

The Ethnic Relations Commission, acting under article 212 D, of the Constitution of the Co-operative Republic of Guyana, considering all the information as presented to the Ethnic Relations Commission on the question of racism and/or racial discrimination at the Guyana Lottery Company Limited, arrives at its decision as set out below.

DECISION

1.0 BACKGROUND

1.1 The **Government Lotteries Act** makes provision for the promotion and the conduct of the Government Lotteries.

1.2 On or about the 26th day of April, 1996 the Government of the Co-operative Republic of Guyana entered into an agreement with Canadian Bank Note International Limited, (CBN) a Company incorporated under the Laws of Ontario with place of business at 7525 Bath Road, Mississauga, Ontario, Canada. This Agreement envisioned the creation of a Government Lottery pursuant to the Laws of Guyana and in so keeping granted a license to CBN for the conduct of a National Lottery in Guyana. Hence the State of Guyana joined together with CBN for their mutual benefit to carry out the operations of a Government Lottery in Guyana under the terms and conditions of the said agreement. The National Lottery as envisaged under the agreement operates in Guyana by the Guyana Lottery Company Limited (GLCL) from its local office situated at 357 Lamaha Street, Georgetown. GLCL commenced its operations in August 1996 with the launch of the Instant Ticket Games and this was subsequently followed by several other games.

1.3 The Ethnic Relations Commission has the jurisdiction to receive complaints of racial discrimination as provided for in Article 212 D, (j) of the Constitution of the Republic of Guyana. It also has the mandate to investigate the complaints and to make recommendations. Such complaints were brought before the Commission for consideration.

2.0 COMPLAINTS

2.1 On or about the 21st September, 2005 Mr. Kellawan Lall, a member of the Guyana Lotteries Commission wrote to the Chairman of the Ethnic Relations Commission (ERC) indicating that there was some level of unease at the headquarters of the Guyana Lottery Company Ltd. due to what was perceived to be an unacceptable ethnic relations situation. Complaints were subsequently received from six employees who alleged that the GLCL had serious issues of racial discrimination in its employment and employment practices. The Complainants in this matter are namely:

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|---------------------------|-------------------------------------|
| 1. Mr. Mohamed Yasin | Sales Manager |
| 2. Ms. Desree Shaa | Finance Controller |
| 3. Ms. Bharatie Nandalall | Supervisor |
| 4. Ms. Rakeema Zainool | Systems Operator |
| 5. Ms. Charmaine Braaham | Senior Redemption Clerk |
| 6. Ms. Pamela Sankar | Supervisor Redemption
Department |

2.2 The complaints are directed against GLCL and more particularly Ms. Tracy Lewis, General Manager of GLCL.

2.3 The matter has since been investigated by the ERC and is before the Commission for consideration as to whether the facts in question give rise to instances of racial discrimination.¹

3.0 THE LAW

3.1 The *Constitution of the Co-operative Republic of Guyana* makes provisions for the creation of an Ethnic Relations Commission (Art. 212 A) and for the Commission to promote the elimination of all forms of discrimination on the basis of ethnicity (Art. 212 D (b)), to investigate complaints of racial discrimination and make

¹ Rule 7 (2) of the ERC Draft Rules

recommendations (Art 212 D (J)). Under this mandate the Ethnic Relations Commission acts in the current matter.

3.2 It is to be noted that Guyana is a signatory to the *International Convention on the Elimination of All Forms of Racial Discrimination* instrument, which states that ‘all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination.’

3.3 The key and relevant legislation with respect to matters of discrimination that is applicable to all employers and employees in the public and private sectors who are engaged in an employment relationship² is the **Prevention of Discrimination Act**. It is an offence under this Act to discriminate against another person if such discrimination is based on their race *inter alia* and ‘any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in any employment or occupation...’³ The Section further states that an ‘act or omission or any practice or policy that directly or indirectly results in discrimination against a person ...is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate.’⁴ This Act was crucial in guiding the Commission in its deliberations on the issues that arose for consideration.

3.4 It is important to understand the meaning of the word ‘discriminate.’ The word does not have the wide meaning assigned to it in the dictionary. In the words of Massiah JA, it has a precise and limited connotation. Although it contains the elemental constituent of favouritism, or differentiation in treatment, its application is confined only to favouritism or differentiation based on ‘race, place of origin, political opinions, colour or creed.’⁵

² Section 3 of the Prevention of Discrimination Act

³ Section 4 (1)

⁴ Section 4 (3)

⁵ Nielson v. Barker (1982) 32 WIR p.280 per Massiah JA.

3.5 The Constitution of the Republic of Guyana offers some assistance in arriving at a definition of discrimination. ‘Discriminatory’, may be interpreted as ‘affording different treatment to different persons attributable wholly or mainly to their or their parents or guardians respective descriptions by race, place of origin, political opinion, colour, creed, age, disability...whereby persons of one such description are subjected to disabilities or restrictions to which persons of the same or another such description are not made subject or are accorded privileges or advantages which are not afforded to persons of another such description.’⁶

3.6 Massiah JA posits that the ethical imperative of respect for a person’s race, colour, place of origin and the like (particularly important in a country of ethnic plurality like Guyana) has always found a place in our Constitution and has always been enforceable in a court of law.⁷ Such enforcement may be sourced in Art. 153 of the Guyana Constitution which invests the High Court with original jurisdiction to hear and determine applications for redress allegedly arising from contravention of any of the provisions protecting fundamental rights and freedoms.

3.7 Finally it is to be noted that:

It is important to bear in mind that it is unusual to find direct evidence of racial discrimination. Few employers will be prepared to admit such discrimination even to themselves.⁸

4.0 THE PARTICULARS

4.1 There has been a complaint that the recent recruitment of staff at GLCL is biased and in favour of Afro-Guyanese employees. The Sales Manager alleged to CBN (22nd July, 2005) that of the eleven recent employees ‘eight are Black and three are Indians.’ The General Manager responded in her correspondence (undated) that the racial composition of the said employees is as follows: 5 Blacks, 5 Indians and 1

⁶ Art. 149(2)

⁷ Neilson v. Baxter Op. Cit.

⁸ King v Great Britain –China Centre (1990) IRLR 194.

mixed race person. At the meeting with the Commission on the 2nd November, 2005, when asked, the complainant indicated that he could not at the material time provide the information to substantiate his claim.

4.2 There is a complaint that there is racial discrimination and/or prejudice in the process of selection of staff at the GLCL. With respect to the process of selection, there is supplied to the Commission a copy of the score sheets presumably of the General Manager and the Finance Controller respectively for an employee (whose race has not been disclosed). The scores stated are 36 and 40 respectively out of a cumulative total of 70 points. At the meeting with the Commission (2nd November, 2005) the Executive Vice President of CBN indicated that there is a strict employment policy in all Canadian companies. It was however alleged by the Finance Controller that there was no employment procedure at the GLCL, that the scoring system was only used once lately, and that since then ten other persons were subsequently recruited outside of this system. The General Manager did not refute this, but stated that very often they would ask employees if they know persons who they would like to recommend for job vacancies and have these positions filled.

4.3 The Finance Controller alleges that on more than one occasion there is a short listing of applicants based on surnames, where applicants with Indo-Guyanese surnames have been ignored by the General Manager. The Complainant further alleges that there was a statement made to the effect that 'I don't want those kind of people working in here' and that she was instructed by the General Manager that persons of a particular ethnicity were required. She alleges that when there was recruitment of a driver, she was told that a 'black' driver was required and cites an example in Berbice that one person was not hired because the applicant 'did not look black enough.' The Systems Operator also alleges that "the General Manager once stated in the presence of 'some staff' that she needs to clean up the offices and make sure that the heads of every department are 'Blacks'" and that she does not need any more Indo-Guyanese staff in the Company.

4.4 The Sales Manager has alleged that his personal internet access has been cut, as instructed by the present Executive Vice President of CBN, which has not been denied by the Executive Vice President. The Sales Manager further alleges that he no longer has access to the WYSE. The Executive Vice President has since stated in the meeting with the Commission of 2nd November, 2005 that there was a decision to have a public 'group' internet station, to prevent internet abuse and denied that there were instructions for the Sales Manager not to have access to the WYSE. The information from the General Manager is not clear. In her response to the Sales Manager's letter dated the 22nd June, 2005, she indicated that the WYSE functions are set and accessed by password. However she does not answer whether the Sales Manager needs the access to this programme and if so why such access was denied.

4.5 The Sales Manager alleges that the General Manager seems to be in favour of Afro-Guyanese agencies, citing financial support and sponsorship for agencies and individuals such as ACDA, and Afro-Guyanese personalities.

4.6 The Sales Manager alleges in his statement that an Indo-Guyanese cleaner was bypassed for promotion to cashier by an Afro-Guyanese cleaner who was employed years after her. The General Manager has at the meeting with Commission on the 2nd November, 2005 indicated that after the cleaner was approached about the possible promotion for the position of cashier she allegedly declined the promotion.

4.7 The Sales Manager has indicated in a correspondence dated the 22nd July, 2005 that all of the Indo-Guyanese contractors and sign painters had been 'fired' by the General Manager. He claims that they have since been replaced by 'Black artisans of dubious competence who stick the company with outrageous fees.' The General Manager in her response to this allegation has stated that the Air Conditioning contractor was too expensive and that his replacement was found by a technician. She indicated that the sign painters 'come and go as they please' and that the one used 'recently was recommended by Guyenterprise'.

4.8 The Sales Manager alleges that there was a replacement of the Indo-Guyanese Security Guards with Afro-Guyanese Security Guards. The Sales Manager allegation is that he was forced to write a letter to the Coordinator of Field Operations, GEB requesting that one of the guards be no longer detailed for guard duty at the Company for 2003. His argument is that this was done since the guard had previously reported stealing by an Afro-Guyanese employee and the General Manager had not permitted an investigation into the said matter. The General Manager has indicated that the reasons for the request for the Indo-Guyanese Guards' removal were because of specific deficiencies. She indicates that it was for sleeping on the job and being disabled.

4.9 It has been alleged by more than one complainant that the General Manager 'feted' a select group of Afro-Guyanese employees, with one Indo-Guyanese employee being present, at her birthday party at the Pegasus. The General Manager has since rationalised this as being a boost for staff whose moral was low at the time, and claims that this was done with the concurrence of the Sales Manager. The General Manager has not refuted the claims of the composition of the gathering but argues at the meeting with the Commission on the 2nd November, 2005 that the group had gone to a funeral and after which she decided to take the remaining staff who 'were available' to the Pegasus. She indicates in her response to the Sales Manager's correspondence dated 22nd June 2005 that the Finance Controller who had left the country for Suriname on the said morning was also informed.

4.10 A number of the complainants alleged that the General Manager made a number of statements that they consider racist. The following are some of the alleged statements:

1. the Sales Manager claims that he has heard her say on numerous occasions that she 'likes her coffee black and strong like her men;'
2. that 'everything black is best;'
3. that 'I'm black, oily and proud;'

4. that it was alleged that the General Manager brought a certain Sales Representative to replace the Sales Manager and when questioned she allegedly stated that it was because 'he is a black man;'
 5. that 'I have to clean up the Redemptions Department because there are too many Indians;'
 6. 'we need more black agents;'
 7. that the Finance Controller does not consider herself to be a 'black woman;'
and
 8. that the Finance Controller is 'not supportive of black people;'
- 4.11 The Sales Manager has indicated that the 2005 GLCL calendar was commissioned by the General Manager and depicted Amerindians and Afro-Guyanese as people of Guyana and excluding other ethnic groups in Guyana.
- 4.12 It is alleged by the Finance Controller that the General Manager in the past has made 'personal representations' for a favourite staff member to be assisted with medical expenses. She claims however that when the Sales Manager and the Supervisor of the Redemptions Department made a similar request the former was only accorded after much insistence and in the case of the latter, minimal assistance was offered.

5.0 THE DETERMINATION

5.1 After analysing the documents submitted both by the GLCL and the Complainants, an investigation by the ERC and a number of meetings with management of GLCL, their employees, the Complainants and representatives from the Lotteries Commission and CBN, thirteen issues were determined by the Commission for consideration. All of the issues presented in the Commission's considered view, amounted to *prima facie* cases of racism/racial discrimination. The following are the issues that were considered:

1. Whether there exists racial discrimination with respect to the recent recruitment of staff at Guyana Lottery Company Limited?
2. Whether there is racial discrimination/prejudice in the scoring of and/or selection of staff at the Guyana Lottery Company Ltd.?
3. Whether there is racial profiling in the recruitment of staff at the Guyana Lottery Company Limited?
4. Whether there exists racial discrimination against the Sales Manager with respect to the non-activation of internet access and his non access to the WYSE?
5. Whether there is racial discrimination with respect to the sponsorship and advertising by the Guyana Lotto Company Limited?
6. Whether there is racial discrimination against an Indian Cleaner who allegedly complained of treatment and hostility and of being by-passed for promotion?
7. Whether the replacement of Indo-Guyanese contracted employees amounted to racial discrimination?
8. Whether the removal of two Indo-Guyanese Guards is the result of racial discrimination?
9. Whether there was racial discrimination with respect to the GLCL's sponsored General Manager's party at the Le Meridian Pegasus?
10. Whether alleged statements made by the General Manager of the Guyana Lottery Company Limited amounted to racial prejudice?
11. Whether the non inclusion of Indo-Guyanese in the 2005 GLCL calendar is an indication of racial prejudice?
12. Whether there was an intention to single out and harass a Supervisor because of her race?
13. Whether there was racial discrimination by the General Manager with respect to the requests for medical assistance by two Indo-Guyanese staff members?

6.0 THE COMMISSION'S ANALYSIS OF THE ISSUES

6.1 The Commission in deliberating on the issues, found on examination, that while there was evidence for instance of a poor recruitment policy at the GLCL which can lead to

discrimination, there was not however adequate evidence to conclude same and that the mere racial composition of the workforce did not in itself mean that there was a case of racial discrimination. Similarly with respect to the complaint of perceived harassment and discrimination with regards to requests for medical assistance, the Commission found that while this seems to be a case of a deviation from standard company's procedure, this did not necessarily amount to a finding of racial discrimination.

6.2 The Commission in its deliberations found that the 2005 GLCL calendar did not suggest an obvious racial prejudice in its design and content, since the Commission found that the suggestions of racial prejudices contained therein, could be reasonably explained. Again, with respect to the replacement of the Indo-Guyanese contracted employees, and the complaint that one of the employees was by-passed for promotion because of her race, the Commission found that the reasons given by the General Manager were plausible and there was no racial discrimination in this regard.

6.3 With regards to the complaint of non-access of the inter-net and denial of computer program (WYSE) access, the Commission found that even if it may have amounted to being discriminatory, it did not necessarily amount to racial discrimination.

6.4 With regards to the complaint of racial discrimination in its sponsorships and advertising, the Commission found that in the absence of specific information i.e. the denial of the Indo-Guyanese businesses, the amounts of the disbursements etc, there could be no determination of racial discrimination.

6.5 On the question of whether there was a case of racial discrimination at the GLCL's sponsored General Manager's party, the Commission found that while the entire event may be questionable, even if there may have been a discriminatory exclusion of some employees, this did not necessarily mean that such exclusion amounted to racial discrimination on the part of the General Manager.

6.6 With respect to whether there was racial profiling in the recruitment of staff at the GLCL, the Commission found that within the context and meaning of section 5 of the **Prevention of Discrimination Act**, that there was a clear case here of unlawful racial discrimination. The Commission however was not in a position to determine the reliability of the allegations made by the two Complainants in this regard, and hence could not arrive at a finding/determination of racial discrimination. In similar vein, the Commission found that some of the alleged statements made by the General Manager, if true, could amount to being personal preferences/opinions that may be considered inappropriate and insensitive in a place of employment. Some of the other alleged statements however, the Commission found may be considered to be racist and prejudicial statements. The Commission wishes to note that where there is prejudice, discriminatory conduct is much more likely to have occurred. The Commission however opted not to arrive at a conclusion here, since the Commission was unable to determine the truthfulness of the allegations made.

7.0 CONCLUSION

7.1 The Ethnic Relations Commission concludes that in the premises, no clear case had been made out of racial discrimination.

7.2 Generally there seems to be serious management problems at the GLCL, with particular emphasis on human resources and administrative management practices. This has contributed to and led to the inter-racial problems at the Company. The Commission believes that CBN cannot escape the partial blame. Instead of attempting to address the problems and deal with the issues, the Commission believes that CBN sought the easiest way out of the problem by requesting the resignations of the three key persons in the Company. This, the Commission believes was premature and uncalled for.

7.3 CBN, the Commission believes, could have attempted to solve the internal problems at GLCL by the implementation of proper ('strict') employment procedures that the

Executive Vice President of CBN indicated Canadian companies practice. The Commission considers that CBN has done little to seriously alleviate the grave charges that have been levelled against the General Manager and by extension the Company.

7.4 It should be mentioned that there were a number of other employees who claimed that they were not of the opinion that the General Manager was racist. This is supporting evidence that could not be discredited, however the usual starting point in deliberations should be whether a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstance in which he thereafter had to work.⁹ Once this is established, then it is a question of the reaction of the individual employee, and the fact that others might not have felt harassed by the behaviour is irrelevant.¹⁰

8.0 THE COMMISSION'S RECOMMENDATIONS

8.1 That GLCL may wish to consider the need for there to be a proper and clearly defined policy with respect to the employment and recruitment practices at the GLCL.

8.2 That GLCL may perhaps wish to consider sourcing a management manual to guide its management operations.

8.3 That there needs to be a transparent policy at GLCL with regards to the process of awarding of contracts, advertising and sponsorship.

8.4 That the Lotteries Commission may wish to consider being more involved in the matters at the GLCL, and to perhaps offer some level of direction and guidance in the operations of the GLCL.

⁹ DeSouza v. Automobile Association (1986) IRLR 103 at 107.

¹⁰ Wilemen v. Minilec Engineering Ltd. (1988) IRLR 145.

8.5 That the Ethnic Relations Commission notes with concern the lack of confidentiality of certain information and documents at the GLCL and that same should not be compromised.

8.6 That the Management may wish to consider an independent mediation process to heal the racial differences that the Ethnic Relations Commission believes exist in the Company at present.

8.7 That it is the view of the Ethnic Relations Commission that the GLCL may wish to consider alternatives to the termination of their employees based on the aforementioned matter.

8.8 That the GLCL produces a human resources policy document that takes into consideration the building of harmonious relations within the company. Such document may be subject to review by the Ethnic Relations Commission, six months from the date stated below.

Given under the Seal of the
Ethnic Relations Commission,
in three (3) original copies, this
21st day of December, 2005.
[C.K.]

[A copy of this decision is available upon request from the offices of the Commission located at 66 Peter Rose Street, Queenstown, Georgetown. The Decision will also be reflected in the Commission's next Annual Report to the National Assembly].