

• For The Good Of The Public
• And Those Who Serve The Public

•

OMBUDSMAN FOR BERMUDA
Second Annual Report 2007





January 28, 2008

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 second Annual Report which covers the year 1st August, 2006 to 31st July, 2007.

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

Annual and Special Reports

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

Yours sincerely,

Arlene Brock
Ombudsman for Bermuda

Table of Contents

Ombudsman’s Message.....	1
How is Maladministration Determined?.....	3
Selected Summaries of Closed Complaints.....	7
General Recommendations Arising from Individual Complaints.....	13
Statistics.....	19
First Special Report re Allegations of Discrimination Involving Medical Professionals at King Edward VII Memorial Hospital.....	24
Staff.....	32
Presentations, Conferences and Courses.....	34
Ombudsman Act 2004 “In a Nutshell”.....	37
How to Make a Complaint to the Ombudsman.....	39
CAROA Conference.....	40
About Bermuda.....	42

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

A colleague noted that we literally hit the ground running in the first year of the Ombudsman institution in Bermuda. This second year seemed like a relentless marathon. We continued the work of learning about best practices, branding our office, building an electronic complaint management system and investigating individual complaints. We drafted our first Annual Report with the twin goals of accounting to the Parliament and the public for our operations and of informing readers about the role and breadth of the Ombudsman in fostering fair, efficient and caring delivery of public services.



Generally, authorities responded cooperatively to our inquiries about individual complaints. Civil Servants are learning that the Ombudsman can insulate them from frivolous and vexatious complaints. On the other hand, they were held to account for administrative actions that were not fair, reasonable or service oriented. Complaint numbers in the second year were about the same as in the first year. However, they tended to be more complex. There were 134 complaints of which 44 were referred.

One of the most important functions of the Ombudsman is to make recommendations generally about improving practices and procedures. General Recommendations Arising from Individual Complaints are noted at pgs. 13-18.

The Transport Control Department, the KEMH Credit Office, Ministry of Works and Engineering and the Bermuda Housing Corporation were quick and diligent in resolving issues. However, we did have serious concerns about the quality and timeliness of responses to our inquiries from two departments: Social Insurance and Planning. The Department of Social Insurance has improved in its responses to me, but has yet to conquer a quagmire of overdue reimbursements to doctors. I am convinced, however, that the Department is working hard with software vendors to address the problem.

We hope that the Department of Planning will embrace our general recommendations aimed at ensuring more transparency in their communications with the public. In August 2006, I felt it necessary to speak directly with all staff in the Department of Planning about the principles, role and expectations of the Ombudsman. I thank the Bermuda Public Services Union for facilitating two department-wide meetings.

The most absorbing and significant work during the year was our first public interest systemic investigation—into Allegations of Discrimination amongst Medical Practitioners at the King Edward VII Memorial Hospital (Bermuda's only hospital). I thank interviewees as well as the Bermuda Hospitals Board and the Ministry of Health for their cooperation. Our extensive report, *A Tale of Two Hospitals*, found a disturbing pattern: although problems amongst medical practitioners were often fueled more by issues of governance and competition than by race, hospital administration sometimes did not seem to afford black doctors the same benefit of the doubt as was extended to white doctors.



Of even greater concern was the paucity of best practices for reporting and analyzing clinical incidents and promotion of institutional learning. This enabled a climate of arbitrary decisions that seemed to disadvantage black doctors. I am pleased to note that our fifteen recommendations have been taken on board and look forward to an update from the Bermuda Hospitals Board and the Ministry of Health by June 30, 2008 with respect to implementation. The Report is reviewed at pgs. 24-31 and can be found in full on our website: www.ombudsman.bm.

We appreciate the ongoing advice and assistance of our international colleagues. In particular, the Ombudsman of Ontario, a trailblazer in systemic investigations, was exceptionally generous. The UK Parliamentary Commissioner has given kind permission to reprint the Summary of her 2007 Principles of Good Administration (pgs. 3 & 4). Bermuda was able to give back just a little at the 2007 Annual Conference of the US Ombudsman Association in my presentation on "Launching a new Ombudsman Office".

In December 2006, we hosted the new Complaints Commissioner of the Turks and Caicos Islands for two weeks. Mrs. Sadie Williams fit seamlessly into our busy office. We are grateful to the investigatory and oversight bodies that graciously extended time to speak with her about their own procedures and work: the Police Complaints Authority, Human Rights Commission, Department of Consumer Affairs, Department of Labour and Training, the Employment Tribunal and Office of Legal Aid.

Our office is preparing to host the 5th Biennial Conference of the Caribbean Ombudsman Association (CAROA) April 27-May 2, 2008. We look forward to welcoming distinguished Ombudsmen and leading presenters in the field not only from the Caribbean but also from other regions. It promises to be a dynamic experience. The first day, focusing on the foundations of good governance and the value of the Ombudsman institution, will be open to the general public. As in the previous four Biennials, the Commonwealth Secretariat is the primary sponsor. We are also grateful to four large corporate sponsors (who are unlikely to resort to our services) and the Government of Bermuda for their support. (See pgs. 40 & 41 and website for more information.)

Our office is effective only because of the dedication of our talented and committed staff—I thank them profusely.



Arlene Brock

Ombudsman for Bermuda

How is Maladministration Determined?

The function of the Ombudsman is to investigate complaints in order to determine whether there is evidence of “Maladministration”. Section 2 of the *Ombudsman Act 2004* defines maladministration as “inefficient, bad or improper”. This includes: unreasonable delay; abuse of power; actions that are contrary to or mistake of law or fact, unfair, oppressive, improperly discriminatory, negligent, based on irrelevant grounds; and, procedures that are unfair, oppressive or improperly discriminatory.

In reviewing each complaint, there was no need to reinvent the wheel. The Ombudsman considered documents from other jurisdictions in order to analyze what the above maladministration elements looked like in practice. The UK’s Principles of Good Administration and British Columbia’s Code of Administrative Justice were helpful.

Principles of Good Administration (UK 2007)

Good administration by a public body means:

1. Getting it right

- Acting in accordance with the law and with due regard for the rights of those concerned.
- Acting in accordance with the public body’s policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.
- Responding to customers’ needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions.
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.



4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologizing where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

These Principles are not a checklist to be applied mechanically. Public bodies should use their judgment in applying the Principles to produce reasonable, fair and proportionate results in the circumstances. The Ombudsman will adopt a similar approach in deciding whether maladministration or service failure has occurred.

Examples of Correspondence Received from Complainants

"Your letter brought a prompt response including a telephone call...This is the action which is appropriate in the circumstances and I am grateful to you for causing it to happen."

"Thank you for your involvement, care, concern and patience."

"I have to thank you for your tenacity in making this (resolution) possible and for your patience in seeing it through. Your diligence and the research efforts of your staff have proven that your office is indeed a necessity for those who feel they have not been treated fairly."

"Thank you for the influence of your office in assisting me."

"I really appreciate all that you have done – this would not have been resolved without you."

Code of Administrative Justice (British Columbia 2003)

Act Improperly

An authority acts improperly when it intentionally or recklessly breaches a duty which it owes towards a person and thereby results in adverse consequences for him or her. The element of intention or recklessness distinguishes this ground from negligence.

Unreasonable Delay

Delay is unreasonable whenever service to the public is postponed improperly, unnecessarily or for some irrelevant reason.

Abuse of Power

An authority has acted for an improper purpose in the following situations:

a) When an act or decision is motivated by favouritism or personal animosity towards the individual who is directly affected; and **b)** When there is an intention on the part of the authority to promote an objective other than that for which a power has been conferred on it.

Contrary to Law

Unauthorized acts are those beyond the jurisdiction or power of an authority. Such acts have no constitutional basis, legislative authorization, or common law justification. An authority acts contrary to law when it fails to comply with statutory directives.

Unjust

Where an authority is exercising a discretionary power, the merits of its decision may be reviewed on the basis that it has made the wrong choice of a governing law, right, rule or policy. It is unjust for an otherwise valid claim to be defeated because of the claimant's failure to adhere to procedural requirements, if such failure does not prejudice any other person or authority. Administrative decisions should be made on the basis of the real merits and justice of the case.

Administrative justice requires consistency in the application of determinative principles and standards. When the law spells out a test to apply, or when an authority has adopted a reasonable policy as a guide to the exercise of its discretion, the test or policy ought to be applied so that similar cases are treated in a similar way. Otherwise the authority acts arbitrarily, and an arbitrary decision is an unjust decision.



Oppressive

A precondition is oppressive when it has the effect of unreasonably overburdening a person in the pursuit of his legal entitlement. An act or decision is oppressive when the authority uses its superior position to place the Complainant at an unreasonable disadvantage.

Improperly Discriminatory

Discrimination is improper if it is not reasonably required for the attainment of the overall purpose of the administrative or legislative scheme which it is intended to serve or if it is inconsistent with the distinguishing criteria established in an enactment or in a policy pursuant to an enactment.

Mistake of Law

An authority makes a mistake of law when it misperceives or misinterprets a provision of an enactment or a common law rule.

Mistake of Fact

A mistake of fact occurs when an authority is mistaken as to the existence of a certain fact or facts. A mistake of fact is a question of perception or knowledge on the part of the authority.

Irrelevant Grounds

An act of an authority is based on irrelevant grounds or considerations when it pays attention to and utilizes extraneous matters, circumstances, policies and rules or does not consider relevant information.

Arbitrary Procedure

An authority invokes or utilizes an arbitrary procedure when it uses a procedure which fails to adhere to relevant principles of natural justice and which is designed for mere convenience of the authority or is based on preference.

Unreasonable or Unfair Procedure

An unreasonable procedure is one which fails to achieve the purpose for which it was established. An inadequate opportunity for the person affected to be heard before the decision is made is unfair.

Negligent

An authority is negligent if it fails to meet a standard of care it owes to the public. Negligence in administration is the failure to exercise proper care or attention in the performance of a public duty.

Selected Summaries of Closed Complaints

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

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

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

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

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

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

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

The following pages set out examples of individual complaints (grouped by Ministry).

Ministry of Finance

Government Employees Health Insurance (GEHI), Accountant General

UNRESPONSIVE

Patient A had scheduled a pre-approved procedure overseas. Just prior to traveling, she required another urgent procedure that KEMH was unable to schedule in time. Therefore, her doctor recommended that she get the second



procedure overseas at the same time as the original procedure. GEHI was notified and did not object. Upon Patient A's return, GEHI declined to reimburse additional travel expenses. Patient A appealed that decision and complained to the Ombudsman about the unreasonable delay in processing her appeal. After inquiry by the Ombudsman, GEHI determined that an appeal was unnecessary and reimbursed Patient A.

UNREASONABLE DELAY / UNRESPONSIVE

Survivor B claimed that for at least six months GEHI failed to return her phone calls when she attempted to secure reimbursement of her mother's overseas medical expenses. Her mother passed away in the interim. GEHI's explanation is that it handles 3,000 claims per week (approximately 70 calls per day are received through the switchboard in addition to calls to direct lines). Emergency calls must take precedence over calls dealing with past billing matters. Further, GEHI does not always leave a message when returning a call. GEHI is acutely aware of the need to reduce processing time and hired additional staff and reorganized processing procedures. Nevertheless, the Ombudsman found maladministration in the delay. The deceased's estate was paid.

Department of Social Insurance

UNREASONABLE DELAY / UNRESPONSIVE

Pensioner C retired and had received a pension for about ten years. The Department informed him that he would no longer receive the pension until he produced additional information. He submitted appeal documents and the Department advised that the matter would be sent to the Contributory Pension Appeal Tribunal. However, years later the appeal had not yet been scheduled. He complained about unreasonable delay and also that his phone calls were not answered. After preliminary inquiries, the Ombudsman found maladministration and recommended that the appeal be submitted without delay to the Tribunal (which upheld Pensioner C's case—he received \$40,000+).

UNREASONABLE DELAY / UNRESPONSIVE

Similarly, Pensioner D was aggrieved that, despite 34 years of unbroken service, the Department discounted his pension entitlement by disallowing four years of government service abroad (notwithstanding that the service abroad was allowed for purposes of Superannuation). He complained that the Department took 5 ½ months to acknowledge submission of his appeal documents. After advising that his appeal would be sent to the Contributory Pension Appeal Tribunal, the Department still had not scheduled the appeal some 1 ½ years later. It even took 4 months for the Department to respond to the Ombudsman's inquiries. She found maladministration in the delay and the appeal was heard two months later (Pensioner D's case was upheld).

OPPRESSIVE DECISION

In two similar but unrelated complaints, Widow E and Widower F applied for widow's gratuity under the Contributory Pensions Act 1970. The gratuity is payable only if, at the time of the spouse's death, the couple had been married for three years or more. Both Complainants were aggrieved as their spouses passed less than three weeks before the three-

year deadline. After considerable review and legal advice, the Ombudsman found no maladministration. The Department was correct in its conclusion that there was no statutory discretion to vary the cut-off date.

Office of the Tax Commissioner

MISTAKE OF LAW

Tax Payer G is an independent professional who co-mingled his professional and personal funds. He provided office records of his billings and 3rd party records of reimbursements. However, he objected to producing his personal account records. The Tax Commissioner adjudicated on his objection—and disallowed it. Tax Payer G indicated that he wished to appeal but the Tax Commissioner declined to forward his appeal to the Tax Appeal Tribunal. The Taxes Management Act 1976 and leading Bermuda case law does not provide for any discretion on the part of the Tax Commissioner not to forward an appeal of an adjudicated matter. The Ombudsman found maladministration on the grounds of a mistake of law. After consultation with their legal advisors, the Tax Commissioner agreed to submit the appeal to the Tribunal. Tax Payer G agreed to keep a separate business bank account in future, which the Tax Commissioner is entitled to see.

Ministry of Culture and Social Rehabilitation

(then Ministry of Community and Cultural Affairs)

Human Rights Commission

UNREASONABLE DELAY

Grievant H made a complaint of sexual harassment to the HRC. This could have been the HRC's first referral to the Department of Public Prosecutions ("DPP") for review for possible prosecution on such ground as a summary offence. However, the HRC failed to process the complaint in a timely way. Grievant H claimed unreasonable delay. The Ombudsman found procedural errors and delay in the HRC's handling of the complaint. The result was that the complaint was time-barred from review by the DPP. As there was no remedy that could restore the Complainant's legal rights or otherwise put her in the position that she would have been in had there been no maladministration, the Ombudsman recommended a without prejudice apology and a consolatory *ex-gratia* payment (based on analysis of such payments recommended by Ombudsman in the UK and Canada). *Note: A consolatory payment is not compensation.*

Ministry of Labour, Home Affairs and Housing

(then Ministry of Public Safety and Housing)

Parole Board ("the Board")

UNFAIR DECISION

Parolee I felt aggrieved by the Parole Board's decision not to grant him permission to travel after only two weeks on parole. The Ombudsman found no maladministration as this decision was within the discretion of the Board. Moreover, the Board must be extremely cautious in granting permission to travel as it is essentially warranting to another country



that the parolee will behave lawfully. Travel is a privilege that must be earned. The Ombudsman recommended that clear (non-mandatory) guidelines be attached to the Petition for Travel form.

Department Of Corrections

FAILURE TO GIVE REASONS / ARBITRARY DECISION

Inmate J claimed he was returned to maximum security without explanation. The Ombudsman's inquiries found no maladministration in this regard as the Complainant was given verbal reasons for his reclassification. There is no requirement for reasons to be given in writing. The Ombudsman did find maladministration in that the manager of the unit did not process Inmate J's complaint appropriately. This will be rectified by the restructured complaints system (see General Recommendations, pg. 16).

NEGLIGENT LOSS OF FILES

Inmate K claimed that his application for parole was negatively impacted because the Department had lost or misplaced his Main Custody File. The Ombudsman found maladministration in the Department's loss of his (and other inmates') files. However, the Complainant's parole application was not harmed because the relevant psychological assessments are maintained in a different location and were available for the Parole Board's review.

This complaint raised a systemic issue of whether it is within the Commissioner's discretion to delay submitting a parole application under certain circumstances. The Department will update the Ombudsman upon receipt of legal advice.

Ministry of Works and Engineering

Lands, Buildings and Surveys Division

UNFAIR / OPPRESSIVE DECISION

Business Tenant L objected to the Department's proposal to increase her rent by 70% to market value and claimed that the premises were severely substandard and neglected for years. She had to install an electricity sub-meter at her own expense. The Ombudsman found that the market rent took the conditions of the premises into consideration but recommended that the Department reimburse the Complainant for the cost of the meter.

Department of Operations

FAILURE TO PAY FOR SERVICES

Tradesman M had given years of honest, diligent service to the Department, usually for emergency repairs. Often, when he was on a site, he would be asked to do additional work that was not originally requisitioned. He kept accurate records. The Department and the sites, however, did not keep consistent or complete records – especially for the additional work requested or for follow-up work. Although the Complainant took full responsibility for submitting certain weekly time sheets several months late, he complained that the Department refused to pay him some \$54,000 on the grounds that

the services could not be verified. After consultations with the Ombudsman, the Department worked with Tradesman M to reconcile the records and work done. He was paid. The Ombudsman also recommended improvements in the Department's system for recording requisitions and services.

Ministry of the Environment and Sports

(then Ministry of the Environment, Telecommunications and E-Commerce)

Department of Planning

FAILURE TO ISSUE CERTIFICATE OF COMPLETION AND OCCUPANCY

Developer N was forthright in his original application that renovations were for housing his staff (up to nine persons). A planning permit was approved. In response to Developer N's application to revise the permit to reduce the number of car parking spaces (as his staff used motorcycles only and the neighbours welcomed reduced traffic in the narrow *cul-de-sac*), the Department instructed him that a new "change of use" application was required. The Ombudsman found maladministration. This requirement was arbitrary as there is no existing law, regulation, policy or guideline proscribing who may live in non-institutional residences. The Ombudsman recommended that the Department rescind its direction and place the Complainant in the process queue in the same order of priority as he would have been had the incorrect instruction not been given. The Ombudsman noted "A non-existent policy may not be imposed unilaterally on the public."

FAILURE TO INSPECT IN ACCORDANCE WITH PLANNING REQUIREMENTS

Developer O complained that the Department had not inspected his building properly and had not explained what had to be done to correct code infractions. The Ombudsman found no maladministration because full information is provided in the initial package when planning permits are issued.

MISTAKE OF LAW / UNFAIR PRESENTATION TO THE DEVELOPMENT APPLICATIONS BOARD ("DAB")

Neighbour P believed that a development application should have been declined as the development would block the natural light coming into his existing building. He also complained that the Department's presentation to the DAB was unfair and excluded useful information. The Ombudsman engaged extensive advice from legal and planning experts. She found no maladministration as there is no legal "right" to natural light and the presentation to the DAB included all relevant information.

UNFAIR / ARBITRARY / UNREASONABLE / MISTAKE OF LAW

Lessee Q was instructed by the Department to apply for retroactive change in use for illegal development erected on the site long before the Complainant's lease. The Ombudsman found that the Department's requirements were unfair, arbitrary, unreasonable and a mistake of law as the Department did not take into account the "six year rule" (that deems developments that contravened the legislation as having received planning permission if there has been no notice of enforcement in that period). The Ombudsman noted "the Department cannot simply invent conditions". The Minister approved Lessee Q's use of the site.



Ministry of Health

Bermuda Hospitals Board (KEMH)

FAILURE TO PROPERLY INVESTIGATE CLAIM OF FAULTY OPERATION

Patient R alleged that an operation was faulty with the result that she needed overseas medical treatment at additional expense. The Ombudsman had the explanation given by the hospital reviewed by a clinical expert. The complication was within an expected range for that type of operation and both the physician and the hospital responded appropriately. There was no maladministration.

FAILURE TO GIVE REASONS / ARBITRARY DECISION

Indigent S believed that the hospital's Credit Office was unreasonable and exceeded its authority in requiring her to be assessed for eligibility by the Department of Financial Assistance. The Ombudsman found no maladministration and further, that the Complainant had received an adequate explanation of the process.

FAILURE TO ENSURE SAFE DELIVERY OF MEDICAL RECORDS

Patient T requested the transfer of her medical records from one physician to another. The documents were placed by the old physician in a mailbox at the hospital but the new doctor never received them. The Ombudsman found no maladministration on the part of the hospital. However, because of the gravity of the matter, she recommended that the hospital review and circulate best practices for the handling of sensitive medical records on its premises by private practitioners.

*Thank
You...*

Insp. D. Redfern, Complaints and Discipline Dept., Bermuda Police Service, for prompt response

G. Wilkinson, Department of Financial Assistance, for helpful information

Dr. M. Virgil, Department of Human Affairs, for quick implementation of recommendations and forthrightness re challenges in the Human Rights Commission

W. Kattan, the Bermuda Monetary Authority, for same day response

General Recommendations Arising from Individual Complaints

Section 5(1)(b) of the Ombudsman Act –

The functions of the Ombudsman are...to make recommendations to an authority... generally, about ways of improving its administrative practices and procedures.

Health Council (MINISTRY OF HEALTH) / **Department of Social Insurance** (MINISTRY OF FINANCE)

(Multi-Department Issue)

Five Complainants with end-stage renal disease despaired of ever obtaining kidney transplants. They could not assure the US waiting list agency that they could pay for the procedure (or even for the tests to determine if they are qualified for a transplant). The Hospital Insurance Plan (“HIP”) covers dialysis treatment (approximate annual cost: \$150,000). However, HIP (through the Mutual Reinsurance Fund) covers only approximately up to \$20,000 for kidney transplants (a total one-time cost of approximately \$150,000). Current research confirms that transplants are a more effective treatment than daily dialysis as patients can resume a relatively normal quality of life. In addition, there are likely to be considerable cost savings for the healthcare system as a whole. The Ombudsman held discussions with the Department of Social Insurance, the new Health Council and its Health Insurance Committee. Until a comprehensive mechanism is devised, patients should approach the Health Insurance Committee for consideration (on an *ad hoc* basis) of payment for the best treatment for which they are eligible. The Ombudsman has requested an update on this matter.

Department of Environmental Health (MINISTRY OF HEALTH)

(Multi-Department Issue)

Further to an individual complaint regarding the rental terms and appalling physical conditions of a private home in which all rooms were rented to multiple “house-guests”, it appeared that there was no single Government Authority to which the Ombudsman could either refer the Complainant or direct inquiries. These “tenancy” arrangements are usually beyond the reach of the Landlord and Tenant Act, Consumer Affairs or the Rent Commission. Too often, these arrangements are unfair and exploit poor Bermudian tenants as well as lower paid guest workers.

My preliminary inquiries revealed that several departments had received similar complaints and had long-standing concerns about how to protect such tenants. As there was no clear authority for us to investigate, the Ombudsman convened two meetings of Relevant Authorities in order to jump-start a process toward addressing what appeared to be a vacuum in protection of some of Bermuda’s most vulnerable inhabitants. She made five general recommendations regarding a coordinated approach.

The Department of Environmental Health had already begun to draft legislation which is in the process of being finalized. This Department, with the Bermuda Fire and Rescue Service, has inspected the ten sites identified by the group of Relevant Authorities as high-risk. Appropriate correspondence has been sent to each property owner.



The Ombudsman commends:

1. The Departments of Immigration, Health, Planning, Consumer Affairs, the Bermuda Fire and Rescue Service, Rent Commission and Bermuda Housing Corporation for their genuine engagement in this process, clear concern about tackling this issue and giving invaluable information and feedback to the Department of Health;
2. The Cabinet Office for taking a pro-active, systemic approach to this issue.

King Edward VII Memorial Hospital (BERMUDA HOSPITALS BOARD, MINISTRY OF HEALTH)

KEMH should manage the caseload in the Department of Pathology to ensure:

1. Timely reporting (including communication with physicians if there is a delay);
2. Adequate coverage for completion of reporting tasks during planned vacations;
3. Appropriate balancing of the need to diagnose live patients and to facilitate closure and understanding for grieving families;
4. Appropriate benchmark by auditing its autopsy completion times for 1st May through 31st July 2007.

Human Rights Commission (MINISTRY OF CULTURE AND SOCIAL REHABILITATION)

(then Ministry of Community & Cultural Affairs)

With respect to referrals to the DPP the HRC should:

1. Establish an effective system to triage complaints immediately after receipt in order to ensure that any referrals to the DPP are done within the necessary timeframes. This may require upgrading and/or more efficient use of the electronic tracking system.
2. Liaise with the DPP to establish the correct factors, procedures, documents and forms required to prosecute offences so that future referrals are managed expeditiously.
3. Consult with the DPP to determine whether any amendment to any enactment is required in order to establish a mechanism for the HRC to exercise its statutory due diligence in the timelines established by the Human Rights Act before referral of a summary offence to the DPP.

Department of Operations (MINISTRY OF WORKS AND ENGINEERING)

In order to ensure correct payments to tradesmen and independent contractors, the Department should establish and follow clear procedures to authorize, record and pay for work requisitioned.

Office of the Tax Commissioner (MINISTRY OF FINANCE)

Any review of the law with respect to the Collector's audit powers should take into account evolving tribunal principles that promote broad access to and rights of appeal.

Department of Immigration (MINISTRY OF LABOUR, HOME AFFAIRS AND HOUSING)

(then Ministry of Labour and Immigration)

There were several complaints of unreasonable delay or unresponsiveness. The Ombudsman recommended that the Department review its telephone message procedures to ensure timely acknowledgement of messages, even if a key officer was unable to provide a substantive response immediately.

Department of Planning (MINISTRY OF THE ENVIRONMENT AND SPORTS)

(then Ministry of the Environment, Telecommunications and E-Commerce)

Our First Annual Report noted: *"There were more complaints about this Department than any other. Staffing has not grown in proportion to the volume and complexity of its work, particularly for enforcement. The Ministry is working on this challenge."* This problem remained true also during our second year.

There were several Acting Directors from December 2006 until the new Director arrived in the Spring of 2007. A few appointments were for as little as one month. Generally, the Acting Directors were not able to settle matters raised by the Ombudsman. Therefore, there were considerable delays in resolution of some complaints.

However, some of the challenges that we experienced with the Department cannot be attributed to staffing shortages alone. We could well understand public complaints that their telephone calls, letters, even communication from lawyers went unanswered, as we also often chased the Department for responses to our own inquiries.

No human being or organization is perfect. In the highly technical and arcane world of planning, there will inevitably be some errors. I was more concerned about what seemed to be a consistent reluctance on the part of the Department to seek reasonable resolutions that serve the public. Rather, the default reaction to our inquiries was to deny mistakes, justify or, in one instance, unfairly blame junior staff.

I heartily commend the Department on its excellent new website and hope that the new electronic complaint system will reduce these problems and promote a public service-oriented culture. The Principles of Good Administration produced by the UK Parliamentary Commission (see pgs. 3 & 4) are quite instructive in this regard and I encourage the Department to study and embrace them.

General Recommendations:

1. *Re staff housing:* We reviewed a complaint where a non-existent policy was invoked to deny a development application. I recommended that proposed policies should not be imposed on the public (even as Development Control Guidance Notes) until they are vetted through appropriate consultation within the Ministry or by the Cabinet.



- 
2. *Due diligence in zoning:* We investigated a complaint where a general zoning category had mischaracterized a site, leading to materially erroneous conclusions about the actions of the Complainant by the Department and the Development Applications Board. I recommended that the current zoning exercise utilize at least aerial photograph history if not actual site visits.
 3. *Regulatory support for directions:* We investigated complaints where directions to the public regarding their applications were not based on clear statute, regulation or existing departmental guidelines. To avoid the appearance of arbitrariness and shifting goalposts, I recommended that—as a general practice—the Department’s directions, advice and other communication with the public should always quote or reference the relevant provisions of statutes, Planning Statement or other guidelines. (I had previously investigated a situation where a planning application was resubmitted but denied for features that were approved in the original application. Re-applications should similarly be cross-referenced to the original application and to relevant provisions of statutes, Planning Statement or other guidelines.)
 4. *Certificates of Completion and Occupancy:* We saw a number of situations where Certificates of Completion and Occupancy were issued before resolution of conditions that were either required by the development permit or that neighbours were still objecting to. I recommended that the Department should institute an appropriate process to ensure that no Certificates are issued until outstanding matters are resolved and reasons given if neighbour objections are not upheld.

Department of Corrections (MINISTRY OF LABOUR, HOME AFFAIRS AND HOUSING)

(then Ministry of Public Safety & Housing)

Sections 7(3) and (4) of the Ombudsman Act 2004 provide –

- 7(3)*** *Where a person who is detained in custody or otherwise confined in an institution informs the person in charge or another person performing duties in connection with his detention or confinement, that he wishes to make a complaint to the Ombudsman, the person so informed – (a) shall take all steps necessary to facilitate the making of the complaint including the provision of an unsealed envelope; and (b) without delay, shall send such envelope to the Ombudsman, sealed*
- 7(4)*** *A communication from the Ombudsman to a person confined or in custody shall be forwarded to that person in a sealed envelope.*

Ombudsman elsewhere in the world have found that this right of uncensored access by inmates in particular has flooded them with frivolous complaints. As with any other Complainant, inmates must first exhaust existing complaints processes

before making a complaint to the Ombudsman. Therefore, during our first year of operations, I consulted with the Department of Corrections and the Treatment of Offenders Board to ensure that their existing complaints handling mechanisms entailed appropriate due process. Further, I invited a representative of each to attend a Prison Ombudsman conference in May 2006 organized by the Forum of Canadian Ombudsman.

The Department of Corrections has now amended its complaints system accordingly and will inform inmates of the system and of their last resort right to complain to the Ombudsman by placing notices in visible locations throughout the facilities, including residential units, dining room and programme areas. I therefore have confidence in referring complainants to the departmental process before they file complaints to our office. I await similar review from the Treatment of Offenders Board (a voluntary body).

Department of Corrections–Notice to Inmates:

“MAKING A REQUEST OR COMPLAINT–INFORMATION FOR INMATES

You may make a complaint, without fear of retribution, if you have a problem and have good grounds for believing that you have not been treated properly. You may also make a request for something to which you believe you are entitled or for special arrangements to be made if you think it is justified. There are two ways for you to make a complaint. You can use Department of Corrections procedures or you can ask the Ombudsman to inquire into the matter on your behalf. **Please note that if you write to the Ombudsman before making a request or complaint to Corrections staff or the Treatment of Offenders’ Board it is possible that the Ombudsman will ask you to do so before inquiring on your behalf.**

The Department of Corrections takes legitimate complaints very seriously and there is a process for making sure that complaints are dealt with as quickly and as fairly as possible.

THE SYSTEM FOR MAKING A REQUEST OR COMPLAINT

Talk to a member of staff

As a first step, you should talk to a member of staff—preferably a Divisional Officer on your unit. Lots of problems are dealt with very simply and quickly in this way. If the matter cannot be sorted out like this you can make an application to see the Principal Officer in charge of the unit.

A Principal Officer will discuss the request or complaint with you within two working days of your application.

If the Principal Officer cannot help or refuses your request you can make an application to see the Chief Officer. The Chief Officer will speak to you about your request or complaint. If you are dissatisfied with the outcome you may make a formal written complaint to the facility Assistant Commissioner of Corrections (“ACOC”).



Formal requests and complaints

A written request or complaint must be addressed to the facility Assistant Commissioner. There is a special form for this purpose. Your formal request or complaint will be returned with a written reply, which you should receive within fourteen days. The reply may not be the full answer to your problem, but should at least tell you when you can expect a full reply. If your request or complaint is rejected, you will be given reasons.

Treatment of Offenders Board ("TOOB")

If you are not content with the reply from the Assistant Commissioner you may ask to see the TOOB about your request or complaint. You may make a request or complaint to the TOOB without first using these procedures. However, you are advised to try to resolve the matter before asking to see the TOOB.

The Ombudsman

The Ombudsman is an independent point of appeal for all persons in Bermuda, including prisoners. For the purpose of investigations, the Ombudsman has full access to Department of Corrections information, documents, facilities, and individuals, including classified material and information provided to Corrections by other organizations, such as the police. Your consent is required for disclosure of medical records. You may make a request or complaint to the Ombudsman at any time but you are advised to try to resolve the matter before writing to the Ombudsman. If you are complaining about a decision by the TOOB or an ACOC then you must do so within one year of that decision. The Ombudsman's address is Suite 102, 14 Dundonald St West, Hamilton HM09."

Did You Know?

A guest worker supporting a dependent spouse must have a salary of at least \$55,000 (\$90,000 with a dependent child).

As a consequence of the changes to the Hospital Medical Clinic, all applicants for indigent status are now required to have periodic assessments by the Department of Financial Assistance.

To report paint or oil spills on the roads you may contact the Superintendent for Highways at 747-3023 or the Marsh Folly Plant at 292-7454 and leave a message.

Statistics

STATUS OF COMPLAINTS

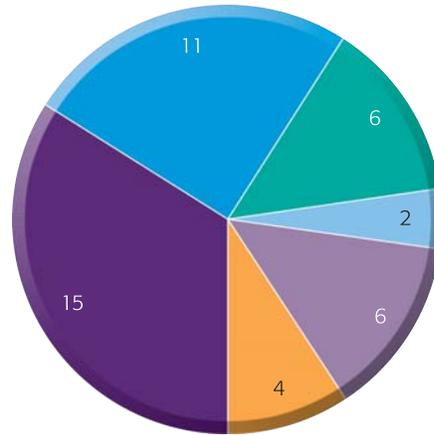
Number / Status at July 31, 2006 and 2007



2006—Total Number of Complaints **137**
 2007—Total Number of Complaints **134**

COMPLAINTS REFERRED

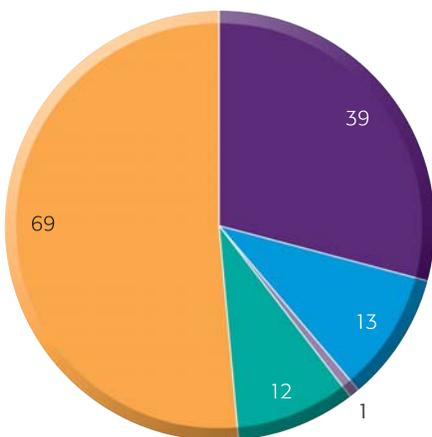
Number / Where Referred



Dept. of Consumer Affairs
 Magistrates Court
 Bermuda Bar Council
 Police Complaints Authority
 Dept. of Labour & Training
 Other

SOURCES OF COMPLAINTS

Number / Source



Telephone
 Walk-In
 E-Mail
 Ombudsman *
 Letter

*Ombudsman's Own Motion Systemic Investigation

Complaints Not Referred

Complaints Brought Forward at July 31, 2006	22
New Complaints Not Referred	90
Complaints Disposed of During the Year (See pgs. 22 & 23)	83
Complaints Outstanding at July 31, 2007	29

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 31/07/07)				
TYPES OF COMPLAINTS		INEFFICIENT	IMPROPER	UNREASONABLE DELAY
Community & Cultural Affairs	4			
Human Rights Commission	3			1
Parish Councils	1			
Education, Sport & Recreation	2			
Bermuda Archives	1			1
Bermuda College	1			
Environment, Telecoms. & E-Commerce	16			
Department of Planning	13	1		2
Land Valuation Department	2			
Broadcasting Commission	1			
Finance	12			
Bermuda Monetary Authority	1			1
Accountant General: GEHI	1			1
HM Customs	2	1		
Pension Commission	1			1
Department of Social Insurance	5		1	2
Tax Commission	2	1		
Health	8			
Bermuda Hospitals Board	5	1		
Department of Health	3			
Social Rehabilitation	5			
Department of Child & Family Services	3			
Department of Financial Assistance	2			
Public Safety & Housing	7			
Bermuda Housing Corporation	3			1
Department of Corrections	3			
Parole Board	1			
Labour & Immigration	19			
Department of Immigration	11			2
Department of Labour & Training	6	1		
Registry General	2	2		
Attorney-General & Ministry of Justice	3			
Judiciary	3			
Cabinet Office	4			
Marine Administration	1			
Transport Control Department	3			
Works & Engineering	2			
West End Development Corporation	1			
Operations & Engineering	1			1
Non-Ministry	8			
TOTALS	90	7	1	13

ABUSE OF POWER	CONTRARY TO LAW	UNFAIR/ OPPRESSIVE	MISTAKE OF LAW OR FACT	ARBITRARY	NEGLIGENT/ UNRESPONSIVE	OTHER
			1			1
		1				
					1	
	2	3		2	2	1
		2				
			1			
		1				
					1	1
	1					
					4	
					2	1
		1		1	1	
1						1
	1				1	
				1	2	
		1				
1					5	3
1	2	1			1	
	1		1			1
		1				
		1				
					1	7
5	7	12	3	4	22	16



[M] = Mediated Figures in blue represent complaints outstanding at 31/07/06 which were closed by 31/07/07.

MINISTRY (at 31/07/07)	# of new Complaints	OUTSTANDING	DECLINED	
			Not in Jurisdiction	Time Bar/ Withdrawn
DISPOSITION OF CASES NOT REFERRED				
Community & Cultural Affairs	4			
Human Rights Commission	3	1	2	
Parish Councils	1			
Education, Sport & Recreation	2			
Bermuda Archives	1			
Bermuda College	1			
Environment, Telecoms. & E-Commerce	16			
Department of Planning	13	8	2	1
Land Valuation Department	2	1		1
Broadcasting Commission	1		1	
Finance	12			
Bermuda Monetary Authority	1	1		
Accountant General: GEHI	1		1	
HM Customs	2		1	1
Pension Commission	1			
Department of Social Insurance	5	3	1	
Tax Commission	2	2		
Health	8			
Bermuda Hospitals Board	5	1		
Department of Health	3	1		2
Social Rehabilitation	5			
Department of Child & Family Services	3	1		1
Department of Financial Assistance	2		1	
Public Safety & Housing	7			
Bermuda Housing Corporation	3	2		
Department of Corrections	3			
Parole Board	1			
Labour & Immigration	19			
Department of Immigration	11	2	1	1
Department of Labour & Training	6	3	1	2
Registry General	2			
Attorney-General & Ministry of Justice	3	(Judiciary)	2	1
Cabinet Office	4			
Marine Administration	1	1		
Transport Control Department	3	1	1	
Works & Engineering	2			
West End Development Corporation	1			1
Operations & Engineering	1	1	1	
Lands, Buildings & Surveys Division	1			
Non-Ministry	8		6 / 1	
TOTALS 06 - 07 / 05 - 06		29 / 0	19 / 3	11 / 0

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

CLOSED AFTER PRELIMINARY INQUIRY OR INVESTIGATION				
Maladministration			No Maladministration	
Informal Resolution	Specific Complaint Recommendation	General Practices Recommendation	Information Assistance	No Action
	1	1		
1				
		1	1	1
	1 / 1	3 / 1	1	1 / 1
1	1			
	2	1 [M]	1	1
	1	1		1 / 1
	2	2		2 / 1
	1	1		
				1
				1
2		1		1
				1
1	1 / 1		2	3
1	1			
				1
	1	1		
	1			
1				1 / 1
7 / 0	5 / 10	7 / 6	5 / 0	15 / 4



First Special Report: Allegations of Discrimination Involving Medical Professionals at King Edward VII Memorial Hospital

One value of the institution of the Ombudsman is to shine light in the crevices and illuminate possibility for resolution. Since the Office of the Ombudsman for Bermuda opened September 2005 all of the approximately 300 complaints received have been dealt with as individual inquiries or referrals.

There are some situations, however, for which a systemic approach is warranted. For example, when issues are broad, affect a lot of people, are highly sensitive or not conducive to simple, contained or informal resolution. This first Special Report is one such case. Section 5(2)(b) of the *Ombudsman Act 2004* provides for the Ombudsman to conduct investigations on her “*own motion, notwithstanding that no complaint has been made to her, where she is satisfied that there are reasonable grounds to carry out an investigation in the public interest.*”

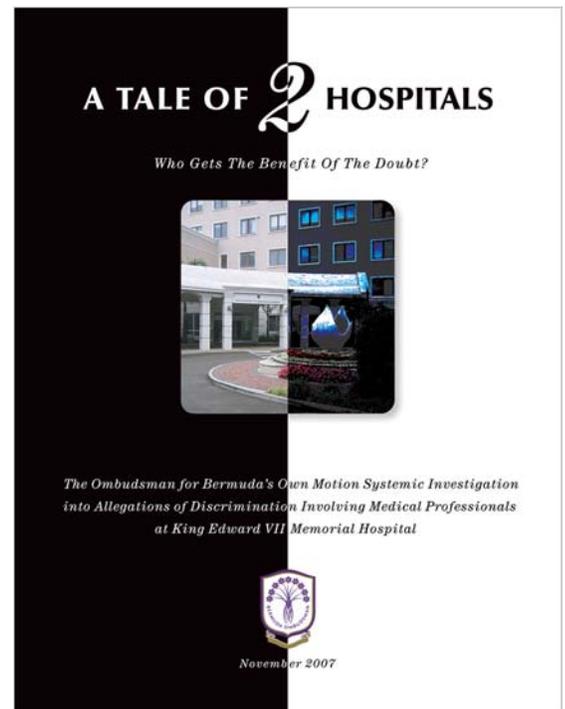
Pursuant to three complaints from physicians with privileges at Bermuda’s only hospital alleging long-standing racial discrimination, the Ombudsman launched a systemic investigation. It entailed review of over 1,000 pages of documents and some 130 interviews of 120 persons and organizations in Bermuda and overseas. The Ombudsman was assisted by experts in hospital management ethics, diversity amongst professionals, systemic investigation and clinical evaluation.

The Ombudsman illustrated 22 examples of differential treatment of white and black doctors under similar circumstances.

She found evidence of disparity in the way in which the system responds to either perceived or actual transgressions by doctors. Although the disparity is fueled by forces that have to do with governance and competition, black physicians do not seem to enjoy the benefit of the doubt.

She made fifteen Recommendations aimed at assisting the hospital to become more fair and collegial through improving internal processes (so that they are applied evenly across the board) or by expanding external resources (to strengthen professional decision-making and institutional learning). The Minister of Health and the Bermuda Hospitals Board embraced her recommendations and have already made significant steps toward “effective and lasting changes”. They will provide an update by 30 June 2008 of the progress in implementation of the Recommendations.

The Report is written in two columns. The column on the right presents analysis and commentary. The column on the left allows readers to ‘hear’ people’s perceptions—in their own words.



The Investigation

“We all use the hospital – either on the way in or on the way out.” [BB]

“There are many deficiencies here. There is a general lack of collegiality – committees are disappointing.” [WB]

“I get a sense that there are two camps – when you challenge us, we will use the race card.” [WB]

“We try our best to work together because we’re small. We may not like what the other may say about us, but in general we tend to work together and help each other if there’s problems. We can call on each other, there aren’t any real obstacles to us working together.” [BB]

[BB] = black Bermudian

[WB] = white Bermudian

[WE] = white expatriate

[BE] = black expatriate

- 1 Young or old, black or white, expatriate, Bermudian, male, female, rich or poor—almost all of us have used or visited the hospital. Its mission, location, capacity and culture have immediate meaning to us all.
- 2 Therefore, repeated rumblings, rumours and negative media over the years cause real concern. The tensions seem at odds with and detract from the mission of the BHB to act as *“a committed team of professionals working in partnership with patients, their families, clients and the community to provide high quality health care services that meet their needs and expectations”*.
- 3 Last year, three complaints alleging racism amongst medical practitioners (clinicians, physicians) at KEMH were lodged with our office. Complainants were adamant that the issues were not limited to themselves. Rather, they insisted that their complaints represented systemic, long-standing problems that spawned and perpetuated toxic relationships amongst physicians. Moreover, they alleged that the BHB had neglected to address these issues adequately.
- 4 Although discriminatory actions and procedures are forms of “maladministration” as defined by the *Ombudsman Act 2004*, racial discrimination is a protected category under s.2(2)(a)(i) of the Human Rights Act 1981. I therefore first contacted the Human Rights Commission (“HRC”) to see if it was able to conduct a systemic investigation. It was not possible. One of the complainants was referred to the Ombudsman by the HRC.
- 5 Accordingly, I launched this investigation to find out whether there is evidence of “maladministration”. That is, were any administrative actions of the hospital:
 - inefficient, improper, negligent, unreasonable;
 - based wholly or partly on a mistake of law or fact or irrelevant grounds;
 - unfair, oppressive or improperly discriminatory; or
 - based on procedures that are unfair, oppressive, arbitrary, unreasonable or improperly discriminatory.



Principles and Methods

“We don’t need Bermuda losing confidence in the hospital because of anything – racial / gender discrimination – whatever. That’s the only hospital we’ve got.” [BB]

“I don’t know if we’re prepared for the diversity issues that are likely to come up.” [BB]

“If we don’t talk about it and don’t investigate it then you can never hope for a remedy.” [WB]

“You’ve opened up a can of worms.” [BB]

“I’m glad you’re doing it and not me.” [WB]

“It’s all very complex, so good luck.” [WE]

“I think the very fact that they have to be questioned about things is positive. I think that in itself will change attitudes but hopefully there can be some way for us to move forward as a result of your findings.” [WB]

- 18 Clearly, this investigation is highly sensitive, not only because of the possible ramifications for individual physicians, but also because of the risk of undermining public confidence in the hospital. It is not an easy or reasonable option to get on a plane for every health care concern. Therefore, I am mindful of the need to preserve patient confidence.
- 19 Nevertheless, to the extent that this investigation has uncovered debilitating fissures, it is my responsibility to expose them and offer recommendations. A Report that merely states: “there are problems” and suggests “there should be changes” is of minimal value.
- 20 My goal is not to castigate doctors for wrongdoing, but rather to help identify what the BHB might do to develop a fair, transparent administrative process that minimizes opportunities for maladministration on the basis of inefficiency, unfairness and discrimination.
- 21 A few of the matters raised during the investigation have already reached the media; therefore, it may be possible to identify certain persons’ experiences that are on the public record. Otherwise, I caution readers that attempts to identify who said what will be a futile use of time. Hopefully, the depth and breadth of the spotlight that I shine on these matters will correct some of the misinformation in the public domain.
- 22 Soon after the press release announced this inquiry, one person marched into the office to chastise me for using the word “discrimination” rather than “racism”. At the other end of the spectrum, one person of influence attempted—gently but persistently—to dissuade me from this investigation.
- 23 These responses illustrate the emotionalism, fears and unease that attend the allegations of discrimination amongst medical professionals. Some people were eager and supportive to expose and espouse their version of the issues. Others were clearly more comfortable keeping a lid on the tensions.

“Success would be if you are fair in your conclusion. But you can only be that if you have all the information. But I think it’s difficult to get all of the relevant information because people – we still in a sense, are suspicious of non-medical people. That’s meant in the nicest way.” [BB]

“In order to have any credibility your Report needs to deal with facts and not as much the views and opinions. And mostly the facts that are non-controversial. If you can get enough evidence that you feel very clearly are instances of institutional racism then I think you have to say that somehow, name names – open up a can of worms.” [WB]

“I hope that if you find that there is no evidence of racial discrimination that you’ll actually say that loud and clearly for all to hear...and if you do find evidence again that you say that loud and clear and people recognize that that’s not acceptable behaviour.” [WB]

- 24 The Process Appendix describes the investigation. I thank the BHB and some 120 interviewees for their cooperation. At first, some were nervous and wary. The interviews may have seemed interminable (often lasting two or even three hours). Ultimately many interviewees expressed relief at being able to talk candidly and confidentially and several even felt that the process was cathartic.
- 25 I encouraged interviewees to express their feelings in addition to verifiable observations. Too often, emotion is dismissed as a measure of truth. However, as sentient human beings, we must realize that our feelings define our humanity at least as much as our intellect does. Feelings and intuition inform our reactions to situations and people just as surely as what we can see and touch.
- 26 My staff and expert advisors brought fresh eyes to my evolving comprehension and conclusions about this complex terrain. Their multi-competencies and comparative insights were invaluable. Criticisms of this Report, however, should be directed to me alone.
- 27 I believe that the findings and recommendations of this investigation are limited only to the extent that interviewees failed to be honest and forthcoming; and I have not been able to portray the complexities of the details captured in over 45, three-inch thick binders.
- 28 As with any report that delivers bad news, it is likely that this Report (and I) will be pilloried by people with their own agendas on all sides of the issues. As they pick at, deny or bluster over any particular point, I do hope that the urgency for cultural and institutional changes at KEMH will not be lost.
- 29 One of the more challenging aspects of this investigation was the exercise of trying to distinguish between fact and perception. The expectation that facts could be extracted with an analytical pipette belies the deep, emotional complexities and reality of racial and other forms of discrimination.
- 30 Interviewers were diligent, often ponderous, about cross-checking



“Find out the facts, one way or the other.” [WB]

“I don’t see racism.” [BB]

“People do get treated differently.” [WB]

“If it exists, show the evidence.” [WE]

“There is a general environment of unfairness, you can’t always put your hands on it.” [BE]

“I think it’s good already – that they are being checked. I think that they are too blasé.” [WB]

and reality-testing the various assertions and perceptions that arose in the interviews. Yet, life is so much more nuanced than it seems. To the extent that perceptions inform and guide our actions and reactions; then perceptions matter as much as facts.

- 31 The investigation revealed many layers of the dynamics that describe and proscribe relationships within the medical community. It is important to reiterate that whites and blacks are not monolithic groups. Whilst there were clear trends in thinking within each group, there was also significant independence of views. Opinions and observations did not always or unequivocally muster along racial lines.
- 32 For instance, a few blacks felt that race was the least of the problems at the hospital—often used as an excuse or veil for issues involving personality, competition and competence. A few whites were sanguine and reflective about the persistence of discrimination with a depth that might surprise many blacks in our race conscious Bermuda.
- 33 There was also a divide along national lines. That is, black and white expatriates sometimes espoused perspectives that were discernibly different from the views held in common by white and black Bermudians.
- 34 Generally, whites demanded factual proof—putting the onus on blacks to prove that discrimination (in particular, racism) exists. When searching their memories for examples of when race might have been a factor, whites thought in terms of personal, one-on-one situations. They had more difficulty than blacks did in grappling with the concept and reach of institutional racism. Whites tended to believe that their observations were always fact based and were somewhat disconcerted when closer examination proved that their assertions were unsubstantiated.
- 35 The “facts”—conclusively asserted—often proved to be twice or thrice baked rumours. Perceptions easily masqueraded as facts and

*“Racism absolutely exists –
the OR is where you feel
it most.” [BB]*

*“If someone thinks there is
racism, then the discussion
must be had.” [BB]*

*“Some black doctors have
a lot of influence.” [WB]*

*“It would be favourable for
most people if a conclusion
of this investigation said
that we find no evidence
of racism.” [WB]*

*“There have been rumblings
of racial tensions, racial
preferences for years.” [BB]*

at other times vacillated between intuition and filtered experience. In almost all instances—whether the interviewee was black or white—perceptions truly became reality by defining attitudes, informing actions, hardening stereotypes.

- 36 During the interviews, blacks tended to proclaim readily and adamantly that racism existed, but when pressed, were often unable to point to clear concrete examples. Many were reluctant to name an action as racist unless they felt 100% sure. This is a criminal burden of proof—very difficult to prove.
- 37 The Ombudsman standard of proof is civil: that is, on the balance of probabilities—is it more likely than not that an action constitutes maladministration? Even this civil standard of proof is daunting. The common law has long accepted that there is rarely direct evidence of discrimination. Evidence normally consists of inferences drawn from primary facts. Once there are primary facts (*a prima facie* case), then the burden is no longer on the accuser to prove discrimination, but rather shifts to the person accused to prove that there is a clear and credible alternate explanation.
- 38 There is no concrete evidence that can penetrate the hearts, minds, motivations and intents of medical practitioners at the hospital. Therefore, we look for indicia of discrimination such as legacy systems and examples that may demonstrate patterns of an inconsistent application of policies. We look also for disparate impact on a group as a result of actions or decisions that may appear to be biased. We seek to understand the extent to which perceptions indeed shape reality.
- 39 Some believe that this situation is all about incompetent doctors “playing the race card”. Others believe that anything less than a denunciation of rampant racism would be inadequate. Both camps will be disappointed in this Report. The complex affairs of human beings—in an institution of over 1,200 persons—cannot be placed neatly into caricatured boxes.



“I wonder if a lot of our problem is a desire to perpetuate the fight because it is to their advantage.” [WB]

“People with longevity and who are well connected and their protégées – get the benefit of the doubt.” [BB]

“Bring all the writhing unpleasantness out into the open. Put it in the sunlight.” [WE]

- 40 It is useful at this juncture to note the analytical distinction between intent and impact. This is well-articulated in discrimination law (particularly employment and human rights). In essence, a situation or action that results in a disparate impact on a particular group may be deemed discriminatory even if this was not intended.
- 41 A negative impact does not necessarily mean that there was a racist or otherwise nefarious intent.
- 42 On the other hand, a neutral or benign intent does not sanitize an inequitable or offensive impact.
- 43 The path in the quest for truth at the hospital was uncharted, rugged, and beset by fear, anger, rumour and agendas on all sides. Proving racism is not as clear-cut as many blacks believe and disproving racism is not as easy as many whites would want. I did not undertake to surmount impossible hurdles—only to survey the terrain.
- 44 That terrain includes issues of competition, competence, personality and power. If race is not the issue, what else could it be? What I discovered are layers and shrouds of all of these issues—sometimes intertwined, other times at tangents.

Summary of Recommendations

From the Ombudsman’s Special Report:

Recommendation I: 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.

Recommendation II: The hospital should review and follow its Bye Laws and Regulations to ensure clarity, transparency and equitable implementation.

Recommendation III: The hospital should analyze legacy blocks and cancellations to ensure best practice in allocation of Operating Room time (and by analogy to zero-based budgeting principles).

Recommendation IV: 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.

Recommendation V: 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.

Recommendation VI: 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.

Recommendation VII: 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.

Recommendation VIII: KEMH should clarify qualification equivalencies between different jurisdictions and establish an adequate induction programme.

Recommendation IX: 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.

Recommendation X: 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.

Recommendation XI: 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.

Recommendation XII: 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.

Recommendation XIII: The hospital should require recruitment criteria for leadership positions to include training in conflict management, diversity and administrative due process. Physician leaders should have clear job descriptions, which include a credible commitment to equality. Each Department should submit annual reports.

Recommendation XIV: 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.

Recommendation XV: For hospital autopsies, the pathologist should confine his or her written opinion to the matters in which the pathologist has appropriate expertise



Staff



Photo: Bermuda Network News

Ms. Tikitta Suhartono, Mrs. Georgia Symonds, Mrs. Quinell Kumalae, Ms. Arlene Brock.

Georgia Symonds, Administrative Assistant

"My full time employment at the Office of the Ombudsman commenced in February, 2007. I had worked in the travel industry for a period of 30 years during which time I received my certification as a travel consultant. I also worked in the private sector in the capacity of administrative assistant. My present position, which includes primary complaints intake officer, allows me the opportunity to bring together all the experiences and training honed from working in a customer service related industry along with the organizational skills gained from previous administrative positions. Working here at the Office of the Ombudsman is helping me to fine tune my

ability to listen more intently, discern the Complainant's main concerns, then communicate this information to our team as clearly and accurately as possible."

Tikitta Suhartono, Administrative Officer

"I find that this is a great office to work in. As the Administrative Officer, I am very clear about my role, therefore, I am able to set specific goals (immediate and long-term) and know that what I am striving for will help make a difference in our office. My role allows me latitude to make decisions and implement them in order to get the job done. At the end of the day I can look back and see what I have been able to accomplish with

a good feeling of satisfaction. My boss values differences in people, which is a great asset. It is a very friendly and welcoming atmosphere at the Office of the Ombudsman, and doesn't seem so much like work when you are surrounded by people that work together as a team."

**Quinell Kumalae,
Investigations Officer**

Mrs. Quinell Kumalae is responsible for undertaking investigations, researching domestic and international legislation and case law as well as international Ombudsman best practices.

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

"No two days are alike working as the Investigations Officer for the Ombudsman for Bermuda. The camaraderie amongst my colleagues makes the environment a joy to work in and every day is a day of learning, teaching and helping. Knowing that I have been involved in a process to implement change that assists an individual personally or Bermuda in a systemic way makes my work worthwhile."

**Arlene Brock,
Ombudsman for Bermuda**

Ms. Arlene Brock earned a B.A. from McGill University, a LL.B. from Osgoode Hall, York University and a LL.M. (Masters of Law) from Harvard Law School. Her experience is summarized in the Ombudsman's First Annual Report, and on www.ombudsman.bm.

Ombudsman's Note:

I am truly blessed to be surrounded by a team of hard-working professionals who are also so dedicated to the cause of improving public services. Each brings important skills, personal qualities and energies without which our office could not operate. At the risk of cliché, this is truly a "dream team".

Our Investigations Officer, Mrs. Quinell Kumalae, is insightful, meticulous, wise and passionate about doing the right thing. Her work on the Systemic Investigation was, quite simply, stellar. Our Administrative Officer, Ms. Tikitta Suhartono, is calm, gracious, and extremely efficient. She is a wizard at clear reports and presentations. Our Administrative Assistant, Mrs. Georgia Symonds, is very organized and has superlative communication skills, accentuated by wit and good humour. She is highly astute about the human condition and is now our primary complaints intake officer. Mr. Dwayne Paynter assists us a few hours each week as an office junior/messenger/cleaner—with efficiency and commitment to our work.

Thanks and best wishes to Ms. Tanya Jones and Mrs. Melody Albuoy who left mid-year to pursue interesting career opportunities.

I am indebted to Mrs. Lakilah Spencer (congratulations for admission to the Bermuda Bar), Mr. Taaj Jamaal, Mrs. Lynn Place and Ms. Maria Frith (short term appointments) for their very important research and administrative contributions to our Systemic Investigation. Thank-you to Mrs. Pamela Greyson for invaluable accounting assistance. I wish our summer student, Melissiana Gibbons, all the best in her academic studies.



Presentations, Conferences and Courses

Presentations conducted both within the Government service and to the public at large:

Presentations to Organizations

- Bermuda Bar Association – Continuing Legal Education
- Sandys Rotary Club

Media Presentations

- Bermuda Sun article – “Ombudsman News” September 2006
- Radio talk show – Everest DaCosta (ZBM 1340)

International Article

Ms. Brock was featured in “The Ombudsman” August 2006 (publication of the British and Irish Ombudsman Association).

Presentations to Government

- Cabinet
- Bermuda Health Council
- Commission for Unity and Racial Equality
- Department of Consumer Affairs
- Department of Financial Assistance
- Development Applications Board
- Human Rights Commission
- Parole Board
- Public Transportation Board
- Registrar of Companies

Did You Know?

You may request the anaesthetist of your choosing for surgical procedures at the hospital.

If importers deposit an estimated duty in order to take goods from the dock and do not submit appropriate paperwork within 30 days, there is a 50% surcharge. This surcharge is based either on the actual duty (if proper documentation is submitted) or on the estimated duty (if proper documentation cannot be submitted in time).

If a commercial vehicle is off the road for three months the owner must notify TCD.

Thank You...

T. Montgomery, V. Shih, M. Edenlebos, Tynes Bay Incinerator, for following through with communication protocol

M. Christopher, Registrar General, for extraordinary steps to complete the death register

S. Lashley, KEMH Credit Office, for swift, helpful response

S. McMinn, Works & Engineering, for following through with long-term resolution

L. Tucker, Bermuda College, for comprehensive response

The Importance of Training, Networking and Exchange

At the Annual Conference of the Forum for Canadian Ombudsman in May 2007, the host Ombudsman for Montreal Madame Joanne Savard noted:

"Our profession is growing fast and getting better known. We should be proud to hold such responsibilities. But our role still remains to be discovered by so many: we must promote the positive impact of our interventions because we quickly identify problems and their cause and because we find appropriate and efficient solutions.

We have a duty to protect this profession: we must do all we can to ensure that all incumbents of such positions do a better job and are guaranteed the autonomy, the freedom of action and the independence that are essential to their credibility and success.

This is why conferences like this FCO one are so important. Not only will it provide training and skills that are relevant to our profession, but also opportunities to share our experiences, to discuss our daily challenges and the solutions that have worked...or have not!

It will also provide good networking opportunities with persons whom we may later use as sounding boards, when facing difficult situations."

Conferences and Courses Attended August 1 2006 - July 31 2007:

Georgia Symonds, Administrative Assistant

(since joining office January 2007)

- Accountant General courses in the Financial Information Management Systems ("FIMS"): General Ledger; Accounts Payable and Purchasing.
- Administrative Professionals' Association conference: "Shaping the Future" was empowering and instilled a commitment for life-long learning, sharing of best practices and problem solving.
- Have assumed primary intake role within office: will attend an Intake Course by the Forum for Canadian Ombudsman in January 2008; then will spend 2 days training in-house with the Early Response Team at Ombudsman Ontario.

Tikitta Suhartono, Administrative Officer

(since joining office February 2007)

- Accountant General courses in how to better utilize and navigate around the AS400 and VLT System for reporting and tracking accounts; and review of Financial Instructions.
- Budget Office courses on Monitoring and reporting and Budget Preparation (the pre/post budget stages including deadlines and building of the budget packages).
- Conference of the Administrative Professionals Association entitled "Shaping the Future".

Quinell Kumalae, Investigations Officer

- 2-day “Retaliation and Whistleblowers” course at the New York University School of Law focused on the requirements needed to prove ‘retaliation’ and ‘protected activity’. A 2006 decision of the US Supreme Court (*Garcetti v. Ceballos*, 126 S.Ct.) was analyzed in detail. That decision held that there was a difference between speech of an employee while carrying out ordinary job duties under control of the employer (not protected) and personal views of a person outside of the context of work (protected under the US Constitution). An employee cannot allege retaliation if disciplined for speech made on the job. *Note that under s.4 of the Ombudsman Act 2004 public servants are protected from discrimination, dismissal or discipline in the ways specified in s. 8 of the Human Rights Act 1981 for information given to the Ombudsman. We have characterized this as “pre-whistle-blowing protection”.*
- 2-week long Negotiation Workshop at the Harvard Law School explored the 7-Elements of Negotiation, difficult conversations, how to assess and improve negotiation skills and how to change adversarial conversations into learning ones. Using role-play exercises, participants distinguished interests from positions; communication from assumptions and how to invent operational resolutions.
- 3-day meeting of the Caribbean Ombudsman Association (“CAROA”) with the Central American Ombudsman Association to foster exchange and joint projects in the region. Facilitated by the Inter-American Institute for Human Rights (travel and accommodation funded fully by the hosts).

Arlene Brock, Ombudsman for Bermuda

- 3-day 2006 US Ombudsman Association (“USOA”) Annual Conference which focused on: skills (report writing, strategic planning, procedures); and topical issues (whistle-blowing, civility in the public sector and dealing with people who monopolize resources).
- 2-day 7th Biennial Conference of the British and Irish Ombudsman Association (“BIOA”) dealt with Principles of Good Complaint Handling (produced by BIOA) and Principles of Good Administration (produced by the UK Parliamentary Commissioner); relationships of the Ombudsman with Parliaments, tribunals, courts and regulators; the significance of human rights and diversity in Ombudsman work; judicial review and Freedom of Information.
- 3-day Biennial Conference of the Forum of Canadian Ombudsman explored apology practice and legislation; systemic investigations; mediation; psychiatric illness and personalities; and the Ombudsman as an agent of public integrity.
- 3-day meeting of the Caribbean Ombudsman Association (“CAROA”) with the Central American Ombudsman Association (see left; travel and accommodation funded fully by the hosts).



Section 4(2) of the Ombudsman Act 2004 provides that the Ombudsman shall have an official seal. The seal's 9 Bermudian flowers signify that the Ombudsman serves everyone in each parish. The flowers and words form an "O" typically found in Ombudsman seals around the world.

Ombudsman Act 2004 “In a Nutshell”

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

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

The Ombudsman Act 2004 provides that the Ombudsman

- **Section 2** may investigate administrative decisions, acts, recommendations; failure to do an act or make a decision or recommendation; and failure to provide reasons for a decision or action.
- **Section 2** determines if there is evidence of “Maladministration” which includes actions which are inefficient, bad, improper, unreasonable delay, abuse of power (including discretionary), contrary to or mistake of law, mistake of facts, irrelevant grounds, unfair, oppressive, improperly discriminatory, arbitrary procedures, negligent.
- **Section 3** reviews administrative actions of all Government departments and boards, Public Authorities, other bodies established by Legislature or a Minister or whose revenues or fees derive from money provided or authorized by Legislature.
- **Section 5** The Ombudsman investigates administrative action of an Authority
 - pursuant to a specific complaint or on her own motion— notwithstanding that no complaint has been made—where there are reasonable grounds to carry out an investigation in the public interest; and
- makes recommendations about the specific complaint and generally about ways of improving administrative practices and procedures.
- **Section 6** The Ombudsman may not investigate
 - until existing procedures or appeals have been exhausted unless she determines that it was not reasonable for the Complainant to have resorted to such procedures; or
 - those matters listed in the Schedule to the Act, including: administrative actions that may not be inquired into by any Court; actions taken by Cabinet, Ministers or Junior Ministers; pardon power of the Governor; action taken for investigation of crime or protecting security of Bermuda; conduct of proceedings before a court of law or tribunal; personnel and employment matters.
- **Section 7** Complaints may be made orally, electronically or in writing by a person aggrieved (or other suitable person) about actions within the last 12 months.
 - Persons detained are entitled to be given a sealed envelope to write to the Ombudsman.
- **Sections 8 & 10** The Ombudsman may make preliminary inquiries before launching a formal investigation or refer the matter to mediation.
- **Section 9** The Ombudsman may decide not to investigate if the Complainant knew of administrative action more than one year prior to complaint; existing law or administrative procedure provides adequate remedy and there is no reasonable justification for 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.

From the 2005-06 Annual Report of the Ombudsman of Ontario:

"The slavish adherence to rules is the source of many of the most egregious problems we see...I appreciate the importance of rules, policies and guidelines. I know the dangers that untrammelled discretion poses. If there is one thing I learned in my prior incarnation as a lawyer, it is that rules, policies and guidelines exist for a reason. They are meant to prevent arbitrary treatment and to enable correct and sound decisions to be made. But they are not foolproof. They are, by their nature, general and they therefore fail to account intelligently for every situation. No rule is intended to be self-defeating, to be applied even when it will produce perverse results. Rules have to be understood and applied according to their underlying purposes... there are too many times when government agents choose the simple and safe route of mechanically and reflexively following rules, rather than finding ways within a system of rules to solve problems."

How to Make a Complaint to the Ombudsman

How Do I make a complaint?

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

Suite 102, Dundonald House

14 Dundonald Street West

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

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

Tel: 441 296 6541

Fax: 441 296 7734

complaint@ombudsman.bm

info@ombudsman.bm

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).

NOTE: Please submit relevant documents when making your complaint.

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.

CAROA Conference

CARIBBEAN OMBUDSMAN ASSOCIATION
5TH BIENNIAL CONFERENCE

Conference Rationale and Purpose

At a regional meeting in 1998 in Antigua, representatives of various countries and institutions resolved to establish the Caribbean Ombudsman Association ("CAROA"). The 2000 meeting in St. Lucia adopted an interim Constitution. The final Constitution (ratified in the 2002 meeting in Trinidad) delineates CAROA's main objectives:

1. To strengthen offices of the Ombudsman in the Caribbean so as to foster cooperative work, to harness resources of, to network and provide continued enrichment with other Regional, Hemispheric and International offices of the Ombudsman and other similar institutions;
2. To support the promotion and protection of Human Rights Agencies in the Caribbean and the development of governmental and non-governmental institutions relating to human rights;
3. To maintain and promote the Institution of the Ombudsman and to encourage its development through out the Caribbean by ensuring that the people are served by independent and effective Ombudsman and other similar human rights institutions;
4. To develop professionalism in the discharge of the role as Ombudsman and to maintain the integrity of the role of Ombudsman;
5. To facilitate the exchange of experiences and information for the enhancement of the work of Ombudsman and other human rights agencies in the Caribbean;

6. To sponsor training and enhancement programmes for Institutions of Ombudsman in the Caribbean;
7. To encourage and support study and research regarding the institutions of Ombudsman and human rights agencies, with particular reference to the Caribbean area;
8. To collect, store and disseminate information and research data about Institution of Ombudsman and human rights agencies;
9. To plan, arrange and supervise periodic Ombudsman Conferences.

Consistent with the goals of supporting the development of Ombudsman institutions in the region, CAROA Biennial Conferences welcome speakers and participants from existing Ombudsman offices in the Caribbean and other regions of the world as well as from related institutions and countries hoping to establish such institutions. The Ombudsman for Bermuda has offered to host the 5th Biennial of CAROA to explore best practices and evolving initiatives and to elevate public understanding of the institution.

Participants: Members of CAROA (voting, associate & honorary); former Ombudsman; Ombudsman from other regions; Human Rights and other oversight and investigation institutions; community and other NGOs; the Judiciary; University; CARICOM; and the media. The Conference will be of particular interest to the UK Overseas Territories, given the upcoming inquiry of the UK House of Commons (Foreign Affairs Committee) into standards of governance in the Overseas Territories.

Proposed Theme: Foundations of Good Governance – Sharing Best Practices.

Summary of Tentative Programme

The Conference spans three full days (the first would be open to the Bermuda public):

1st day explores themes of good governance: Ethics; Administrative Justice; Principles of Good Administration; Ombudsman Value and Jurisprudence.

Presenters include: Baroness Rennie Fritchie, former UK Commissioner for Public Appointments; Dr. Victor Ayeni, former Director, Governance Division, Commonwealth Secretariat; Ann Abraham, UK Parliamentary Commissioner/National Health Ombudsman; Andre Marin, Ombudsman of Ontario; and Dr. Richard Kirkham, University of Sheffield School of Law. The keynote lunch presentation will be by Olara Otunnu, World Children's Ombudsman, former United Nations Under Secretary General and Special Representative for Children of Armed Conflict (1997-2005).

2nd day considers Human Rights, Systemic Investigations, Investigation Techniques; Remedies and dealing with Anxious Personalities.

Presenters include: Venous Memari, Chair, Bermuda Human Rights Commission; Lorena Gonzalez, Inter-American Institute for Human Rights; Gareth Jones, Director, Special Ombudsman Response Team, Ombudsman Ontario; Fred Weil, Curacao Ombudsman; Ann Abraham and Earl Witter, Public Defender for Jamaica; Dr. Claire Leader, Psychologist, Lecturer at the Bermuda College.

3rd day features panel discussions on Special Issues: Challenges of Small Jurisdictions; Apology Legislation; Freedom of Information and Whistle-Blowing. Also, Senior Caribbean Ombudsman will grace the conference with their insights.

Panelists include: Mario Hook, Ombudsman of Gibraltar; Madison Stanislaus, Ombudsman of St. Lucia; Dr. Richard Kirkham, Dr. Victor Ayeni and Baroness Fritchie; Maj. Kenneth Dill, Head of the Bermuda Civil Service; Mr. Ed Ball Jr., General-Secretary of the Bermuda Public Services Union; Williams Angrick, President of the International Ombudsman Institute / Ombudsman of Iowa and Andre Marin, Ombudsman of Ontario; former Caribbean Ombudsman: Ms. Lawrence Laurent; Dr. Hayden Thomas; Sir Frank Blackman.

The Conference is followed by a one-day skills-building Mediation Workshop (all overseas participants and speakers welcome) and one day of CAROA business:

4th day will be an Intensive Interactive Workshop on the 7-Elements of Interest-Based Mediation.

Facilitated by: Eric Collins (formerly of Conflict Management Inc., the corporate arm of the Harvard Negotiation Program) and Joe Voyticky. *Lunch address:* Prof. Breninkmeijer, Netherlands Ombudsman.

5th day – CAROA – business, reports, elections, strategic planning. Also: consultation with the Central American Ombudsman Association.

Post Conference Document:

"Best Practices Primer" (culled from presentations)

More information about CAROA's 5th Biennial Conference (April 27th-May 2nd, Bermuda) can be found on www.ombudsman.bm.



About Bermuda

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

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

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

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





Learn more about us at
www.ombudsman.bm

OMBUDSMAN FOR BERMUDA

Suite 102 • 14 Dundonald Street West • Hamilton HM 09 • Bermuda
TEL 441-296-6541 • FAX 441-296-7734 • www.ombudsman.bm • complaint@ombudsman.bm