amendment Act would make it clear that the power to distribute annual reports, and other reports which have been made to Parliament.

General Power of Publicity

Publicity can be used for general education and the dissemination of information. In general terms, education of the people who may be able to use the office is part and parcel of our duty. How can arbitrary and unfair decisions be eliminated unless we know about them, and unless people complain it is very difficult to find out about them.

It is a fact of life in Solomon Islands that many people, particularly the middle aged, have not had a formal education and cannot speak English. These people are as important as those with formal education but often do not get the help they need because they do not know of its availability. Radio interviews and public talks can reach many people who would otherwise not know of the office, and I believe that it can achieve good results, more people will complain of maladministration. Experience has shown that the best way of explaining the role of the office is by using examples of the work we have done. Concrete examples may, however infringe the secrecy provisions.

Another situation where publicity would be useful is where investigations reveal that a practice of a department of government is improper, or that entitlements such as pensions are being calculated incorrectly. The errors may be made in many cases but it is difficult to help people who do not complain. If we could tell the people that particular entitlements had been miscalculated all persons affected could go to the relevant office and have their benefits adjusted. Without publicity those people may never know that they have been underpaid.

One anomaly in the system is that a complainant may go directly to the local journalist, or a journalist may even become a complainant himself in order to get information; that has been done in other countries. In short, even where there may be issues of public interest and importance the Ombudsman and the members of his staff may not comment.

Whilst not suggesting that the Solomon Islands Ombudsman have powers commensurate with those of the Swedish Ombudsman it is interesting to note the emphasis of publicity in his operations. An interview with Mr Per Erik Nilsson, the present Chief Parliamentary Ombudsman of Sweden, appeared in the Canberra Times on 31st January, 1982. It contained the following statement.

"Another fascinating difference is that the Swedish Ombudsman works hand in glove with the press. A press room is provided in his office and, each day, as one of his staff opens the mail, all of its except letters containing information on individuals' personal affairs are copied and given to the reports."

"Copies of Mail Mr Nilsson's outgoing letters to government agencies and decisions on complaints are immediately given to the press. He regards the media as essential to the performance of his functions and said the publicity given to the Ombudsman's activities in fact provided the executive power withheld in the establishing legislation."

Examples of the provisions of other countries are;
South Australia

S. 26 Without limiting the generality of the powers elsewhere conferred, the Ombudsmen may if he considers it in the public interest or in the interest of any Department, Authority or proclaimed Council publish in any manner in which he thinks fit any report of an investigation made by him whether or not the subject matter of the report has been dealt by him otherwise under this Act.

Pakistan

S. 28 Annual and other reports (1) Within three months of the conclusion of the calendar year to which the report pertains, the Mohtasib shall submit an Annual Report to the President.

(2) The Mohtasib may, from time to time, lay before the President such other reports relating to his functions as he may think proper or as may be desired by the President.

(3) Simultaneously, such reports shall be released by the Mohtasib for publication and copies thereof shall be provided to the public at reasonable cost.

(4) The Mohtasib may also, from time to time, make public any of his studies, research, conclusions, recommendations, ideas or suggestions in respect of any matters being dealt with by the office.

(5) The report and other documents mentioned in this Article shall be placed before the Feral Council or the National Assembly, as the case may be.

Western Australia has a provision in its Parliamentary Commission Act 1971-82 which allows for Rules of Parliament for the guidance of the Commissioner. Those rules may authorise the Commissioner to publish reports relating generally to the exercise of his functions or to any particular case investigated by him. So potentially the Western Australian Ombudsman has the same powers of publicity as his South Australian counterpart, however such wide Rule have not been made. The Western Australian Parliamentary Commissioner said, in his annual report. The Parliament dated 30 June 1982, pg 10;

“(b) Publicity

It has been aptly and succinctly said that a Parliamentary Commissioner's key weapons are persuasion and publicity. The former is not usually difficult when the facts occasioning a complaint are clear and the Parliamentary Commissioner's recommendation is reasonable and based on sound argument, but the latter, namely publicity, is hard to achieve notwithstanding the co-operation and willingness of the Press to publicise the work of the Parliamentary Commissioner. His investigations are carried out in private and rightly so and they thereby achieve a desired measure of frankness on the part of departmental heads and senior officers, but I do feel that the Parliamentary Commissioner should be able to inform the public of his work more readily and topically than he is presently able to do in Western Australia. Apart from referring in a “depersonalised” and summary form to selected cases in his annual report, he can “burst into print” only with the adhoc approval of the Parliamentary Committee under Rule 3 of the Parliamentary Commissioner's Rules, 1972 (See Appendix D), which approval has been sought (and given) only once since the inception of the office of the Parliamentary Commissioner here. Whilst I abhor any suggestion of “Blackmail through the Press”, whereby some Ombudsman and other complaint-handing agencies threaten an authority with publicity if a recommendation is not accepted, I believe and suggest that the Parliamentary Commissioner should be empowered, in his discretion, to inform the public of what he does without the time-consuming and labour-intensive exercise of obtaining the approval of the Parliamentary Committee. I hasten to add and respectfully approve and quote what Dr R Ivany, the Executive Director of the International Ombudsman Institute, stated some years ago:-

“It is not the role of the Ombudsman to achieve daily sensations by exposing arrogant administrators, ungling bureaucrats and oppressive officials. Granted he must be a smiter of the wicked whenthe despotism of custom rears its ugly head... where decisions are made according to the book instead of according to conscience and the merits of the case. But the Ombudsman must also be equally a protector of the innocent and quash unwarranted accusations against civil servants who acted properly.”

In England the Parliamentary Commissioner is declared to be the holder of an office under Her Majesty for the purposes of the Official Secrets Act and is as effectivly tied as the Solomon Islands Ombudsman.

The proposed amendment would give the Ombudsman a discretion to “go to press” where it would be in the interests of the public, the department or the complainant. It would also help a problem which has been experienced with the Special Reports to Parliament.

If a recommendation of the Ombudsman is not followed, and after the various procedures contained in section 16 of the Act have been followed, the Ombudsman may make a Special Report to Parliament. The threat of that Special Report is designed to prompt action where otherwise the Ombudsman has been ignored or his recommendations not implemented.

That threat has very little force if Parliament does not mention the report. There is not power vested in a public officer to direct Parliament to consider and debate the contents of a report. It has been suggested that once a report has been endorsed by Parliament its contents and recommendations become policy and must be followed. Such an agrument has not been tested and we would not like to have to rely on it in order to enforce recommendation's of the office which are contained in a report to Parliament.

The easiest way around this problem goes hand in hand with the secrecy provisions. If the office has the authority to bring matters of interest to the attention of the public it is less likely to be ignored. Changing the Standing Orders of the National Parliament to oblige Parliament to debate

Special Reports would be the only other way of making sure that reports are not ignored. We would not recommend this as it is out of line with general Parliamentary practices.

The authority to publicise together with a campaign to inform individual Members of Parliament of a special report would effectively overcome this problem.

The scope of any power to publicise is essentially a question to be determined by politicians but if the Ombudsman's office is to have the power to fulfill its duties it is suggested that he should be able to publicise. Publicity gives the "watchdog of the administration" the teeth to follow through this task.

2. Delegation of Authority

In practice the officers of the Ombudsman's Office must carry out some of the investigations of the office, either acting independently of the Ombudsman or under his direct supervision. During the periods of absence of the Ombudsman, for whatever reason, the work must continue. The fairly standard delegation power would enable officers of the office to do most of the work of the Ombudsman except the making of reports to Parliament. The delegation could be for when the Ombudsman is away from the office or generally; it is up to the Ombudsman. Quite possibly there would be a wider delegation for set periods during the Ombudsman's absence.

3. Submissions in Writing

In Solomon Islands many people find it very difficult to write to express themselves in English. Sometimes they are able to get a friend or relative to write a letter of complaint for them, but not always. Because the Ombudsman is for all Solomon Islanders needing help the office has a programme of visiting the provinces and speaking with the people. On these visits many people come to hear about the office, ask general questions and lodge complaints. In situations where the Ombudsman or one of his officers is only in a station for a short period of time and a person who wishes to make a complaint comes the Ombudsman will hear the complaint and take notes. Where possible the complainant is asked to sign those notes. The Ombudsman cannot, in conscience, turn that person away and tell him to reduce the complaint to writing.

The proposed amendment does not take away the requirement for writing, it is often very desirable, but gives the Ombudsman the power to waive that requirement where circumstances and justice demand.

4. Remuneration

Nowhere in the Act or Constitution is the office of the Ombudsman guaranteed a certain level of pay or a particular status. It is not unusual for the relevant legislation to give the Ombudsman salary and conditions of service set in relation to another office, often a senior Judicial Post. To say that the Ombudsman will be accorded the same or similar conditions to a judge solve problems of protocol and ensure the office the prestige it needs.

Also, (even though there has not been a problem in Solomon Islands like this) a government might be compelled to have an Ombudsman but it can fetter his operation by cutting his funding. The amendment proposed does not go so far as to ensure a particular rate of funding for the general administrative expenses of the office but it does give the Ombudsman guaranteed salary and sets the status of his office.

5. Informal Procedures

The only provisions of the Act which gives the Ombudsman authority to act without embarking on a formal investigation is section 9(4). That subsection authorises the Ombudsman to examine the complainant or the officer or authority concerned to determine whether or not to carry out an investigation. In most cases the investigation procedures are more cumbersome and time consuming than the complaint warrants. The role of the Ombudsman in Solomon Islands is developing a strong conciliatory aspect. Frequently once the authority is aware of the situation, problems are discussed and suggestions made by the Ombudsman an amicable solution is found without there being a formal investigation.

This type of work is being done under the authority of section 9(4) as being preliminary to the decision of whether to investigate a complaint or not. The proposed amendment would merely formalize the practice.

6. Court Proceedings

In cases of offences under the Act the Ombudsman may institute proceedings with the consent of the Director of Public Prosecutions, but there is no provision for civil applications under the Act. There are occasions when such a power would be very useful and could be used without infringing upon the work of other law enforcement agencies. The Papua New Guinea Ombudsman has power under Section 19 of their Constitution to make an application to the Supreme Court to get an opinion on any question relating to the interpretation or application of a Constitutional Law.

Special references to the Supreme Court.

(1) Subject to Subsection (4), the Supreme Court shall, on application by an authority referred to in Subsection (3), give its opinion on any question relating to the interpretation or application of any provision of a Constitutional Law, including (but without limiting the generality of that expression) any question as to the validity of a law or proposed law.

(2) An opinion given under Subsection (1) has the same binding effect as any other decision of the Supreme Court.

(3) The following authorities only are entitled to make application under Subsection (1):-

- (a) the Parliament; and
- (b) the Head of State, acting with, and in accordance with, the advice of the National Executive Council; and
- (c) the Law Officers of Papua New Guinea; and
- (d) the Law Reform Commission; and
- (e) the Ombudsman Commission; and
- (f) the Speaker, in accordance with Section 137(3) (Acts of Indemnity).

(4) Subject to any Act of the Parliament, the Rules of Court of the Supreme Court may make provision in respect of matters relating to the jurisdiction of the Supreme Court under this section, and particular as to -

- (a) the form and contents of questions to be decided by the Court; and
- (b) the provision of counsel adequate to enable full argument before the Court of any question; and
- (c) cases and circumstances in which the Court may decline to give an opinion.

(5) In this section, "proposed law" means a law that has been formally placed before the relevant law-making body.

In Solomon Islands there is no equivalent to the term "Constitutional Law" which means the Constitution and any law passed pursuant to a particular provision of the Constitution (an Organic Law). The circumstances in which it is envisaged that the Ombudsman would use such a power are when it is his opinion that there has been or is likely to be maladministration based on mistake of law and where it is in the public interest that an authoritative meaning is given. In many cases there would be a grievous person who could challenge such an administrative act, but that is not always the situation.

A declaration from the High Court would have the same effect as any other decision of the High Court. The decision would be the base for preventing further actions which have been done in a mistake of the law, a particularly important function if such things as the freedom of the Constitution are being impeached or many people are affected by a practice.

Under the Constitution S97(2) Parliament has the power to confer additional functions on the Ombudsman so such an amendment would not cause any problems with the Constitution or the Act.

Minor Alterations

These are only details of drafting which could be tidied if the Act is being amended. They have not given rise to any problems with implementing the Act, but it would be convenient to make such amendment at the same time as more important amendments. Quite possibly the Parliamentary draftsman will find other minor provisions which could also be amended.

- S 3(1) insert "other" instead of leaving it "public office"
- S 10 proviso, inserted reference to reports made pursuant to 16(6) to cater for the insertion of that subsection.
- S 20 renumbered S23, clarification of the right of the Ombudsman to decide whether there has been undue publicity.

As stated at the beginning of this discussion the amendments proposed do not greatly extend the powers of the Ombudsman. It might be appropriate to consider whether these powers should be extended so that any extension could be included in the amendment. The most obvious area of authority which it might be considered useful for the Ombudsman to control is the Leadership Code. For the assistance of all concerned a copy of a submission made on that Code by the Ombudsman is annexed.

APPENDIX B

Submission to the Prime Minister on Leadership Commission

The powers of the Ombudsman's Office in relation to the Commission are contained in S.97(1)(b) of the Constitution; "to assist in the improvement of the practices and procedures of public bodies." The office cannot supervise the day to day affairs of the Commission and have no power to investigate individual decisions.

The Leadership Code (Further Provisions) Act sets out conduct which constitutes "misconduct of office," the penalties for such misconduct and established the Commission. The difficulty with the Act that it establishes the Commission and goes no further. S.4(1) merely states that "There is established.....a Commission." The Prime Minister is given the duty to appoint the Committee Members.

The Act does not oblige the Commission to meet regularly, does not state how "leaders" are to submit their "Statement of Affairs" to the Commission (S.7) and does not set up machinery for carrying out investigations.

The Act is a piece of legislation which alone is inoperative. In order to give some substance to the Act it would be necessary to make extensive regulations under S.25. The Prime Minister may make regulations for the better carrying into effect of the provisions of this Act.

Such regulations should, I believe, set out as least the following.

- A tenure and remuneration of Commissioners
 - B a permanent contact for the Commission to be circulated amongst all "leaders" and advertised publicly.
 - C procedure for processing complaint and application
-
- A Tenure and Remuneration - Self explanatory
 - B Permanent Contact Point - Leaders are required to seek the consent of the Commission before engaging in any extra work (S.11) submit a statement of affairs and follow directive of the Commission. The Commission is suppose to ensure fair leadership of the country and the public has the right to complain to the Commission about suspected misconduct in office S.18(1). These people need access to the Commission, especially the leaders who are obliged to contact the Commission in certain circumstances, and such access should be easy to obtain. By way of observation I have discovered that very few "leaders" (if any) comply with S.11 and few people know how to contact the Commission.
 - C Administrative Procedures - This is, of course, the area of particular concern to this office. With respect to applications by "leaders" to the Commission there are no procedural provisions. This means that the Commission is not obliged to acknowledge an application, not required to consider it within a certain time limit and not required to answer the application, either refusing or accepting it, in writing to the applicant, except perhaps under the general rules of Natural Justice.

With respect to complaints against "leaders" again there is no duty to acknowledge receipt of complaints, to inform the leader complained of the complaint or investigation give the leader a chance to respond, or keep the complaint informed.

I would suggest that the types of things could be covered by regulations stating that -

- complaints and applications in writing
- send to permanent contact (see B)
- the Commission acknowledge receipt of applications and complaints
- before investigating a complaint inform the leader complained of
- notify the applicant or complainant of the decision of the Commission in writing and as soon as reasonably possible.

I trust that the above comments will be of assistance. Should you decide to make regulations or should you require any further information we will gladly assist. Without amendment to the Ombudsman (Further Provisions) Act we are unable to go any further in the operation of the Leadership Code (Further Provisions) Act. I believe that the regulations governing the Commission will go a long way towards implementing the Act.

APPENDIX C
(Extract from the Constitution)

THE OMBUDSMAN

96. (1) There shall be an Ombudsman, whose office shall be a public office.
- (2) The Ombudsman shall be appointed by the Governor-General, acting in accordance with the advice of committee consisting of the Speaker, the Chairman of the Public Service Commission and the Chairman of the Judicial and Legal Service Commission.
- (3) If the person appointed as Ombudsman is a member of Parliament or a Provincial Assembly, he shall forthwith cease to be such a member.
- (4) The Ombudsman shall not perform the function of any other public or provincial government office, and shall not, without the approval of the Governor-General in each particular case, hold any other office of emolument than the office of the Ombudsman or engage in any occupation for reward outside the duties of his office.
- (5) Subject to the provisions of the next following subsection the Ombudsman shall vacate his office at the expiration of five years from the date of his appointment.
- (6) The Ombudsman may 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) or for misbehaviour and shall not be so removed except in accordance with the procedure for the removal of a judge of the High Court as set out in subsections (4) to (7) of Section 80 of this Constitution.

Functions of
Ombudsman.

- 97 (1) The functions of the Ombudsman shall be to:-
- (a) enquire into the conduct of any person to whom this section applies in the exercise of his office or authority, or abuse thereof;
- (b) assist in the improvement of the practices and procedures of public bodies; and
- (c) ensure the elimination of arbitrary and unfair decisions.
- (2) Parliament may confer additional functions on the Ombudsman.
- (3) The section applies to members of the Public Service, the Police Force, the Prisons Service, provincial governments, and such other offices, commissions, corporate bodies or public agencies as may be prescribed by Parliament.

Proviso refers
to Ombudsman

Provided that it shall not apply to the Governor-General or his personal staff or to the Director of Public Prosecutions or any persons acting in accordance with his instructions.

- (4) Nothing in this section or in any Act of Parliament enacted for the purposes of this Chapter shall confer on the Ombudsman any power to question review any decision of any judge, magistrate or registrar in the exercise of his judicial functions.

Discharge of
functions of
Ombudsman

- 98 (1) In the discharge of his functions the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) The Ombudsmanshall not conduct an investigation in respect of any matter if he has been given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Solomon Islands.

(3) The Ombudsman shall make an annual report and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions, and may draw attention to any defects which appear to him to exist in the administration or any law.

Further
Provisions.

99 Parliament may make proviso for such supplementary and ancillary matters as may appear necessary or expedient to give effect to the provisions of Chapter.

APPENDIX D - OMBUDSMAN'S ACT

- S4 1. Before entering upon the exercise of the duties of this office, the Ombudsman shall take and subscribe the oaths prescribed in the Official Oaths Act and shall take before the Chief Justice an oath in the form set out in the First Part of the Schedule to this Act.
- S4 2. The members of the Staff of the Ombudsman shall maintain secrecy in respect of all matters which come to their knowledge in the exercise of their duties and shall, before entering upon the exercise of their duties take an oath to be administered by the Ombudsman in the form set out in the Second Part of the Schedule to this Act.

This means that the Ombudsman is bound by the Official Act 1978. Neither of the Oaths contained therein deal with secrecy. They are the Oath of Allegiance and the Oath of Office.

The oaths in the Schedule of the Ombudsman (Further Provisions) Act bind the Ombudsman and his staff. In essence they are the same and forbid the divulgence of any information by either the Ombudsman or a member of his staff except in accordance with Chapter IX of the Constitution.

Chapter IX Constitution

- S98 3. The Ombudsman shall make an annual report and may make such additional reports to Parliament as he deems appropriate concerning the discharge of his functions.

No other part of section of Chapter IX of the Constitution deals with the reporting of information. This could easily mean that except where he is reporting to Parliament the Ombudsman may not divulge any information.

The difficulty is that Chapter IX does not face the question on fulfilling the functions of the office by the use of publicity, so the reference to that Chapter by the schedule does not assist at all.

The reason that publicity is not mentioned is not clear. Maybe it was never intended that the office should use it as a tool for fulfilling its functions. This seems to be the effect of the legislation which is very unfortunate for two reasons.

- A The result of one particular case already been sent to the local newspapers and SIBC with the sanction of the Ombudsman because the publicity the only way for ensuring the elimination of unfair decisions (S.97(1)(c). In that case other people were affected and unless they knew of their rights would not have benefited by the work of the Ombudsman.

Was this publicity contrary to the Act?

- B The functions of the office could be achieved more successfully with the use of publicity. Where the office, through hard work gains a good result it is very good for public relations for that result to be publicised. It enhances the office in the public eye and will in some occasions make some people aware of rights which they too have and will remedy injustices done in the past.

This is a very serious matter and we must be sure of the legality of advertising before we undertake any further publicity. It is usual for the Ombudsman or one of his staff to highlight particular cases when giving public talks. This demonstrates

the effectiveness of the office, but does it also divulge information received in the exercise of duties. Probably yes.

The policy behind the oath is clear. Firstly, national security and secondly it will encourage people to be frank with the office if they do not fear publicity. However, the Ombudsman will be better equipped to achieve his functions with a power of publicity, (A power which we, in all good faith, assumed we had because it seemed so central to the discharge of our functions).

The Constitution does not say we cannot publicise results, but it does not say that we can. The inference seems to be that we cannot.

The Ombudsman (Further Provisions) Act 1981 does not mention the Official Secrets Act (Căp 23), but it has been brought to our attention that we may also be bound by that Act.

Official Secrets Act

- S5 1. If any person having in his possession or control any secret official code word, or pass word or any sketch, plan modern article not document or information which.....he has obtained.....owing to this position as a person who holds or has held office under Her Majesty.....

- (a) communicate to any person, other than a person to whom he is authorised to communicate it

that person shall be guilty of a misdemeanour.

Definition

- S2 "Office under Her Majesty" includes any office or employment in or under any department of the Government of the UK, or of S.I.

Question

Who has the power to authorise communication under S.5(1)(a)?

The Act does not say. Possibly it is legislative.

The Act merely states "other than a person to whom he is authorised to communicate."

The "Official Secrets Declaration" in use by the Public Service states "I must not divulge any information without the previous sanction of the head of Department."

There is no power in the Act for the Head of Department to sanction the release of any information. In fact, if he is an officer "in or under any department" he too is bound by the Act unless there is legislation to the contrary.

The Public Service Commission being a commission established by the Constitution has the power to make regulations for regulating and facilitating the performance by the Commission of their functions (Con. S.137(1)).

This power has been exercised and we must turn to the General Orders.

G.O Appointments - Section 1

G.O 120 Oaths - Official Secrets Ordinance - All appointments are subject the candidates being prepared to take any oaths or affirmation which may be prescribed by the law. (Cap 11) or the Governor and to conform with Public Service Procedure for the administration of the Official Secrets Act. (Cap 23).

This brings the discussion back to the Official Secrets Declaration. If this declaration was drafted in exercise of the powers to regulate its functions under S.137(1) there may be a problem because the declaration states that the Head of Department has the power to exclude the operation of the Official Secrets Act. This could be going beyond the power of the Commission. If it is merely an explanatory note it may be misleading I have been unable to find any legislation (as distinct from delegated legislation or regulation) which gives to the Heads of Departments this power.

So the position seems to be that officers in the Ombudsman's Office and the Ombudsman are bound by;

- 1 Oaths within the Ombudsman (Supplementary Provisions) Act
- 2 Ombudsman only - Oath of Allegiance
 - Oath of Office
- 3 Official Secrets Act.

It is interesting to note that the Oaths contained in the Ombudsman (Supplementary Provisions) Act give even less room for the divulging of information than the Official Secrets Act.

This paper has been more to raise points for discussion and clarification to provide definite answers.

Any argument saying that the office has an instant power to advertise as a legitimate means of fulfilling its functions is tenuous.

Short of discovering relevant legislation which has been overlooked or amendment to the Ombudsman (Supplementary Provisions) Act the office of the Ombudsman seems bound to limits its publication to the issuing of the report to Parliament.

APPENDIX E - BACKGROUND INFORMATION ON SOLOMON ISLANDS

The land

Solomon Islands lies between longitudes 155° 30' and 170° 30' and latitudes 5° 10' and 12° 45' South. The total land area is approximately 27,560 square kilometers and total sea area approximately 1.3 million square kilometers.

The group is a scattered Archipelago of mountainous islands and low lying coral atolls, stretches for about 1,100 km in a South Easterly direction from Bougainville in Papua New Guinea to the Santa Cruz Islands.

Geographical Features and Climatic Conditions

There are six main islands Choiseul, New Georgia, Santa Isabel, Guadalcanal, Malaita and San Cristobal are characterized by precipitous, thickly forested mountain ranges intersected by deep, narrow valleys. They vary between 150 km and 200 km in length and between 33 km to steeply on one side to sea level on the other through a series of foothills to the coast.

There are extensive coral reefs and lagoons around many of the islands and these form attractive and fascinating stretches of scenery. Ontong Java, the raised atoll north of the main island chain and Sikaiana atoll (Stewart Islands) to the northeast, are typical atolls and they, with the raised atolls of Bellona and Rennell to the South and the islands of Tikopia and Anuta far to the East are the homes of the Polynesian communities.

There is abundance of rivers on all the larger islands from which the water is normally drinkable. Volcanic activity still exists to some extent, on the islands of Tinakula near Santa Cruz and Savo, near Guadalcanal.

The climate of the Solomon Islands is equatorial but is tempered by the surrounding ocean. For most of the year it is warm and pleasant with few extremes of temperature. There are no clearly defined seasons but from end of April until November, the South East trade winds blow almost continuously with varying intensity. Between November and April, the weather is more uncertain, most of the winds from the West or North West though occasionally from the South South East. In this season there are long periods of calms which are punctuated by squalls and by build-up cyclones.

Rainfall is always heavy on the inland areas and on the windward side of the main islands coastal areas of the larger islands sheltered from the prevailing winds are usually drier than in other areas.

Honiara (the capital) in the rain shadow area, has an annual rainfall of about 2,250 mm, with the bulk falling during the first 3 months of the year.

Population Projections by Provinces for Solomon Islands - 1984 (N2 Variant)

Western	Isabel	Central Islands	Guadal- canal	Malaita	Makira	Temotu	Total Provinces	Honiara	Total
55490	13988	18462	39835	74036	18954	13928	234693	23500	259193

The population of the Solomon Islands at 30th June 1982 was estimated at 244,000.

Government:

Solomon Islands is a full member of the Commonwealth and recognises H.M. Queen Elizabeth II as Head of State, represented in the Solomon Islands by a Governor-General. Solomon Islands gained political independence from Britain in July 7, 1978.

The Central Government follows the Westminster system and there is a single Chamber National Parliament composed for 38 elected members. There are three recognised political parties, People's Alliance, United Party and National Democratic Party.

Economy:

The Solomon Islands economy is changing rapidly from its former classic, colonial state of being dependent on the export of a single crop, copra, into a much more diversified and complex system.

Sales of copra, fish, timber and palm oil form the bulk of export earnings, while imports cover a wide range of goods of which fuel oil and machinery are important. Foreign aids helps to give a comfortable surplus on the Balance of Payments. The main trading partners are Japan, New Zealand, Australia and EEC.

While there has been greatly increased participation and control of the economy by its own people over recent years, Solomon Islands continues to depend on primary products sold in World Markets for the major part of its income.

