



TO ALL MEDIA

13 November, **Hamilton, Bermuda:**

In light of the extensive public interest in the Contempt of Court case between the Ombudsman and the Corporation of Hamilton, the Ombudsman today detailed the final stages of her investigation into the governance at the Corporation of Hamilton.

The Ombudsman's Contempt of Court action against the Mayor and Deputy Mayor of the City of Hamilton was due to their failure to comply with her Summons to attend investigation interviews. They claimed that they had a right to have their lawyers present during the Ombudsman's investigation interviews. The Supreme Court found that there is no right of legal representation during the Ombudsman's fact-finding stage of investigations. Ms. Brock said, "people are, of course, free to consult with attorneys before and after interviews – but not inside the interview room. I will exercise my discretion to allow lawyers only for compelling reasons".

The Ombudsman Act 2004 provides for legal representation only at the reporting stage of the Ombudsman's investigation. Section 17 requires that persons about whom adverse comments are made in a preliminary draft report have the right to be heard on their concerns and/or objections. In this stage of the process, they may be represented by anyone of their choosing, including attorneys. The opportunity to "be heard" regarding adverse comments is often referred to as "due process" or "natural justice". Ms. Brock's investigation is now at this stage.

Ms. Brock said, "The great value to me of the due process stage is that the feedback helps me correct any factual errors in the Preliminary Draft Report and, more importantly, to reflect and re-draft if I have misinterpreted or unfairly characterized any issues."

Further, the Ombudsman said, "The responses, concerns and any other representations that persons give back to me may lead to substantive changes to the Preliminary Draft Report. For this reason it is important that the contents remain confidential until I complete and table the final report in Parliament."

"I usually circulate comments being made in draft reports to people if the comments may identify them – even if the comments are not at all adverse. This is a courtesy for them to be aware of what may be in the report. In the past, people have respected the process and have honoured the need for confidentiality," Ms. Brock said.

Ms. Brock said, “The steps for carrying out this due process depends on the circumstances. In the case of the Corporation of Hamilton, there are at least nine members of the City Council itself and other persons either about whom there are adverse comments or who are otherwise named. Given the complexity of this investigation, there are several issues that people may want to comment on.”

“Therefore, to ensure that I have fully heard their concerns, I have established two opportunities for people to present their concerns (in both cases, they may resort to legal or other representation:

- First, they will be to clearly articulate their responses in writing.
- Second, they have the right to hearings in person in order to clarify any further concerns.

The due process period begins today and will be completed by 21 November. Ms. Brock said, “Typically for sensitive investigations, Ombudsman best practice requires the review of adverse comments to be completed within a couple of days. However, I have decided to extend the time in this case.”

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Editor’s notes:

- The Ombudsman announced an investigation into governance issues, particularly regarding the waterfront development process on 20 March 2013
- The Supreme Court of Bermuda upheld the Ombudsman’s Certification of Contempt of Court against the Mayor and Deputy Mayor on 10 October 2012. [Re Office of the Bermuda Ombudsman [2013] SC (Bda) 72 Civ]
- The Ombudsman Act 2004 provides for the due process opportunity to be heard regarding adverse comments:

**Adverse comment**

17 (1) The Ombudsman shall not —

- (a) in any recommendation given under section 15(3); or
- (b) in any report made under section 24,

make any statement that is adverse to any authority or person unless that person has been given an opportunity to be heard.

(2) A person to whom subsection (1) applies may be represented at the hearing by a barrister and attorney or any other person.

(3) In this section, “barrister and attorney” means a person admitted and enrolled as a barrister and attorney under section 51 of the Supreme Court Act 1905.

- This is a media release for information only – there will be no further statements prior to the Ombudsman’s Report being tabled.
- Office of the Ombudsman: tel: 296-6541.