

BERMUDA OMBUDSMAN
1ST Annual Report 2006



*For The
Good Of
The Public*

*And Those
Who Serve
The Public*



January 25, 2007

The Speaker, The House of Assembly
The Hon. Stanley Lowe, OBE, JP, MP
Sessions House
21 Parliament Street
Hamilton HM 12

Dear Honourable Speaker,

I have the honour to present my first Annual Report which covers the year 1st August, 2005 to 31st July, 2006.

This Report is submitted in accordance with Section 24(1) and (3) of the Ombudsman Act 2004 which provides: -

Annual and special reports

- 24 (1) The Ombudsman shall, as soon as practicable and in any case within six months after the end of each year, prepare a report on the performance of his function under the Act during that year.
- 24 (3) The Ombudsman shall address and deliver his annual report and any special report made under this section to the Speaker of the House of Assembly, and send a copy of the report to the Governor and the President of the Senate.

Yours sincerely,

Arlene Brock

Arlene Brock
Ombudsman for Bermuda



January 25, 2007

The Governor, His Excellency Sir John Vereker, KCB
Government House
11 Langton Hill
Pembroke HM 13

Dear Sir John,

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January 25, 2007

Senator Alfred Oughton, MBE
President of the Senate
The Cabinet Building
Hamilton HM 12

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Section 4(2) of the Ombudsman Act 2004 provides that the Ombudsman shall have an official seal. The seal's nine Bermudiana flowers signify that the Ombudsman serves everyone in each parish. The flowers and words form an "O" typically found in Ombudsman seals around the world.

Ombudsman's Message

The primary purpose of the Annual Report is to account to Parliament and to the public for our functions during the past year. The secondary purpose is to explain the purpose and powers of the Ombudsman and to educate people about developments in Ombudsman principles and practice. Shortly after assuming office, I declared, "As I learn, Bermuda will learn." I have attempted to keep this promise with news articles, appearances from time to time on the talk shows and other public presentations. The Annual Report is one of the most important tools for sharing what I have learned.

In this era of increasing scrutiny of governance, the words "transparency" and "accountability" swirl as ideals for how the public accesses and interfaces with Government. Politicians are accountable by way of periodic elections and Parliamentary debate. The Courts adjudicate unlawful actions and the Auditor General oversees the public accounts. As a significant arm of modern democratic society, the Ombudsman institution oversees the daily decisions and actions taken to deliver public services.

I hope that this first Annual Report will adequately convey the amazing journey of this past year. We will walk through the Ombudsman Act of 2004 ("Act") and see how its various sections have been applied. Too often, laws feel arcane and difficult to fathom. I hope that the structure of this Annual Report explains the Act in a clear and helpful way. In addition, I will describe the establishment of our office, our public information efforts, international networks, training and ongoing initiatives.

This Report highlights many of the complaints received and resolutions achieved. Of the 137 complaints, we made inquiries into 79. Most were resolved after preliminary inquiries. A few required full-scale investigations. By and large, Government Authorities have been responsive, interested in pursuing resolutions and accepting of our recommendations. There were a few cases in which the complaint to me was about unreasonable delay – and in turn, the Authorities took considerably longer than desirable to respond to my inquiries. In this first year when all of us are learning, I have decided not to reveal names. There were two cases of active resistance to the investigation and the recommendations. One – which has since been resolved even beyond my expectations – initially required commencement of Contempt of Court proceedings. The other, still outstanding at year end, is with the Attorney General's Chambers.

Our recommendations try to put Complainants in (or as close as possible to) the position they would have been in had Authorities acted properly. We have tried our best. Together with my dedicated staff, it is a great honour to present our first Annual Report.

Arlene Brock

Arlene Brock
Ombudsman for Bermuda



Creation of the Office of the Ombudsman

Over the years, people from both political parties advocated the Ombudsman institution for Bermuda. It was after the 1999 Civil Service Report that the then Premier, the Hon. Jennifer Smith, advanced the idea by an amendment to the Bermuda Constitution (in force August 2001). It is critical for the independence and permanence of the institution that the Ombudsman be enshrined in the Constitution.

The Central Policy Unit meticulously shepherded the legislative process and credits many people in the international community for contributing both conceptual and drafting insights, including Dr. Victor Ayeni (then Commonwealth Secretariat), Sir Frank Blackman (former Ombudsman of Barbados), Dean Gottehrer (former Ombudsman of Alaska), William Angrick (Ombudsman of Iowa and President of the International Ombudsman Institute ["IOI"]), Dr. Hayden Thomas (Ombudsman of Antigua and Barbuda and Vice-President, IOI), the Caribbean Ombudsman Association, the Bermuda Bar Association and the Bermuda Section of the International Commission of Jurists.

The Ombudsman Act 2004 was introduced to the House of Assembly in December 2004 by then Premier, the Hon. W. Alexander Scott who described the institution as having "the potential to provide significant benefits for the social fabric of Bermuda." John Barritt, MP, who spoke for the Opposition in the debate introducing the Bill noted: "Ultimately the Ombudsman forms part of the panoply, the armour, in the legislature that will ensure that we better serve the interests of the people of Bermuda."

At the Official Opening of the office, January 2006, Mr. Scott added: "by investigating complaints to determine whether the Government is doing things in a fair and proper way, and by learning from what went wrong and translating the recommendations into action, you are not only improving governance, but you are improving people's everyday experience with Government".

His Excellency the Governor Sir John Vereker, who cut the ribbon with the then Premier noted: "The Ombudsman for Bermuda provides the last link in a strong chain that connects the people to their Government. It's a chain that includes free and open elections, Parliamentary scrutiny of the Executive, independent audit of public spending, a politically neutral Civil Service and an independent Judiciary." Sir John was quoted in the April 2006 Newsletter of the British and Irish Ombudsman Association: "You,



*The Hon. W. Alexander Scott, Ms. Arlene Brock,
His Excellency Sir John Vereker*

Ombudsman, are the smile on the face of the Cheshire cat, if you remember your Alice in Wonderland, you are what will be left when the cat itself vanishes. We look forward to the time when you sit behind your desk for hours on end, waiting for the telephone to ring, and it never does because the public has no complaints.”

Drs. Victor Ayeni and Hayden Thomas represented the international community at the Official Opening, where Dr Thomas quoted Nelson Mandela’s address to the 2000 International Ombudsman Conference:

“Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of Government and Authorities are subject to the scrutiny of independent organs. This is an essential element of good governance.

It was to me never reason for irritation but rather a source of comfort when these bodies were asked to adjudicate on actions of my Government and Office and judged against it. One of the first judgments of our Constitutional Court, for example, found that I, as President, administratively acted in a manner they would not condone. From that judgment my Government and I drew reassurance that the ordinary citizens of our country would be protected against abuse, no matter from which quarters it would emanate. Similarly, the Public Protector (Ombudsman) had on more than one occasion been required to adjudicate in such matters.”

Section 93A(2) of the Bermuda Constitution Order 1968 provides that “The Governor, acting after consultation with the Premier who shall first have consulted the Opposition Leader, shall, by instrument under the Public Seal, appoint the Ombudsman”.

The Ombudsman is a fully independent Officer of Parliament. Accordingly, under Section 93B(2) of the Constitution, after the appointment process has ended, neither the British Crown (represented in Bermuda by the Governor) nor the local Government have direction or control over the Ombudsman.

Wednesday, May 18th, 2005, *The Royal Gazette*: “Governor Sir John Vereker appointed Ms. Brock after an open and competitive process, a Government House statement said yesterday, and she will take up the position once the necessary office facilities are in place.”



Official Appointment

Acknowledgements

As this is our first Annual Report – there are many to thank. Of course, the problem with listing people is that I may forget someone very important. If I have done so, please know that this was inadvertent and that your help is most appreciated.

All levels of Government recognized the value of the Ombudsman concept and supported its introduction in a spirit of non-partisanship. The Governor, Sir John Vereker; then Premier, the Hon. W. Alexander Scott; then Deputy Governor, Nick Carter; the Cabinet; the Opposition Leaders, Grant Gibbons and Wayne Furbert; the Shadow Cabinet, MPs and Senate all gave valued encouragement throughout the year.

I was not involved in the legislative process. However, the Central Policy Unit's research, thoughtfulness and precision must be applauded. Bermuda's statute incorporated the best from the rest of the world and now serves as a model for others.

The international Ombudsman community has been exceptionally generous in their advice and assistance to me. The individuals named on page 2 have been consistent mentors. I also continue to receive invaluable assistance from the Caribbean Ombudsman Association, the U.K. Public Sector Group, the Canadian Parliamentary Ombudsmen and the U.S. Ombudsman Association.

Thank you to all Complainants for bringing their matters to our attention. The public has taken the Ombudsman institution on board quite seriously. Inevitably, a few Complainants have tried to use the Ombudsman's office to advance other agendas. We have been careful to extract out and address only the maladministration issues. Only two complaints of the 137 were frivolous and only one was made in bad faith. Many thanks to the public at large for their constant encouragement.

The response of Authorities has been largely positive. Public servants on the receiving end of our telephone calls, letters and questions have usually been forthright and willing to find resolutions. They are the experts in their areas and I appreciate their assistance in crafting workable resolutions to the various matters raised.

For initial set up, ongoing support and courtesies to visiting dignitaries, we are grateful for the expertise and help of Government Departments of the Accountant General, Human Resources, Immigration, Works & Engineering, Budget Office, Protocol Officer, Bermuda College and the ever-attentive Information Technology Office.

I thank and commend my staff who have hurdled a steep learning curve, complex systems and a very busy office with ongoing grace, effectiveness and enthusiasm.

Finally, please indulge a personal thank you. To my family and friends: because of your support as much as because of the mission, I count myself blessed to be able to say that I look forward to going to work each morning.

Arlene Brock

Selected Summaries of Closed Complaints

The Authorities within the Ombudsman's jurisdiction include all Government departments and boards, Public Authorities and any other corporation or body which is established by the Legislature or in any other manner by a Minister or whose revenues derive from (or fees charged are approved by) the Legislature.

By the time Complainants come to the Ombudsman they usually have at least two layers of concerns. First is the underlying substantive matter that they had wanted the Authority to address. The second layer is the manner in which that Authority tackled the underlying matter and/or treated the Complainant.

The Ombudsman inquires into decisions, actions, recommendations, failure to do an act or make a decision or recommendation – including the failure to give reasons for a decision. The goal is to determine if there is evidence of “maladministration” – which means “inefficient, bad or improper actions”.

Complainants who come to the Ombudsman are usually very much anchored in the conviction that they are right and that the Authority is wrong. Some are naturally disappointed when the Ombudsman makes a finding of “no maladministration”. Tom Frawley, the Ombudsman for Northern Ireland, said it best: “the Ombudsman is neither an advocate for the Complainant nor the Authority – he is a critical friend to both”.

If maladministration is found, the Ombudsman makes recommendations as she “sees fit”, for example, that an action be rectified, cancelled or altered. She also generally recommends ways of improving administrative practices and procedures, and may recommend that a law or regulation be reviewed.

Her investigations must consider whether Authorities have considered appropriate law, facts and processes. In addition, there are some actions that are lawful but may still be oppressive, arbitrary, unreasonable, and inefficient. Therefore, recommendations also promote resolutions that are fair, proportional and reasonable.

In most jurisdictions, Ombudsmen refer many complaints to appropriate Authorities instead of immediately investigating them. In Bermuda, the Ombudsman adds informal assistance by articulating exactly what the complaint is about. This helps recipient Authorities to understand clearly why the matter was referred. This also helps Complainants who often find it frustrating to have to go to yet another office.

The following pages set out pertinent sections of the Act followed by cases that illustrate them. These examples are a fair sample of the types of complaints raised and how they were addressed. We do not include cases where Complainants could be identified easily unless they have given us permission to do so.



Selected Summaries of Closed Complaints

Section 2(1)(a)

"Maladministration" means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes

(1)(a) unreasonable delay in dealing with the subject matter of an investigation;

Transport Control Department

Vehicle Owner A submitted an application to TCD for the commercial license and registration of a vehicle. TCD did not respond to Vehicle Owner A's queries for eight months. Although initially told that he would receive a temporary license he was later advised that his application would be suspended pending review of the relevant legislation for new types of vehicles. After preliminary inquiries by the Ombudsman, TCD reviewed the case and approved Vehicle Owner A's application.

"The process was comfortable, very professional and well explained. They listened carefully to our complaint and we were fortunate to get a positive outcome. The process was excellent!" – Vehicle Owner A.

Department of Labour & Training

Employee B alleged that the Department had not acted upon her grievance against her former employer. The Ombudsman made preliminary inquiries and was advised that two of the Inspectors could not take the case due to conflicts of interest. The Director had met with the former employer at least twice but there had been some challenges in scheduling further meetings. The Department moved the matter along more quickly after intervention by the Ombudsman.

Department of Labour & Training

Employee C had lodged a complaint over a year before but did not receive a response or update from the Department. The Department advised the Ombudsman that the issues surrounding Employee C's allegations had been resolved and that its findings would be communicated to Employee C by the end of the week. This was not done. The Ombudsman found that there was

maladministration and the Director of the Department agreed to include response times as part of the appraisals of Inspectors.

Department of Social Insurance

Pensioner D had been waiting for almost eight months for reimbursement of \$40 from the Department – yet noted that the Department threatened to cancel coverage if premium payments were three months in arrears. He also expressed his dismay that the Department was more than one year in arrears with their payment to physicians. The Department advised that the delay was due to the fact that reimbursement claims for over 5,000 persons were now submitted by each individual instead of from the doctors' offices. The claims for one calendar year had to be manually reconciled against the records of all physicians – thus delaying the payouts. Although the delay was inordinate and inconvenient, the Ombudsman found that there was no maladministration in that the Department was adjusting to a manual reconciliation process (affecting one year of claims only) that it had not planned or budgeted for. The Ombudsman requested an update on the progress of the project to computerize claims processing.

Section 2(c)(ii)

Maladministration includes

2(c) administrative action that was

(ii) unfair, oppressive or improperly discriminatory or based on procedures that are unfair, oppressive or improperly discriminatory;

man did investigate this first such complaint in order to test and clarify the appeal process. After extensive inquiries, the Ombudsman found that although the discipline was quite strict, it was proportional to the infraction and consistent with the discipline of other students.



Department of Education

Parents E and F felt that the discipline imposed on their daughter was excessive and discriminatory. School discipline is not a complaint the Ombudsman would usually review. However, the Ombuds-

*Thank
You...*

R. Tyrrell, Dr. J. Christopher and team, Department of Education:
for comprehensive responses.

Selected Summaries of Closed Complaints

Section 2(c)(iii)

Maladministration includes

2(c) *administrative action that was*

(iii) *based wholly or partly on a mistake of law or fact or irrelevant grounds;*

Department of Planning

Developer G alleged that the Department had rejected his application to subdivide based on a failure to weigh all factors of his application. The Department rejected it on a single ground. The Ombudsman investigated and found no case of maladministration – the Department’s decision was technically correct. An application may be declined based upon one factor alone, even when several other factors are listed in the Planning Statement.

Transport Control Department

Business Owner H complained that his application for additional commercial vehicles was denied and that he had not been treated equally. Other companies operating in similar industries with comparable numbers of employees had more vehicles. The Ombudsman inquired and found that TCD had fairly considered all relevant information including current traffic congestion and environmental sustainability.

Section 2(c)(iv)

Maladministration includes

2(c) *administrative action that was*

(iv) *related to the application of arbitrary or unreasonable procedures;*

Transport Control Department

Vehicle Owner I had parked an unlicensed car in an unauthorized parking space for a long period. The car was towed and he was told that it would be destroyed unless he paid the towing fee. He complained that TCD failed to give him adequate notice and objected to paying the towing fee. After preliminary inquiries the Ombudsman found that there was no maladministration as Vehicle Owner I was aware of the process and a parking ticket constitutes sufficient notice under the law.

Section 5(1)(a)

5(1) The functions of the Ombudsman are

- (a)** *to investigate any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority;*

Department of Corrections

Prison Visitor J requested a visitor's pass to visit a relative in prison but never received a response. Prison Visitor J was searched when he tried to use a pass originally issued to another relative. The Ombudsman found that there was no maladministration as it is within the Department's powers to conduct a search of visitors even without an obvious reason. The Department did send a written apology for the initial failure to respond.

Section 5(1)(b)

5(1) The functions of the Ombudsman are

- (b)** *pursuant to an investigation, to make recommendations to the authority concerning any administrative action that formed the subject of the investigation and, generally, about ways of improving its administrative practices and procedures;*

HM Customs

Under the 1898 Revenue Act, importers are permitted to take goods off of the dock even when they do not have all of the proper paperwork. They must pay a deposit of the estimated duty and then return to HM Customs within 30 days to make "proper entry" with the appropriate paperwork. The payment is then adjusted from the estimated duty already paid to the actual duty that should be paid. Failure to return within the time period incurs a surcharge of 50% of the actual or estimated duty.

Commercial Importer K did not make a written application for an extension prior to expiration of the 30 days. He returned to HM Customs at 10:30 a.m. on the 31st day after paying the estimated duty deposit. Effectively, he was 1½ business hours late. Commercial Importer K felt that the surcharge was punitive and unreasonable, given the unprecedented two-day city-wide power outage caused by the fire at the Bermuda Electric Light Company Ltd. that interrupted his work schedule during the 30 days.



Selected Summaries of Closed Complaints

The Ombudsman found that the 1898 Revenue Act could not have anticipated today's dependence on electronic document processing and therefore, it was reasonable to grant a retroactive extension for the 1 ½ hour delay. However, to allay concern that importers may take advantage of this finding, the Ombudsman recommended that HM Customs notify all importers that henceforth – even in cases of Acts of God, *force majeure* or other unprecedented events beyond their control – no retroactive applications will be accepted. In all cases importers should apply for extensions of the deposit adjustment date prior to the due date.

With respect to general procedures, the Ombudsman recommended that HM Customs calculate the surcharge on actual duty (rather than on the estimate deposited) if importers eventually make “proper entry”.

Section 5(2)(a)

5(2) *the Ombudsman may investigate any administrative action taken by or on behalf of an authority*

(a) *where a complaint is made to him by a person who claims to have been treated unjustly as a result of maladministration arising from or in connection with the administrative action taken by the authority;*

Department of Operations & Engineering

Contractor L alleged that the Department had misplaced his bid and did not respond to several requests to discuss. The Department advised the Ombudsman that the bid had not been addressed to the proper person. On locating the bid, the Department included it in the bid review process equally with other bids. As there was no harm to Contractor L, the matter was not investigated.

Section 5(2)(b)

5(2) *the Ombudsman may investigate any administrative action taken by or on behalf of an authority*

(b) *On his own motion, notwithstanding that no complaint has been made to him, where he is satisfied that there are reasonable grounds to carry out an investigation in the public interest.*

Rent Commission

Small Advocacy Group M would like Government to pass legislation to protect rent deposits (from arbitrary retention by landlords). Legally the deposits are the property of tenants, but there is no requirement for the

escrow protection of deposits or for interest credits. The Ombudsman asked the Rent Commission and Small Advocacy Group M to collect statistics and other information over a period of 6 months. None of the inquiries to the Rent Commission were about this matter and Small Advocacy Group M did not submit information. As this is purely a matter of policy, the Ombudsman did not investigate.

Section 8 – Preliminary inquiries

8 *For the purpose of determining whether to undertake an investigation, the Ombudsman may conduct such preliminary inquiries as he considers appropriate.*

Bermuda Department of Tourism

Promoter N alleged that his marketing proposal to the Department was not treated equally to the overseas entity awarded the contract. The Ombudsman's preliminary review concluded that Promoter N's proposal did not meet the requested criteria or caliber and that the Department had a right to expect professional standards for the contract awarded.

Section 9 – Decision not to investigate

9(1) *The Ombudsman may decide not to investigate a complaint if he is satisfied that*

(a) *the complainant knew of the administrative action complained against more than one year before the date when the Ombudsman received the complaint;*

Department of Planning

Homeowner O hired a contractor to construct his home. Throughout the building process a number of code infractions were found and consequently the inspections failed. Homeowner O wrote to the Department seeking guidance on the matter but received no response. The Ombudsman advised Homeowner O that she was unable to inquire into the matter because twelve months had passed since the Department's last action, nevertheless she would ask the Department to clarify the inspection process. The Department advised that

"I appreciate all the research that you undertook on my behalf...thank you for your time and help in this matter." – Complainant



Selected Summaries of Closed Complaints

the responsibility of ensuring compliance with all codes rests with the contractor and owner. Further, adequate information regarding construction, inspection and final approval standards is always enclosed in the initial application package. The Department did admit that it had not responded to Homeowner O's letters and although the Ombudsman urged the Department to apologize she was unable to make a formal recommendation as the complaint was beyond the statutory time limit.

Section 9(1)(b)

9(1) *The Ombudsman may decide not to investigate a complaint if he is satisfied that*

(b) *the law or existing administrative procedure provides a remedy adequate in the circumstances for the complainant and, if the complainant has not availed himself of the remedy, there is no reasonable justification for the failure to do so;*

Department of Labour & Training

Employee P alleged that the Department had not taken any action regarding a complaint made six months before about various benefits such as pension and vacation payments. The Ombudsman declined to investigate as Employee P had failed to show up for two scheduled meetings and had no reasonable justification for not following the existing process.

Section 9(1)(c)

9(1) *The Ombudsman may decide not to investigate a complaint if he is satisfied that*

(c) *the complaint is frivolous, vexatious or not made in good faith.*

Department of Child & Family Services

Parent Q alleged that the Department failed to provide reasons for having her daughter under its care and supervision for the past several years. The Ombudsman did not launch an investigation as her preliminary inquiries revealed that Parent Q was well informed of the reasons.

Legal Aid Office

Litigant R challenged the Authority's decision to grant legal aid to the person she was suing. After preliminary inquiries the Ombudsman's office found that the Legal Aid Office had taken all necessary criteria into consideration, had properly exercised its discretion and that the complaint was not made in good faith.

Department of Environmental Health

Restaurant S claimed that personal bias prevented its restaurant license from being renewed. Through preliminary inquiries the Ombudsman found that Restaurant S was not operating in accordance with regulations and had repeated deficiencies over the years. The Ombudsman found that the complaint was vexatious.

Section 9(2)(b)

9(2) The Ombudsman may decide not to further investigate a complaint if

(b) the complainant withdraws the complaint;

Department of Planning

Homeowner T alleged that the Department did not properly investigate her complaint that a relative had encroached on her boundary and had accessed her land during the construction process. After conducting a preliminary investigation the Ombudsman found no maladministration by the Department but wanted to meet with Homeowner T to encourage direct consultation with her relative. This did not materialize as Homeowner T advised that she was pursuing her cause in the courts.

*Thank
You...*

Mr. R. Benjamin, Transport Control Department: for comprehensive responses within days of preliminary inquiries.

Mrs. J. Christopher, Public Transportation Board: for exceptional attention (immediately after joining the Department) to an outstanding matter.

Dr. M. Brewer, Ms. M. Azhar and team, Department of Immigration: for cooperative resolutions.



Selected Summaries of Closed Complaints

Section 9(2)(c)

9(2) *The Ombudsman may decide not to further investigate a complaint if*
(c) *the complaint is settled or is successfully dealt with by mediation.*

Human Rights Commission

Employee U had lodged a discrimination complaint with the HRC. Their initial investigation revealed that the alleged discrimination was a result of a policy of another party. However, the HRC failed to amend its terms of reference as allowed by the Human Rights Act 1981. Accordingly, only one potential respondent was named in the HRC's referral of the matter to a Board of Inquiry. The HRC was in the process of trying to remedy this maladministration according to the Ombudsman's recommendation when it learned that Employee U had settled the matter privately with the one named respondent.

Section 9(3)

9(3) *Where the Ombudsman decides not to investigate or further investigate a complaint, he shall notify the complainant and the authority of his decision and give reasons in writing for the decision.*

Parliamentary Registrar

Taxpayer V felt that the requirement to gain Bermudian status in order to be qualified to vote was contrary to international law and that by virtue of paying taxes he should be allowed the right to vote. The Ombudsman, after researching international law, concluded that Bermuda's policy is consistent with other leading democracies in that the liability for paying taxes does not confer a right to vote. Taxes are commensurate to the privileges of living, employment and owning property in a country.

Bermuda Monetary Authority

Investor W complained that the BMA should have investigated his concern about a staffing decision made by a company he invested in. The Ombudsman declined to investigate as the complaint was made after the 12-month deadline, however the Ombudsman's office did review the relevant legislation and found that the BMA does not have the statutory authority to regulate staffing decisions of the companies within its remit.

Section 9(4)

9(4) *The Ombudsman may indicate with the notification under subsection (3) any other recourse that may be available to the complainant.*

Department of Immigration

Bermudian U.K. Resident X thought that the Department in Bermuda should process her application for a British Overseas Territories citizen passport. The Ombudsman advised Bermudian U.K. Resident X that Bermudians living abroad must apply for passports from the British Overseas Territories Office nearest to their place of residence.

Section 10 – Mediation

10(1) *The Ombudsman may decide to deal with a complaint by mediation under this section if he is of the opinion, having regard to all the circumstances of the case, that mediation is suitable in such circumstances.*

Department of Health

Company Y felt that the Department unduly rejected their explanation for (a) shipping goods without prior authorization and (b) advertising for services it was not yet licensed to offer. The Ombudsman declined to investigate as the Department had undertaken reasonable due diligence. Company Y had been confused about the correct process and was very concerned that its mistake would damage its reputation with the Department. The Ombudsman mediated a meeting, which resulted in an agreement that Company Y would not be prosecuted for breaching the legislation and would adhere strictly to all regulations in future.

Department of Immigration

Parent Z alleged that the Courts and the Department had contravened the International Rights of the Child by imposing harsh and unnecessary conditions on him in order to visit Bermuda to see his children. The Ombudsman explained that she had no jurisdiction over Court proceedings and advised Parent Z to follow the proper procedures for a Court appointment. The Ombudsman's research showed that the Department



Selected Summaries of Closed Complaints

had not been in contravention of any international human rights law. The conditions imposed were reasonable given the circumstances and ages of the children. Nevertheless, the Ombudsman facilitated communication between the Departments of Immigration and Child & Family Services as well as the custodial parent to arrange a supervised visit.

Bermuda Housing Corporation

Tenant AA claimed that the BHC had issued a Notice to Quit and threatened legal proceedings for arrears even though she felt that she had reasonably withheld rent because the BHC failed to effect promised repairs. Using mediation, the Ombudsman found that although the BHC was within its right to insist on arrears, a payment plan would be a more reasonable resolution than eviction.

Public Transportation Board

Commuter BB injured himself exiting a bus and wrote to the PTB, but after three months still had no response. The Ombudsman made inquiries but the matter was addressed only after a new Officer joined the PTB. She explained that all attempts to identify the driver had failed and that the bus in question had been retired. The Officer met Commuter BB in the Ombudsman's office and apologised for the PTB's unresponsiveness. She advised that the PTB had already placed safety markings on the bottom steps of the older buses and that newer buses can deflate to reach the ground to assist those with difficulties exiting or entering the bus.

Section 15 – Procedure after investigation (Recommendations)

15(1) *If, at the conclusion of an investigation, the Ombudsman determines that there is no evidence of maladministration on the part of the authority that is the subject of the investigation, he shall record his decision and the reasons in writing and, as soon as is reasonable, notify both the complainant and the authority thereof.*

HM Customs

Importer CC felt that HM Customs had miscalculated the duty he owed, unduly delayed him for two hours and had unlawfully confiscated some items. The Ombudsman investigated but found no maladministration as Importer CC admitted that his agitated behaviour had escalated the matter. In any event, the duty was calculated correctly and the Department had already submitted a written explanation for the confiscation.

Section 15 – Procedure after investigation (Recommendations)

15(2) *The Ombudsman may indicate any other recourse that may be available to the complainant.*

Department of Labour & Training

Employee DD was concerned that the Department had not made progress on his unfair dismissal complaint that had been filed nearly one year before. The original Inspector worked on it for approximately eight months and then handed the complaint to another Inspector who Employee DD could never contact. The Director had also not responded to Employee DD's letter. The Department confirmed that there had been a delay, for which it apologized, and then explained that because the matter could not be conciliated it would be referred to the Employment Tribunal. Subsequently, additional information came to light that exonerated the employer and the Ombudsman agreed that it was not necessary to refer the matter to the Tribunal.

National Training Board

Trainee EE alleged that the NTB did not give him a course completion certificate. The Ombudsman's inquiries revealed that it was Trainee EE's employer, not the NTB, who was required to issue the certificate after the training was completed. The NTB did however obtain and release the certificates even though Trainee EE's former employer was not satisfied that the on-the-job training had been completed adequately.

Section 15 – Procedure after investigation (Recommendations)

15(3) *If, at the conclusion of an investigation, the Ombudsman decides that there is evidence of maladministration on the part of the authority, the Ombudsman shall report his decision to the authority and the complainant and make such recommendation to the authority as he sees fit.*

Department of Operations & Engineering

Resident FF complained that the Department had not responded to his numerous complaints about the unreliability of the water service to his area, yet he was still being invoiced. Preliminary inquiries indicated that the Department had offered a short-term resolution to area residents of intermittent service (which Resident FF had agreed to) until the construction of a new plant by late 2007. The Ombudsman asked the Department to advise her, by the end of July 2007, of the progress of the construction.



Selected Summaries of Closed Complaints

Section 15 – Procedure after investigation (Recommendations)

15(4) The Ombudsman may recommend that

- (a) a matter should be referred to an appropriate authority for further consideration;***

Bermuda Housing Corporation

Tenants GG and HH complained that the BHC acted inhumanely by evicting their family for arrears, and that amounts estimated by the BHC for damage were inflated or unfounded. The Ombudsman declined to investigate the complaint as Tenants GG and HH acknowledged that they had been chronically in arrears and had breached certain BHC rules. Although there was no maladministration, the family clearly needed ongoing intervention. The Ombudsman suggested that Tenants GG and HH meet with relevant government agencies to develop an emergency housing plan, life-skills counseling, employment training, debt consolidation and parenting classes. She urged the BHC and other relevant agencies to expedite a multi-departmental approach.

Section 15 – Procedure after investigation (Recommendations)

15(4) The Ombudsman may recommend that

- (b) an omission or a delay should be rectified;***

Department of Immigration

Applicant II applied for a work permit for a potential employee. Due to considerable delay, the prospective employee found alternative employment. Applicant II sought a refund of the application fee but there were further delays and difficulties contacting Immigration Officers. After investigation, the Ombudsman found that the delay was unreasonable, the matter was attended to and the fee refunded.

General Post Office

Company JJ alleged that there were extensive delays of up to 11 days in the delivering of bills and receipt of payments, which wreaked havoc on its business operations and affected customers. After making preliminary inquiries the Ombudsman was advised of a number of short- and medium-term measures that the GPO was taking to resolve the delays including hiring a consultant, increasing staff and making a public press statement to apologize for and explain the delay.

Section 15 – Procedure after investigation (Recommendations)

- 15(4) The Ombudsman may recommend that*
- (d) reasons should be given;*

Registry General

Groom KK had not received a marriage license four months after applying for it and no reasons were given. When preliminary inquiries were made the Ombudsman was advised that the Department had sought legal advice on a technical matter. Although the Ombudsman found that the delay was reasonable, she recommended that applicants should be informed in cases of unexpected delay.



Section 15 – Procedure after investigation (Recommendations)

- 15(4) The Ombudsman may recommend that*
- (e) a practice, procedure or course of conduct should be altered;*

Department of Labour & Training

Employee LL claimed that the Department failed to make inquiries into her complaint, after her numerous requests, regarding non-payment of benefits by her employer. After inquiries by the Ombudsman, the Department resolved the issue. With respect to general procedures, the Department will update the Ombudsman on case tracking and other measures to address its timeliness.

Selected Summaries of Closed Complaints

Department of Financial Assistance

Assistance Recipient MM complained that he was required to incur the cost of quarterly medical certificates confirming a permanent disability. Assistance Recipient MM has constant rehabilitation therapy and was receiving a disability pension and financial assistance. This meant that every quarter Assistance Recipient MM had to incur expenses in order to continue to receive help. The Department agreed with the Ombudsman's recommendation that in this case the medical reports could be submitted annually.

Tynes Bay Incinerator

Company NN alleged that the Department failed to provide adequate notice of the short-term closure of the disposal facility for maintenance work. After the Ombudsman's preliminary inquiries the Department agreed that past notices given to individual truckers were inadequate. With respect to general procedures in future, the Chamber of Commerce would be notified of closures of the facility for onward communication to the construction industry. The Ombudsman did not uphold Company NN's suggestion that there be an alternative site during maintenance closures. There was no justification for the cost of creating an alternative site for such short time periods.

Department of Health

Optometrist OO wrote to the Department seeking an exemption from customs duty on the importation of frames and lenses for prescription glasses. Preliminary inquiries indicated that eligibility for exemption from duty should be made by the Department of Health, not HM Customs. With respect to general procedures, the Ombudsman recommended that all Optometrists be notified of the process for applying for customs duty exemption. HM Customs agreed to issue this notice.

*Thank
You...*

Mr. D. Kendall, Department of Health: for comprehensive responses and cooperation.

Major G. Brangman, Bermuda Housing Corporation: for sensitive, quick resolutions even beyond recommendations.

Mr. G. Outerbridge, General Post Office: for immediate response and public notice of problem and resolution.

"Thank you for listening and for all of the assistance that you afforded us. I must say that out of all the persons, contacts, departments that I dealt with, you were the most helpful and informative."— Complainant

Section 25 – Obstruction and contempt

25(1) If any person without lawful excuse

(a) obstructs the Ombudsman in the performance of his functions under this Act; or

(b) does any act or makes any omission in relation to an inquiry or investigation under this Act which, if that inquiry or investigation were a proceeding in the Court, would constitute the offence of contempt of Court,

that person commits the offence of contempt under this Act.

(2) Where a person commits an offence under subsection (1), the Ombudsman may certify the offence to the Court.

Bermuda Housing Corporation

Tenant PP complained that the BHC had not credited her for rent paid for a unit in a building that had become unfit for habitation. After an initial meeting the BHC failed to respond to the Ombudsman's repeated inquiries, choosing instead to challenge her jurisdiction. The Ombudsman eventually issued a summons under section 13(1)(b) of the Ombudsman Act 2004. This, too, was effectively ignored.

In the meantime, the Ombudsman's investigation otherwise uncovered that the BHC had been compensated by an insurance company for damage to the unit for the same period that Tenant PP and the other tenants in the building had paid rent. Effectively, the BHC had been doubly compensated.

The Ombudsman commenced Court proceedings to certify the offence of Contempt of Court against the BHC. The day before proceedings were to begin, the BHC agreed to attend an interview and provide the information requested months earlier. The matter was fully resolved after the BHC's new administration reviewed the Ombudsman's recommendations. Indeed, the BHC is to be commended for its sensitive apology to Tenant PP in the Ombudsman's office. The BHC's resolution went even beyond the Ombudsman's recommendations.

"The Ombudsman's office is truly a welcome addition to Bermuda – especially for those who have almost lost all hope of recovering what is right! Ms. Brock is a very warm-hearted, principled person who went the extra mile in making sure that everything was fair. The rules were explained to me in a way that made it easy for me to understand and the process was quick and efficient. Thank you – job well done!" – Tenant PP.

In this case the Ombudsman also launched an "own motion" investigation under section 5(2)(b) of the Ombudsman Act 2004 in order to ensure that the other tenants in the building were similarly refunded.



Selected Summaries of Closed Complaints

Schedules – Actions not subject to investigation

2 Any administrative action taken by the Cabinet or by a Minister or a Junior Minister.

Department of Immigration

Spouse QQ complained about the decision by Cabinet to disallow his appeal for permission to reside and seek work in Bermuda until the expiration of his wife's work permit. The Ombudsman explained that Cabinet decisions were not subject to review by her office although she could review recommendations made towards those decisions. The Ombudsman's preliminary inquiries confirmed that the criteria for a dependent spouse were not met in this case. A guest worker supporting a dependent spouse must have an annual salary of at least \$55,000 (with a dependent child: \$90,000).

Schedules – Actions not subject to investigation

3 Any exercise of the power by the Governor to pardon persons convicted of criminal offences or commute their penalties.

Non-Ministry

Rehabilitated Offender RR sought the assistance of the Ombudsman regarding his application for a pardon to the Governor of Bermuda. He was convicted of an offence over 19 years ago but was unable to get a rehabilitation certificate and have his name removed from the Bermuda felon list. The Ombudsman declined to investigate because she cannot investigate the Governor's power of pardon.

"No one looked at this for two years. When I told them I'm coming to see you, it was a different story!" – Complainant

"Thank you for your February 21 letter...it was encouraging news and I thank you for your endeavors in this matter. It seems that as a result of your intervention, we will be informed...I am glad Government has seen fit to set up your offices as it seems somewhat unseemly to go to Bermuda's unofficial ombudsman – the press – to air grievances of a personal nature." – Complainant

Schedules – Actions not subject to investigation

- 6** *Any administrative action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority.*

Bermuda Police Service

Employee TT felt that the BPS had disciplined him without due process. The Ombudsman declined to investigate as employment matters were outside of her jurisdiction.

Department of Labour & Training

Union UU alleged that the Department did not properly refer a matter to arbitration. The Ombudsman declined to intervene in a labour dispute but did suggest that it is appropriate to refer matters to arbitration when the Department's conciliation does not succeed.

*Thank
You...*

Ms. K. Marshall, Department of Consumer Affairs: for willingness to consult whenever possible.

Mr. E. Foley, Rent Commissioner: for cooperative and meticulous record of complaints to assist the Ombudsman to determine concern about the issue of rent deposits.

"Thank you so much for the follow up. And I will follow your advice." – Complainant

"I am aware that there is nothing more you could do in this regard, but I did want to express my sincere thanks to you and your team for all your efforts on my behalf. I am not optimistic that I will get what I desire, but at least the matter has had a proper airing, something I had been denied in the past." – Complainant

"Now that the Department knows that it can be reviewed, we are taking more care." – Civil Servant



Of Special Interest

Systemic Investigation

Further to complaints and after consultation with the Human Rights Commission which could not undertake a systemic investigation at the time, the Ombudsman launched an "own motion" investigation in July.

The Government was planning an inquiry into allegations of discrimination involving medical professionals at King Edward VII Memorial Hospital under the auspices of the Ministry of Labour, Home Affairs and Public Safety.

The Ombudsman was concerned that, if that inquiry was not perceived as independent, the matter would ultimately be brought to her. There would then be more resistance from investigation-weary stakeholders.

The Government fully supported the Ombudsman conducting an independent investigation in the first instance.

International Network

The international network of Ombudsmen is of inestimable value. A case in point: Bermuda was able to resolve a matter through the good offices of the Inspector General (Ombudsman) of Uganda. Our Investigations Officer met a Director of the Inspectorate General during a training programme earlier in the year.

The widow of a Bermudian missionary murdered in the Sudan had tried (for almost a year) to obtain his death certificate through diplomatic channels. After also making formal inquiries, we asked our Ugandan counterparts for advice.

The Inspector General obtained the original death certificate from the Sudan.

"We wish to express our gratitude for your diligence and determination to have the matter solved in spite of the impenetrability encountered across borders. We thank you for your perseverance..." – Family

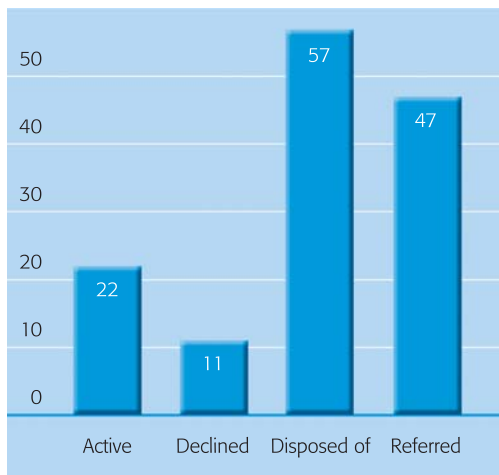
Caribbean Ombudsman Association (CAROA)

At the 2006 Biennial Conference of CAROA, Ms. Brock was elected for a two-year term to its governing Council. Other Council members are: Paul Rodriguez, Ombudsman of Belize (President); Madison Stanislaus, Ombudsman of St. Lucia (Vice-President); Lawrence Laurent, former Ombudsman of St. Lucia (Secretary / Treasurer); Frederik Weil, Ombudsman of Curaçao; and Necker Dessables, Ombudsman of Haiti.

Statistics and Commentary

STATUS OF CASES

Number of cases / Status at July 31, 2006



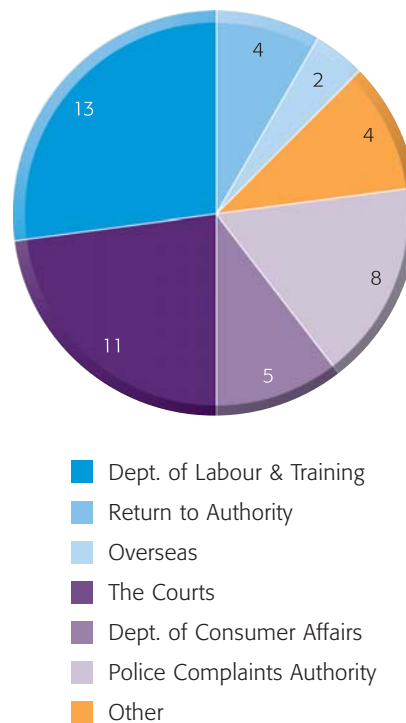
Complaints Management System

We had hoped to transition from a manual to an electronic complaints management system by year end. We looked at excellent but costly systems in five other jurisdictions. However, it appears possible to develop the expertise in Bermuda by reconfiguring a system already used by the Department of Consumer Affairs to meet our needs. We thank the Government Information Technology Office for their assistance throughout the year and for contracting an enthusiastic, independent project analyst, S. Bean, to spearhead this effort. We hope to be online in Spring 2007.

Note: Department of Planning There were more complaints about this Department than any other. Staffing has not grown in proportion to the volume and complexity of its work, particularly for enforcement. The Ministry is working on this challenge.

CASES REFERRED

Number of cases / Where referred



The Tonic Effect

Worldwide, the Ombudsman institution is noted for having a "tonic effect". In Bermuda, we have also been told of at least five instances where we may have assisted without actually launching inquiries. Potential Complainants either told the Authority that they were going to the Ombudsman or copied us on their letters of complaints – and received highly responsive and timely attention. These "tonic effect" situations are not included in our statistics.

Note: Table, Pages 28/29 The number of dispositions totals more than the number of complaints as some complaints had both specific and general resolutions.



MINISTRY				
TYPES OF COMPLAINTS		INEFFICIENT	IMPROPER	UNREASONABLE DELAY
Community Affairs & Sports	4			
Human Rights Commission	4			2
Education	5			
Department of Education	4			
National Training Board	1			1
Environment	11			
Department of Planning	11		2	1
Finance	12			
General Post Office	1			
Government Employees Health Insurance	1			
HM Customs	3			
Department of Social Insurance	5			1
Tax Commissioner	1		1	
Bermuda Monetary Authority	1			
Health & Family Services	14			
Bermuda Hospitals Board	5			
Child & Family Services	1		1	
Department of Financial Assistance	2	1		1
Department of Health	6		1	3
Ministry of Justice	3			
Legal Aid	3			1
Labour, Home Affairs & Public Safety	17			
Bermuda Police Service	2			
Department of Corrections	1			
Department of Immigration	5			2
Department of Labour & Training	7	1		2
Registry General	1			
Bermuda Fire Service	1			
Tourism & Transport	7			
Public Transport Board	1			
Transport Control Department	4			1
Department of Tourism	2		1	
Works & Engineering & Housing	12			
Bermuda Housing Corporation	4		2	
Tynes Bay Incinerator	1	1		
West End Development Corporation	1			
Department of Operations & Engineering	5			1
Rent Commission	1			
Non-Ministry	5			
TOTALS	90	3	8	16

ABUSE OF POWER	CONTRARY TO LAW	UNFAIR/ OPPRESSIVE	MISTAKE OF LAW OR FACT	ARBITRARY	NEGLIGENT/ UNRESPONSIVE	OTHER
			1	1		
		3		1		
	3		5			
					1	
	3				1	
					2	2
		1				
2		1				2
			1		1	
	1		1			
	1				1	
	2				1	
			1		2	1
					1	
						1
					1	
	1			1	1	
	1					
	1				1	
		2	1		2	
						1
	1	1	1			2
2	14	8	11	3	16	9





MINISTRY		DECLINED		ACTIVE	MEDIATED
DISPOSITION OF CASES NOT REFERRED		Not in Jurisdiction	Time Bar		
Community Affairs & Sports	4				
Human Rights Commission	4			2	
Education	5				
Department of Education	4				
National Training Board	1				
Environment	11				
Department of Planning	11	1		6	
Finance	12				
General Post Office	1				
Government Employees Health Insurance	1			1	
HM Customs	3	1			
Department of Social Insurance	5			2	
Tax Commissioner	1			1	
Bermuda Monetary Authority	1		1		
Health & Family Services	14				
Bermuda Hospitals Board	5	2		3	
Child & Family Services	1				
Department of Financial Assistance	2				
Department of Health	6			2	1
Ministry of Justice	3				
Legal Aid	3				
Labour, Home Affairs & Public Safety	17				
Bermuda Police Service	2	1			
Department of Corrections	1				
Department of Immigration	5	1			1
Department of Labour & Training	7				
Registry General	1				
Bermuda Fire Service	1				
Tourism & Transport	7				
Public Transport Board	1				
Transport Control Department	4	1		1	
Department of Tourism	2			1	
Works & Engineering & Housing	12				
Bermuda Housing Corporation	4				
Tynes Bay Incinerator	1				
West End Development Corporation	1				
Department of Operations & Engineering	5			3	
Rent Commission	1				
Non-Ministry	5	3			
TOTALS	90	10	1	22	2

CLOSED AFTER PRELIMINARY INQUIRY OR INVESTIGATION

Maladministration (Recommendations Accepted)				No Maladministration
Informal Resolution	Specific Complaint Recommendation	General Practices Recommendation	Own Motion Recommendation	
1	1			
1				3
				1
2				2
	1	1		
	1	1		1
	2	1		1
				1
	1			1
	1	1		2
1	1			1
				1
				1
	2			1
2	3	2		2
	1	1		
1				
	1	1		
	1			1
				1
	1		1	3
	1	1		
1				
				2
1				1
				1
10	18	9	1	27



Staff



Ms. Arlene Brock

Ms. Brock earned a BA from McGill University, a LLB from Osgoode Hall, York University and a LLM from Harvard Law School (Thesis: "The International Human Right to Health").

After her first law degree she worked in insolvency litigation with Blake, Cassels & Graydon in Toronto and in reinsurance litigation with Milligan-Whyte & Smith in Bermuda. In 1992, Ms. Brock interned for a summer at the United Nations Center for Human Rights where she triaged incoming complaints from around the world and was also the Human Rights resource for a weeklong seminar on peace-keeping conducted by the UN Institute of Training And Research (UNITAR).

Ms. Brock worked for five years with Conflict Management Inc. which was the corporate arm of the Harvard Negotiation Program (the think-tank that pioneered the concept and practice of interest-based negotiations). She conducted a range of negotiation, mediation, diversity, collective bargaining, "train-the-trainer" and strategic planning workshops for a variety of corporate, education and international clients.

She was recruited back to Bermuda as Principal for Strategic Initiatives of Stockton Reinsurance Ltd. She then consulted to the Ministry of Labour, Home Affairs and Public Safety whilst acting periodically as a Magistrate in Family Court and as an adjunct lecturer in employment law at Webster University. She was Chairman of the Permanent Arbitration Tribunal and the Police Complaints Authority, and served on the Boards of Butterfield Bank and the Bermuda Electric Light Company.

She has presented internationally on a variety of subjects around the world including Egypt, the Philippines, Costa Rica, Nicaragua, the Caribbean and Europe and a MSN internet conversation on peace in Northern Ireland.

Effective August 1, 2005, she was appointed by His Excellency the Governor (after consultation with the Premier and the Opposition Leader) as the first national Ombudsman for Bermuda.



Mrs. Quinell Kumalae

Mrs. Quinell Kumalae is the Investigations Officer for the Office of the Ombudsman for Bermuda. She is responsible for undertaking investigations of complaints pursuant to the Ombudsman Act 2004 and making appropriate recommendations. Complaints may require researching domestic and international legislation and case law as well as international Ombudsman best practices.

A graduate of Bermuda Institute and Atlantic Union College, she continued her education at the University of Buckingham and was called to the Bermuda Bar in December 1997. Prior to commencing employment with the Ombudsman's Office in April 2006, Mrs. Kumalae worked for the Bermuda Monetary Authority and the Pension Commission.



Ms. Tanya Jones

Ms. Tanya Jones brings more than 15 years of international and local work experience within the IT and Education industries. Prior to joining the Ombudsman's Office, Ms. Jones was a consultant for the Ministry of Education. She decided to return to the civil service on a full-time basis to make a difference, especially since the Ombudsman Office is a new concept to Bermuda. Her role as Administrative Officer is to manage administrative, human resource, payroll, website and information technology issues within the office. She is a seasoned volunteer who is outgoing, loves to meet new people and learn new things.



Staff (continued)



Mrs. Melody Albouy

Mrs. Melody Albouy is the Administrative Assistant for the Office of the Ombudsman for Bermuda. She has been a Secretary / Administrative Assistant for over seven years. She trained at The Berkeley Institute and the Bermuda College. Mrs. Albouy is our first line of contact for Complainants and visitors. She maintains our complaints register and schedules amongst a variety of other duties.

Her hobbies and interests include reading, walking/running, writing poetry, acting, and spending time with her children and husband. She has performed in several community plays (four times as lead actress). Her love for acting has landed her a major part in a commercial shown on local TV for one of our local fire safety firms.

Many Thanks...

Mrs. Quinell Kumalae, our Investigations Officer, who is meticulous, thoughtful, compassionate and absolutely invaluable.

Ms. Tanya Jones, our Administrative Officer, a quick study of complex payment and administrative systems with an impressive mastery of technology.

Mrs. Melody Albouy, our Administrative Assistant and air traffic controller, keeping the frontline responsive with a willing smile...and extreme multitasking.

Mrs. Joanne Talbot-Johnson, temporary initial Administrative Assistant who, until March 2006, ensured that we would 'hit the ground running' and sensitively welcomed Complainants.

Our two volunteers **Lauren Francis** – beginning law student – who catalogued our library, and **Joanne Burrows** – newly graduated from law school, on loan from the Attorney General's chambers – for research and judicial case summaries.

Thank you all.

Presentations – the Role of the Ombudsman

Conducted both within the Government service and to the public at large:

Media

- News conferences
- Bermuda Sun article May 2006
- Radio talk shows – appearances by Ombudsman and by guests (see below)
 - Everest DaCosta (ZBM 1340)
 - Shirley Dill (VSB 1450 AM Gold)
 - Lt. Col. David Burch (HOTT 107.5)
 - David Lopes (ZBM 1340)
 - Thaa Dill & Nefertari (HOTT 107.5)

Public Lecture

Graciously hosted by the Bermuda College: “The Ombudsman: An Institution for All Seasons” by Dr. Victor Ayeni (then Commonwealth Secretariat) and Dr. Hayden Thomas (Vice President, International Ombudsman Institute; then Ombudsman for Antigua and Barbuda).

Government

- Cabinet
- Civil Service Executive
- Senior Civil Servants at nine Ministries
- Department of Planning

Organizations

- Bermuda Public Service Union
- Seniors Learning Centre, Bermuda College
- Corporation of St. George
- Kiwanis Club of St. George
- Hamilton Rotary Club
- Bermuda Bar Association – Continuing Legal Education

International

Ms. Brock was a co-panelist with human rights scholars Gay McDougal and Hope Lewis at the Black Alumni Celebration of Harvard Law School on: “Ombudsmanship and Human Rights”.



Dr. Victor Ayeni, Ms. Arlene Brock, Dr. Hayden Thomas

Conferences and Workshops

Ms. Brock (Ombudsman):

- “New Ombudsman Orientation” and Conference of the U.S. Ombudsman Association including Performance Measures and Dialogue Techniques.
- Biennial weeklong Conference of the Caribbean Ombudsman Association (CAROA) including Human Rights; Public Sector Reform; and Ethics.
- Public Administration International organized a week of networking meetings with Ombudsmen, scholars, organizations and lawyers. Highlights:
 - Prison and Probation Ombudsman allowed Ms. Brock to shadow investigations and resolution meetings at HM Wandsworth Prison.
 - Meetings of the U.K. Public Sector Ombudsmen group (that is: the U.K. Parliamentary Ombudsman; Ombudsmen covering devolved matters – Local Government in England, Scotland, Wales, Northern Ireland – and the Ombudsmen for Ireland, Gibraltar and Malta).
- Forum for Canadian Ombudsmen: Advanced Investigations Course including The Role of Intuition, Systemic Investigations, and Difficult Complainants.
- Forum for Canadian Ombudsmen: Prison Workshop including International Initiatives and the Importance of Oversight. The Ombudsman invited participants from the Department of Corrections and Treatment of Offenders Board.

- The Ombudsman was kindly invited to the 2006 Annual Meeting of the Canadian Council of Parliamentary Ombudsman. British Columbia’s Apology Legislation and Ontario’s systemic investigation methodology have been of immediate value.

Mrs. Kumalae (Investigations Officer):

- Attended two-week course by Public Administration International: “When Citizens Complain” including evolving principles, best practices, jurisdiction, access, remedies and visits to public and private sector offices. An important feature was sharing and comparing practices with participants from around the world. Bermuda has since received critical assistance from a co-participant, a Director of the Office of the Inspectorate General of Uganda (see page 24).

Ms. Jones (Administrative Officer):

- Attended four workshops in payments, vacation tracking, budget controls and essential supervisory skills.

Mrs. Albuoy (Administrative Assistant):

- Attended a weeklong course in Administrative Development including accountability, conflict resolution and taking initiative.

“Thank you for your continued efforts in following up...I do understand the delay and realize that you have done all you can and now we just have to wait.” – Complainant

How to Make a Complaint to the Ombudsman

How Do I make a complaint?

By letter, email, fax, telephone or in person...

Suite 102, Dundonald House

14 Dundonald Street West

Monday - Thursday, 9:00 a.m. - 5:30 p.m.

Friday 9:00 a.m. - 5:00 p.m.

Tel: 441 296 6541

Fax: 441 296 7734

complaint@ombudsman.bm

info@ombudsman.bm

NOTE: Please submit relevant documents when making your complaint.

What happens to my complaint?

The Ombudsman may:

- Refer you to a more appropriate complaints Authority;
- Make preliminary inquiries, which often resolves a complaint without the need for an investigation;
- Mediate the matter if this seems the most appropriate;
- Conduct a full, confidential investigation, reviewing all relevant documentation and taking evidence (under oath if necessary).

How long does it take?

The Ombudsman investigates complaints as quickly as possible and therefore requests timely responses from Authorities. Many cases can be resolved in a few weeks, but more complex cases can take much longer.

How much does it cost?

Services are free and available to anyone.

*Thank
You...*

H. Edwards, Assistant Director, Department of Telecommunications:
for diligent research.

"Thank you for giving us a fair assessment of our concerns...your several points of business procedure are duly noted and you can rest assured that I will be personally ensuring that they are implemented in our company." – Complainant



Ombudsman Act 2004 “In A Nutshell”

Chapter VIA, s.93A of the Bermuda Constitution provides

- For appointment of the Ombudsman by the Governor, after consultation with the Premier who shall first have consulted the Opposition Leader.
- For removal by the Governor for inability to discharge the functions of office, misbehaviour, or engaging in any other unauthorized occupation.
- That in the exercise of her functions, the Ombudsman shall not be subject to the direction or control of any other person or Authority.

The Ombudsman Act 2004 provides that the Ombudsman

- **Section 2** may investigate administrative decisions, acts, recommendations; failure to do an act or make a decision or recommendation; and failure to provide reasons for a decision or action.
- **Section 2** determines if there is evidence of “Maladministration” which includes actions which are inefficient, bad, improper, unreasonable delay, abuse of power (including discretionary), contrary to or mistake of law, mistake of facts, irrelevant grounds, unfair, oppressive, improperly discriminatory, arbitrary procedures, negligent.

- **Section 3** reviews administrative actions of all Government departments and boards, Public Authorities, other bodies established by Legislature or a Minister or whose revenues or fees derive from money provided or authorized by Legislature.

- **Section 5** The Ombudsman investigates administrative action of an Authority

- pursuant to a specific complaint or on her own motion – notwithstanding that no complaint has been made – where there are reasonable grounds to carry out an investigation in the public interest; and

- makes recommendations about the specific complaint and generally about ways of improving administrative practices and procedures.

- **Section 6** The Ombudsman may not investigate

- until existing procedures or appeals have been exhausted unless she determines that it was not reasonable for the Complainant to have resorted to such procedures; or

- those matters listed in the Schedule to the Act, including: administrative actions that may not be inquired into by any Court; actions taken by Cabinet, Ministers or Junior Ministers; pardon power of the Governor; action taken for investigation of crime or protecting security of Bermuda; conduct of proceedings before a court of law or tribunal; personnel and employment matters.

- **Section 7** Complaints may be made orally, electronically or in writing by a person aggrieved (or other suitable person) about actions within the last 12 months.
 - Persons detained are entitled to be given a sealed envelope to write to the Ombudsman.
- **Sections 8 & 10** The Ombudsman may make preliminary inquiries before launching a formal investigation or refer the matter to mediation.
- **Section 9** The Ombudsman may decide not to investigate if the Complainant knew of administrative action more than one year prior to complaint; existing law or administrative procedure provides adequate remedy and there is no reasonable justification for Complainant not to have availed himself of the remedy; the complaint is frivolous, vexatious or not made in good faith or has been settled.
- **Sections 11-13** After notifying the Authority of the intent to investigate, the Ombudsman may obtain information from such persons and in such manner as she considers appropriate, including inspecting premises, summoning persons and examining them under oath.
- **Section 14** All information given to the Ombudsman is privileged. It is not a breach of any relevant obligation of secrecy to provide information to the Ombudsman. No person may be penalized or discriminated against in their employment for complaining or giving information to the Ombudsman.
- **Section 15** The Ombudsman makes such recommendations as she sees fit including that an omission be rectified, decision be cancelled or altered, reasons be given, practice or course of conduct be altered, and an enactment be reviewed.
- **Section 16** Within 20 days of receiving the Ombudsman's recommendation, Authorities must notify her of action taken or proposed to give effect to the recommendation or reasons for failure to implement. She may submit a Special Report to Parliament if she deems the response inadequate or inappropriate.
- **Sections 17 & 24** The Ombudsman submits an Annual Report and any Special Reports to the Speaker of the House of Parliament with a copy to the Governor and a copy to the President of the Senate. The Ombudsman may not make any adverse statements in reports without giving the Authority an opportunity to be heard.
- **Sections 20 & 21** The Ombudsman and staff must maintain secrecy and are privileged from court proceedings.
- **Sections 25 and 26** Any obstruction of the Ombudsman in the performance of her functions constitutes the offence of Contempt of Court. Intentional misleading or false statements are summary offences.



About Bermuda

At 21 square miles (650 miles due east of North Carolina, just two hours by air from the U.S. East Coast) Bermuda is the only country in the mid-Atlantic Ocean between North America and the Azores. In 1609, Bermuda was settled by English adventurers shipwrecked here while on their way to rescue the Virginia colonies. Today, the island is best known as an hospitable tourist destination.

Through its accident of geography, Bermuda has carved a competitive niche as an economic hub from centuries of slave-based maritime ventures through to early 20th Century provisioning for transatlantic shipping and aviation to strategic submarine and NASA tracking to today's modern tourism and international business sector comprising reinsurance, trust and investment services.

With a wide measure of internal self-government, this British Overseas Territory of 65,000 residents maintains one of the highest standards of living in the world. The excellent quality of our fiscal structure and governance has been endorsed by international reviewers such as the OECD.

With the oldest Legislature in the Western Hemisphere and an independent judiciary, the introduction of the institution of the Ombudsman represents a critical plank in the structures for accountability and transparency in this thriving democracy.





Learn more about us at
www.ombudsman.bm