

# THE PEOPLE MATTER

## OMBUDSMAN FOR BERMUDA Third Annual Report 2008



*For The  
Good Of  
The Public*

*And Those  
Who Serve  
The Public*



March 5, 2009

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 third Annual Report which covers the year 1st August, 2007 to 31st July, 2008.

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,

A handwritten signature in purple ink, which appears to read "Arlene Brock".

Arlene Brock  
Ombudsman for Bermuda

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*The Ombudsman is an independent Officer of the Constitution who investigates complaints from the public about the administrative actions of Public Authorities (including Government departments, boards and bodies established or funded by the Legislature). She provides an impartial form of alternative (free) dispute resolution. She aims to put things right if they have gone wrong. The Ombudsman must submit an Annual Report to Parliament.*

## *Ombudsman's Message*

The highlight of the year was the 5th Biennial Conference of the Caribbean Ombudsman Association (CAROA). Some 38 international and 58 local participants imbibed the insights of some of the world's leading practitioners and scholars. I am eternally grateful to my incredible team as well as volunteers, sponsors, local hosts, government officials and vendors in ensuring that our guests experienced the best of Bermuda.

Our keynote speaker, Olara Otunnu – “World's Children's Ombudsman” – traced the relationship between standard-setting in the international arena and the Ombudsman's role in upholding standards of good governance at the national level (p.34). Transparency and accountability are breezy buzz words, but what do they actually look like in practice? Ann Abraham, UK Parliamentary and Health Services Ombudsman, set out the Principles of Good Administration that she uses to evaluate whether there is maladministration: “It is about behaving with the sort of good sense that does not let officiousness become the enemy of the efficient, perfection the enemy of the good” (p.40).

That good sense is rooted in personal and community values as described by Baroness Fritchie, former UK Commissioner for Public Appointments. She reflected that our daily work literally requires us to summon the courage of our convictions (p.36). Dr. Victor Ayeni, Director, Governance and Management Services International argued that not only must services be delivered with utmost justice, but also that this is a fundamental human right owed by governments to the people (p.45). Frederik Wiel, Ombudsman for Curaçao noted that this is also the principle for Ombudsman investigations (p.37).

André Marin, Ombudsman for Ontario, and Gareth Jones, Director, Special Ombudsman Response Team demonstrated the broad function of the Ombudsman (beyond individual redress of complaints) in their systemic investigations (p.38). Bermuda's Ombudsman Act 2004 explicitly provides for “own motion” investigations in the public interest. Further, the Act specifies that the Ombudsman may make recommendations “generally about ways of improving administrative practices and procedures”.

As detailed by Madison Stanislaus, Parliamentary Commissioner for St. Lucia (& President of CAROA) and Mario Hook, Ombudsman for Gibraltar, small, over-stretched jurisdictions are often challenged with embracing the need to respond to oversight (p.37). William Angrick, President of the International Ombudsman Institute (& Ombudsman for Iowa) outlined how critical issues such as whistle-blowing protection and freedom of information are increasingly intertwined with the work of the Ombudsman (p.42).

Dr. Richard Kirkham, Professor at the University of Sheffield also analyzed the breadth of the Ombudsman and other oversight institutions: “Constitutional lawyers have always talked of three distinct and fundamental branches of the constitution – the executive, the legislature and the courts...it is argued that we should add a fourth branch, the integrity or accountability branch. Such a



*It must, of course, be remembered that the Ombudsman is also a fallible human being and not necessarily right. However, he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds. If his scrutiny and observations are well-founded, corrective measures can be taken in due democratic process, if not; no harm can be done in looking at that which is good.*

Re Alberta Ombudsman  
Act [1970] 10 DLR. (3d) 47

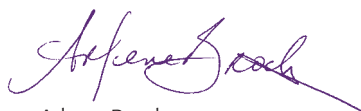
theoretical development is no more than a practical recognition of how constitutions have evolved.”

The Ombudsman of the Netherlands, Dr. Brenninkmeijer, presented an interest-based distinction between *lawful* conduct and *proper* conduct to explain why some Government authorities embrace the help of the Ombudsman while others resist – the latter being more concerned about whether their actions were technically lawful or how they would look as a result of Ombudsman investigations (p.44).

The Bermuda Housing Corporation stands out as an authority that is customer-focused and keen to resolve problems in ways that promote the dignity of the public it serves. In one case, I commended BHC staff “for their grace, patience and professionalism in the face of a blistering attack”. The Bermuda Hospitals Board must be applauded for timely implementation of most of the recommendations of our Systemic Investigation into Allegations of Discrimination (pp.29-31).

The following authorities have been consistent in responding with pragmatic, resolution-oriented approaches to our inquiries: GEHI Management Committee, Department of Immigration, the Tax Commissioner and Transport Control Department. On the other hand there was one instance, in the Department of Planning, where finding a remedy seemed secondary (p.49).

Like all other participants, we found the conference invaluable in deepening our insights into the purpose, practices and evolution of the institution of the Ombudsman. This was particularly poignant in the reflections of senior former Ombudsman, Sir Frank Blackman (first Ombudsman for Barbados), Dr. Hayden Thomas (first Ombudsman for Antigua & Barbuda) and Ms. Lawrence Laurent (former Parliamentary Commissioner, St. Lucia). The conference has certainly strengthened our own resolve. We thank our international colleagues for their participation and encouragement.



Arlene Brock  
Ombudsman for Bermuda

[The powers of the Ombudsman] “are, as they ought to be, extremely wide. They are not powers which this Court should read down. They are beneficial provisions designed in the public interest for the important object of improving public administration and increasing its accountability...whilst it may be expected that the Ombudsman will conform to the statute establishing his office, a large power is intended. The words of the Ombudsman Act should be given an ample meaning. Anti-Discrimination Commissioner v. Acting Ombudsman [2002] TASSC 24



## ***Presentations, Conferences and Courses***

### **Visit to the Complaints Commissioner of the Turks and Caicos Islands ("TCI")**

In March 2008 Ms. Brock was invited by the TCI Complaints Commissioner / Ombudsman, Mrs. Sadie Jean Williams, to conduct a series of meetings on the Ombudsman concept and practice. This three-day visit, supported by the UK Foreign and Commonwealth Office, was a follow-up to an intensive two week understudy visit by Mrs. Williams to Bermuda in December 2006.

Ms. Brock met with the then Governor, Deputy Governor, Speaker of the House of Assembly and a number of Senior Public Officials. The Governor hosted Ms. Brock for an informational lunch with the Deputy Governor, Attorney General, Senior Magistrate, Head of the Public Service Commission, new Chair of the Human Rights Commission and Government House Liaison Officer.

Ms. Brock's presentations traversed the 200 year evolution of the modern Ombudsman institution. She highlighted the fundamental principles of independence and fairness as illustrated by comparative case law and best practices from the UK, Canada, Caribbean, Gibraltar and the US.

Mrs. Williams was a most gracious host and both Ombudsmen benefited from private exchanges regarding office and investigation practices.

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### **Presentations and Courses**

Ms. Brock was asked by the United States Ombudsman Association to be one of the presenters at their Annual Conference in September 2007 (in Alaska). Her presentation was on *"Launching a New Ombudsman Office"*. Mrs. Kumalae attended this Conference.

At the second meeting of the Caribbean Ombudsman Association and the Central American Council of Ombudsman in June 2008 (in Jamaica), Ms. Brock gave a presentation on *"The Human Right to Health in the Work of the Ombudsman"* (sponsored by the Inter-American Institute for Human Rights). Mrs. Symonds attended this meeting.

Mrs. Kumalae attended an Ombudsman of Ontario workshop on conducting systemic investigations, *"Sharpening Your Teeth"* and spent two days in their office. Mrs. Symonds also trained for two days in the Ombudsman of Ontario's office after attending a *"Complaint Intake"* workshop by the Forum of Canadian Ombudsman.

## Staff



**Arlene Brock,  
Ombudsman for Bermuda**

Ms. Brock was appointed the first national Ombudsman for Bermuda in August 2005 by the then Governor after a competitive process and after consultations with the then Premier and Opposition Leader. Previously, she had consulted to the Ministry of Labour, Home Affairs and Public Safety, acted periodically as a Magistrate in Family Court and was an adjunct lecturer in employment law. She was Chairman of the Permanent Arbitration Tribunal and the Police Complaints Authority.

She was also a mediator with Conflict Management Inc. (the corporate arm of the Harvard Negotiation Program). Prior to that, she worked in insolvency litigation with Blake, Cassels & Graydon of Toronto and in reinsurance litigation in Bermuda. In 1992, she interned for a summer at the New York office of the UN Center for Human Rights. Ms. Brock holds a BA from McGill University, a LLB from Osgoode Hall, York University and a LLM from Harvard Law School.



**Quinell Kumalae,  
Investigations Officer**

Mrs. Kumalae was called to the Bermuda Bar in 1997. She holds a BA from Atlantic Union College and a LLB from the University of Buckingham. Previously, she worked as a Manager for the Authorisation & Compliance Department of the Bermuda Monetary Authority and as a Pension Officer at the Pension Commission. Mrs. Kumalae carries out major investigations with enormous insight and thoroughness. She also oversees the electronic complaint management system and conducts research into global best practices and legal matters.



**Tikitta Suhartono,  
Administrative Officer**

Ms. Suhartono is pursuing an Associate Degree from the Bermuda College. Previously she worked as a Financial Reporting Assistant with the office of the Accountant General for Bermuda. In addition to meticulous attention to financial, inventory and other administrative tasks, Ms. Suhartono assists with substantive research and will be managing the website.

In June 2008, when Ms. Suhartono left on maternity leave (now blessed with a delightful son), Mrs. Scherene Bailey from the office of the Accountant General covered her work with boundless enthusiasm and dedication. We also appreciated the eagerness of summer student, Kamara Douglas.



**Georgia Symonds,  
Administrative Assistant**

Mrs. Symonds is an accredited travel consultant who worked in that industry for 30 years. She was also the office manager of a small insurance company.

Mrs. Symonds is especially empathetic and skilled in complaint intake which is her primary responsibility in addition to referrals and managing

the electronic complaint management system.

**Ombudsman's Note:**

As usual, my "dream team" – the "see the end from the beginning" Quinell, "get things done" Tikitta and "bring it all together, down to earth" Georgia – excelled above and beyond all measurements during this past year. As we began to plan for the CAROA Conference, and faced enormous fee proposals from possible event organizers, the team convinced me that we would be able to do this ourselves. From December through May, we pored over every detail to ensure that the Conference content and visitor experience of our overseas guests would be of the highest quality. So said, so done. Our international guests and local attendees were impressed by and appreciative of all of the efficient touches that proved Bermuda's famed hospitality.

The staff managed all of this while continuing to service ongoing complaints with compassion and professionalism. I am truly thankful.



*Georgia Symonds,  
Quinell Kumalae and  
Muriel Bailey dur-  
ing the CAROA Con-  
ference*

During this year the team also initiated changes in processing complaints that ensure better alignment with the new electronic complaint management system.

We are fortunate to have the calm assistance from time to time of Mrs. Muriel Bailey, the Controller assigned to non-Ministry offices by the Accountant General.



## *Selected Summaries of Closed Complaints*

### **Ministry of The Environment & Sports**

#### **Land Valuation Department (“LV Department”)**

**Resident A** and his wife (the property owner) had almost completed renovations on their home. He complained that the LV Department entered the property unannounced and without permission to inspect for the purposes of assessing the new tax rate. Ordinarily, a Certificate of Use and Occupancy Permit (“Planning Certificate”) from the Planning Department would trigger notification by the LV Department to the owner/resident that an inspection will be conducted. This notice is usually sent at least 24 hours prior to the inspection.

There are some instances, other than through the Planning Certificate, when the LV Department learns that construction is substantially completed and that a building is in fact being used. The LV Department may conduct an inspection and assign a new tax rate without the Planning Certificate. In this case the LV Department failed to issue the notice before attending at the property.

When Resident A initially complained, the LV Department acknowledged the error and apologized. Nevertheless, Resident A complained to the Ombudsman who declined to investigate on the ground that an apology had already been made. Ombudsman recommendations aim at putting complainants in the position that they would have been in had there been no maladministration. As it was impossible to turn the clock back for the LV Department to send the proper notice, and as there was no continuing harm, the apology was the most appropriate remedy.

The LV Department has also changed its processes so that proper notices are now sent in advance of inspections whether or not the inspections are triggered by Planning Certificates.

**Condo owner B** knew that a similar sized unit in the same complex had a higher Annual Rental Value (“ARV”) than his. He complained that the LV Department failed to recommend an increase in his ARV. The tax rate is assessed on factors such as size, amenities and ancillary buildings. After re-measuring all of the units in the complex the LV Department determined that the ARV of the neighbour’s unit that was of similar size should be decreased. The Ombudsman found no maladministration as the LV Department had applied its assessment criteria fairly.

#### **Department of Planning (“Planning”)**

**Neighbour C** had finally lost her patience after complaining for over nine years to Planning that her neighbour was using his property for industrial and storage purposes. After several site visits over the years, Planning agreed that the neighbour’s use was illegal for the residential zoning and repeatedly promised to take enforcement action. It never did so – leaving Complainant

*“I would like to thank you and your staff for the competent and thorough job that was done. It was a pleasure to work with your department. I am sure that this matter would still be outstanding if not for your intervention. I don’t think we would be anywhere near a conclusion without your help.”*

plagued by red dirt and noise pollution.

After inquiries by the Ombudsman, Planning again agreed to enforce the zoning regulations. The Ombudsman followed up with 6 letters, emails and telephone calls over a two month period which Planning did not respond to. The Ombudsman was forced to express her concerns directly to the Permanent Secretary and Head of the Civil Service. A month later, Planning confirmed that an enforcement notice had been served which allowed the neighbour four months to stop the illegal activities. Five months later, Planning finally referred the matter to the Department of Public Prosecutions.

**Neighbour D** lived in a close-knit neighbourhood. He signed a Planning Letter of Consent Form to allow his new neighbour to place certain items along the property boundary until construction was complete. However he alleged that the form was later amended without his permission in order to justify that Planning had allowed the neighbour to build within the setback distance. Further, he was aggrieved that Planning did not investigate his allegation. The Ombudsman engaged a documents examiner who reported that there was no evidence of forgery. In this case, Neighbour D had actually agreed to construction within a specified setback distance. There was no maladministration on the part of Planning.

**Neighbour E** is a retiree who enjoys the privacy of his backyard. A developer asked him to sign a Letter of Consent Form to indicate that he had no objections to a proposed house next door. The developer then submitted an application to Planning to encroach four feet into the setback distance (which is normally ten feet). This was approved. However, Neighbour E never agreed to construction within the setback. In fact, he specifically told the developer that he had no objections to the new house “as long as you don’t build within the setback”. He signed the Letter of Consent “just to be a good neighbour”. He was never shown a drawing, plan or told of the developer’s intention to build within the setback. The Ombudsman requested that Planning issue a temporary Stop-Work Order at least until an urgent meeting could be scheduled to review the matter. Planning did not respond.

The Ombudsman found that Planning had erred in accepting an incomplete form that neither stipulated a setback distance nor indicated a plan or drawing number to signify that Neighbour E had viewed a plan prior to signing. Indeed, it was impossible for Neighbour E to have seen a plan because the developer did not have it drawn until a month later just before submitting his initial Planning application. Further, Neighbour E did not see any subsequent or revision plans that were approved by the Development Applications Board. Planning disagreed that it had erred on the ground that incomplete forms had been accepted routinely in the past.

During construction, the developer made an excavation cut that compromised Neighbour E’s boundary. At a site meeting with Neighbour E, the Ombudsman’s Investigations Officer and a

*“I appreciate your thoroughness.”*

*“You gave me information that I haven’t been able to get anywhere or from any law firms.”*

*“I am satisfied with and very grateful for your professional assistance in rectifying the longstanding issue. It has been a long struggle ...once again thank-you for the efforts of you and your staff. I am very appreciative.”*

Planning Officer, Neighbour E indicated that his priority was that the excavation cut be fixed with a retaining wall. In turn, he reluctantly resigned himself to the fact that construction was now finished with the significant encroachment in the setback area. After considerable communication, during which the Director of Planning twice impugned the Ombudsman’s impartiality (*see The People Matter p.49*), Planning required the developer to build the retaining wall.

**Builder F** alleged that Planning had issued a Stop Work Order without explaining why. He contended that each time he tried to resolve the matter another problem would arise. Planning claimed that Builder F had been advised of all of the issues that had to be resolved before the Stop Work Order could be lifted and that he was working to comply. Builder F confirmed this and the Stop Work Order was later lifted. The Ombudsman found no evidence of maladministration.

#### **Department of Environmental Protection**

**Bidder G** believed that certain contractors are favoured by the Government and not required to go through the proper tender process. He complained that a contract for a certain project worth more than \$50,000 should have been tendered. Although three quotations must be obtained for proposed contracts above \$5,000, there is no specific threshold amount for putting a project out for tender. In this case, the Department had sought quotations from four contractors including Bidder G. The successful contractor was appropriately vetted. The Ombudsman found no maladministration in the process or grounds used to award that contract. (*Note that Cabinet must approve projects above \$50,000.*)

### **Ministry of Finance & Economic Development**

#### **Department of Social Insurance (“DOSI”)**

**Medical Office Administrator H** manages the office and accounts for two busy doctors. She complained of unreasonable delays obtaining reimbursement from DOSI for medical claims dating back to 2004 and 2006 under the Hospital Insurance Plan (“HIP”). During the delay, one patient even passed away thus adding an additional burden for the doctor to settle the residual debt through his estate. Medical Office Administrator H wanted an immediate reimbursement on all outstanding HIP claims; an explanation for the delay and backlog; as well as guidance from DOSI with respect to those outstanding claims where the patients have since died.

Further to the Ombudsman’s inquiries, DOSI paid the outstanding reimbursements. Further, all outstanding cheques were hand delivered to enable DOSI to discuss with each doctor’s office the reconciliation of their accounts, timely submission of claims, turn around times and other

relationship matters. An update on their automation system was provided indicating that 99% of pending claims were corrected and paid. Going forward, a system was put in place to ensure that all claims are paid within 60 days.

**Widow I** lost her husband when she was 46 years old. She sought payments from DOSI from the Contributory Pension into which her husband had paid for 34 years until his death. She alleged age discrimination because she was entitled to receive payments only for six months whereas a widow aged 50 years and over would receive Widows Allowance for the remainder of her life.

The Ombudsman found that, although the result may seem harsh, there was no maladministration in DOSI's interpretation and implementation of the relevant legislation. Further, there are similar policies in other jurisdictions. The Ombudsman requested DOSI to advise Widow I of any other payments that she might be entitled to.

**Daughter J** complained on behalf of her elderly father who was very agitated that his doctor's bills had not been paid. A whole year after the surgery, DOSI had not notified her of the amount that would be reimbursed under the Hospital Insurance Plan. After three weeks of leaving several telephone messages, she was told to resubmit copies of the medical bills. A month later she still had no response and began to make instalment payments to the doctor. Shortly after her complaint to the Ombudsman, DOSI indicated that a reimbursement cheque had been sent, but apparently was never received by her father. DOSI agreed to follow up with the office of the Accountant General to ascertain what had happened.

**Retiree K** felt stonewalled by DOSI and frustrated in pursuing his pension application from abroad. Four months after applying for a pension, DOSI informed him that his application was denied. He appealed, as required, within days of receiving that letter. Another two months later, Retiree K inquired into the status of his appeal because he had not received any communication from DOSI. He then complained to the Ombudsman. Her preliminary inquiries revealed that the Appeal Tribunal could not meet for yet another three months. After reviewing his information, the Appeal Tribunal decided that Retiree K could receive his pension up until the date that he ceased to be ordinarily resident in Bermuda. Fourteen months after submitting his original application, Retiree K received his pension cheque.

**Guest Workers L & M** were set to leave Bermuda at the end of their contracts. They independently complained that it was unfair that they had to wait until the age of 65 before being issued a refund of their contributions. The Ombudsman found no maladministration in DOSI's interpretation of the law that pensions are not refundable until age 65. Accordingly, workers who leave Bermuda are responsible for ensuring that DOSI is apprised of any changes in their addresses and other contact information.

*"I wish that the Department was as efficient as you are."*

*"Thank you for all your help. I appreciate it!"*

*“I called your office yesterday – and I have to tell you, the lady on your front desk was enormously helpful and professional – I do hope she is recognized for this!”*

It is possible for workers to receive a gratuity payment at the time that they are leaving Bermuda if all of the relevant contribution conditions (to receive the pension at age 65) have not been met.

#### **Bermuda Small Business Development Corporation (“BSBDC”)**

**Entrepreneur N** passionately wants to develop a new technology business. He alleged that the BSBDC had ignored his complaints that a Ministry had installed a business process that he had originally proposed to them without an adequate tender process. He also complained that the BSBDC had failed to assist him to obtain a business loan. The Ombudsman’s inquiries revealed that it was not within the mandate of the BSBDC to investigate the complaint against the Ministry or to secure a business loan. In this case, it did not appear that Entrepreneur N had developed a compelling business case for the loan. Further, each Ministry is entitled to determine the quality, expertise and viability of any proposal. In this case, the Ministry was able to meet its needs without an external contractor.

#### **HM Customs (“HMC”)**

**Non-Resident O** requested a tax refund from HMC because the product he had paid duty on was defective and returned. In the meantime, he relocated overseas and the replacement product was shipped to his new address. Non-Resident O complained to the Ombudsman after four months of no response from the HMC. The Ombudsman’s preliminary inquiries reopened the lines of communication between the HMC and Non-Resident O to ensure that he had submitted all relevant documentation. Accordingly, she declined to conduct a formal investigation. However, six months later, he still had not received his refund and the Ombudsman made additional inquiries. Another two months later HMC confirmed the refund.

**Shopper P** undervalued her declarable goods. This resulted in a duty payment that was \$120 lower than it should have been. Two months later, HMC notified her that the penalty for the offence of misstatement of the value of the goods would be approximately \$3,800. Shopper P complained that the penalty was unduly harsh and motivated by personal bias. She also believed that her selection for search at the airport went beyond the normal level of scrutiny.

The Ombudsman declined to investigate Shopper P’s complaint with respect to the amount of the penalty as an existing review process was already in place. Two months later HMC conceded that, although the penalty amount was fair, it had erred in notifying Shopper P of the penalty after she left the airport. The penalty should have been imposed immediately when the misstatement was discovered. The Ombudsman found no evidence of unfair treatment or scrutiny as this was Shopper P’s second offence in two years. *(Note that, by law, the penalty for undervaluing goods may be up to \$12,000.)*



**Entrepreneur Q** wanted to determine the level of interest in a new line of products. He imported samples that neither he nor the manufacturer had intended for resale. HMC declined to release the goods on the basis that the invoice value stated by the manufacturer was too low. The manufacturer re-invoiced the goods for a larger value and Entrepreneur Q decided to forgo landing all but 3 of the samples. He complained to the Ombudsman after HMC again refused to release the goods.

The Ombudsman found no maladministration as HMC had correctly followed its policies in the Customs Procedure Code with respect to samples (Bermuda Customs Tariff 2008 7th Schedule). Samples must be: (a) incomplete; (b) bear a manufacturer's official stamp indicating that the products are not intended for resale; and (c) should be rendered useless (but not so much as to destroy the value as samples). An invoice is not adequate as it merely records the value of the sale, not whether the product is intended for resale.

**Retailer R** made frequent business trips to the US for a small, but thriving business. Although for several years his interaction with the airport customs officers was professional and polite, he complained that he increasingly became the target of repeated, unreasonable and aggressive scrutiny.

After careful analysis and discussions with overseas colleagues, the Ombudsman determined that the search powers of HMC are not within her jurisdiction. The Schedule to the Ombudsman Act 2004 provides that "*administrative action taken for the purposes of investigating crime or protecting the security of Bermuda*" is not subject to an investigation.

However, the Ombudsman can investigate allegations about the way that HMC handles a complaint even if it arose out of the search powers. In this case, there was no evidence of maladministration.

## **Office of the Accountant General**

### **Government Employee Health Insurance ("GEHI")**

Elderly and still recuperating from surgery, **Patient S** felt hostage to a run-around as she attempted to settle her medical bills. GEHI had notified her that her pre-operative procedures and overnight hospital stay would not be covered. She was also aggrieved that the response of one of the GEHI clerks to her initial questions was abrupt and insensitive: "we only pay for surgeries that are a matter of life or death".

Patient S was advised to find out if her doctor had submitted a pre-surgery notice to GEHI that it was a medical necessity. She spoke to her general practitioner who referred her to the surgeon who, in turn, referred her back to GEHI. Patient S became quite upset when she was threatened with credit action by the hospital. She began to make instalments on her bill.

*"You're so helpful and took her complaint even though she did not have an appointment."*

*"The Ombudsman is very thorough and informative. She gave me information I can understand and use."*

*“I would also like to thank your office once again for being so professional and courteous – it is really comforting to know that there are people like yourselves out there in the public service!”*

The Ombudsman made a finding of both unreasonable delay and failure of GEHI to provide a clear and courteous explanation of the process and how Patient S could rectify the problem. However no maladministration was found in GEHI’s denial of the reimbursement as it was the surgeon who had failed to give notice of the (genuine) medical necessity of the operation. GEHI agreed to contact the surgeon and request the document stating that the surgery was a necessity.

**Mother T** is faced with years of continual overseas medical treatment for one of her three children – usually twice per year. She submitted receipts for her son’s medical and ancillary expenses for one such treatment. After a month of receiving no reimbursement from GEHI, she complained to the Ombudsman. GEHI had advised Mother T that a year earlier, she had been “double paid” because a charity had also contributed funds toward her hotel and other expenses. GEHI required Mother T to repay its previous year’s reimbursement before she could be reimbursed this time. Although technically correct, the Ombudsman found it unfair for Mother T to repay the previous year’s reimbursement as the combined GEHI and charity contributions had not covered her out of pocket expenses. The charity was amenable to Mother T using the funds for any of her expenses and decided that it would not specify “hotel expenses” for future contributions. GEHI withdrew the request for Mother T to repay and reimbursed her covered expenses for the recent trip.

## **Ministry of Labour, Home Affairs & Housing**

### **Bermuda Housing Corporation (“BHC”)**

**Tenant U** was concerned that the tenants in different units of the same block were paying the same for water despite different usage. She complained that the BHC did not explain how the water bill was calculated. Tenant U’s rental agreement indicated that water usage is metered. However, the BHC conceded that the existing billing calculation was unfair and agreed to install a meter within a month. Further, the BHC intended to purchase electronic meter reading equipment and software with water billing capability. In the interim, water would be billed per person/unit with a review of each circumstance in order to offset any potential unfairness.

**Tenant V** claimed that she suffered from a fungus-related illness caused by mould in her home. She asked the BHC to relocate her within a week. The Ombudsman declined to investigate after preliminary inquiries revealed that Tenant V had already been offered but had declined alternative temporary accommodations. Given the limited housing units available to the BHC, Tenant V was encouraged to accept the next offer until a permanent solution became available. The following month, the BHC confirmed that she accepted a temporary unit.

## Department of Corrections

**Mother W** was anxious about her son's first incarceration. She alleged that her son was suffering physical abuse, medical neglect and that correspondence between him and his lawyer had been intercepted.

Persons detained may send direct, uncensored, letters of complaints to the Ombudsman. However, inmates should first request to meet with the Treatment of Offenders Board ("TOOB") members who visit the correctional facilities periodically and can often resolve such issues on site. The Ombudsman referred the matter to the Chairman of TOOB who visited the very next day. The inmate did not confirm abuse or problems with his correspondence but was gratified that someone was listening to his fears.

**Son X** was concerned that his father, an inmate in Westgate Correctional Facility, was subjected to double jeopardy. His father had been reprimanded by TOOB for assaulting a corrections officer and was also scheduled to appear in court for the same offence. He feared that TOOB could increase his existing period of incarceration. The Ombudsman noted that the father's action was both an infraction of prison rules and a criminal offence. TOOB did not have the power to amend his existing sentence and it was appropriate for the Court to hear this matter.

## Department of Immigration

**Job Seeker Y** had applied for two jobs with the same employer in the private sector. She notified the Department of her concerns that the employer may have violated immigration regulations by hiring a guest worker despite the fact that she was qualified for both posts. She received no response for 10 months and complained to the Ombudsman that the Department not only did not respond but had not adequately investigated her complaints.

The Ombudsman found that the Department had, indeed, failed to respond to Job Seeker Y. The Department should have notified her in writing that her complaint had been investigated but there was no evidence the employer had violated immigration policies. The Department accepted the Ombudsman's recommendation to write a formal letter apologizing for its unresponsiveness and to explain the reason for its conclusion with respect to the employer.

**Foreign Spouse Z** made an application for Bermuda status after 14 years of marriage and was advised that the process takes approximately three to six months. Some 10 months later, during which she had complied with several requests from the Department to adjust or add to her

*"I don't know why I'm smiling and feeling so good – I didn't even get what I wanted."*

*"Your efforts for me helped everyone here in the same situation – we all thank you."*

*“Thank you for responding to all of our queries. May God continue to guide you and give you the wisdom of Solomon in your job as Ombudsman for Bermuda.”*

documentation, she was still awaiting approval. Foreign Spouse Z believed that there was a personal prejudice against her on the part of certain staff within the Department.

The Ombudsman found no evidence of any interference with Foreign Spouse Z's application by any officers within the Department. The delay in processing the status application was due in part to additional investigations by the Department which had received information that Foreign Spouse Z was estranged from her Bermudian husband.

A further delay was necessitated by the fact that, before the status application could be processed, Foreign Spouse Z first needed to apply to be naturalised as a British Dependent Territory Citizen. This is processed through the office of the Deputy Governor and involves applicants swearing an Oath of Allegiance. The Ombudsman did find, however, that the Department's communication about its processes to Foreign Spouse Z was inadequate.

**Employer AA** had tried repeatedly to find a local administrative assistant to work in her busy and demanding business. She then applied to the Department to advertise abroad. The application was denied and she appealed. Although this process should have taken less than six weeks, she had heard nothing 10 weeks later. When she followed up with the Department she was asked to re-fax the information.

It turns out that the file had been misplaced. The Ombudsman found maladministration. Further, despite its mistake, the Department placed the re-submitted file at the end of the queue of appeals to be processed, effectively setting Employer AA back by about four weeks. The Department should have placed the appeal in the order that it would have been in had the file not been misplaced.

The Department wrote a “without prejudice” apology. The Ombudsman made a general recommendation that the Department maintain a tracking system for file processing and monitor the performance of officers charged with processing files.

#### **Department of Labour & Training (“L&T”)**

**Employee BB** complained that his former employer had not paid his vacation pay entitlement. The Ombudsman referred him to L&T because she does not investigate terminations, discipline and other employment matters. Employee BB later returned to the Ombudsman to complain that L&T did not adequately investigate his complaint. After discussion with the Ombudsman, L&T worked on the matter again and three months later the employer paid the outstanding vacation pay owed to Employee BB.

**Employee CC** had complained to L&T that her employer had arbitrarily reduced her sick leave. She then complained to the Ombudsman when L&T told her that it was lawful for an employer to do so. The Ombudsman asked L&T to reconsider whether the employer had contravened the Employment Act 2000. L&T held further discussions with the employer who eventually reinstated Employee CC's sick leave. The employer also reinstated the sick leave of several other employees who had been similarly affected.

## **Ministry of Health**

### **Bermuda Nursing Council ("BNC")**

**Nurse DD** claimed that the BNC failed to follow due process before suspending her. The Ombudsman met with representatives of the BNC who advised that they had not suspended Nurse DD. In fact, they were unable to make a decision regarding the allegation of professional misconduct against her because she had not responded to their earlier communication and request for more information. The Ombudsman declined to investigate as the BNC acted in accordance with the appropriate procedures.

## **Ministry of Culture & Social Rehabilitation**

### **Department of Consumer Affairs**

**Consumer EE** believed that the Department had not properly addressed her complaint against a vendor. She complained that the Department's conclusion that the vendor was correct was unfair and threatened to go to Court. The Ombudsman found that the Department had reasonably considered the matter and that there was no evidence of bias. Consumer EE then protested that the Ombudsman was not given full information by the Department. The Ombudsman reviewed the file but found that Consumer EE's additional arguments did not add relevant factual information.

### **Human Rights Commission ("HRC")**

**Professional FF** believed that she was not held to a fair or acceptable standard with respect to her application to be certified to practice her profession in Bermuda. When she complained of discrimination to the HRC, she advised that she could refer the HRC to documents that would prove a pattern, or at least the existence, within the relevant department of a prior bias against Bermudian applicants. After an initial response to the Statement of Complaint from the department, the HRC asked Professional FF to engage in a pilot mediation program. The HRC indicated that, should conciliation not be successful, the next steps of the complaint would be a referral to the DPP for prosecution, if warranted, or to the Minister for a Board of Inquiry. When the conciliation failed, the HRC voted by a margin of one to dismiss the complaint.

*"This email is to confirm that I met with Ministry officials. Thank you for the influence of your office in assisting me."*



*“Your investigations officer is so helpful. She updates me frequently and explains everything carefully. It really feels like she cares.”*

Professional FF complained to the Ombudsman that the HRC had not adequately investigated her complaint and further, had not followed either the promised or proper procedures in dismissing her complaint. After a protracted investigation of the details of the HRC’s actions with respect to this complaint as well as a review of best practices regarding human rights investigations, the Ombudsman found that the HRC: (a) had erred in setting out the process, as dismissal of a complaint is a reasonable third option if conciliation is unsuccessful; (b) had not adequately investigated the documents that Professional FF had highlighted at the outset; (c) had improperly dismissed Professional FF’s complaint by denying her a due process opportunity to be heard first, as required by the Human Rights Act 1981; and (d) failed to respond to her process inquiries.

During the Ombudsman’s investigation, two of the Commissioners who had wrestled with their decision to dismiss the complaint indicated unequivocally that they would have voted to refer the complaint to the Minister to appoint a Board of Inquiry had they known of even a hint of a prior bias against a Bermudian applicant within the department. The HRC eventually accepted the Ombudsman’s recommendations to edit public brochures to ensure an accurate description of its process and to revisit the conclusion of Professional FF’s original complaint to ensure that she has an opportunity to be heard.

## **Ministry of Works & Engineering**

### **WEDCo**

**Tenant GG** always tried to pay her rent on time. She complained that WEDCo had failed to credit a rent payment and also sent her name to the Bermuda Credit Association without prior notification. Tenant GG filed the complaint to the Ombudsman only a day after detailing the situation to WEDCo. As this did not allow WEDCo sufficient time to resolve the issue, the Ombudsman declined to investigate. An informal inquiry revealed that the matter would be resolved to Tenant GG’s satisfaction.

## **Ministry of Energy, Telecommunications & E-Commerce**

### **Registry General (“RG”)**

**Applicant HH** complained that the RG failed to provide clear and adequate information about how he could make a critical amendment on his birth certificate in order to facilitate his daughter’s application for a UK passport. The Ombudsman declined to investigate as the RG had explained to Applicant HH that his issue may have legal complications and that he should seek the advice of an attorney. The Ombudsman did recommend that the RG set out for Applicant HH the full and clear process for amending his birth certificate.

## Rent Commission

**Tenant II** faced eviction after refusing to pay what she believed was an illegally increased rent. She complained to the Rent Commissioner who advised her to find out directly from the previous tenants what they had paid. She complained to the Ombudsman that this was an unfair burden, especially because the previous tenant now lived abroad. She did not understand why the Department did not have this information in its files or would not take the responsibility of ascertaining this information.

The Rent Commissioner explained that by law, his function is only to process applications to increase rents. Only when a landlord applies to do so would the Rent Commissioner be provided with information about the prior rent. Usually this is through a formal declaration from the landlord to justify that the proposed increase is true and correct. If, as in this case, a landlord raises the rent without making an application, then the Rent Commissioner is unlikely to have information about the prior rent of a unit.

Although Tenant II's questions were understandable, the Ombudsman found that the Rent Commissioner is not legally required to have information on file about the original rent for all rent-controlled housing. Further, the Rent Commissioner refrains from inquiring about the prior rent because his past experience is that some tenants have faced retaliation when landlords learned that their tenants had taken their suspicions to the Rent Commissioner. The Rent Commissioner agreed to assist Tenant II in ensuring that she could not be evicted unless proper procedures were followed.

## Ministry of Education

**Mother JJ** has spent years coping with the special needs, medical and developmental challenges of her son. She was convinced that his illnesses were exacerbated by exposure to mould at school. She requested that the Department transfer him to another school or send him abroad for special education. She was aggrieved that the Department failed to respond. The Ombudsman found no maladministration as Mother JJ had made her request to the second school, not to the Department (which had not received her written requests).

The Department did not have special facilities, teachers or programs to educate her son at any other school but did agree to assign home assistance for two weeks until the school room where he would spend the majority of his time could be tested for mould. The Ombudsman verified with an independent expert that the scientific tests commissioned by the Department were reliable. She assured Mother JJ that her son may attend the original school.

Not everyone was happy:

*One Complainant accused the Ombudsman of believing the "lies" of the Authority and of being completely unhelpful. This was a situation that we reviewed three times and even went on a site visit with the Complainant and two representatives of the Authority. Not only did I find no maladministration but also found that the representatives had been patient in the face of insults and had tried everything in their power to assist the Complainant.*

## *General Recommendations*

### *Arising from Individual Complaints*

S.5(1)(b) of the Ombudsman Act 2004 provides: *“The functions of the Ombudsman are...to make recommendations to an authority...generally, about ways of improving its administrative practices and procedures.”*

#### **Department of Land Valuation**

The Department should revamp its practices to ensure that notices are sent routinely for site inspections generated internally in the same way that notices are already sent routinely for site inspections generated by Department of Planning Certificate of Use and Occupancy Permits.

#### **Department of Planning**

*Certificate of Use and Occupancy Permit:* the Department should implement a clear check-off process to ensure that Certificates are not issued until the conditions of disputes, revision applications and other outstanding matters have been resolved.

*(Note: this was also strongly urged in our 2007 Report – we appreciate that the new Building Control Officer, Mr. Gordon Ness, is committed to resolving the problem of Certificates being issued before resolution of conditions that were either required by the development permit or that neighbours were still objecting to.)*

*Record date of posting of appeal letters:* Section 30(1)(2) of the Development and Planning (Application Procedure) Rules 1997 (“Rules”) provides that for the purposes of an appeal, notice of the Development Application Board’s decision shall be “deemed to have been received by the applicant or other person on the day on which it was actually received or seven days after the date of posting, whichever is earlier”. Although this implies that the Department should know when a letter was mailed, there is no statutory requirement for the Department to record the date. The Ombudsman recommended that the Department should record the date of posting in order to comply practically and rationally with the Rules. A failure to implement this General Recommendation can then lead to adverse inferences in future investigations of similar complaints by the Ombudsman.

*Independent verification of application information:* The Department should verify data on applications that pertain to protected conservation areas by cross-checking to easily available resources (photographic history, electronic e.g. such as Beemis, Departmental files).

*Consultation with other departments:* The Department should, as a matter of agreed protocol and practice, consult with the Department of Conservation Services (and/or similar relevant authorities) whenever applications may impact on protected conservation areas – prior to presentation of the Board Report and prior to assigning any monitoring or enforcement responsibilities to other departments.

#### **Human Rights Commission (“HRC”)**

In order to maintain international best practices and standards, the HRC should:

1. institute a robust, systematic program of training for all staff in the purposes, principles and practice

of human rights investigations. Training should be ongoing and updated by best practices elsewhere.

2. consider requesting the expert and relatively inexpensive assistance of the Human Rights Unit of the Commonwealth Secretariat.
3. avail itself of databases and other sources of leading case law from the European Court of Human Rights, Canadian jurisdictions and elsewhere. While not binding, and in many cases distinguishable from complaints in Bermuda, such resources nevertheless are useful to reinforce learning and analysis about the principles and specific guidelines (such as the duty of investigatory fairness) relating to the work of national human rights institutions.

#### **Department of Social Insurance**

The Ombudsman received a number of complaints from doctors about persistent delays in reimbursing Hospital Insurance Plan ("HIP") claims. The Department of Social Insurance explained that this was a result of: (a) increased supplemental HIP benefits without the appropriate computer system to cope with the demand; (b) repeated training of employees because of the high turnover of temporary staff; and (c) manual reconciliation of claims.

The Department eventually responded to doctors who complained. However, the Ombudsman found this inadequate as only the doctors who contacted the Department were apprised of the Department's efforts. She recommended that the Department write a letter to all affected doctors by May 30, 2008: (a) apologizing for the lack of communication regarding the backlog; (b) apprising them of the technological challenges; and (c) explaining their proposed plan and deadlines and that updates will be given periodically.

#### **Department of Immigration**

The Ombudsman made a general recommendation that the Department maintain a tracking system for file processing and monitor the performance of Officers charged with processing files. The Department notes that an electronic system is being installed.

In order to assist applicants to understand why the process may be protracted, the Ombudsman recommended that the Department: (a) explain to applicants the reasons they may require additional documents; and (b) review and determine what may or may not be disclosed to applicants while an investigation is ongoing.

#### **Department of Labour & Training**

Adequate and clear communication in the form of written correspondence is critical when an authority is giving a result or opinion about the rights of complainants. This is particularly important in order to alleviate the confusion and misinterpretation that too often result when complainants are upset. Accordingly, the Ombudsman recommended that the Department revise its communication protocols so that it gives written conclusions to complainants about the disposition of their complaints.

*The Parliamentary intention was that reports [i.e. recommendations] by the Ombudsman should be loyally accepted by the local authorities concerned ... This is clear from [the section of the Act] which requires the local authority to notify the Ombudsman of the action which it has taken and proposes to take in light of his report.*

R v Local Commissioner for Administration ex parte Eastleigh Borough Council [1988] 1 QB 855

The **Bermuda Coastal Erosion Vulnerability Assessment Report** is available for reference at the Dept. of Planning. **Coastal Protection and Development Planning Guidelines** can be found on [www.planning.gov.bm](http://www.planning.gov.bm).

## Did You Know?

### Department of Financial Assistance

*Under the Financial Assistance Act 2001, persons without Bermuda status cannot qualify to receive financial assistance. Possession of a Permanent Residency Certificate is not sufficient in meeting the criteria for Bermuda status.*

### Department of Planning

**Letters of Consent:** Neighbours of proposed developments who are asked to sign letters of consent should make sure that:

- Every line is filled out clearly before you sign
- Developer gives you a copy of the plan that will be submitted to the Development Applications Board (“DAB”) (to ensure that the plan shown to you is not different from the plan submitted)
- You write in any conditions or objections you may have
- You consult an attorney if you have any questions or concerns
- You make and retain a copy of the Letter of Consent immediately upon signing.

**Verbal understanding:** Sometimes at the outset of a development or prior to revision applications, neighbours who have concerns about (usually) boundary issues may forge agreements with developers about conditions for going forward. Even those verbal agreements facilitated or witnessed by planning officers may not be recorded in planning files or conveyed to the DAB as conditions for approval of the development applications or revisions. Therefore, neighbours should ensure that all agreements made with developers are set out in writing.

**Fencing:** The Bermuda Plans 1992 and 2008 state that fencing should retain the rustic, rural appearance compatible with the “Bermuda Image”. In practice, planning permission has not normally been required for fences four feet and under. In considering applications for fencing over four feet, the Department has decided that the material must be wood, rather than PVC.

**Planning advice:** The Ombudsman has recommended that any instructions or advice given by the Department to the public should specify or refer to the relevant sections of the Development & Planning Act, the Planning Statement or other source documents and policies. This would help to alleviate confusion with respect to highly technical requirements or procedures.



#### Department of Corrections

*Inmates facing concerns regarding their care whilst in prison may ask to meet directly with a representative of the Treatment of Offenders Board and request their assistance in resolving the issue.*

#### Department of Immigration

*The Minister for Immigration is entitled **not** to approve a spouse's application for Bermuda status if the parties to the marriage are estranged for 2 years preceding the application. Estrangement may be concluded even when the parties are living at the same residence. The powers of officers in the Department of Immigration to investigate concerns raised about a spousal application are broad and may take whatever time that the officers deem is necessary.*

#### Government Employee Health Insurance ("GEHI")

*Any insured who must undergo surgery abroad is required to have a doctor's letter submitted to GEHI and obtain GEHI's approval before their surgery. The letter must indicate that the procedure is a medical necessity.*

#### Department of Social Insurance

**Guest Workers:** *It is the responsibility of guest workers who must leave Bermuda before they are eligible to receive a pension refund to inform the Department of Social Insurance of their new address abroad as well as any subsequent changes of contact information.*

**Widows:** *Widows under the age of 50 years are entitled to a six month allowance from the Contributory Pension Scheme whereas widows 50 years and over receive an allowance for life.*

**Unemployed Spouses:** *Employees who withhold information (e.g. on the medical enrollment form) and do not register unemployed spouses are responsible for paying any medical claims for their unemployed spouses.*

**Time to reimburse:** *All Health Insurance Plan reimbursement claims are to be paid within 60 days of submitting.*

#### Dept. of Environmental Protection

*The importation of **Palm** plants is prohibited under the Agriculture (Control of Plant Disease and Pest) Regulations 1970.*

#### Post Office

*Postal codes must have the two letters in front of the numbers, even for post box addresses in sub-post offices.*

#### Transport Control Dept.

*Within 30 days of the expiry of any vehicle licence, you must make a declaration to TCD regarding storage or disposal of the vehicle.*

### Department of Land Valuation

**Notice of Inspections:** *The Department of Land Valuation must send property owners/land tax payers written notice 24 hours prior to conducting an on-site survey and assessment for land valuation purposes.*

**Internal Conversions:** *Conversion units that have the effect of creating a separate residence from an already existing structure must receive a Certificate of Use and Occupancy Permit from the Department of Planning before a Land Valuation Assessment Number can be granted.*

### HM Customs

**Penalty for undervaluing goods purchased overseas:** *The maximum penalty that can be levied for making misstatements on a customs declaration form and/or undervaluing the goods declared is \$12,000. However HM Customs must impose the penalty for this offence at the time of entry into Bermuda.*

**Samples:** *For goods to be regarded as samples by HM Customs when shipped to Bermuda, they must be incomplete goods that are unable to be re-used or re-sold. Importers must ensure that the goods have the manufacturer's stamp stating the words "sample" or "this product is a sample and is not for re-sale" or such other notice that the goods are samples.*

### Rent Commission

*Persons in rent controlled housing who wish to complain about increases that were not approved by the Rent Commission must provide proof that the rent paid by the previous tenant was lower. Such proof can be obtained from the previous tenant or from the landlord who is required to give a new tenant a written statement of the previous tenant's rent (but only if the rental unit was subject to rent control for the previous tenant).*

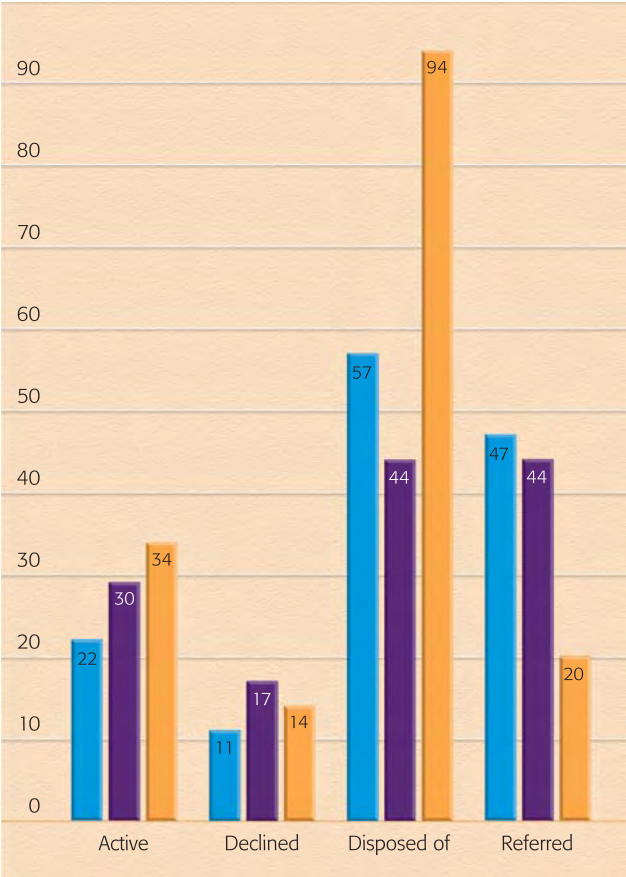
### Pension Commission

*Subject to certain exceptions, once pension benefits become vested, the contributions (plus any interest) cannot be taken out of the pension fund as a cash lump sum. Vested funds can only be used to provide a retirement income to the plan member (or to be distributed to the member's beneficiary). Portability to overseas pension plans is possible when a plan member terminates employment before reaching retirement age. [National Pension Scheme Act 1998]*

Statistics

STATUS OF COMPLAINTS

Number / Status at July 31, 2006, 2007 and 2008



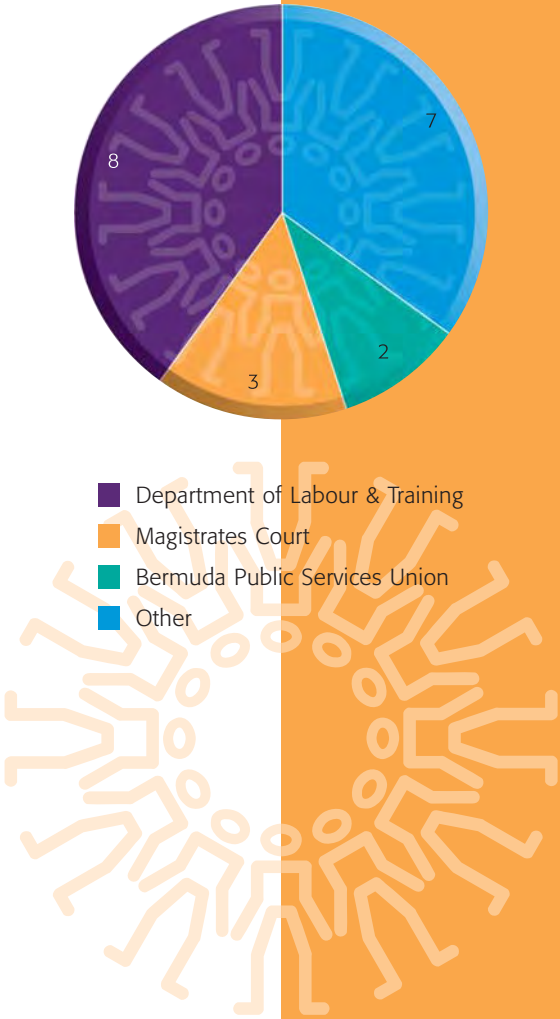
- 2006 – Total Number of Complaints **137**
- 2007 – Total Number of Complaints **134**
- 2008 – Total Number of Complaints **127**

Complaints Not Referred

Complaints Brought Forward at July 31, 2007	30
New Complaints Not Referred	107
Complaints Disposed of During the Year (See pp.26 & 27)	94
Complaints Outstanding at July 31, 2008	34

COMPLAINTS REFERRED

Number / Where Referred



**Statistics** do not include complaints to authorities which were copied to us. Anecdotally, this appears to have assisted with more timely responses from authorities.

MINISTRY (at 31/07/08)				
TYPES OF COMPLAINTS		INEFFICIENT	IMPROPER	UNREASONABLE DELAY
<b>Cabinet</b>	<b>5</b>			
Archives	5			
<b>Culture &amp; Social Rehabilitation</b>	<b>9</b>			
Charities Commission	1	1		
Consumer Affairs	2	1		
Department of Court Services	3			
Department of Financial Assistance	2			
Human Rights Commission	1	1		
<b>Education</b>	<b>7</b>			3
<b>Environment &amp; Sports</b>	<b>20</b>			
Department of Environmental Protection	2		1	
Department of Land Valuation	4			
Department of Parks	2			
Department of Planning	12	1		4
<b>Finance &amp; Economic Development</b>	<b>20</b>			
Accountant General	7		2	3
Bermuda Small Business Development Corp.	1			
Bermuda Monetary Authority	1	1		
HM Customs	4			
Department of Social Insurance	7	1		3
<b>Health</b>	<b>7</b>			
Bermuda Hospitals Board	2			
Department of Health	5			1
<b>Labour, Home Affairs &amp; Housing</b>	<b>24</b>			
Department of Immigration	8	1		3
Department of Labour & Training	7			1
Department of Corrections	2			
Bermuda Housing Corporation	4			1
Fire & Rescue Service	1			
National Training Board	2		1	
<b>Energy, Telecoms &amp; E-Commerce</b>	<b>4</b>			
Registry General	1			
Rent Commission	2			
Department of Telecommunications	1			
<b>Tourism &amp; Transport</b>	<b>1</b>			
Transport Control Department	1			
<b>Works &amp; Engineering</b>	<b>3</b>			
West End Development Corporation	2	1		
Department of Operations & Engineering	1	1		
<b>Non-Ministry</b>	<b>7</b>			
<b>TOTALS</b>	<b>107</b>	<b>9</b>	<b>4</b>	<b>19</b>

ABUSE OF POWER	CONTRARY TO LAW	UNFAIR/ OPPRESSIVE	MISTAKE OF LAW OR FACT	ARBITRARY	NEGLIGENT/ UNRESPONSIVE	OTHER
5						
		1				
		2				1
		1			1	
					2	2
				1		
		2	1		1	
		1			1	
				2	3	2
			1		1	
		1				
1					1	2
		3				
					2	
1					2	1
		1		2		1
		1	2		2	1
1						1
	1					2
						1
						1
					1	
		1			1	
			1			
					1	
					1	
4				1		2
12	1	14	5	6	20	17



Figures in blue represent complaints outstanding at the end of 2007 which were closed in 2008.

MINISTRY (at 31 / 07 / 08)	# of new Complaints	OUTSTANDING	DECLINED	
DISPOSITION OF CASES NOT REFERRED			Not in Jurisdiction	Time Bar/ Withdrawn
<b>Cabinet</b>	<b>5</b>			
Archives	5	5		
<b>Culture &amp; Social Rehabilitation</b>	<b>9</b>			
Charities Commission	1	1		
Consumer Affairs	2			1
Department of Court Services	3	1	1	1
Department of Financial Assistance	2		1	
Department of Child & Family Services	1			1
Human Rights Commission	1		1	
<b>Education</b>	<b>7</b>	1	3	1
<b>Environment &amp; Sports</b>	<b>20</b>			
Department of Environmental Protection	2	1		
Department of Land Valuation	4		1	
Department of Parks	2		1	
Department of Planning	12	4	1 / 1	1
<b>Finance &amp; Economic Development</b>	<b>20</b>			
Accountant General	7	3	2	
Bermuda Small Business Development Corp.	1			
Bermuda Monetary Authority	1	1		
HM Customs	4			
Department of Social Insurance	7	1		
Office of the Tax Commissioner	2			
<b>Health</b>	<b>7</b>			
Bermuda Hospitals Board	2	1		
Department of Health	5	1	1	
<b>Labour, Home Affairs &amp; Housing</b>	<b>24</b>			
Department of Immigration	8	3		1
Department of Labour & Training	7	4		1
Department of Corrections	2			
Bermuda Housing Corporation	4		1 / 1	
Fire & Rescue Service	1			
National Training Board	2			2
<b>Energy, Telecoms &amp; E-Commerce</b>	<b>4</b>			
Registry General	1			
Rent Commission	2	1		
Department of Telecommunications	1			1
<b>Tourism &amp; Transport</b>	<b>1</b>			
Transport Control Department	1			
Department of Marine & Ports Services	1			
<b>Works &amp; Engineering</b>	<b>3</b>			
West End Development Corporation	2	1		
Department of Operations & Engineering	1			
<b>Non-Ministry</b>	<b>7</b>	5	1	
<b>TOTALS</b>	<b>107 / 21</b>	<b>34</b>	<b>14 / 2</b>	<b>7 / 3</b>

CLOSED AFTER PRELIMINARY INQUIRY OR INVESTIGATION				
Mediation/ Informal Resolution	Maladministration		No Maladministration	
	Specific Complaint Recommendation	General Practices Recommendation	Value Added	No Action
				1
	1			
	1	1		
1			1	
			1	
1			1	1
			1	
	1	1 / 1	3 / 2	2
			2	
			1	
			3	1
	2 / 2		4	1
			2	
			1	1
1		1	2	
	1 / 1	1 / 1	2	1
	1	1	1 / 1	1
			2	
			2	1 / 1
				1
			1	
			1	
	1	1		1
1				
			1	
			1	
				1
3 / 1	5 / 6	3 / 5	30 / 6	12 / 2

Number of dispositions exceeds number of complaints as some complaints had both specific and general recommendations.

## *Updates on General Recommendations*

*from 2007 Annual Report*

### **Department of Environmental Health**

The issue regarding the regulation of Lodging Houses is under active review by the Ministry of Health.

### **Health Council / Department of Social Insurance**

In May 2008, the Ministry of Health amended the "Additional Benefits" Order of the Hospital Insurance Plan ("HIP") to cover \$70,000 of the cost of kidney transplants for HIP patients. This is in addition to the \$30,000 that the Mutual Reinsurance Fund already covered. Therefore, the total coverage was raised from \$30,000 to \$100,000. This is a huge and important step. The Ministry of Health must be applauded for this patient-centred response.

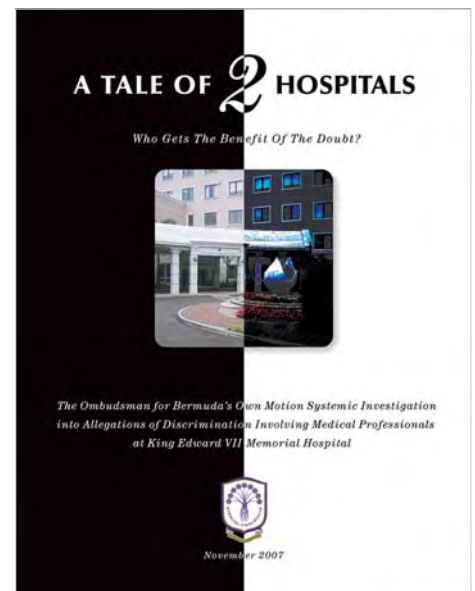
Although concerns remain that the full costs of transplants and pre-transplant assessment for eligibility are not covered, the 15 patients who may currently be eligible for transplants may present their cases to the Health Council for further financial assistance on an individual basis.

### **King Edward VII Memorial Hospital ("KEMH")**

As the following table shows, the Bermuda Hospitals Board (BHB) is moving swiftly to address all but one of the Recommendations in our Systemic Report on Allegations of Discrimination Involving Medical Professionals at KEMH. Contrary to some fears, this report did not languish on a shelf. Although one person complained that the changes are not sufficient and another complained that the changes have gone too far, neither presented persuasive evidence of bad faith on the part of the BHB. I remain heartened that the steps being taken will lead to enduring and substantial change in the culture of professional interdependence and collegiality at KEMH.

*[Note: Interestingly, the National Health Service recently conducted an extensive survey that revealed the UK is grappling with similar issues: "black and minority ethnic staff is grossly under-represented among senior management but disproportionately involved in disciplinary, grievances, bullying and harassment cases and capability reviews" (Health Service Journal, 6th Nov. 2008).]*

Bermuda has the potential to become a model.



## Update on Systemic Investigation

King Edward VII Memorial Hospital

RECOMMENDATIONS	INITIATIVES / DEADLINE
<p><b>Recommendation I (p.11):</b></p> <p>The BHB / KEMH should change its accreditation body to the US Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) which, as our research indicates, offers more robust methods for data collection and iterative, ongoing follow-up.</p>	<p><b>Under consideration; in progress / December, 2009</b></p> <ul style="list-style-type: none"> <li>• The BHB will forgo making any decisions on changing our accrediting body until after the completion of our current review (May, 2008). It must be noted that Accreditation Canada (formerly CCHSA) has adopted interactive tracer methodology similar to JCAHO.</li> </ul>
<p><b>Recommendation II (p.18):</b></p> <p>The hospital should review and follow its Bye Laws and Regulations to ensure clarity, transparency and equitable implementation.</p>	<p><b>Accepted; in progress / December, 2007</b></p> <ul style="list-style-type: none"> <li>• Bye Laws and regulations reviewed</li> <li>• Rewriting of Bye Laws underway / <b>March, 2009</b></li> </ul>
<p><b>Recommendation III (p.21):</b></p> <p>The hospital should analyze legacy blocks and cancellations to ensure best practice in allocation of OR time (and by analogy to zero-based budgeting principles).</p>	<p><b>Accepted; implemented / January, 2008</b></p> <ul style="list-style-type: none"> <li>• The assignment of OR time has been removed from Nursing and is now owned by the new Chief of Surgery.</li> <li>• The Chief of Surgery and Chief of Anaesthesia consult on OR conflicts and communicate with medical staff.</li> </ul>
<p><b>Recommendation IV (p.24):</b></p> <p>The BHB / KEMH should immediately engage information databases, specialist retainers and other relevant resources that doctors would be required to consult in arbitrating between different views on clinical care. This information should also be used to analyze disputed anaesthetic and surgical procedures and to establish standard protocols for pre-, intra- and post-operative practices.</p>	<p><b>Accepted; in progress / March, 2009</b></p> <ul style="list-style-type: none"> <li>• Following the policy decision to formalize the relationships with a number of health systems, the BHB has announced a Clinical Advisors relationship with Dana-Farber for Oncology.</li> <li>• Clinical Advisors will be assigned to Departmental Chiefs to assist with developing clinical standards, quality reviewing (including implementing peer review), physician training and accessing or sourcing specialist care for select disease cases.</li> </ul>
<p><b>Recommendation V (p.26):</b></p> <p>The hospital should reconsider implementing outstanding recommendations from previous reports regarding the Department of Anaesthesia and revisit the idea of hiring its own anaesthetists – at least to cover Bermuda's emergency needs.</p>	<p><b>Review completed / 1st BHB employed Anaesthesiologist will commence employment on January 5th, 2009; onsite 3rd week of January, 2009</b></p> <ul style="list-style-type: none"> <li>• Johns Hopkins will provide a Clinical Advisor to conduct a review of the Anaesthesiology Department and previous reports.</li> </ul>
<p><b>Recommendation VI (p.36):</b></p> <p>The BHB, in conjunction with relevant internal committees, the Ministry of Health, the Bermuda Medical Council ("BMC") and the Bermuda Health Council, should engage in a strategic review of Bermuda's clinical manpower needs, including whether the BHB, the BMC or other entity should hold the work permits of the specialists who practice only at KEMH.</p>	<p><b>Accepted; implemented at BHB</b> <b>In progress across health care system</b></p> <ul style="list-style-type: none"> <li>• The Chief of Staff has completed a medical manpower review in respect to BHB. / <b>May, 2008</b></li> <li>• The BHB has received permission to hold physician work permits and bill for services rendered. / <b>April, 2008</b></li> <li>• The BHB is in consultation with the Ministry of Health and the Bermuda Health Council to extend this review across all physicians. / <b>December, 2009</b></li> </ul>

RECOMMENDATIONS	INITIATIVES / DEADLINE
<p><b>Recommendation VII (p.38):</b></p> <p>The hospital's Board should review and rationalize its own structures and operations in accordance with best practices in order to strengthen its independence and leadership.</p>	<p><b>Accepted; completed</b></p> <ul style="list-style-type: none"> <li>• The Board and CEO restructured both the Board Committees and the hospital management team. / <b>October, 2007</b></li> <li>• Dr. Donald Thomas III was hired as the Chief of Staff in August, 2007. / <b>August, 2007</b></li> <li>• Dr. Thomas posted and hired seven new Chiefs between October, 2007 and January, 2008. / <b>December, 2007</b></li> <li>• Medical manpower was transferred to the control of the Chief of Staff effective 1st April, 2008. / <b>April, 2008</b></li> <li>• The BHB has received permission to hold physician work permits and bill for services rendered.</li> </ul>
<p><b>Recommendation VIII (p.47):</b></p> <p>KEMH should clarify qualification equivalencies between different jurisdictions and establish an adequate induction program.</p>	<p><b>Accepted; completed / April, 2008</b></p> <ul style="list-style-type: none"> <li>• BHB has adopted core privileges for new applications and renewal applications for medical staff.</li> </ul>
<p><b>Recommendation IX (p.55):</b></p> <p>KEMH must introduce an 'apples to apples' data collection and comparison which is benchmarked to medical literature and includes mandatory reporting by doctors to the Office of Quality and Risk Management and the Privileges Review Committee of all elements of their practice such as lawsuits, insurance settlements and billing anomalies.</p>	<p><b>Accepted; in progress</b></p> <ul style="list-style-type: none"> <li>• Clinical Advisors will provide guidance / <b>December, 2008</b></li> <li>• Ministry of Health advised of changes required to legislation</li> </ul>
<p><b>Recommendation X (p.58):</b></p> <p>The hospital should augment its Major Clinical Incident Policy to ensure a clear, accessible and confidential procedure in a separate complaints department to identify, report, review and respond to sentinel events. There should also be a policy based on best practices, for disclosing incidents to patients.</p>	<p><b>Not accepted –</b></p> <p>Considered separate complaints department</p> <ul style="list-style-type: none"> <li>• The Quality Department is separate from the Chief of Staff's office. / <b>2007/2008</b></li> </ul> <p><b>Accepted</b></p> <ul style="list-style-type: none"> <li>• Legislation required / <b>December, 2009</b></li> </ul>
<p><b>Recommendation XI (p.64):</b></p> <p>The hospital must phase in mandatory, methodical and regular reviews of adverse events, including Morbidity and Mortality Rounds and analytical tools such as Root Cause Analysis and Evidence Based Practice.</p>	<p><b>Accepted; in progress</b></p> <ul style="list-style-type: none"> <li>• Clinical advisors will provide guidance / <b>December, 2008</b></li> <li>• Revised Bye Laws</li> </ul>
<p><b>Recommendation XII (p.68):</b></p> <p>The hospital must revamp entirely its disciplinary process, including training in tribunal process. Consideration should be given to appointing lay arbitrators to any disciplinary review panel.</p>	<p><b>Accepted; in progress</b></p> <ul style="list-style-type: none"> <li>• The disciplinary process will be revamped in the new Bye Laws. / <b>March, 2009</b></li> </ul>
<p><b>Recommendation XIII (p.73):</b></p> <p>The hospital should require recruitment criteria for leadership positions to include training in conflict management, diversity and administrative due process. Physician leaders should</p>	<p><b>Accepted; in progress / October, 2008</b></p> <ul style="list-style-type: none"> <li>• Review of all Job Descriptions hospital wide, including physicians, to include performance expectations relative to Diversity and Service Excellence.</li> </ul>

RECOMMENDATIONS	INITIATIVES / DEADLINE
<p>have clear job descriptions, which include a credible commitment to equality. Each Department should submit annual reports.</p>	<ul style="list-style-type: none"> <li>● Expanded to be part of a Culture of Service Excellence. Values defined as behaviours and added to Performance Excellence – <b>In progress</b> Review of Best Practice Training – <b>In progress</b></li> <li>● Training/education in Conflict Management Diversity and Administrative Due Process to be part of performance curriculum and mandatory development curriculum</li> <li>● Formalized reporting/written grievance process to be followed by BHB, BPSU and BIU / <b>May, 2008; completed</b> – part of new contract</li> <li>● Annual reports to be provided to Diversity Officer (DCEO) on: Diversity ● Hot-Line Issues ● Grievance Issues ● Exit Interviews ● Physician Initiatives – Implemented physician training and development programs through the Greeley Company / <b>June, 2008</b> ● Expanded depth of physician leadership ● New job descriptions for physician leaders have been drafted</li> </ul> <p><b>In progress or completed:</b> Accountability processes implemented to ensure capture and triangulation of data culled from Grievances, Exit Interviews, Hotline and Employee Complaints Diversity Questions added to Exit Interviews and on-boarding – 3 and 6 month review Employee Relations function restructured to have position accountable for data analysis and pro-active resolution / <b>Completed</b></p>
<p><b>Recommendation XIV (p.81):</b> The hospital should designate a person or office with executive level authority to be trained in and conduct ongoing audits and reports on the institutional climate with respect to race, country of origin, language, gender and other diversity areas.</p>	<p><b>Accepted; completed</b></p> <ul style="list-style-type: none"> <li>● The Hospital has retained Press Ganey to conduct continuous Patient Satisfaction and Physician Satisfaction Surveys and bi-annual Employee Climate Surveys. Using Press Ganey will enable cross correlation of survey results to determine climate factors on employees through the impact on the quality of patient care delivered. Physicians Satisfaction Surveys / <b>Continuous</b> Physician Survey / <b>June, 2007</b> Employee Climate Survey / <b>January, 2008</b> Organizational Report Card / <b>December, 2008; completed</b></li> <li>● Diversity Officer named: DCEO – Venetta Symonds / <b>Completed</b></li> <li>● Functional Diversity Resource Oversight: HR Director – Kerry Garrigan / <b>Completed</b></li> <li>● Diversity Liaison and Reporting Function – To be assigned / <b>September, 2008</b></li> <li>● Diversity Oversight Council, including physicians – to be established / <b>September, 2008; completed</b></li> </ul>
<p><b>Recommendation XV (Appendices p.90):</b> For hospital autopsies, the pathologist should confine his or her written opinion to the matters in which the pathologist has appropriate expertise.</p>	<p><b>Accepted; implemented September, 2007</b></p>





## CAROA Conference

*Caribbean Ombudsman Association 5th Biennial Conference, Bermuda*

### **The Hon. Terry Lister, Acting Premier Minister of Energy, Telecommunications and E-Commerce**

It is my pleasure to open this Conference. I bring greetings and apologies on behalf of Premier Brown.

The Ombudsman institution in Bermuda was created by a Constitutional Amendment Order in 2001. Then in 2004 we passed legislation under the former premier, Alex Scott.

The office of the Ombudsman has served us very well in investigating things like administrative inefficiency at the Department of Planning and allegations of institutional discrimination at our hospital. Bermuda's Ombudsman has shown dedicated commitment toward getting to the truth and sharing the truth with the public. This job is made even more difficult in our sometimes politically charged community.

Like Ombudsman everywhere, our Ombudsman is an independent advocate for rights, justice and truth. When an Ombudsman is in place, it better ensures that the public is getting good governance, transparency and accountability.

We find ourselves as a government constantly plagued with charges of not being open, not being transparent and not being accountable. So we rely on Ms. Brock and her office to assist in raising the confidence of those who don't have that confidence.



*CAROA Biennial Conferences aim to promote the development and defend the independence of the Ombudsman institution as well as strengthen professionalism through the exchange of experiences and research.*

The Ombudsman's office has the full support – and I underline that – the full support of the Government of today. In one of my previous Ministries, one of my staff came in and said “you know that matter, it's with the Ombudsman now”. Oh my gracious! But it was handled to the satisfaction of all around. It's important that Ms. Brock has open access, which I believe she does.

Our journey to this point has been greatly benefited from the assistance of the Caribbean Ombudsman Association. Every Bermudian owes this Association a great debt of gratitude for the assistance it provided in creating our Ombudsman legislation and office. As Acting Premier, allow me to thank you on behalf of the people and Government of Bermuda. You have strengthened our democracy – and I don't say that lightly.

Strengthening democracy in every country is something that people should be striving for. In Bermuda, we are very conscious that we want to maintain the high standards of government that has existed here and see an open, fair place that people can be able to feel free to live. So this certainly assists us.

Our government is on to a new democratic task now – Public Access to Information – or, as we call it, PATI. As we did with the Ombudsman legislation, we are seeking the input and experiences of other jurisdictions. Our friends in the Caribbean region have once again been a tremendous resource. We believe that PATI will further strengthen our democracy in the same way that the Ombudsman has made us stronger.

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#### **Opposite: CAROA Members, Advisors & Central American affiliates**

*Standing, Back Row:* **Frederik Wiel**, Ombudsman of Curaçao • **Dr. John Epp**, Complaints Commissioner of the Cayman Islands • **Earl Witter**, Public Defender of Jamaica • **Dr. Deryck Brown**, Economic Consultant, Governance & Institutional Development Division (GIDD), Commonwealth Secretariat • **Dr. Victor Ayeni**, Nigeria, former Director of GIDD, Commonwealth Secretariat

*Standing, Middle Row:* **Pedro Ascencio**, General Secretary for Human Rights, Office of the Defensor del Pueblo (Ombudsman) for Guatemala • **Susan Duguay**, Administrative & Investigative Officer, Office of the Complaints Commissioner, Cayman Islands • **Sharon Flowers**, Admin. Officer, Office of the Ombudsman for Belize • **Sadie Williams**, Complaints Commissioner, Turks & Caicos Islands • **Nekker Dessables**, Protecteur du Citoyen (Ombudsman), Haiti • **Barbara Taylor**, Investigations Officer, Office of the Ombudsman for Barbados • **Eusalyn Lewis**, Ombudsman for Antigua & Barbuda • **Sir Frank Blackman**, former (first) Ombudsman for Barbados • **Dr. Hayden Thomas**, Honourary CAROA Council member, former Ombudsman for Antigua & Barbuda

*Seated:* **Lawrence Laurent**, CAROA Secretary / Treasurer, former Parliamentary Commissioner of St. Lucia • **Arlene Brock**, Ombudsman for Bermuda • **Madison Stanislaus**, Parliamentary Commissioner of St. Lucia, CAROA President • **Lynette Stephenson**, Ombudsman of Trinidad & Tobago • **Lorena Gonzalez**, Director, Inter-American Institute for Human Rights, Costa Rica

Sir Frank Blackman, former Ombudsman for Barbados: *“The Ombudsman should give the kind of attention to each of the complainants that would indicate that respect is being shown to them regardless of personal or whatever other differences; that they are being listened to; and that their needs are understood.”*



## FROM SETTING STANDARDS TO COMPLIANCE: THE ERA OF APPLICATION

**Olara Otunnu, World's Children's Ombudsman**

I want to pay tribute to the distinguished Ombudsman and the work that you are doing – because your work is a critical role in building a genuine architecture of democratic governance and of ensuring that government power is exercised in a manner that is responsive, that is transparent and that is fair. Above all, you serve as advocates on behalf of those who are not so powerful in our polities; those who may have weakened voices and those who need to ensure that there is equal protection for all citizens. Your role plays such a critical role in giving content – not just formality – to democratic governance.

The theme of my remarks this morning is “Saving our Children from the Scourge of War”. I believe that few missions could be more compelling in the world today. This is a central issue of rights, of protection and of peace. I wanted to share this with you because it is analogous to the regimes you are seeking to build in your national jurisdictions. It is a regime which I worked to build at the international level but applied both internationally and at the domestic level.

When adults wage wars, children pay the highest price – they are the primary victims of armed conflict. They are both its targets and increasingly also its instruments. Their suffering bears many faces in the midst of armed conflict and its aftermath. Children are killed and maimed, made orphans, abducted, deprived of education and health care and are left with deep emotional scars and trauma. They are recruited and used as child soldiers, thus forced to give expression to the hatred of us adults. Uprooted from their homes, displaced children become particularly vulnerable. Girls among them face additional risks particularly sexual violence and exploitation.

I can think of no group of persons more completely vulnerable than children exposed to war. Yet, until very recently, their fate did not constitute specific and systematic focus and response by the international community. Indeed when policy makers convened to discuss the breakdown of peace and security, the fate and well-being of children did not feature in their deliberations.

This has now changed. Let me emphasize that children do not only deserve but indeed have a right to protection and well-being. Those who brutalize children and deny them schooling and medical care in situations of war are committing two crimes simultaneously. They are destroying the present as well as destroying the future. These violations need to be identified, named and shamed...

We are now faced with a cruel dichotomy. This dichotomy is not unique to this issue – the protection of children exposed to war. It is a perennial problem of the United Nations and other multinational efforts: of moving from the creation to the enforcement of international norms and standards.

*As the former UN Under-Secretary General and Special Representative for Children of Armed Conflict, Mr. Otunnu was the architect of UN Security Council Resolution 1612 that created a compliance mechanism for naming and shaming governments and rebel groups that victimize children in war-affected regions.*

It is my view that the key to overcoming this gulf lay in the embarking on a systematic campaign of what I call the Era of Application for transforming international instruments and standards into an actual protection regime on the ground – which is what you Ombudsmen are seeking to do at the domestic level.

The Era of Application had to be developed and anchored within a formal and structured compliance system of mechanisms. Words on paper, important as they are – and words are important: we begin with words; they express our thinking and intentions – but words on paper alone cannot save children and women in danger, any more than they can protect the vulnerable and the not so powerful within your countries.



The time has come for the international community to redirect its energies from the normative task of the development and elaboration of standards to the compliance mission of ensuring their application on the ground. That is where your task, your road meets the road I travelled. Without accountability, corruption and impunity take root and flourish. And corruption, like cancer, corrodes and distorts everything in its path – making development and genuine democratic governance virtually impossible. These and more are the costs to our society when there is no overarching and binding structure of democratic and legal accountability.

These are part of the challenges that you Ombudsmen face. You are at the forefront of that struggle to establish best practices in building democratic governance. Your role is critical. Without it, we lose the genuine article and remain with the shell of the formality. We all must do much more to ensure the building and enforcement of a genuine and effective rule of law regime in our countries. Your practice, your role is a cornerstone of this challenge. So much turns on this because without the rule of law, there is no good governance, no democratic accountability; there is no justice and equality.

*His Excellency Sir Richard Gozney, Governor of Bermuda, enters the Welcome Ceremony escorted by Arlene Brock, Ombudsman for Bermuda. Berkeley Institute student, Deandra Brangman, led them with the Bermuda flag.*

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Thank-you to Lunch-time Bermuda Speakers: **The Hon. Mrs. Justice Norma Wade-Miller**, Puisne Judge; **Major Kenneth Dill**, Head of the Civil Service; **Ed Ball, Jr.**, General Secretary, Bermuda Public Services Union





## ETHICS IN THE PUBLIC SECTOR

### Baroness Rennie Fritchie, former UK Commissioner for Public Appointments

Public Services, using public money, require a strong system of moral values, a set of principles of right conduct in order to not only have the confidence of the public, but also to provide a comprehensive framework to enable a coherent and connected basis for the design and delivery of public services. The Seven Principles of Public Life are drawn heavily from the work of The Committee on Standards in Public Life.

The public wants office-holders to be more honest or truthful about policies and services, acknowledging difficulties and competing pressures, and also admitting or owning up when things go wrong or have unintended consequences.

- Three of the Seven Principles have an ethical content, namely Integrity, Honesty, Selflessness. These ethical principles are absolutes. You are honest or you are not. You cannot be half-honest, and the same goes for integrity and selflessness, there are no half way houses.

- The second set of principles are procedural. Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

A holder of public office is given one or both of two privileges. The first privilege is the power to spend tax payers' money. The second is the power to compel or restrain the actions of citizens through the use of public law. These privileges carry responsibilities. One is the requirement to account for the exercise of that privilege and the other is to show how that privilege is being used – in short: Accountability and Openness.

- The remaining two principles, Leadership and Objectivity concern performance. The role of the leader is to choose the strategic direction of the organisation, to set the direction of travel, the future agenda. But it also means to behave in the right way to model ethical behaviour.

The tension between the choice between doing the right thing, taking an ethical stand or the choice of building a successful track record is one we all face.

*'We must do what we conceive to be the right thing,  
And not bother our heads or burden our souls whether it will be successful.  
Because if we don't do the right thing we will be doing the wrong thing,  
And we will just be part of the disease and not part of the cure.'*

*E. F. Schumacher,  
"A Guide for the  
Perplexed"*

## **PANEL: CHALLENGES OF OMBUDSMAN WORK IN SMALL JURISDICTIONS**

**Madison Stanislaus, Parliamentary Commissioner, St. Lucia**

Many complaints occur simply because of poor communications between the complainant and government officials. Citizens should have clear information about what they have a right to expect from the government or agency and, equally importantly, government officials need to protect the rights of citizens. To do this effectively, these officials must be familiar with the elements of good administrative practice. The latter could help to prevent maladministration, to identify and to correct it promptly when it happens. This will also go a long way in promoting good governance. One good thing which comes out of being a small jurisdiction is that the Parliamentary Commissioner, with discretion, could conduct friendly discussions with certain Government Ministers, Permanent Secretaries and Heads of Departments or resolve informal investigations by a mere telephone call.



## **PANEL: CHALLENGES OF OMBUDSMAN WORK IN SMALL JURISDICTIONS**

**Mario Hook, Public Services Ombudsman, Gibraltar**

There are always some officials who form their own opinion that the Ombudsman is just an inconvenient entity. Nothing could be further from reality. Without exception, the legislative provisions to create an office of the Ombudsman in any territory, has been put in place by its Government and it is therefore the express wish of the people to have such an institution. It follows that all officers, no matter their rank must comply with the requests of the Ombudsman for information and in a timely manner. I must emphasize, delays are not acceptable and should not be tolerated. The Ombudsman in a small jurisdiction has a very important role to play in the daily well being of his fellow citizens. They rely on him and look for his assistance when they are aggrieved by the machinery of bureaucracy. This may be true for all Ombudsmen around the world, but is more apparent to those in small jurisdictions.



## **INVESTIGATION ASPECTS OF THE OMBUDSMAN'S ROLE**

**Frederik Wiel, Ombudsman of Curaçao**

The United Nations' guideline on Ombudsman investigations starts with the observation that the legal basis for an Ombudsman to conduct inquiries and investigations of complaints is in the country's constitution and/or law creating the institution. The guidelines recognize that no one set of practices fits every local situation. In nearly all Ombudsman offices around the world, investigations are inquiries, not adversarial processes. Based on powers provided in law, the Ombudsman determines how each investigation will be conducted. Not every complaint requires investigation. The majority of concerns and allegations raised by complainants will be able to be resolved at an informal level by intervention or through other processes such as mediation.







## THE OMBUDSMAN: PAPER TIGER OR VITAL WATCHDOG?

**André Marin, Ombudsman for Ontario**

I think you can guess which side of the question that I am on as we have “watchdog” in our motto. As Ombudsman, we have to watch for the predators prowling the bureaucratic jungle. If your office is not demonstrating its value by taking a robust stance, the paper tigers may very well get you.

Our office created a model for doing the greatest good for the greatest number of people. We created a Special Ombudsman Response Team (SORT). This is a specialized fast acting unit of investigators who are trained to take on big, complicated cases and get to the bottom of them quickly and efficiently. The essential elements of such cases are: issues of strong public interest; strong evidence on the face of it of maladministration; and, little chance of resolving problems informally without an investigation.

The Government’s response to most of our investigations and recommendations has been very constructive. There has been a recognition among Government leaders that our work is not about exposing or embarrassing them or making them look bad – although we certainly have exposed some bad things. They recognize that our investigations and recommendations are revealing problems and solutions that are going to benefit millions of people and that by acting on them, they are going to look good.

One of our very first investigations involved a medical issue – the tests that are done on newborn babies to see if they have a genetic disease or disorder that can be treated early – things like cystic fibrosis or sickle cell anemia or a number of metabolic disorders. These conditions can and have killed children in Ontario or left them permanently disabled if they are not treated.

In fact in our province, this was happening to about 50 children every year because our province was doing only two tests on babies since 1978. Think about it, 50 deaths or severe disabilities in babies. Some places, like some states in the US, were doing more than 90 tests. Just about every country in the world was doing more tests than Ontario even though we had access to and were developing the technology for some of these tests right in Toronto.

When we revealed the shocking situation, the Government immediately announced that it would start doing more tests. It has recently announced that the number of tests is up to 29 – a long way from 2. The Premier in Ontario likes to say that “we have gone from one of the worst in the world to one of the first”. It is now a point of pride for the province because there are now 50 fewer children suffering or dying needlessly each year.

We saw another dramatic reaction from the Government in response to an investigation we did last year. In Ontario, we have a Government agency, the Criminal Injuries Compensation Board that is supposed to help people who are victims of violent crimes. If your child is murdered, for example, the CICB will help you pay for the funeral. If you have been badly beaten up, it might be that you need to be compensated for lost work or need counseling.

Ms. L. Laurent, former Parliamentary Commissioner, St. Lucia: *“Guyana was the first constitutionally enshrined Ombudsman in the Western Hemisphere (1966). Unfortunately, no Ombudsman has been appointed there since 2005.”*

The problem is that this generous agency was a bureaucratic mess. Instead of helping victims it was actually re-victimising them by snarling them in red tape and making them wait years and years to get a single nickel. Our investigation found all kinds of administrative horror stories.

There was a man whose little girl had been raped and murdered who was given the third degree over the funeral bill he submitted. There were people snowed under a ton of paperwork. One man – and this is a true story – had his application form sent back to him because he forgot to dot an “i” in his name! We exposed all of this publically and blamed it on a succession of governments that had failed to fund the agency properly.

The government realized that it had to act. It immediately doubled the Compensation Board’s budget to \$20 million and promised to change its heartless bureaucratic procedures. A year later, just a couple of weeks ago, the Government announced \$100 million to get rid of the backlog and pay compensation to the thousands of people caught in the waiting. So, not only has government politely said ‘thank-you for your report Mr. Ombudsman, but it has put its money where its mouth is – because that is the right thing to do.’

To me, that is a good sign that you as an Ombudsman are demonstrating the value of your office – you have helped make things better for the public. This is not something that is just measured in money. After all, governments increase spending all the time and it doesn’t always improve things.

The Lotteries Commission responded to one investigation: “in hindsight, the shock of the Ombudsman’s report brought about deep and systemic change within the corporation in very short order. It is unlikely that this could have been achieved through traditional or conventional means of organizational reform.”



*Foreground:*

*Dr. Richard Kirkham, University of Sheffield; Ms. Caterina Alari, UK Dept. for International Development*

*Professor Kirkham’s presentation, **The Ombudsman’s Place in the Constitution**, will be published in Vol. 10 of the International Ombudsman Yearbook (Int’l Ombudsman Institute).*

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**We also thank the following speakers for the CAROA Conference:**

- L. Gonzalez**, Inter-American Institute for Human Rights
- G. Jones**, SORT, Ontario Ombudsman
- V. Memari**, Bermuda Human Rights Commission
- G. Sibblies**, Ontario Human Rights Commission
- Q. Sherlock**, Lecturer, Bermuda College
- E. Witter**, Public Defender, Jamaica



## **'PRINCIPLES OF GOOD ADMINISTRATION': HUMANISING THE STATE BUREAUCRACY**

**Ann Abraham, UK Parliamentary Ombudsman & Health Service Ombudsman for England**

I want to present to you a vision of principles of good administration as an essential building block of any accountable and democratic society, and so of any state, whether large or small, that is serious about the business of enabling a flourishing and sustainable future for all its citizens. The task [of the Ombudsman is to] investigate 'maladministration', of unearthing individual instances of bad practice and, by implication, of proposing individual remedy after the event.

There is much debate about exactly what 'maladministration' means: things like bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness. This need to classify bad practice reflects one dominant view of the role of Ombudsman: the role of 'fire fighter'.

But of course fire fighting is not, and cannot be, the whole Ombudsman story. It was not long before the rather different role of 'fire watching' – of proactive prevention rather than remedial cure – came to assume its proper place in the accepted ingredients of a viable Ombudsman institution. It was the task of 'humanising' the interaction between state and citizen that had pride of place and that justified the importation of what in many ways looked like a rather alien inquisitorial intruder upon the customarily adversarial territory of a common law jurisdiction.

Just as public sector ethics and human rights can serve to soften the edges of the otherwise sharp and painful encounters between citizen and state, so the dissemination and adoption of 'principles of good administration' can also serve to 'humanise' those encounters, to restore to citizens their status as human persons of dignity and worth, and to encourage an ethos of good governance that is integral to any meaningful form of democracy. The essential principles of good administration [act] as an indicator or touchstone of what I take to be the Ombudsman's key constitutional role:

- 'Getting it right' – acting in accordance not just with 'hard law' and with due regard to rights, but taking proper account of 'soft law', such as guidance and good practice models, providing effective service and taking reasonable decisions. Getting it right must be the first aspiration of any worthwhile public administration, recognition of the importance of the task in hand and of the reasonable expectations of citizens.

- The obligation to be *customer* focused cuts to the chase and proclaims without reservation that the administration is there to serve the citizen, and not the other way round. Being customer focused means ensuring ease of access for everyone (including people, e.g., who are disabled, or who come from minority language groups or who have low levels of literacy), being clear about expectations, keeping to commitments, tailoring services as far as possible to meet individual circumstance, and above all being flexible so that the citizen-as-customer comes first. It is about keeping a sense of perspective and a sense of purpose, and behaving with the sort of good sense that does not let officiousness become the enemy of the efficient, perfection the enemy of the good.

- There is the need to be *open and accountable*, about the reasons for decisions, and about the information held on citizens. There is the associated need to keep proper records and accept responsibility for actions taken. This is about transparency, a further recognition of where priorities lie, not in self-serving and inward-looking processes but in delivering a public service in which the ethos is collaborative and citizens are recognised as equal partners, whatever their social or economic status.

- There is the duty to act *fairly and proportionately*, in the sense of treating citizens impartially, and with courtesy and respect, avoiding discrimination, being objective and ensuring that decisions are balanced and proportionate in outcome to the issues raised. This is a matter of putting the principle of individual dignity into practice, giving concrete realisation to the principle of equality, so that it enables the achievement of shared high standards not acquiescence in treatment that is simply shabby for everyone.

The final two principles are remedial and of a slightly different order, forward-looking in that they seek to ensure that mistakes are corrected and the lessons learned.

- There must be the will to *make amends* by acknowledging and apologising for mistakes, by putting things right quickly, providing suitable information about how to complain or appeal, and by operating an effective complaints procedure that itself has the ability to provide a fair remedy when a complaint is upheld. It's about putting your money where your mouth is, giving apology where apology is due, and demonstrating that you mean it by making restoration wherever possible. This is an exhortation to practise restorative justice, not in a legalistic way but in a way that recognises the plight of the wronged citizen and restores a sense of equilibrium.

- There is the desire to seek *continuous improvement* by reviewing policies and procedures regularly, seeking customer feedback, and ensuring that the fruits of any lessons learned are disseminated to improve services and future performance. Without insisting on that forward-looking aspect, public administration will be unnecessarily constrained in its ambitions and the prospect of maximizing the common good will be all too easily betrayed. This is about saying 'never again', and meaning it.

The exercise of defining principles of good administration sets the standards against which the performance of public authorities can be judged. The existence of such principles gives notice of my Office's expectations when it comes to evaluating performance in the light of individual complaints.

The principles also relate to the broader Ombudsman ambition of fire watching, of taking preventive action and feeding back into the administrative system the fruits of Ombudsman investigation. This constitutes a significant part of the 'added value' and the public benefit that Ombudsmen offer over and above the dispute resolution function they share with the courts and conventional tribunals. This is the gilt-edged Ombudsman dividend, the extra-special return on Ombudsman investment that underpins the success of the Ombudsman institution as an increasingly worldwide phenomenon.

*The full conference proceedings will be available on our website [www.ombudsman.bm](http://www.ombudsman.bm) (currently under reconstruction) by mid-April.*



## **FREEDOM OF INFORMATION INTERFACE WITH THE OMBUDSMAN: THE IOWA EXPERIENCE**

**William P. Angrick II, Citizens' Aide / Ombudsman, State of Iowa; and  
President, International Ombudsman Institute**

Open meetings and open records are important in a democracy. They combine to keep government transparent, responsible, and accountable. Open government instills trust and confidence. Its opposite breeds suspicion and alienation.

After a 2000 Freedom of Information (FOI) audit by Iowa's media, the Iowa General Assembly authorized a new position in the Ombudsman's office to respond to inquiries and complaints about public records, open meetings, and privacy.

Last summer I told an Interim Legislative Study Committee that "absent a commitment to aggressively investigate and prosecute violators of Iowa's open meetings and open records law, I question whether whatever we do will accomplish much. We can refine the definitions, close the technical loop holes, and admonish those caught in violation but a stronger message must be sent. If we cannot promise to place greater effort across our state to actively prosecute violations of these laws, then I suggest finding another way to level the playing field and hopefully stop the bending, stretching, and ignoring of our FOI laws."

Investigating public records and open meetings issues is interesting and challenging. Many of the complaints presented go to the bedrock of participatory democratic government such as who voted for a budget increase, a new tax, or a policy change.

Interesting questions include: Must a request be made at the office of the custodian of the record, or can it be by telephone, email, or letter? Are all the names of applicants for a position of authority to be made public or is it permissible to publicly identify only the finalists? Does a requestor of a public record have to identify themselves when making the request or can they do so anonymously?

Technology and technological change impacts public records and open meetings issues dramatically. Are all emails of a government employee or official public record? If so, how are they to be managed, archived, or retrieved? Should audio and video recordings be preserved even after minutes are published? What kinds of redactions need to be considered before government records are made easily available on government websites? Do forms which collect personally identifiable information need to be redesigned?

Being responsible for investigating public records and open meetings issues (to which I would also argue there is value in adding privacy) presents an important opportunity for the Ombudsman to positively impact government in a proactive way.

*A day-long Mediation  
Workshop (Ombuds-  
man only), based on  
the methodology of the  
Harvard Negotiation  
Program was led by E.  
Collins and J. Voyticky.*





(Above, left to right) **Madison Stanislaus**, Parliamentary Commissioner, St. Lucia, and CAROA President • **Lynette Stephenson**, Ombudsman, Trinidad & Tobago • **Susan Duguay**, Administrative & Investigative Officer, Cayman Islands; **Barrie Quappe**, Analyst, Cayman Islands



(Above, left to right) **Earl Witter**, Public Defender, Jamaica • (seated) **Philip Aylett**, Director, Policy, Information & Communications, UK Parliamentary and Health Services Ombudsman; (standing) **Sir Frank Blackman**, former Ombudsman, Barbados • **Dr. Hayden Thomas**, former Ombudsman, Antigua & Barbuda; **Eusalyn Lewis**, current Ombudsman, Antigua & Barbuda



(Above, left to right) **Sharon Flowers**, Administrative Officer, Belize; **Nekker Dessables**, Protecteur du Citoyen / Ombudsman, Haiti; **Barbara Taylor**, Investigations Officer, Barbados • **Geanine Sibblies**, Senior Mediator, Ontario Human Rights Commission • **Dr. Deryck Brown**, Advisor, Commonwealth Secretariat

Dr. Hayden Thomas, former Ombudsman, Antigua & Barbuda: *"The proactive and educative role of the Ombudsman is important... the office should be more proactive in dealing with systemic problems in the public service and not only wait for complaints to be made."*





## FAIR GOVERNANCE: A QUESTION OF LAWFULNESS AND PROPER CONDUCT

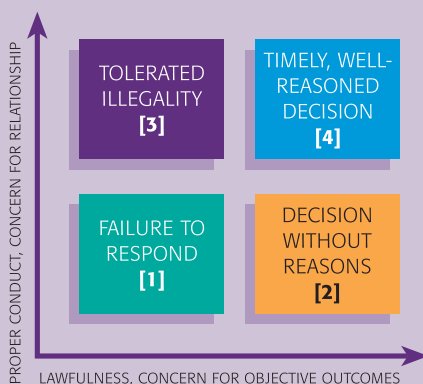
**Dr. Alex Brenninkmeijer, Ombudsman for the Netherlands**

To deal properly with public complaints, an Ombudsman considers more than a strictly legalistic application of administrative law. Procedural Justice (proper and ethical conduct) is just as important as Distributive Justice (you get what you are entitled to, for instance a right as laid down in the law). Legality is not the only issue. I often see that even when things have gone dreadfully wrong between an individual and government, they can be smoothed over simply by the authority showing a human face.

The standards applied by the Ombudsman are clearly not just legal norms. The general principles of administration law (such as due care, reasonableness, the duty to give reasons for a decision, legal certainty and legitimate expectations) are obviously sacrosanct. Unlike the Courts, which judge the lawfulness of decisions, the Ombudsman assesses whether conduct has been proper. This is a different thing from simply being lawful. This is chiefly an ethical category. Behind the codification of the general principles of proper administration in statute lurks the more shadowy category of proper conduct as an ethical standard.

To link proper conduct and lawfulness, I diagram the dual concern model in what I call the "Ombudsquadrant". This looks at four ratios of proper conduct (the outcome primarily of concern to the citizen) versus lawfulness (the outcome primarily of concern to Government Departments).

### "OMBUDSQUADRANT" DUAL CONCERN MODEL



**[1]** A department that attaches little value to achieving either its own outcomes (lawfulness) or those of the public (proper conduct) will tend to avoid conflict, fail to respond and will remain silent in situations in which an individual has a right to a decision.

**[2]** A department that attaches much value to achieving its own outcomes and little to achieving those of the public will tend to adopt an aggressive attitude. The exclusive pursuit of lawfulness will look like a refusal to compromise and be perceived as conflict-seeking behavior.

**[3]** A department that attaches much value to achieving the outcomes of the public but little to its own will tend to be accommodating. This may result in compromise to the extent that illegality is tolerated.

**[4]** A department that attaches equal value to achieving both sets of outcomes will seek collaboration. Proper conduct helps to create acceptance, legitimacy and ultimately public confidence in government. Decisions that are delivered with reasons, on time, in accordance with proper conduct criteria and are lawful will be perceived by the public as both just and fair.

A learning government will invite feedback from citizens and take what they say seriously. By doing so, it will automatically learn how to function properly. This will in turn improve public acceptance of its operations and enhance public confidence in the system.

**DR. VICTOR AYENI, former Director, Governance & Institutional Development Division (GIDD), Commonwealth Secretariat**

**Administrative Justice as a Human Right**

The concept of administrative justice is a fundamental part of the relationship between the individual and the modern state. More than ever before states have an obligation to ensure that they meet international standards of good administration. Administrative justice issues cut across all aspects of how a governmental body or agency organizes and delivers a service to the public. It can be defined in terms of its procedural elements or as an end in itself, commonly referred to as substantive justice. Individuals in a state can hardly be content with processes and procedures without regard to quality and outcomes.

A natural point to begin is that the work of administrative agencies and officials on individuals invariably touches on human rights issues. Access to justice is a basic requirement of Article 7 of the Universal Declaration of Human Rights. Similarly, the due process guaranteed in national constitutions is inevitably a human rights problem.

An Ombudsman must be proactive, systemic in orientation and able to decipher the broader implications arising from the discrete individual cases that it handles in order for it to act as an effective agent of change and improvement. While emphasising this point, an Ombudsman office will hardly succeed if Government fails to demonstrate a genuine will and commitment to the concept.

**Whistle Blowing: An Essential for Good Governance**

The concept of whistle blowing has attracted growing interest worldwide as an essential tool for the attainment of good governance. It is a distinct form of dissent. It is a potentially expensive, high risk activity that depends primarily on the personal sacrifice and initiative of an individual. As a result, the efficacy of whistle blowing as a tool for reducing corruption and ethical violations could be severely limited, if not counterproductive, in the absence of the right conditions to make it work.

(Dr. Ayeni set out the well-known children's story: *The Emperor's New Clothes*.) In modern parlance, the child was a "whistleblower" – someone who shouted out the truth. Note that (a) No one wanted to speak the truth; (b) Even intelligent and powerful people kept quiet; (c) After the child yelled out the truth, the emperor kept going as though he was still right, despite knowing the truth and knowing that everyone else knew the truth.

The willingness to 'take a stand and make a difference' is vital. However, considerable risk is involved. Whistleblowers sometimes have to forfeit their careers and reputations in the course of exposing significant wrongdoing. Transparency, integrity, courage, focus, confidence and commitment, the ability to go it alone and/or engage in team work and perfect timing are other essential elements required of a whistleblower.



*We thank the many people who contributed tirelessly to the Conference. Notably: families who hosted international guests for dinner in their homes; high school students who led the Procession of Flags in the Welcome Ceremony, St. George's cultural guides and Masterworks.*

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(Above, left to right) **Olara Otunnu**, keynote speaker; **Arlene Brock**, Ombudsman, Bermuda • **Rev. Canon James Francis**, former Chair, Bermuda Human Rights Commission • (standing) the **Hon. Advocate M.L. Mushwana**, Public Protector, South Africa; (seated) **Sir Frank Blackman**, former Ombudsman, Barbados; **Gareth Jones**, Director, Special Ombudsman Response Team, Ontario



Caribbean Ombudsman (Antigua & Barbuda, Barbados, Belize, Bermuda, Cayman Islands, Curaçao, Haiti, Jamaica, St. Lucia, Trinidad & Tobago, Turks & Caicos) were joined by international colleagues and leading scholars (Canada, Costa Rica, Denmark, Gibraltar, Guatemala, Nigeria, South Africa, Netherlands, Uganda, UK and US). Thirty-three registrants from the Bermuda public and media attended the first day. A further 25 civil servants attended the full three days. The Mediation Workshop was for Ombudsman only.



CANDID PHOTOGRAPHS – CAROA CONFERENCE





## CANDID PHOTOGRAPHS – CAROA CONFERENCE



## *The People Matter*

Sometimes it may seem that the Department of Planning is 'between a rock and a hard place' – balancing applications that impact on the environment, developers who take advantage of its strained enforcement resources, owners protective of each scarce square inch of land, and now the Ombudsman making constant inquiries. The Department's service delivery was reviewed a few years ago by the Department of Management Services and last year, Ambling Management Company conducted another study. I must note that new staff members, C. Rickards and G. Ness, have been exemplary with respect to their insight into complaints, their forthright acknowledgment of how the Department may have contributed to problems and their remedy-focused approach.

The twin pillars of the Ombudsman institution are independence and impartiality. I am scrupulous (some might say zealous) about upholding both. I am therefore very concerned that the Director has persisted in questioning my impartiality with respect to Neighbour E (p.7). The central issue was whether Neighbour E had consented to encroachment into the setback area. The required Letter of Consent Form must stipulate that the signatory has seen plans of the proposed development and agrees to a specified setback distance.

Neighbour E signed a Form (just to be neighbourly) but it did not stipulate a plan # (plan had not even been drawn) or a setback distance (he verbally cautioned the developer not to encroach). A former Director reviewed the entire file and agreed that the documentary evidence supported Neighbour E's assertion that he had not consented. Apparently the Director believes that my finding that the Department should not accept an incomplete form was unfair: *"the approach adopted would seem to suggest that the adjudication of this issue has been elevated to beyond the traditional grounds of review inasmuch as attention is directed to the relative weight accorded to the interests and considerations of the Complainant...and appears to be moving toward imposing a duty on the Department to ensure that all consents have been given on the basis of disclosure of all relevant considerations."* The former Director noted that the lines were added to the Form years ago with the intention that the Department would vet applications for this information. I cannot credibly be called unfair for expecting this standard of good administration.

The Director also criticized my depiction of Neighbour E as a "71 year old retiree" as *"paternalistic... [his] age and employment status seems irrelevant unless it is raising some legal incapacity or susceptibility"*. The Director's concept / proviso that the Ombudsman may refer to a complainant's situation only if this is of a *"limiting nature"* would impose an untenable straitjacket on Ombudsman work. As Baroness Fritchie notes: *"whilst we would want excellent service delivered to everyone, the individual circumstances of each complainant means that poor service delivery impacts in a very different way and has a different long lasting effect on each person. If we start to forget the unique and special circumstances of each, we begin to dehumanize the service."*

It is precisely the Ombudsman's job to remind the bureaucracy that complainants are not nameless or faceless files, forms and statistics. Rather, the people must always matter.

*The objects of the legislation and the degree to which it should receive a large and liberal interpretation can best be understood by examining the scheme of the statute as well as the factors that have motivated the creation of the Ombudsman's office...Only the most serious cases of administrative abuse are likely to find their way into the courts. More importantly, there is simply no remedy at law available in a great many cases... There is a large residue of grievances, which fit into none of the regular legal moulds, but are nonetheless real.*

Public Services Ombudsman v. H.M. Attorney General for Gibraltar [17th April 2003] Supreme Court of Gibraltar [Claim # 2002 T 283]



## *Ombudsman Act 2004 “In a Nutshell”*

### **Thank You To:**

**L. Johnston**, *Department of Parks – for quick and comprehensive responses*

**K. Tuckett**, *GEHI Management Accountant – for consistent follow-up*

**E. Foley**, *Rent Commission – for quick responses*

**Maj. G. Brangman** and staff, *Bermuda Housing Corporation – for customer focus, problem-solving approach and patience*

**R. Azhar, E. Frederick, S. Lambert**, *Department of Immigration – for comprehensive and forthright responses*

**C. Rickards, G. Ness**, *Department of Planning – for forthright responses and problem-solving approach*

### **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 rev-

enues 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 the 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 & 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.

## **Thank You To:**

**M. Crichlow, Tax Commissioner** – for pragmatic, service-oriented approach

**C. Farrow, Department of Land Valuation** – for quick and comprehensive responses

**Dr. J. Cann, Department of Health** – for quick and comprehensive responses

**R. Rochester, Transport Control Department** – for lightning speed and comprehensive responses

**D. Wade, BELCo** – for thorough clarification of processes

**C. Anderson and K. Thomas, Department of Social Insurance**, for a helpful meeting and written clarification of the nuts and bolts of the process for HIP claims

## How to Make a Complaint to the Ombudsman

*We gratefully acknowledge the assistance of the **Treatment of Offenders Board** (“TOOB”). Under s.7(3) of the Ombudsman Act, persons “detained in custody or otherwise confined in an institution” have a right to write to and receive communication from the Ombudsman uncensored. In order to determine whether or not we should conduct an investigation, the Chairman and members of TOOB have twice visited inmate complainants at our request to assess their concerns. In both cases, TOOB was able to resolve the issues.*

### How do I make a complaint?

By letter, email, fax, telephone or in person...  
Suite 102, Dundonald Place , 14 Dundonald  
Street West, Hamilton HM 09  
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).

### What can I complain about?

- Any administrative action\*—that is, a decision, recommendation made or act done or omitted (including failure to provide reasons for a decision);
- Administrative action that appears to be bad, unfair, arbitrary, discriminatory, unreasonable, oppressive, inefficient, improper, negligent, unreasonably delayed or based on a mistake of law or fact;
- Please complain only after you have already tried to work things out with the Authority or resolve the matter through existing remedies (unless it is unreasonable to expect you to resort to such remedies).

\* Administrative action was done within the 12 months prior to complaint.

### Who can make a complaint?

Anyone who feels personally unjustly treated by an administrative action of a Public Authority. A family member or other suitable person may make the complaint if you cannot.

The Ombudsman can also investigate matters on her “own motion” although there is no specific complaint.

### 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?

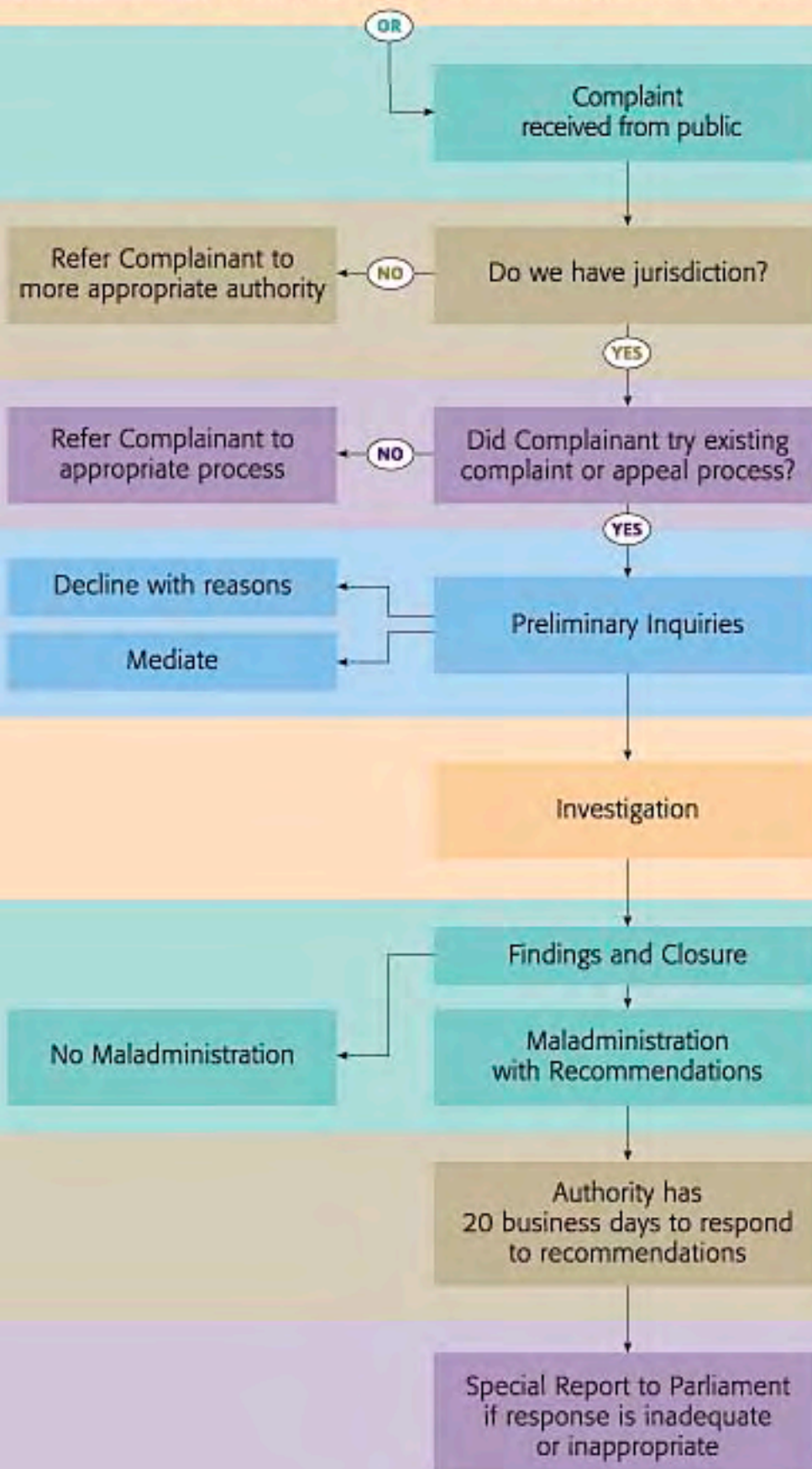
Services are free and available to anyone.

## COMPLAINT PROCESS

Ombudsman may investigate in the public interest even if no complaint

## NOTES

- "Own Motion Investigation"



- Complaints may be
  - Oral, electronic, written
  - by persons aggrieved (or family if persons cannot act for themselves)
  - Within 1 year of event

- Is complaint about a Government Board, Department, or Public Authority?
- Is matter exempt (Cabinet, court proceeding, crime or employment issue)?

- Ombudsman can investigate even if matter cannot be further appealed or is final

- Inquiries resolve complaint; or
- Investigation or mediation; or
- Ombudsman declines

- Ombudsman may visit sites, require documents, question under oath, summon any witness
- due process to respond
- update case periodically
- Obstruction = Contempt of Court

- Ombudsman makes
  - specific recommendations re complaint and/or
  - general recommendations on how to improve practices and procedures

- Notify Ombudsman of steps taken or proposed to implement or reasons for not doing so
- Ombudsman accepts if adequate or appropriate

- For other complaints, Ombudsman may summarize (without names) in Annual Report



*Learn more about us at*  
**[www.ombudsman.bm](http://www.ombudsman.bm)**

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