

Annual Report 2007–08

Fourth Annual Report of the Office of the Complaints
Commissioner of the Cayman Islands addressing the Fiscal
Year July 2007–June 2008



Office of the Complaints Commissioner



Office of the Complaints Commissioner

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Aim of the Office: To investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.



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8 June, 2010

The Honourable Mary Lawrence
Speaker of the Legislative Assembly
Legislative Assembly
Grand Cayman

By Hand

Dear Madame Speaker,

Re: Annual Report 07-08

I am pleased to submit the former Complaints Commissioner's Annual Report for the period of 1 July 2007 to 30 June 2008, pursuant to section 20(1) of the Complaints Commissioner Law (2006 Revision).

Additional copies have been delivered to the Clerk for distribution.

The Chairman of the Legislative Committee on Oversight of this office has agreed to introduce the Annual Report.

Sincerely,

Nicola Williams
Commissioner

c.c. Honourable Cline Glidden, Chairman

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1 Executive Summary

The fiscal year 2007-08 was another busy and fulfilling year for the Office of the Complaints Commissioner. As time passed, we continued to become better known in the community and were gratified by the evolving and improving nature of customer service in the public sector.

We considered almost 500 enquiries, around 10% of which went on to become fully-fledged investigations. We received more enquiries than we had budgeted for, yet the actual number of complaints that gave rise to investigations was more manageable. Indeed, the number of complaint investigations in 2007-08 was fewer than half the number from two years ago. We attributed the drop to several encouraging factors: a tightening of the intake processes; the existence of internal complaints processes in government entities; and improvement in government departments.

A cross-section of complainants revealed some interesting trends about our users. Most were Caymanian residents of George Town between the ages of 30 and 50 and more men than women filed complaints. We also reached out to the Sister Islands, completing seven investigations there. The number of companies seeking assistance from the OCC also demonstrated the credibility of the office within the business and professional sectors.

We had anticipated that between two and five public-interest investigations would be completed and sent to the Legislative Assembly, and in the event two (plus our Annual Report for 2006-07) were completed and another two were started. One Special Report was completed and tabled in the Legislative Assembly. We monitored 92 recommendations, well above the target of 20–50 recommendations, and by year's end, we had evidence that 38 recommendations from last year and this year had been complied with.

With the support of the Chief Secretary, we continued the training sessions for civil servants on the value of internal complaints processes (ICPs), and many entities instituted internal complaints departments or processes. Last year, we reported that two studies were done to document the progress in this area. A third study was completed in March 2008. With each study, greater numbers of government entities were able to tell us that they had implemented either informal or formal ICPs.

In some cases, the OCC was able to hear both sides of a complaint within a day or two, and thereafter resolve the dispute. However, the more complex the allegation and the more people and documents involved, the more time elapsed before the investigation could reach completion.

The OCC was invited to make contributions to the Chief Secretary's Review of the expansion of the Civil Service, to the Central Tenders Committee's process and procedures manual, and to the Governor's FACE (Five-star Award for Customer service Excellence) process. We provided a submission to Sir Richard Tucker in the Commission of Enquiry regarding Hon. Charles Clifford on the role of the OCC and the code of conduct for civil servants and requirements for a civil servant entering political life. And we advised Mr Vijay Krishnarayan, a representative of the UK Department for International Development's programme, Building Human Rights Capacity in British Overseas Territories.

Also this year, former analyst Petula Twinn completed a third edition of a booklet entitled *Small Claims Handbook*, designed to assist residents in pursuing available legal remedies through the Summary Court. This booklet is a plain-language guide to making a claim and enables complainants to seek redress for complaints that fall outside the jurisdiction of this office. It has been used, for example, to make claims against a private car vendor and a landlord. Hundreds of copies are now in circulation.

A number of key strategic ownership goals were established in 2006–07 for a period of two years (2007–08 and 2008–09). The goals, which were all complied with, were as follows:

1. Establish a presence on the Internet for informational purposes and to register complaints online.
2. Implement a case management system, Modified Case Tracker.
3. Implement a performance-appraisal system.
4. Provide a bi-monthly report to the media on the work of the OCC.
5. Increase public awareness through media interviews and advertising.
6. Complete in-house training on human rights.

Our budget for 2007–08 of \$954,442 was satisfactory. We were prudent in our spending and returned money to the central treasury at the end of the year, repeating the trend from past years.

While the OCC is independent, it must also account for the manner in which it uses public funds. Section 45 (2) of the Public Finance and Management Law provides for the appointment of a financial oversight committee. The members of the committee are the Hon. Alden McLaughlin, Jr (Chairman), Mr W. Alfonso Wright, Mr Moses I. Kirkconnell, JP, Ms Lucille D. Seymour, BEM, and Mr Rolston M. Anglin.

The staff of the OCC included Commissioner John A. Epp, PhD, MCJ, LLB; Mrs. Susan K. Duguay, Administrative and Investigative Officer; analysts Mr. Scott D. Swing, MEd, BA, and Mrs. Barrie Quappe, BSN, BFA, Executive Assistant to the Commissioner Mrs. Bridgette von Gerhardt; and receptionist Mrs. Claudine Simons. A special mention to former analyst Ms. Petula Twinn and former executive assistant Ms. Giselle Webb, who are continuing in the public service in new roles, and former apprentice analyst Ms. Pamela Mendez, who, having completed her final year reading Law and her professional practice course, left us on schedule to join the law firm of Appleby.

2 Former Commissioner's Message

Reflecting on the fourth year of operation of the OCC (2007–08) brings a feeling of optimism for the perpetual success of this institution. Our efforts to establish credibility within the community continued to show positive results. We were pleased to receive expressions of gratitude from some residents who were assisted. We also were commended by the government of the day in the booklet 'The Cayman Islands Constitution: A Reflection of who we are: Explanatory Notes' (January 2008) at page 13: "It is good practice in a democracy to provide independent checks on the efficiency, fairness and integrity of all our institutions. Caymanians have seen that the creation of the office of the Complaints Commissioner has had a profound effect in investigating government agencies whose practices contravene the principles of fairness, efficiency

and good administration. The PPM government believes that the Office of the Complaints Commissioner should be just the first step towards promoting transparency and integrity in government and ensuring that decisions are made in the best public interest."

Our desire to better equip our team was met by continued training programmes such as the one provided by the Ombudsman of Ontario and his team.

Our powers of investigation were clarified and affirmed by declaration of the Grand Court arising from a case that began in 2007-08. Regulations under the Complaints Commissioner Law (2006 Revision) were affirmed in August 2007 (but not Gazetted until August 2008.)

The matters which we investigated on our own motion continued to be topics of wide significance and complexity. Two investigations of note included the safety and regulation of the marine environment, and the reputation and operation of the national airline during hurricane Dean. The reports are on our website at www.occ.gov.ky.

We continued our efforts to promote the establishment of internal complaints processes in government entities to improve customer service. It is our view that these efforts have had a positive impact on government service and have reduced our case load.

There have been some disappointments. Promised legislation has not been forthcoming on the safety and operation of small commercial vessels. Our continued questioning and review of the functioning of labour tribunals and the labour appeals tribunal contributed to the decision of the Ministry of Employment to retain consultant Gerry Samuel Goolsarran in March 2007 to review that and related issues. But the expected new legislation and better service to the public has not materialized.

The establishment of the Legislative Committee with responsibility for oversight of the OCC was a welcome event, but attempts to meet with the Committee have been generally unsuccessful. Amendments to the powers of investigation and jurisdiction of the OCC, adopted by the committee, have not been moved forward by the Chairman. Reports arising from our investigations have not been debated in the Legislative Assembly.

I feel fortunate to have the privilege of working with a good team. Together we are pleased to have had the opportunity to assist in the encouragement of better governance in these Islands. We have had the satisfaction of seeing positive and lasting change in certain administrative practices, which will benefit the residents of the Cayman Islands. Also, we have seen, through our independent investigations, examples of the good work done by many civil servants. The civil service, in the main, usually works well.

As I will be demitting office in the months ahead, I will not have the opportunity to write another annual report, and in consequence I take this opportunity to state that it has been an honour and privilege to serve.

John A. Epp

January 2009

3 The Oversight Committee of the Legislative Assembly

The Office of the Complaints Commissioner is an independent office.

The Cayman Islands (Constitution) (Amendment) Order 1993 amended the Constitution of the Cayman Islands to establish the Office of the Complaints Commissioner. The Constitution, in section 49(N)(5), states, "In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority."

While the OCC is independent, it must also account for the manner in which it uses public funds. Section 45 (2) of the Public Finance and Management Law provides for the appointment of a financial oversight committee:

"45 (2) Unless the context otherwise required, Part IV shall apply in respect of the Office of the Complaints Commissioner as if –

- (a) every reference to the Governor in Cabinet or a minister were a reference to the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Complaints Commissioner, or if no such committee exists, the Speaker; and
- (b) every reference to a ministry were a reference to the Office of the Complaints Commissioner."

The members of the committee are the Hon. Alden McLaughlin, Jr (Chairman), Mr W. Alfonso Wright, Mr Moses I. Kirkconnell, JP, Ms Lucille D. Seymour, BEM, and Mr Rolston M. Anglin.

4 Introduction of Staff

The Office of the Complaints Commissioner is a challenging, stressful, and rewarding place to work. The OCC is proud of the members of its 2007–08 team, who are introduced below.

Commissioner

John A. Epp

Administrative and Investigative Officer

Susan K. Duguay

Analyst

Scott D. Swing

Analyst

Barrie S. Quappe

Executive Assistant to the Commissioner

Bridgette von Gerhardt

Receptionist

Claudine Simons

Special mention

The OCC is grateful for the service of Analyst Petula Twinn and Executive Assistant Giselle Webb. Both are continuing in the public service in new roles. We benefited from the contribution made by our apprentice analyst, Pamela Mendez, who, having completed her final year reading Law and her professional practice course, left us on schedule to join the law firm of Appleby.

5 Training

During the third week of December 2007, the entire OCC team undertook an advanced training programme on investigations designed by the Ombudsman of Ontario. The training was conducted by Ombudsman André Marin and Lead Investigator Gareth Jones. Specialist training in obtaining evidence from computers was received from Deloitte.

In-service training continued through the remainder of the year. For example, Ms Simons attended a course designed to assist receptionists. The Commissioner attended the annual meetings and seminar series of the Canadian Forum of Ombudsman in St Johns Newfoundland and was a presenter at the Canadian Association of Civilian Oversight of Law Enforcement, held this year in Regina.

Mr Swing continued his studies in the course entitled "Information Access and Protection of Privacy", offered online by the University of Alberta. He hopes to complete his certification through this programme in the first quarter of 2009. He attended the Caribbean Ombudsman Association Meeting in Jamaica in June 2008, where the topic of human rights was discussed. Mrs Duguay and Mrs Quappe attend the Caribbean Ombudsman Association bi-annual meetings and lecture series in Bermuda in May 2008. Ms Webb learned about supervising reception through a mentoring programme designed by Mrs Duguay.

6 Translation Services

On the basis of the broad cultural diversity in the Cayman Islands, it was anticipated that the OCC would better serve the public by being able to assist in languages other than English. The Administrative and Investigative Officer, Mrs Susan Duguay, is able to assist people in English, French, and Spanish. The Executive Assistant, Mrs von Gerhardt, is able to assist people in Spanish. For services in 50 other languages, the OCC has contracted for translation services.

7 Role and Function of the Office of the Complaints Commissioner

7.1 ROLE

The Office of the Complaints Commissioner exists to safeguard the community in its dealings with government agencies. The Office has three major statutory roles:

- *Complaint investigation:* the investigation and review of the administrative actions of Cayman government officials and agencies, upon receipt of complaints from members of the public, groups, and organisations.

- *Own motion investigation:* the investigation, on the initiative or “own motion” of the Commissioner (ombudsman), of the administrative actions of Cayman government agencies – often arising from insights gained from handling individual complaints.
- *Complaint monitoring:* the monitoring of the administrative actions of Cayman government officials and agencies, upon receipt of our recommendations.

The complaint and own motion investigation roles of the OCC are the more traditional roles that constitute the bulk of the work of the office. The guiding principle in an investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient or otherwise wrong. At the conclusion of the investigation, we can recommend that corrective action be taken by an agency. This occurs either specifically in an individual case or generally by a change to relevant legislation, administrative policies or procedures.

A key objective of the OCC is to foster good public administration within Cayman government agencies, ensuring that the principles and practices of public administration are sensitive and responsive to the interests of members of the public.

The OCC does not represent the complainant or the government administration. It conducts an independent review and makes objective reports to the parties or the Legislative Assembly. It can address complaints that occurred within the past 12 months if the subject of the complaint is a government entity and if the complaint is not excluded by schedule 2 of the CCL.

The OCC has jurisdiction to consider decisions taken in the course of “maladministration” by a government entity. Government entities include a ministry, company, department, portfolio, statutory board or authority. Maladministration is defined in the CCL as “inefficient, bad or improper administration”. This includes unreasonable conduct (for example, delay) or abuse of power or authority. Abuse of power or authority may include an action based on a mistake of law or fact; an action which is unreasonable, unjust, oppressive, or improperly discriminatory; or an action based on *practices or procedures* which are unreasonable, unjust, oppressive or improperly discriminatory.

Examples of maladministration taken from the reports of the Parliamentary Ombudsman of the United Kingdom include bias, partiality, neglect, inattention, delay, abuse of power, incompetence, ineptitude, perversity, rudeness, unwillingness to treat the resident as a person with rights, refusal to answer reasonable questions, neglecting to inform a complainant about rights or entitlement including appeal routes, knowingly giving misleading or inadequate advice, offering no redress, faulty procedures, failure by management to adequately monitor compliance with procedures and failure to reduce the effects of rigid adherence to the letter of the law where that produces inequitable results.

The OCC also has jurisdiction to consider the inequitable or unreasonable nature or operation of any enactment or rule of law.

7.2 PRIMARY FUNCTIONS

The primary functions of the OCC are to investigate; to recommend; to report; and to monitor.

7.2.1 Investigate

A key objective of the OCC is to contribute to public discussion on administrative law and public administration and to foster good public administration that is accountable, lawful, fair, transparent and responsive. We pursue this objective in different ways – by looking in depth at an issue arising in a particular ministry/department/portfolio; drawing attention to problem areas across government administration; conducting own motion investigations; working jointly with ministries/departments/portfolios to devise solutions to the administrative problems that arise within government; and making submissions to external reviews and enquiries that are examining issues in public administration.

The OCC will investigate complaints made in writing that fall within the scope of the CCL, and matters directed to it for investigation by resolution of the Legislative Assembly. The OCC may also, on its own initiative, investigate matters which, in the Commissioner's opinion, must be investigated in the public interest.

The purpose of the investigation is to ascertain whether "injustice" occurred as a result of maladministration.

The powers of investigation are stated to be the same as those of a Grand Court judge, although the Commissioner is not bound by the rules of court and can set his own procedure within the confines of natural justice. Some powers include the power to summon witnesses and receive confidential documents. Also, the Commissioner may order re-entry of a person removed from the Islands by the Immigration Department who is important to an ongoing investigation.

Throughout 2007–08, we did not have to order the re-entry of a person but we did have to issue formal summons. These were complied with in due course.

7.2.2 Recommend

The OCC may recommend action to be taken by an administrator when maladministration is found. The recommendations may address a specific action causing an injustice and may address laws, regulations or rules that lead to an unjust result. The OCC may recommend payment of compensation for the complainant who was wronged. In addition, the Commissioner may make such comments in relation to a case as he thinks fit, whether or not an injustice has occurred.

7.2.3 Report

The OCC must inform the government entity of the result of an investigation if injustice is sustained as a result of the actions taken by the entity's officer. If no action is taken by an administrator on a recommendation made by the OCC, the OCC must report this failure to the Legislative Assembly. Also, if the OCC conducts investigations on its own initiative, it must report the findings to the Legislative Assembly. A special report must be made to the head of department when serious misconduct is discovered in a department, and that report must be presented to the Governor and the Legislative Assembly.

7.2.4 Monitor compliance

The OCC must monitor compliance by government entities with recommendations made by the Office.

7.3 ADDITIONAL FUNCTIONS

The CCL authorises the OCC to organise the mediation of a complaint that is minor in nature, where the parties are willing to meet to attempt to resolve the problem. This can be an effective route where, for example, the member of the public must often interact with the same government officer. Mediation can help defuse tension or frustration and serve to begin a dialogue and open lines of communication.

To better perform the role and function stated in the CCL, the OCC, by implication, must inform the public service and the residents of the Islands of all aspects of the Office.

7.4 AREAS OUTSIDE THE JURISDICTION OF THE OCC (SCHEDULE 2)

1. International affairs – matters certified by the Governor to affect relations between the government and another country's government (or its international organisations).
2. Matters of national defence, external affairs and internal security (e.g., Emergency Powers Law).
3. Investigation of crime, or protection of the security of the Islands, by Police, Customs or Immigration.
4. The Governor's power of pardon.
5. Court proceedings, whether civil or criminal in nature.
6. Issues concerning the employment (e.g., hiring, promotion or firing) of government employees.
7. The Attorney General's powers of prosecution (e.g., beginning, overtaking or ending).
8. Legal advice given by the Attorney General to the government.
9. The Auditor General's actions (e.g., reviewing the government's accounts).
10. Matters under the Mutual Legal Assistance Treaties.
11. Contracts for services for government (but can investigate purchases of land).
12. Matters defined by the Constitution as outside of the authority of the court.
13. Any judicial function.

8 Demographics

Attached as Appendix B is an indication of the demographics of the people served by the OCC, based on 54 files closed during the period ending the fiscal year June 2008. In brief, most complainants are Caymanian, between the ages of 30 and 50 years, and often residents of George Town. Men are slightly more prone than women to file a complaint (19 males, 12 females, 16 companies). During this fiscal year, seven investigations arising from complaints made in the Sister Islands were completed. The number of companies seeking assistance from the OCC demonstrates the credibility of the office within the business and professional sectors. This office is committed to continuing a mixed-media campaign to increase the visibility of the OCC to all socioeconomic groups in Cayman society.

9 Intake and Case Flow Process

The basic intake process is depicted in a flow chart found below at appendix C.

10 Case Examples

The OCC deals with a diverse range of complex complaints where the results can differ widely. Below, we present a number of case studies reflecting that diversity and the very different outcomes that can occur. Other cases are discussed later in this report. Sometimes, government entities are found wanting and the OCC will offer recommendations to rectify the circumstances giving rise to the complaints and help to avoid a repeat in future. The OCC often finds that entities in question are not at fault but that the law or regulations are inadequate. And in many cases, neither the office in question nor the procedures are at fault and the OCC will find no maladministration. Investigations can involve a number of different entities and require the analysis of expert opinion and special reports. Names and some details of the selected complainants have been omitted owing to issues of confidentiality.

10.1 Case 1: Immigration Department accused of leaks - completed June 2008

When a complainant contended that the Immigration Department had violated the Public Servant's Code of Conduct by revealing information to a third party, the OCC found that the complainant had suffered an injustice as she was never told whether a suspected leak, which could have placed her in danger, had occurred or not. Although the person had first complained to the Immigration Department in February 2008 and had been promised a letter explaining the findings of the leak enquiry in May 2008, no such communication had been received by the end of this financial year – June 2008. The OCC recommended that, in future, the Immigration Department complete its investigations arising from complaints within one month and report those findings within a week of completion to the complainant. The OCC will continue to monitor the department's compliance of these recommendations.

Case 2: Immigration Department follows the rules – completed July 2007

One of the first cases to be completed in this financial year involved an employer who complained to the Department of Immigration that four of her workers had been issued permits for other employers before the complainant had released them. The OCC found the Immigration Department had acted appropriately because even though the complainant had not issued 'release letters' for the four former employees, they had effectively released themselves by cancelling their own permits owing to the intolerable working conditions under the complainant. The Immigration Law (2006 Revision) does not require a release letter if a permit is cancelled under such circumstances, and in this case all four permits were cancelled before new ones were issued. Accordingly, the Department had not breached any laws or regulations and therefore the complaint was unfounded.

Case 3: Port Authority not liable in accident – completed April 2008

Under the Complaints Commissioner Law (2006 Revision), the Commissioner cannot investigate an action where the complainant has another avenue of remedy. When a complainant came to the office contending that the Port Authority had refused to investigate his complaint after a work accident at a dock because the complainant was not

a Port Authority employee, the OCC found that this was indeed the case. It also discovered the complainant had another course of redress. In this case, the Authority could not be held liable for the accident and the complainant's employer had already informed the Department of Employment Relations of the accident. The complainant was therefore entitled to pursue his direct employer for compensation for the accident and there was no maladministration on behalf of the Port Authority.

Case 4: The failure to convene Labour Appeals Tribunals – completed September 2007

A consistent failure by the Labour Appeals Tribunal (LAT) to meet and hear appeals in a timely manner due to a combination of factors, not all within its control, did however, result in considerable maladministration, injustices, cases of justice denied and well founded complaints. In some cases, complainants were waiting literally years to have their appeals heard. In September 2007, in the wake of two particular complaints to the OCC, the office recommended that the Secretariat of the LAT prepare a schedule to address all outstanding appeals before the end of January 2008 and that all appellants be notified in writing of the status of their appeal. Having monitored the situation closely, the OCC found that the new Chairman of the LAT did make a considerable effort to convene hearings and address the backlog. Once the hearings were underway, the OCC had no further need to make recommendations.

Case 5: Ministry not at fault on musician's complaint – completed January 2008

In an unusual case, a complainant alleged that the Ministry of Communications Works & Infrastructure was failing to uphold the Memorandum of Understanding regarding airtime on local radio for Caymanian musicians. The complainant said his music was not being played on a specific radio station and the Ministry was not taking action. In the course of the investigation, the OCC found that the Chair of the Cayman Music and Entertainment Association (CMEA) had recently congratulated the station in question for its efforts in promoting local music and that overall the airtime given to Caymanian musicians had significantly improved. As the spirit of the MOU was being adhered to, the OCC found that the Ministry was not at fault. While the complainant may not have liked the details of the MOU or was disgruntled that his music was not being played on one particular station, the MOU was indeed being honoured and the complaint was unfounded.

Case 6: Immigration decisions need to be justified – completed September 2007

When the Immigration Department failed to adequately deal with a complaint over a refused visa application, the OCC found a case of maladministration. During its investigation, the OCC discovered that a discretionary decision to refuse a visa made by an immigration officer was arbitrary with no evidence to support it. The Immigration Regulations (2006 Revision) suggests that an application for a visa may be refused if the applicant fails to satisfy an officer that he or she will leave the island or is suspected of seeking entry to Cayman to look for work. In this case, the visa applicant had not previously overstayed nor was there any evidence she was seeking employment and therefore the decision to refuse the visa was unjust. As a result, the OCC recommended that the Immigration Department improve written instructions for the officer in question on the criteria used to decide visa applications.

Case 7: Lands & Survey service within the law – completed March 2008

When a member of the real estate sector complained that the commercial service offered by the Lands and Survey Department (“Lands and Survey”) was biased towards an industry body and against individual agents, the OCC did not uphold the complaint. Legally operating a commercial service offering real estate agents access to its Geographical Information Service under the Public Management and Finance Law’s revenue-generating recommendations, the department had entered into a discount agreement with the Cayman Islands Real Estate Brokers Association (CIREBA). The complainant accused Lands and Survey of not only refusing to offer her the same discount but also giving CIREBA greater access. Having established jurisdiction to investigate the most part of the complaint, the OCC found that all subscribers were given equal access to information depending on the fee they paid and were receiving equitable service. The discount given to CIREBA was reasonable because of the body’s bulk purchasing power. Lands and Survey had also offered to negotiate an agreement with the complainant. The OCC decided the complaint was unfounded, but it did find that the investigation took longer than necessary, as the department did not respond in a timely manner. However, as the Director acknowledged this and indicated that in future he would respond to the OCC in a timely manner, no recommendations were made.

Case 8: Documentation needs to be clear – completed June 2008

A complaint against the Department of Vehicle and Drivers Licensing accusing the department of overcharging unexpected fees on a suspended vehicle licence was upheld because of poor documentation. A motorist suspended his vehicle licence for an indefinite period while he acquired the necessary parts for its repair. After paying the back fees, he was led to believe that no more fees would be required until he reactivated the licence. However, when fees were later requested of him, he was told by the manager of the department that he had to pay because the suspension of a vehicle licence had a limit of three months. During the investigation of the complaint, the OCC found that a department clerk had originally advised the complainant that the suspension was open ended. Not only that, but the department’s literature concerning suspensions indicated that no fees should have been due. The OCC recommended that the wording on the relevant documentation be clarified and that the internal accounts of the department be corrected to reflect that the complainant did not owe money. This was done.

Case 9: Status & Permanent Residency guided by AG – completed August 2007

A complainant stated that permanent residency was granted to his wife without his approval and complained that the Caymanian Status & Permanent Residency Board, which considered his wife’s application without his signature, had based its decision on misrepresentation. But the OCC found that the board had not only considered all the factors on the application for residency, it was also guided by an opinion of the Attorney General. Even though the marriage was unstable, the board recognized that this was not an absolute bar to the granting of a Residency and Employments Rights Certificate (RERC). Moreover, in this case the board’s primary concern was the welfare of the applicant’s Caymanian child. As the wife was unable to apply for a work permit, she had no other recourse but to apply for a RERC. As a result, the OCC was satisfied that there was no failure on the board’s part to properly review the application.

Case 10: Board decisions must follow the law – completed June 2008

When the Marine Conservation Board reversed a decision not to issue Turtle Capture Licences for the period November 2007 to April 2008, a complaint was received by the OCC suggesting the board had been interfered with by outside powers. When the OCC began its investigation, it was revealed that the board had first decided not to issue licences because it felt the Marine Conservation Law needed to be revised and was concerned that things were not moving fast enough. However, none of the turtlers were informed that this was what was behind the refusal and one of them complained to the Leader of Government Business. This provoked a meeting with elected members of Cabinet, which is what board members intended in order to bring government to the table to discuss what it perceived as necessary changes to the law. It was the OCC's finding that the turtlers had therefore been denied their right to a licence in an unfair process. The office also found the portion of Cabinet to be at fault when they called the meeting with the board to address the turtlers' complaints deviating from the proper route governing appeals against any decision made by the board. By calling the meeting with the board, the members gave the appearance of wrongly interfering with the process. As a result of the chain of events, the OCC recommended that the board follow the rules of natural justice when making decisions and accurately state the reasons for them. It also recommended that elected members of Cabinet follow the process as stated in the relevant legislation.

Case 11: Immigration Department must hear applicants – completed June 2008

The OCC found that an employer and his employee were not given due consideration when the Immigration Department failed to give them a chance to answer allegations made against them during an appeal over a refused work permit. In the wake of the refusal, a complaint was made to the OCC that the employer was not invited to attend the appeal. The OCC found that a previous employer had denigrated the performance of the employee in writing to the board requesting that employee be refused any future permits. As neither the employee nor the employer were given the opportunity to see these written allegations and answer them, the OCC found a breach of the rules of natural justice. The OCC recommended that the Immigration Department consider the application afresh in a timely manner with no fee. It also stated that the Immigration Department must follow the rules of natural justice and give applicants the opportunity to answer allegations, and that the reasons given in writing to applicants must reflect the real reasons for a decision being made by the department. In the end, a new application was submitted and granted.

Case 12: The OCC is tied by Planning Law – completed July 2007

The OCC seeks to help all those who believe they are the victims of an injustice perpetrated by a government entity. However, there are times when it is impossible to achieve a favourable outcome because of the rule of law. When a complainant contended that the Planning Department had refused to take action regarding a zoning violation, the OCC found that the department had not violated the principles of good administration. In this instance, the OCC sought an independent legal opinion because of the complexity of planning law. It was the view of the expert attorney that the time limit for taking enforcement action against the landowner had expired and as a result, the planning Department was acting within the law and the complaint could not be upheld. The