

**OMBUDSMAN FOR BERMUDA  
Ninth Annual Report 2013**

*For The  
Good Of  
The Public*



*And Those  
Who Serve  
The Public*





## OMBUDSMAN FOR BERMUDA

25<sup>th</sup> June, 2014

The Speaker, The House of Assembly  
The Hon. K. H. Randolph Horton, JP, MP  
Sessions House  
21 Parliament Street  
Hamilton HM 12

Dear Honourable Speaker:


I have the honour of presenting the Ninth Annual Report, which covers the year 1<sup>st</sup> January to 31<sup>st</sup> December, 2013.

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,



Victoria Pearman  
Ombudsman for Bermuda



Ombudsman's Message .....	1
Former Ombudsman's Comments.....	3
Letter of Thanks from BPSU .....	10
Presentations and International Relations.....	11
Complaint Summaries.....	12
Statistics .....	17
Eight Steps for Resolving Your Own Complaint.....	22
Ombudsman Act 2004 in a Nutshell .....	25
How to Make a Complaint to the Ombudsman .....	27



## Ombudsman's Message



It is my pleasure to present the Ombudsman's Annual Report for the year 2013. As I commenced my duties in March 2014, this Annual Report covers the work of the Office prior to my appointment. I appreciate my predecessor Ms. Arlene Brock and the members of my new team who have assisted me in the fulfillment of my statutory duty to report on the work of this Office for the last calendar year.

The first Ombudsman for Bermuda has kept her promise that as she learned Bermuda would learn. She diligently educated the public and those who serve them on good governance and best practices, shared her knowledge at home and abroad and opened the Office to train others from beyond our shores. Arlene Brock and her team built the Office of the Ombudsman for Bermuda on strong foundations and forged its excellent reputation locally, regionally and internationally. She never wavered in discharging her responsibilities. I thank her for her service and all that she has done to establish and develop this important Constitutional Office.

I am honoured to have been appointed as the Ombudsman for Bermuda. When the appointment was announced people approached me wherever they saw me (at the dentist, the hair salon, the movies, the pharmacy or the supermarket), offering best wishes and encouragement. Many I did not know. They were not shy to tell me about my new responsibilities and duties as well as their high expectations of the new Ombudsman. I have been humbled by their kindness and confidence. I am storing these kindnesses for times when they may be less than pleased with my decisions.

In my new role there is much to learn. I am committed to learning as much as I can as quickly as I can. For the past twenty years I have practiced as a litigator at the Bermuda Bar and it has been my honour and privilege to serve within my community. Though new to the Office of the Ombudsman, I am not new to fighting for fairness for all, insisting that people are entitled to be treated with dignity, their rights respected and taken seriously. In this new role I am thankful and blessed to serve our country in another way.

As we move forward we will be reviewing our procedures with a focus on improving our turn-around time and attending to our outstanding complaints. The Office will build on the work done thus far to improve accessibility and awareness of what we do. We want all to know that this Office is an independent office of last resort that provides free, unbiased redress against maladministration within our jurisdiction. We want to know how we can better assist you.

People deserve fairness and to be treated with respect by those entrusted to serve them. Public servants deserve guidance on best practices and recommendations that look beyond what went wrong and - through collaboration - look at how best to get it right. I will talk but I promise I will also listen. I pledge to carry out my duties to the best of my ability and to serve with integrity and without fear or favour.

A handwritten signature in black ink, appearing to read 'Victoria Pearman', with a long horizontal line extending to the right.

Victoria Pearman  
Ombudsman for Bermuda

---

“ *Sometimes we feel  
that what we do is  
just a drop in the sea,  
but the sea would be  
less without this drop.* ”

**- MOTHER TERESA OF CALCUTTA**



## Former Ombudsman's Comments

The words "Accountability" and "Transparency" are bandied about quite freely by politicians, civil servants and the public at large. But, in the practice of government and the delivery of public services - what do these two words actually look like? At least in theory:

Accountability means that civil servants

- take responsibility in the first instance for doing their best to deliver public services in accordance with fair procedures
- and when things go wrong, they acknowledge the problem and look for ways to redress.

Transparency means that:

- procedures and the information that the public needs to take advantage of are clear and accessible
- civil servants must give reasons for why certain procedures are or are not in place and must explain what happened when things go wrong.

In Bermuda, the Civil Service motto is "At Your Service, Bermuda". This implies that the Civil Service is driven and guided by the principle of serving the public. However, civil servants do not operate in a vacuum. Ultimately, public services are authorized and defined by the laws set by the Legislature and the policies set by the Cabinet. Ministers are accountable to the Legislature for answering questions about the effectiveness of their policies as implemented by the Civil Service.

Accordingly, civil servants, especially senior civil servants, are tasked with explaining or even defending their actions directly to the Ministers. The balance between serving Ministers and serving the public can sometimes be difficult for civil servants to navigate - not just in Bermuda but indeed, all over the world. (In the popular culture, this relationship is epitomized by the British comedy "Yes Minister".)

Our Special Report, *Today's Choices: Tomorrow's Costs*, commented on the dilemma:

*Given the nature of hierarchy, it would be all too human if a kind of "constructive intimidation" is sometimes at work – a civil servant may refrain from pressing a point that is contrary to what people more senior may appear to prefer. A publication of the UK National School of Government ("Working with Ministers" 4th ed. 2008 C. Jary) notes: "civil servants must ensure that ministers' decisions are based on a firm foundation of fact. This involves setting aside our own personal views and our ministers' and saying what, in our professional judgment, is the best course in these circumstances...We are not doing ministers (or the quality of government) any favours by telling them what they want to hear, rather than what they need to know. We have a duty to warn ministers if we feel that their decisions will not work or will produce unwanted results."*

As noted in my TEDx Bermuda talk in October 2013, our Civil Service should be encouraged and evaluated by how well they ask questions, acknowledge problems, and seek resolutions rather than: by how well they cover their backs; the quickness of knee-jerk "can't do" responses; hyper-legalistic justifications for bureaucratic inaction; and, how narrowly they interpret what accountability, transparency and "at your service" actually entail (the Ombudsman for Ontario has coined this "rulitis").

How is the general public to be assured that civil servants (whose salaries are paid with their taxes) are serving them and not just political bosses or other agendas? Prior to the establishment of an Ombudsman, it was often difficult to ensure accountability of civil servants for poor – or mal – administration. Transparency, such as providing reasons for decisions, was not typical of the culture of the Civil Service. As the seminal 1984 judgment of the Supreme



## Former Ombudsman's Comments

Court of Canada explained regarding the need for the Ombudsman:

*The traditional controls over the implementation and administration of governmental policies and programs – namely, the legislature, the executive and the courts – are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands. The inadequacy of legislative response to complaints arising from the day-to-day operation of government is not seriously disputed. The demands on members of legislative bodies are that they are naturally unable to give careful attention to the workings of the entire bureaucracy. Moreover, they often lack the investigative resources necessary to follow up properly any matter they do elect to pursue... The limitations of courts are also well-known. Litigation can be costly and slow. Only the most serious cases of administrative abuse are therefore likely to find their way into the courts. More importantly, there is simply no remedy at law available in a great many cases.<sup>1</sup>*

The Ombudsman institution fills the gap. Since the early 1960s, the Ombudsman has proliferated throughout the world as the institution that oversees the operations of the Civil Service. In effect, the Ombudsman – who does have the necessary investigative resources – acts as the eyes and ears of the Legislature. To do this effectively, with integrity and without fear of political retribution, the Ombudsman in Bermuda is an officer of the Constitution. Like the Auditor General - who oversees the expenditures of the government and is the only other wholly independent oversight institution in Bermuda's Constitution - the Ombudsman is under the direction and control of no other person. She reports directly to the Legislature and thereby to the public.

Ombudsmen throughout the world are extraordinarily passionate about the need to ensure access to justice for ordinary persons who do not have political influence or voices that are readily heard. This has also underpinned our work in Bermuda. Most important, Ombudsmen are also clear and determined that the Ombudsman is neither an advocate for the complainant nor for the authority, he is a critical friend to both.<sup>2</sup> On the other hand, the Ombudsman is always an advocate for good administration, accountability and transparency.

Dr. Victor Ayeni, a global expert in the oversight of public administration (Keynote Speaker at the official opening of our office in January 2006) states that the value of the Ombudsman is such that it has become a human right in itself. That is, countries that do not have Ombudsman institutions are denying inhabitants the right to administrative justice.

In the second reading of the Ombudsman Bill on 3 December 2004, and at the official opening of our office 19 January 2006, then Premier Alex Scott noted that the establishment of the Ombudsman is a

*"significant step in entrenching good governance, transparency and accountability for the people of Bermuda by the Government of Bermuda...the Ombudsman will address not only those issues of national importance, but also issues related to everyday matters that are significant to the members of the community that have been affected...We view your office as a cornerstone in the great structure that is good governance. By investigating complaints to determine whether the Government is doing things in a fair and proper way, and by learning from what went wrong and translating the recommendations into action, you are not only improving governance, but you are improving people's everyday experience with government."*

Accordingly, the failure to implement Ombudsman recommendations without reasonable explanation – especially after agreeing to do so – not only makes a mockery of the very notion of accountability, but also essentially constitutes a defiance of the will of the Legislature. There is no harm in Bermuda taking guidance from UK Courts: while recommendations are not binding, the findings of the Ombudsman are binding – unless it is reasonable to

<sup>1</sup> *BCDC v. BC (Ombudsman)* [1984] 2 SCR. 447 (followed worldwide and noted by Bermuda's Supreme Court in *Smith v The Minister of Culture and Social Rehabilitation* [2011] Bda LR 7.

<sup>2</sup> Succinctly stated by Tom Frawley, Ombudsman for Northern Ireland

disagree. It is not enough to disagree because a senior Civil Servant or Minister feels like doing so – they must advance cogent, persuasive reasons for disagreeing.<sup>3</sup>

Most of the cases of maladministration over the years can be traced to a failure of due process or due diligence. It has been astonishing to see how important decisions can be made based on “what someone said” or “what I believe or feel” rather than on clear and objective assessments of all the facts and perspectives that it is possible to unearth. Too often, advisors and decision-makers latch on to the first notions they understand about an issue rather than taking the extra steps of testing and double-checking those notions and/or seeking and embracing other perspectives.

Accountability would mean acknowledging mistakes and missteps - all humans make them. Transparency would mean giving reasons for decisions and actions. Accountability means accepting that those reasons might not be the most appropriate or adequate. Transparency means being open to assessing a variety of options for resolving issues rather than just narrow, entrenched ideas. Accountability means taking steps necessary to resolve problems and address Ombudsman recommendations rather than ostrich-like denial. Transparency means acknowledging that there is more that a department, board or other authority can learn.

Most complainants come to the Ombudsman with two layers of complaint - not only the underlying administrative problem itself, but also how they were treated when trying to redress the problem. More than the actual maladministration itself (inefficiency, unresponsiveness, mistake of law or fact, etc.) it is the failure to accept accountability and ensure transparency that tend to frustrate and motivate complainants.

Notwithstanding what has occasionally felt like battering against concrete bureaucratic walls, I must categorically confirm that over the years, the vast majority of the Civil Servants that we have made inquiries of or worked with to find resolutions have been diligent, eager to do the right thing and to craft resolutions. I do not believe that anyone wakes up in the morning, looks in the mirror and decides “I will make life difficult for the public today”. In some instances, Civil Servants may simply be operating with old interpretations of their guiding statutes,<sup>4</sup> or without knowing details of the other side of the issue or the abyss of documentation falls through bureaucratic cracks.

At the great risk of leaving out an office or person who demonstrated notable accountability and transparency, I commend the following who have stood out over the years as consistent models of Civil Servants who embraced good governance and were always eager to learn: R. Azhar (former Chief Immigration Officer), G. Ness (Planning Department), L. Lister (Executive Officer, Human Rights Commission), D. Taylor (Director of Financial Assistance), R. Rochester, formerly of the Transport Control Department; the entire Department of Consumer Affairs and the Bermuda Public Services Union.

It is probably no coincidence that these are also people who peruse our Annual Reports (which are used as training material in other countries) and took advantage of uncommon opportunities to learn about the Ombudsman functions. Bermuda hosted the biennial conference of the Caribbean Ombudsman Association in 2008 and the 2010 Annual Board Meeting of the International Ombudsman Institute. I asked both organizations to do something that is not normally done: public presentations about the work of the Ombudsman in their own countries. It was important that the public learn about the Ombudsman not just from me but also from visiting Ombudsman. Generally

3 Regina (Bradley and Others) v Secretary of State for Work and Pensions and Others. [2007] EWHC 242; [2008] EWCA Civ 36  
“the [minister] acting rationally, is entitled to reject a finding of maladministration and prefer his own view. But...it is not enough that the [minister] has reached his own view on rational grounds; it is necessary that his decision to reject the Ombudsman's findings in favour of his own view is, itself, not irrational having regard to the legislative intention which underlies [the Ombudsman's legislation]...it is not enough for a Minister who decides to reject the Ombudsman's finding of maladministration simply to assert that he had a choice: he must have a reason for rejecting a finding which the Ombudsman has made after an investigation .”

R v Local Commissioner for Administration ex parte Eastleigh Borough Council [1988] 1 QB 855 “The Parliamentary intention was that reports by Ombudsman should be loyally accepted by the local authorities concerned... in the absence of a successful application for judicial review and the giving of relief by the Court, local authorities should not dispute an Ombudsman's report and should carry out their statutory duties in relation to it.”

4 Such as the first complaint (that arrived in our office promptly at 10:30 am on opening day): for decades HM Customs had misapplied the amount of surcharge allowed by the 1898 Revenue Act for late submission of documents.

## Former Ombudsman's Comments

speaking, the Civil Servants who took advantage of these opportunities also tended to give exemplary responses to our inquiries and embraced the effort of continuous improvement.

I also must acknowledge former Premiers Alexander Scott and Paula Cox and former Ministers Randolph Horton and Lt. Col. David Burch for their proactive inquiries to ensure that complaints were addressed.

On the other hand, I demit office with a couple of outstanding matters which hopefully will be rectified in order to give true meaning to any understanding of what good governance and integrity should entail.

- The most important is the Government's unsubstantiated denial of my conclusion (which was supported by two legal opinions) that the 2001 Environment Charter imposes obligations - including that Bermuda must require environment impact assessments before approving certain developments. In several reports, I have provided a mountain of evidence to support this assessment of the Charter's legal status including the only Court judgment that has ever reviewed the Charter. The Bermuda Government insists that the Charter was merely "aspirational". This view is not aligned with the Foreign and Commonwealth Office ("FCO") with which the Government signed the Charter. In its 2007 written evidence to the UK House of Commons' Environment Audit Committee, the FCO asserted: "The Charters have a list of commitments that both Her Majesty's Government and the Overseas Territory Governments are working towards". The FCO has never backtracked from this and indeed affirmed the Charter commitments in its recent evidence to the 2012 hearings of the Environment Audit Committee:

The Government of Bermuda cannot simply say "we do not agree" without substantiating its position or publicly disavowing the Charter. They claim to have legal opinions. My understanding is that there was a "preliminary cursory view" that did not take into account the elements of agreements between governments or the contemporaneous evidence of the intent of the Charter. If there is another legal opinion to support the Government's assertion, then they should have shared at least the basic arguments with the Ombudsman. As the eyes and ears of the Legislature, the Ombudsman should be able to count on all Government authorities to cooperate fully. This includes waiving legal privilege (as Governments elsewhere do) in order to provide all relevant information to the Ombudsman. It would be bizarre if Government authorities were to insist on denying the Legislature's right to see and hear all evidence (via the Ombudsman or the Auditor General).

- Also outstanding is the Land Valuation Department's view that it may take internal photographs of peoples' homes from the outside without first asking permission. As noted (and reported at greater length) in our 2012 Annual Report:

*The Department asserts a Constitutional right not to request consent. It is true that Article 7(b) of the Bermuda Constitution allows government officers to inspect premises without consent for the purpose of any tax. Valuations determined by the Department are for the purpose of assisting the Tax Commissioner to calculate taxes and issue bills. However, the Constitution also requires that such entry must be "reasonably justifiable in a democratic society". It is my opinion and recommendation that it is not reasonably justifiable for the Department to enter onto people's premises in the first instance without first seeking consent. If people refuse, then the Department still has recourse to enter – with a police escort under s.8 of the Land Valuation and Tax Act 1967.*

*The Bermuda Police Service ("BPS") has a similar right under Article 7(a) of the Constitution to enter on premises without consent in order to protect public safety, order and morality. Yet, even the BPS has strict parameters and must in most instances obtain initial authorizations in order to exercise this right under the Police and Criminal Evidence Act 2009 and certain other legislation. The BPS may enter premises without consent – only on the reasonable belief that a person or relevant evidence is on the premises – for the purpose of: executing arrest warrants; recapturing persons unlawfully at large; saving life or limb; or preventing serious damage to property. There is an even higher standard of information required to obtain a warrant issued by a Magistrate. Specifically: the warrant must be in connection with an indictable offence; and, the evidence sought must be considered to be of substantial value. The Department has submitted no persuasive reason to justify why it cannot simply ask*

## Former Ombudsman's Comments

*for consent in the first instance. It is illogical and untenable that the Department of Land Valuation should have a larger power to invade privacy of the home than even the Bermuda Police Service.*

- Finally, the responses by the Ministry of the Environment to the Special Report: A Grave Error and the Corporation of Hamilton to the Special Report: 4" x 6" are sadly of great concern:

4" x 6" = 262 demonstrated a range of governance problems at the Corporation of Hamilton that any responsible administration that is truly committed to accountability and transparency would eagerly want to fix.

The responses to both reports are inadequate and inappropriate and will be the subject of two further brief Special Reports under s.16 of the Ombudsman Act.

Soon after the office opened, a talk show caller asked: "why would you want to take on this role?" The opportunity to fill the gap of access to administrative justice is compelling and indeed rewarding when we are able to find resolutions for complainants who felt that no one else had listened or treated them fairly. We appreciate that the public took the role of the Ombudsman quite seriously. Over the years there has been only a handful or two of complaints that can be characterized as frivolous or not made in good faith. I thank the public for their constant support.

The need to safeguard and promote accountability and transparency is particularly urgent during periods of budgetary crisis when governments may be tempted to cut corners or dispense quickly with difficult problems without adequate due process and due diligence. Worldwide, Ombudsmen are reminding governments that periods of financial downturn are times when the imperative of good governance is even greater. This is particularly true in small states which are often more vulnerable than large bureaucracies to wide discretion, intertwined personal relationships and weak governance. As noted by Dr. R. Koranteng of the Commonwealth Secretariat in a 2011 report: "Better Governance – Issues and Challenges in Corruption Control for Small States", transparency and accountability are "antidotes" to corruption. The Ombudsman team operates as one of the accountability or integrity physicians in the modern world who is relied on and trusted by the Legislature and the public to oversee, articulate and administer these antidotes.

Comparative research by a legal team at the University of Sheffield, UK explored a seminal idea largely from developments in Australia:

"Constitutional lawyers have always talked of three distinct and fundamental branches of the constitution – the executive, the legislature and the judiciary. We should add a fourth branch – the integrity or accountability branch. Such a theoretical development is no more than a practical recognition of how constitutions have evolved".<sup>5</sup>

In Bermuda, the "Integrity Branch of Government" is comprised of three Constitutional authorities – Auditor General, Ombudsman and Public Service Commission. The permanence of the status of Officers of the Constitution enhances both credibility and execution of our oversight functions. There are also five statutory accountability authorities. If they were fully independent, they could also be deemed part of the burgeoning "Integrity Branch of Government" – Human Rights Commission, Parliamentary Registrar, Police Complaints Authority, Department of Internal Audit and the impending Information Commissioner.

None of the Ombudsman's work can be effective without the enormous efforts, diligence and dedication of an incredible staff. I have been blessed with wonderful people to work with who have exemplified what only the very best staff do: challenge and support me; go the extra mile; bring focus and perspective, and consistently contribute their best skills and values. The staff at the Office of the Ombudsman became a formidable and highly respected team over the years. International colleagues and also many members of the Bermuda public have expressed amazement that we could accomplish so much with so few. Quite simply, any positive impact is due to the hard work, care and

5 "The Ombudsman Enterprise and Administrative Justice" - from Dr. Richard Kirkham's speech at the 2008 conference in Bermuda of the Caribbean Ombudsman Association.)

## Former Ombudsman's Comments

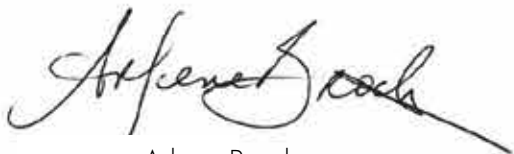
persistence of this phenomenal staff. Any shortcomings are mine alone. During 2013 in particular, the team carried the office on their shoulders when my attention had to be focused on unprecedented legal challenges (to be reported on more fully in the Section 16 Special Report on the response of the Corporation of Hamilton to 4" x 6" = 262).

My profound thanks and respect to:

- Quinell Kumalae, Senior Investigations Officer, and essentially my right hand for eight years. Mrs. Kumalae's clarity of thought, wisdom and dedication to justice are nothing short of stellar. Lamentably, an interesting and totally different career off island has beckoned.
- Thankfully, Catherine Hay, Investigations Officer, has remained. Her insights, stalwart legal acumen and finger on the pulse of various aspects of Bermuda are invaluable.
- Georgia Symonds (who retired in December) was the heart of the office. She organized us all, conducted research and myriad tasks and always contributed much-needed substantive perspective.
- Lamumba Tucker does not merely manage our accounts, budget and office administration. He also pitches in with research, the right questions and anticipates needs with intrepid humour and spirit.

During the first eight and a half years of the Ombudsman institution in Bermuda, I believe that our team established an understanding of what maladministration is, what accountable and transparent responses should look like and how this institution can contribute to administrative justice. We did not accomplish a transformation of the Civil Service culture into one in which due process and due diligence are uppermost priorities.

The new Ombudsman, Ms. Victoria Pearman, has great "Ombudsman instincts" and integrity. I believe that - if the Civil Service is open - she will take the office and its impact far along the road to this next level. Godspeed, Ms. Pearman and team - as you forge ahead in this incredible journey - indeed this global movement - of bringing administrative justice to the public and making the words "accountability" and "transparency" come to life.



Arlene Brock  
Former Ombudsman for Bermuda



The Hard Working Team at the Office of the Ombudsman



**2013** – Seated: Georgia Symonds (Admin./Personal Assistant for Ms. Brock); Arlene Brock (Ombudsman)  
Standing: Kara Simmons (Complaint Intake Officer and Analyst); Catherine Hay (Investigations Officer);  
Quinell Kumalae (Senior Investigations Officer); Lamumba Tucker (Administrative Officer).



**2014** – Seated: Victoria Pearman (Ombudsman)  
Standing: Aquilah Fleming (Complaint Intake Officer); Catherine Hay (Investigations Officer); Lynda Augustus  
(Executive Administrative Assistant); Lamumba Tucker (Administrative Officer).



## **BERMUDA PUBLIC SERVICES UNION**

P.O. BOX HM 763  
HAMILTON, BERMUDA HM CX  
TEL: (441) 292-6985  
FAX: (441) 292-1149  
[www.bpsu.bm](http://www.bpsu.bm)

---

*"Onward and Upward Together"*

March 11, 2014.

Ms. Arlene Brock

On behalf of the members, Union Officers and staff, the President's award is a celebration of the human spirit and a prestige that we bestow to you;

For your ability to overcome extraordinary and daunting challenges at private and collective levels to form the Office of the Ombudsman;

For the extraordinary and mystifying heights you scaled for the benefit of Bermuda's community.



Brother Kevin Grant.  
President



# *Presentations and International Relations*

## **MAY 2013:**

Biennial Conference of the Caribbean Ombudsman Association

Arlene Brock's presentation: "Weaving Together Human Rights and Ombudsmanship" argued that the institution of the Ombudsman was evolving so quickly that the old distinctions between the "classical, complaint-driven" and the "hybrid, human-rights" ombudsman were fading. This is especially true since the UN General Assembly resolutions of 2009 and 2010 that not only recognized the role of Ombudsman in promoting and protecting human rights but also urged Ombudsman to become accredited as National Human Rights Institutions. Further, some 25% of Ombudsman institutions have been designated by their governments as National Preventative Mechanisms to conduct annual human rights audits of places of detention.

Ms. Brock was also asked by the Conference host to pinch-hit at the last minute for Dr. Victor Ayeni who was unable to attend. Due entirely to her phenomenal staff at home who put together a power-point presentation, Ms. Brock spoke on the value of UK Commonwealth Jurisprudence to suggest global standards to elucidate: Ombudsman Purpose and Jurisdiction; Powers and Discretion; Maladministration vs. Legal Causes of Action; and, Response of Authorities.

## **SEPTEMBER 2013:**

Ms. Brock developed these ideas further at the Colloquium of the African Ombudsman and Mediators Association.

## **JUNE 2013:**

Visit to office by the Governor of Aruba, HE Fredis Refunjol, the Director of Cabinet, Mr. Martijn Boelen, and his ADC, Lt. Roel Samson. Governor Refunjol met with the Chief Justice, Auditor General and others to see how Bermuda conducts good governance accountability and oversight. He spent a spirited hour with our office exploring the powers, authority and effectiveness of the



ombudsman institution within the context of the special challenges and politicization of small jurisdictions.

## **OCTOBER 2013:**

TEDx Bermuda: Ms. Brock emphasized the importance of making decisions based on facts rather than mere opinion—against a backdrop of emotion and influence. (<http://www.youtube.com/watch?v=VTiVj0YiVXE>)

During the year, Mrs. Kumalae and Ms. Hay conducted workshops on human rights of inmates and the Ombudsman complaint handling process at each of the Island's correctional facilities.

The Bermuda office agreed to establish and host an interim static website of the Caribbean Ombudsman Association (which paid for this undertaking) – the work and expertise of our Mr. Tucker made this possible.

The Ombudsman for Bermuda continues to respect the Herculean work done by the Ombudsman for Haiti (Protectrice du Citoyens). In addition to her many endeavours, including bringing justice to street girls and connecting inmate fathers with their sons in a football league, Madame Florence Elie was asked by the Government of the US to be the responsible authority to produce and distribute copies of Haiti's latest Constitution that had been translated into creole.

The Rotary Club of Sandy's, Bermuda was so inspired that they have contributed funds to pay for two years of membership for Haiti in the International Ombudsman Institute. Many thanks!

# Complaint Summaries

## CONSUMER A

This is an example where a single incident gave rise to complaints against three different authorities. As each complaint requires the same diligence of inquiry, investigation and, if needed, mediation, each is counted in our statistics as a separate complaint.

1. Consumer A complained to the Ombudsman that the Department of Consumer Affairs ("Department") had not adequately resolved her complaint that a store owner had verbally attacked her. The Department's investigation concluded that the store owner had been less than courteous and issued a written warning to the store owner. The Complainant wanted far greater consequences, including a written apology. She felt that the Department did not understand the gravity of the incident.

The Ombudsman determined that the Department had conducted its investigation adequately. Further, the written warning was appropriate and proportionate because this was the first ever complaint filed against this particular store owner.

2. Consumer A also complained against her child's School ("School"). The School had exclusively designated the above-noted store owner to stock the school uniforms. Consumer A had no alternative but to purchase the uniforms from the store owner. Before the above-noted encounter, she had unsuccessfully tried three times to purchase the uniforms. On two occasions the store was not open when advertised. On the third occasion its credit card machine was not working. In her frustration she wrote a letter to the School complaining about these difficulties. The School forwarded a copy of her letter regarding these original complaints to the store owner.

The next time Consumer A went into the store she experienced the encounter referred to in

"1." above. She managed to quickly record the conversation on her mobile phone and captured the store owner saying: "I've been waiting for you". Consumer A complained that the School had put her in an uncomfortable position by leaving her no alternative but to purchase uniforms from this store and more importantly, by alerting the store owner to her identity as a complainant.

The School's initial response was that it was actually the Parent Teacher Association ("PTA") that had made the arrangements with the store owner to stock the uniforms. After meeting with the Ombudsman the School accepted that the PTA was operating on behalf of the School, as the sole purpose of the uniforms was to meet the School's dress requirements. Therefore, the School will encourage a choice of vendors in the future.

Further, the School acknowledged that it was the School, not the PTA, that had compromised Consumer A's identity. The School understood that it was inappropriate and unnecessary to name Consumer A in raising her original concerns about opening hours and the difficulty of the credit card machine. The School agreed that in future it would handle such complaints generically rather than identifying complainants without their express consent. The School also agreed that it would be useful to have training in complaint handling.

3. Consumer A also complained to the Ombudsman against the Human Rights Commission ("HRC"). In addition to saying "I've been waiting for you", the store owner referred to her as "you people". She also made comments to the effect that "you people" expect to be treated with deference. (Consumer A is not a Bermudian national/of Bermudian origin). Consumer A recorded these statements. Such direct and clear evidence from recordings of such encounters is almost unprecedented.

Consumer A complained to the HRC of discrimination based on country of origin. The HRC initially determined that because Consumer



A was ultimately able to purchase the clothes the Human Rights Act 1981 ("HRA") did not apply to this complaint.

*S.5(1) of the HRA provides: "No person shall discriminate against any other person due to age or in any of the ways set out in section 2(2) in the supply of any goods, facilities or services, whether on payment or otherwise, by refusing or deliberately omitting to provide him with any of them or to provide him with the goods services or facilities in the like manner and on the like terms in and on which the former normally makes them available to other members of the public."*

*S.2(2) of the HRA provides: "For the purposes of this Act a person shall be deemed to discriminate against another person—if he treats him less favourably than he treats or would treat other persons generally...or deliberately treats him differently to other persons because...of his race, place of origin, colour, or ethnic or national origins"*

Apparently the HRC's conclusion was based on an interpretation that the words "in the like manner" refer only to the items purchased. That is because Consumer A was eventually able to purchase the uniforms, there could not have been any discrimination.

The Ombudsman asked the HRC to reconsider whether the words "in the like manner" could also apply to the encounter preceding the purchase in addition to the physical exchange of the school clothes for money. The Commission agreed to do so and Consumer A was instructed to contact their offices.

*Full Disclosure: In the course of drafting this 2013 Annual Report, it was discovered that the new Ombudsman had previously represented the Store Owner after being notified by the HRC that the matter would be reopened on the Ombudsman's recommendation.*

### MOTHER B

Mother B complained that a Charity had not treated her fairly after it received a complaint about her.

The Ombudsman declined to investigate because the Ombudsman Act 2004 ("Act") applies to public authorities within the definitions listed in s.3 of the Act. The Charity is not a public authority and therefore does not fall within the jurisdiction of the Ombudsman. However due to the breakdown in communication between all parties the Ombudsman decided to contact the charity in order to obtain clarification of the matter as well as to provide information to Mother B regarding their process. The Ombudsman was able to advise the Charity generally on some process improvements that they promised to implement, including sending clear closure letters for matters handled by the Charity.



### PROPERTY OWNER C

Property Owner C bought a newly constructed house that split the land of the Developer in half. He stated that the Developer told him that a wall would be built dividing the now, two separate properties. The Developer built a 6ft freestanding wall between the lots but did not plaster the side on which Property Owner C lived. Property Owner C complained to the Department of Planning ("Planning") that the wall was not compliant with Planning regulations which dictate walls that are four feet and over. In particular, s.6.6 of the Bermuda Plan 1992 requires that concrete block walls should be plastered.

In response to the complaint by Property Owner C, Planning initially inspected the wall and 'failed' it because: (a) it was not plastered on the northern side; and (b) it was constructed without the requisite inspections. There were other issues arising from the inspection as well. The Developer agreed to regularise most of the outstanding issues but he did not agree to plaster the wall because the Planning approval for the wall did not specifically stipulate that it must be plastered. Planning changed its original instruction and agreed that the Developer was within his rights not to plaster the wall.

Further, Planning also seems to have accepted the Developer's view that the approval document must

## Complaint Summaries

restate all of the conditions set out in the Bermuda Plan in each approval. There is actually no requirement that this must be done. This would in fact add a great deal of unnecessary paperwork if each approval had to set out paragraphs, in some instances pages, of all of the relevant requirements of the Bermuda Plan.

In the meantime, after several months of no further apparent action by Planning, Property Owner C complained to the Ombudsman that Planning was both unresponsive and had failed to enforce the regulations set out in the Bermuda Plan. Planning informed the Ombudsman that it had written to the Developer outlining certain issues arising from the inspection but had conceded to the Developer on the plastering point and withdrew its original instructions that the wall must be plastered.

Planning's reasoning was that s.6.6 of the Bermuda Plan is merely a policy and provided guidance only, that is, the conditions set out in the Bermuda Plan are not mandatory.

As required by the Development and Planning Act, approximately each decade a new Bermuda Plan is developed. The Plan is developed after over a year of public and expert consultation on the vision and requirements to regulate development for the ensuing decade. Accordingly, approvals of development applications should not arbitrarily depart from the community-wide expectations unless there are proper reasons for doing so.

Chapter 1 of the 2008 Bermuda Plan states:

*The main purpose of the Plan is to provide for the land use and development requirements of the Island in a way that makes the most effective use of its resources, protects its natural and built environment, and provides a good quality of life for the Island's residents...The Plan comprises a written Planning Statement and a series of 89 Zoning Maps. The Planning Statement contains the key objectives and policy regulations and standards for each of the zonings shown in the Zoning Maps.*

Discussions with Planning Officers revealed a difference of opinion about the status of the Bermuda Plan. Some take the view that the Plan is a set of regulations which must be followed unless there is discretion not to do so. Others took the view that the Plan sets out "policies" that are not mandatory and merely provide guidance for Planning Officers and decisions of the Development Applications Board (DAB). The latter view appears to have prevailed in Planning's assessment of and advice to the DAB about this Developer's application

In another context regarding the legal obligations set out in the 2001 Environment Charter, the Ombudsman has researched and received two concurring legal opinions that policies are not merely guidelines. Policies are mandatory – unless there are (1) statutory discretion to vary the policies and (2) reasonable reasons to do so. Both the Privy Council (regarding government's public statements) and an Appeal decision of the Eastern Caribbean Supreme Court (regarding the legal obligations of the Environment Charter) have judged that the public has a legal Legitimate Expectation that the government will follow its own policies. See the Ombudsman's reports (a) **Today's Choices: Tomorrow's Costs** which sets out the "Save Guana Bay" Privy Council decision as well as (b) **Diligent Development** which sets out the "Webster" appeal decision of the Eastern Caribbean Supreme Court.

Applying the doctrine of Legitimate Expectation to the Bermuda Plan, it is the Ombudsman's considered analysis that it would be logical and fair to interpret the status of the Bermuda Plan as follows:

- where there is no DAB discretion with respect to a policy regulation and standard set out in the Bermuda Plan, then such policy regulation and standard is mandatory
- where there is DAB discretion, then that policy regulation and standard should





guide DAB deliberation on the extent of and reasonableness of varying the policy regulation and standard (subject to any external law or Court decision that stipulates that the condition is mandatory).

In its initial handling of this complaint, the Ombudsman did find maladministration due to Planning's unresponsiveness in its failure to update Property Owner C. However, and critically, the Ombudsman accepted Planning's interpretation of the Bermuda Plan. Accordingly, the Ombudsman found no maladministration in Planning's retraction from its original letter that the wall must be plastered. The Department wrote a 'without prejudice' apology to Property Owner C for having raised his expectations that the wall would be rectified. Upon confirmation of this, his complaint file with the Ombudsman was closed.

On reflection and in particular in light of decisions of the Privy Council and other Courts that the Ombudsman has researched regarding the Government's environmental obligations, the Ombudsman's acceptance of Planning's interpretation of the role of the Bermuda Plan appears to be in error.

The s.6.6 requirement in the Bermuda Plan that certain walls be plastered is not within the discretion of the DAB and therefore should be considered to be mandatory. There is no right by the Developer to willfully ignore the conditions set out in the Bermuda Plan. Property Owner C has a legitimate right to expect that Planning would uphold and enforce it. Further, given the fact that approved plans are not required to restate all of the regulations set out in the Bermuda Plan, the fact that the Developer's approved plan for the wall did not stipulate plastering does not override regulation s.6.6.

A hedge now covers the offending wall. Nevertheless, this is a complaint for which the former Ombudsman has undertaken to apologise to the complainant, Property Owner C, for what she concludes was an error in interpretation of the Bermuda Plan.

### GOVERNMENT EMPLOYEE D

After 40 years of employment with Government, Employee D checked on her upcoming benefits and was told that she would receive health coverage

immediately after retiring. However, after retiring she was given quite different information. The Accountant General Government Employee Health Insurance Scheme ("GEHI") told her that she was not entitled to health benefits after retirement until she reached the age of 60 years.

After considerable time and effort, a letter to GEHI and several telephone messages trying to clarify the matter, Employee D complained to the Ombudsman, not only about the conflicting information regarding her medical coverage but also that GEHI was unresponsive.

The Ombudsman's inquiries revealed that GEHI's information was partially correct. The Complainant was entitled to health coverage prior to reaching the age of 60 years under HIP rather than GEHI. Once she reaches the age of 60 years, she would be entitled to GEHI coverage. Her file was sent to the GEHI Management Committee for review. The Committee approved re-enrollment if she agreed to pay the HIP premium for the period from retirement until re-enrollment.



### HOMEOWNER E

Homeowner E owned a house that had a retaining wall owned by Government on its boundary. Homeowner E wrote to the Department of Planning ("Planning") to express concerns that the retaining wall was unsafe and did not comply with the Government's own planning regulations. Planning investigated and promised a response. However after the initial contact and despite subsequent telephone calls and emails, Homeowner E received no further communication.

Approximately a year later Homeowner E still had not received a substantive response and complained to the Ombudsman. Homeowner E claimed that the integrity of the wall was compromised and posed a danger to the family. The Ombudsman investigated and Planning advised that the matter was being reviewed. However, Planning noted that it was a

## Complaint Summaries

complicated matter and would take time to resolve. Due to the technicalities as well as legal and financial considerations, Planning had sought legal advice.

After considerable negotiations and numerous proposals Homeowner E and Planning reached an agreement. The Government accepted responsibility for rebuilding more than half of the new wall and Homeowner E would rebuild the remainder. Although it did take some time for this matter to be resolved the Ombudsman understood its complexity and was pleased that both Planning and Homeowner E assisted, and were able to reach an agreement.



### FOREIGN NATIONAL F

Foreign National F was a Dominican Republic national recently divorced from her Bermudian husband, with two non-Bermudian children and one Bermudian child. Foreign National F came to the Ombudsman after the Government announced that nationals from the Dominican Republic must have a visa in order to land in Bermuda. A subsequent Government

announcement advised that if persons could prove that they were resident in Bermuda prior to the March 2010 announcement they would be eligible for an exemption from the landing visa requirement.

Foreign National F claimed that she submitted an application for her oldest daughter to reside in Bermuda in April 2010 and was told it would take two weeks to process. By August she had still not heard anything from the Department of Immigration.

Our preliminary inquiries revealed that the Minister refused the application because he was not satisfied that Foreign National F could financially sustain herself and her daughter. This decision was entirely within the rights of the Minister (over which the Ombudsman has no jurisdiction). There was no evidence that the information provided to the Minister by the civil service (which is within the Ombudsman's jurisdiction to oversee) was incorrect or biased.

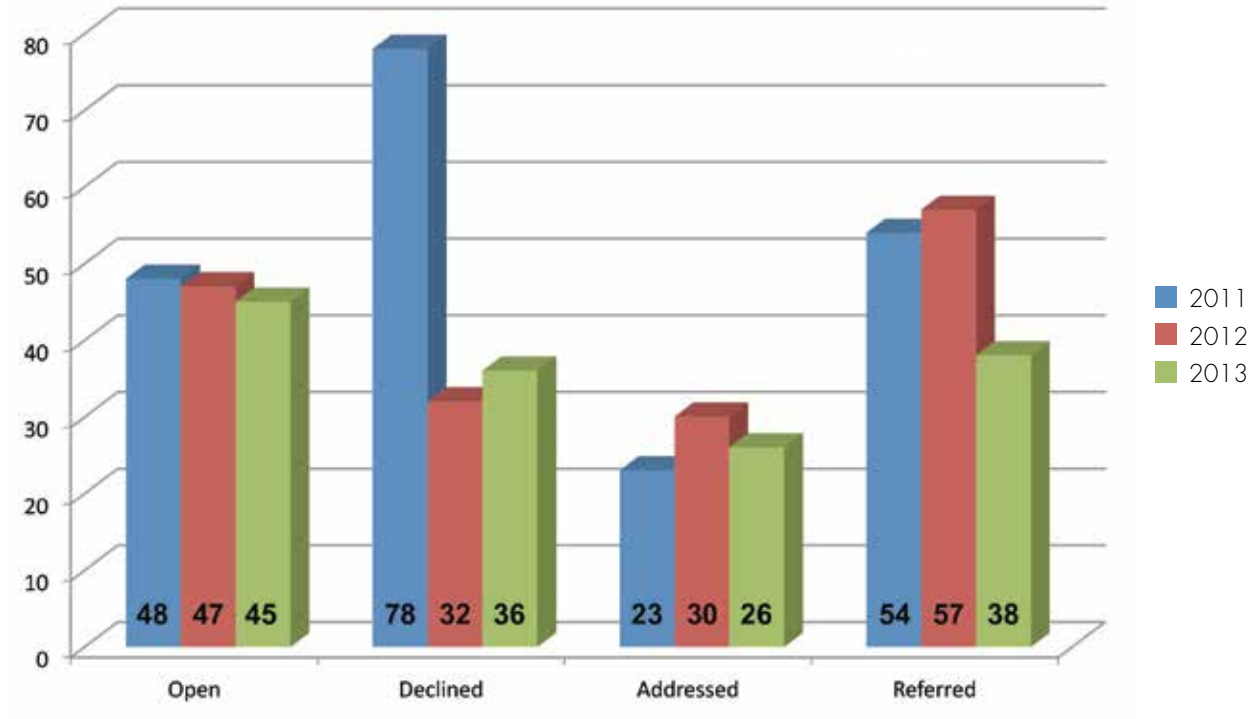


“ *The important thing is never to stop questioning.* ”

- ALBERT EINSTEIN

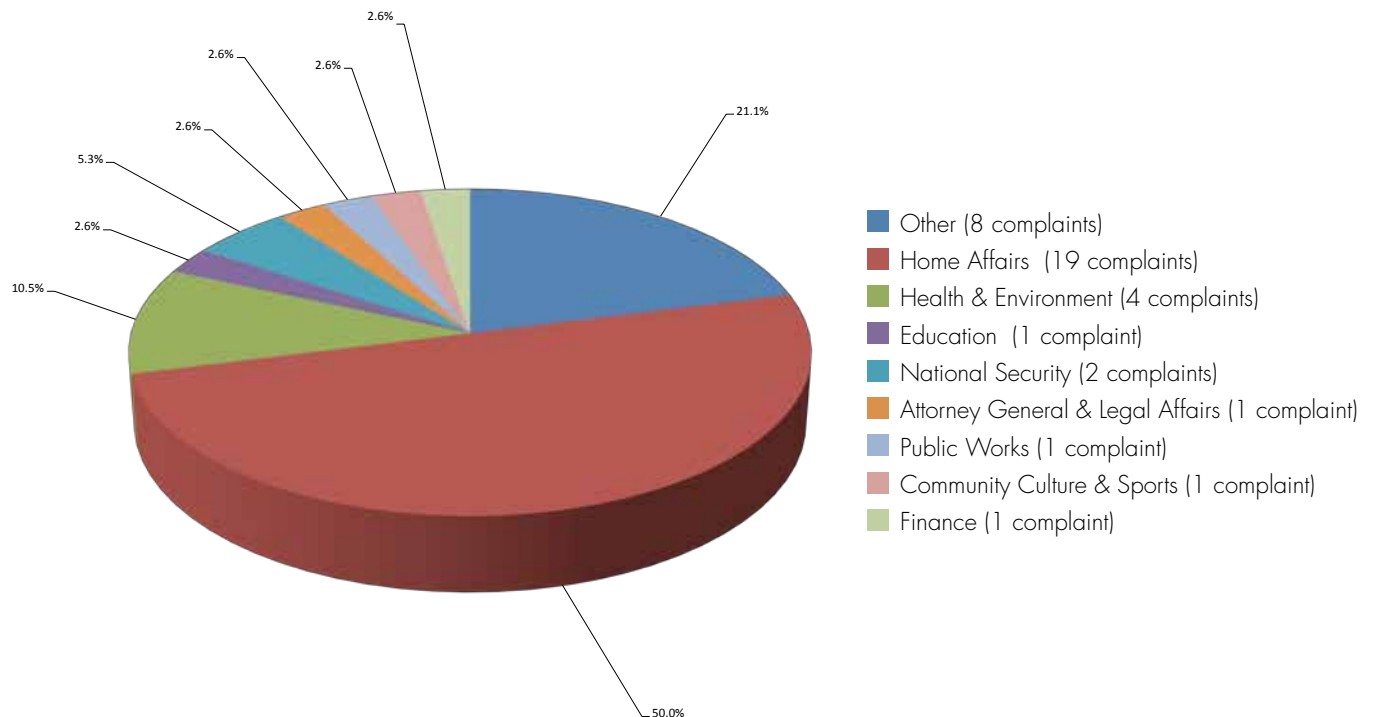
### DISPOSITION OF COMPLAINTS

Breakdown of complaint disposition for the period of 1 January – 31 December for the years 2011, 2012 and 2013



### COMPLAINTS REFERRED

Number (38 total) / Where Referred



# Statistics

## Ministry of Community and Cultural Affairs

	Community & Cultural Affairs	Human Rights Commission	Financial Assistance	Child & Family Services	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	1	1	-	-	2
Complaints Opened in 2013	-	2	8	2	12
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>1</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>14</b>
Complaints Investigated and Closed	-	1	1	-	2
Complaints Referred	-	-	1	-	1
Complaints Informally Resolved	-	-	1	-	1
Complaints Declined / Withdrawn/Abandoned	1	-	5	2	8
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>-</b>	<b>2</b>	<b>-</b>	<b>-</b>	<b>2</b>

## Ministry of Education and Economic Development

	Education	Registrar of Companies	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	1	-	1
Complaints Opened in 2013	7	1	8
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>8</b>	<b>1</b>	<b>9</b>
Complaints Investigated and Closed	-	-	-
Complaints Referred	1	-	1
Complaints Informally Resolved	1	-	1
Complaints Declined / Withdrawn/ Abandoned	4	-	4
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>2</b>	<b>1</b>	<b>3</b>

## Ministry of Finance

	Bermuda Monetary Authority	Pensions Commissioner	Tax Commissioner	Accountant General (including GEH)	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	3	-	-	1	4
Complaints Opened in 2013	-	3	1	4	8
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>5</b>	<b>12</b>
Complaints Investigated and Closed	-	2	-	1	3
Complaints Referred	-	-	-	-	-
Complaints Informally Resolved	-	-	-	2	2
Complaints Declined / Withdrawn/Abandoned	-	-	1	-	1
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>3</b>	<b>1</b>	<b>-</b>	<b>2</b>	<b>6</b>



## Ministry of Health and Environment

	Bermuda Dental Board	Nat'l Off. for Seniors	Bermuda Hospitals Board	Department of Health	Health Insurance	Bermuda Medical Council	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	1	1	6	1	-	-	9
Complaints Opened in 2013	-	-	10	3	1	2	16
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>1</b>	<b>1</b>	<b>16</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>25</b>
Complaints Investigated and Closed	-	-	-	-	-	-	-
Complaints Referred	-	-	3	1	-	1	5
Complaints Informally Resolved	-	-	-	-	-	-	-
Complaints Declined / Withdrawn/Abandoned	-	-	3	-	1	1	5
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>1</b>	<b>1</b>	<b>10</b>	<b>3</b>	<b>-</b>	<b>-</b>	<b>15</b>

## Ministry of Home Affairs

	Planning	Immigration	Workforce Development	Registry General	Corp. of Hamilton	Warwick Parish Council	Consumer Affairs	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	17	4	12	1	-	-	1	35
Complaints Opened in 2013	11	5	20	4	1	1	2	44
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>28</b>	<b>9</b>	<b>32</b>	<b>5</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>79</b>
Complaints Investigated and Closed	2	-	-	1	1	-	-	4
Complaints Referred	2	-	15	1	-	-	1	19
Complaints Informally Resolved	1	2	-	1	-	-	-	4
Complaints Declined / Withdrawn/Abandoned	4	2	3	-	-	-	-	9
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>19</b>	<b>5</b>	<b>14</b>	<b>2</b>	<b>-</b>	<b>1</b>	<b>2</b>	<b>43</b>

## Ministry of Legal Affairs

	Legal Aid	Court Services	Public Prosecutions	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	1	-	-	1
Complaints Opened in 2013	5	1	2	8
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>6</b>	<b>1</b>	<b>2</b>	<b>9</b>
Complaints Investigated and Closed	1	-	-	1
Complaints Referred	1	-	-	1
Complaints Informally Resolved	-	-	-	-
Complaints Declined / Withdrawn/ Abandoned	2	-	2	4
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>2</b>	<b>1</b>	<b>-</b>	<b>3</b>

# Statistics

## Ministry of National Security

	Parole Board	TOOB	Bermuda Police Service	General Post Office	Corrections	HM Customs	Police Complaints Authority	Fire Services	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	-	2	-	-	3	-	-	-	5
Complaints Opened in 2013	2	1	1	1	4	3	1	1	14
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>7</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>19</b>
Complaints Investigated and Closed	1	-	-	-	-	-	-	-	1
Complaints Referred	-	-	-	-	-	-	1	1	2
Complaints Informally Resolved	-	-	-	-	-	-	-	-	-
Complaints Declined / Withdrawn/Abandoned	-	-	1	1	-	1	-	-	3
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>1</b>	<b>3</b>	<b>-</b>	<b>-</b>	<b>7</b>	<b>2</b>	<b>-</b>	<b>-</b>	<b>13</b>

## Ministry of Public Works

	Land Valuation	Works & Engineering Bermuda Land Development Corporation	Conservation Services	Bermuda Housing Corporation	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	-	-	-	1	1
Complaints Opened in 2013	2	2	1	2	8
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>9</b>
Complaints Investigated and Closed	-	-	-	-	-
Complaints Referred	1	-	-	-	1
Complaints Informally Resolved	-	-	-	-	-
Complaints Declined / Withdrawn/Abandoned	-	2	-	-	2
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>6</b>

## Ministry of Tourism Development and Transport

	Marine & Ports	Tourism	Transport Control	Ministry Totals
Outstanding Complaints as of 31 <sup>st</sup> December 2012	1	-	-	1
Complaints Opened in 2013	1	2	1	4
<b>TOTAL OPEN COMPLAINTS IN 2013</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>5</b>
Complaints Investigated and Closed	-	-	-	-
Complaints Referred	-	-	-	-
Complaints Informally Resolved	-	-	-	-
Complaints Declined / Withdrawn/ Abandoned	-	-	1	1
<b>TOTAL OUTSTANDING COMPLAINTS AS OF 31<sup>st</sup> DECEMBER 2013</b>	<b>2</b>	<b>2</b>	<b>-</b>	<b>4</b>

“ Every time I sit down in the situation room, every one of my advisors around there knows I expect them to give me their best assessments. And so the fact that there were some who voiced doubts about this approach was invaluable, because it meant the plan was sharper, it meant that we had thought through all of our options, it meant that when I finally did make the decision, I was making it based on the very best information. ”

- PRESIDENT BARAK OBAMA

## *Eight Steps for Resolving Your Own Complaint*

### “What steps have you taken to resolve the problem?”

That is often one of the first questions we ask people who contact us with a complaint.

Under law, one of the scenarios in which the Ombudsman is not required to investigate is when “the law or existing administrative procedure provides a remedy adequate in the circumstances for the complainant and, if the complainant has not availed himself of the remedy, there is no reasonable justification for the failure to do so”: [Ombudsman Act section 9.1 (b)] In other words, a complainant must exhaust the other remedies or channels of complaint which they could be reasonably expected to use prior to filing a complaint with the Ombudsman. And it is not just the law, it is also simple common sense. Disputes and grievances can be resolved with simple, honest communication. Certainly not all the time, but enough that it is almost always worth trying before filing a complaint with our office.

Here are some basic, important guidelines to follow when you are trying to resolve any “consumer” problem, whether it involves a government department or not.

- *Be pleasant, persistent, and patient.* The wheels of government usually move, but not always quickly. We have found the citizens who are best able to get problems resolved have three core traits in common: they treat everyone with respect and courtesy; they don’t give up easily; and they realize that most problems are not resolved overnight.
- *Exercise your appeal rights.* Does the problem involve a decision or action that has a formal appeal process? If you are not sure, ask the department. The right to appeal usually has a deadline. Respond well before the deadline and consider sending your appeal by certified mail. If you cannot write before the deadline, call to see if you can get an extension or if you can appeal by telephone.
- *Choose the right communication mode.* If

you are not filing a formal appeal, decide whether you want to contact the department in person, over the phone, or through a letter or e-mail. Go with the mode you are most comfortable with, unless the problem is urgent, in which case you will probably want to rule out a letter or e-mail.

- *Strategise.* Before making contact, consider who your likely audience will be. Will it be someone who can actually fix the problem to your satisfaction? If not, your initial goal might be along the lines of patiently explaining your concern, listening to the response, and then politely asking to speak with a supervisor—perhaps even more than once!
- *Plan your questions.* Write down your questions before calling or visiting the department. Be sure to specifically ask which law, rule, or policy authorized the department’s actions. Then ask for a copy of the law, rule, or policy (so you can read it for yourself, to see whether you agree).
- *Be prepared.* Be sure to have any relevant information available before contacting the department. If you are wanting face-to-face contact, we recommend you call first. A short phone call could save headaches and wasted time, such as finding that the person you need to talk to is sick that day.
- *Keep records.* Take good notes of all conversations. This should include the person’s name and title, the time and date, and what they told you. Keep all records received from the department, even envelopes. Also keep copies of any letters, faxes, or e-mails you send to the department.
- *Read what is sent to you.* Carefully read everything from the department, front and back including the fine print!

If all that fails, contact us. Our office has authority to investigate complaints about government departments, public authorities, Government boards,

## *Eight Steps for Resolving Your Own Complaint*

and any other corporation or body that is established by Act of the legislature or whose revenues derive directly from money provided by the legislature. Major exceptions include any administrative action taken by the Cabinet or any exercise of power by the Governor to pardon persons convicted of criminal offences. We do not have authority to investigate any

civil or criminal proceedings or any administrative action taken in respect to appointments, removals, pay, discipline, superannuation or other personnel matters.

Adopted, with thanks, from State of Iowa Citizens' Aide/Ombudsman in "2012 Annual Report", p.4

---

“ *It is unwise to be too sure of one's own wisdom.  
It is healthy to be reminded that the strongest  
might weaken and the wisest might err.* ”

- **MAHATMA GANDHI**

“ *Whenever there is a move  
to a new paradigm,  
there are reactionary forces.* ”

**- DEEPAK CHOPRA INDIAN  
-AMERICAN AUTHOR AND PHYSICIAN**

# Ombudsman Act 2004 “In a Nutshell”

## Chapter VI A, s.93A of the Bermuda Constitution 1968 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 or confined 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 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 provide 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.

## Ombudsman Act 2004 “In a Nutshell”

- **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.

“*You have to be constantly receptive to bad news and then you have to act on it...If you don’t act on it, your people will eventually stop bringing bad news to your attention. And that’s the beginning of the end.*”

– **BILL GATES**



# How to make a Complaint to the Ombudsman

## HOW DO I MAKE A COMPLAINT?

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

Suite 102, Dundonald Place,  
14 Dundonald Street West, Hamilton HM 09

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

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

Tel: 441 296 6541 • Fax: 441 296 7734

complaint@ombudsman.bm

info@ombudsman.bm

www.ombudsman.bm

*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).

## WHO CAN MAKE A COMPLAINT?

Anyone who feels personally unjustly treated by an administrative action of an 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" in the public interest 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 complaints can be resolved in a few weeks, but more complex complaints can take much longer.

## HOW MUCH DOES IT COST?

Services are free and available to anyone.





*Where the mind is without fear.*

*Where the head is held high.*

*Where knowledge is free.*

*Where the world has not been broken into  
fragments by narrow domestic walls.*

*Where words come out from the depths of truth,*

*Where the clear stream of reason rises into the  
dreary desert sand of dead habit.*

*Where tireless striving stretches its  
arms towards perfection.*

*Where the mind is led forward by thee  
into ever widening thought and action.*

*Into that Heaven of Freedom  
my Father, let my country awake....*



**- RABINDRANATH TAGORE, INDIAN POET,  
NOBLE LAUREATE AND FREEDOM FIGHTER**

**NOTES**

• “Own Motion Investigation”

Complaints may be

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

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

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

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

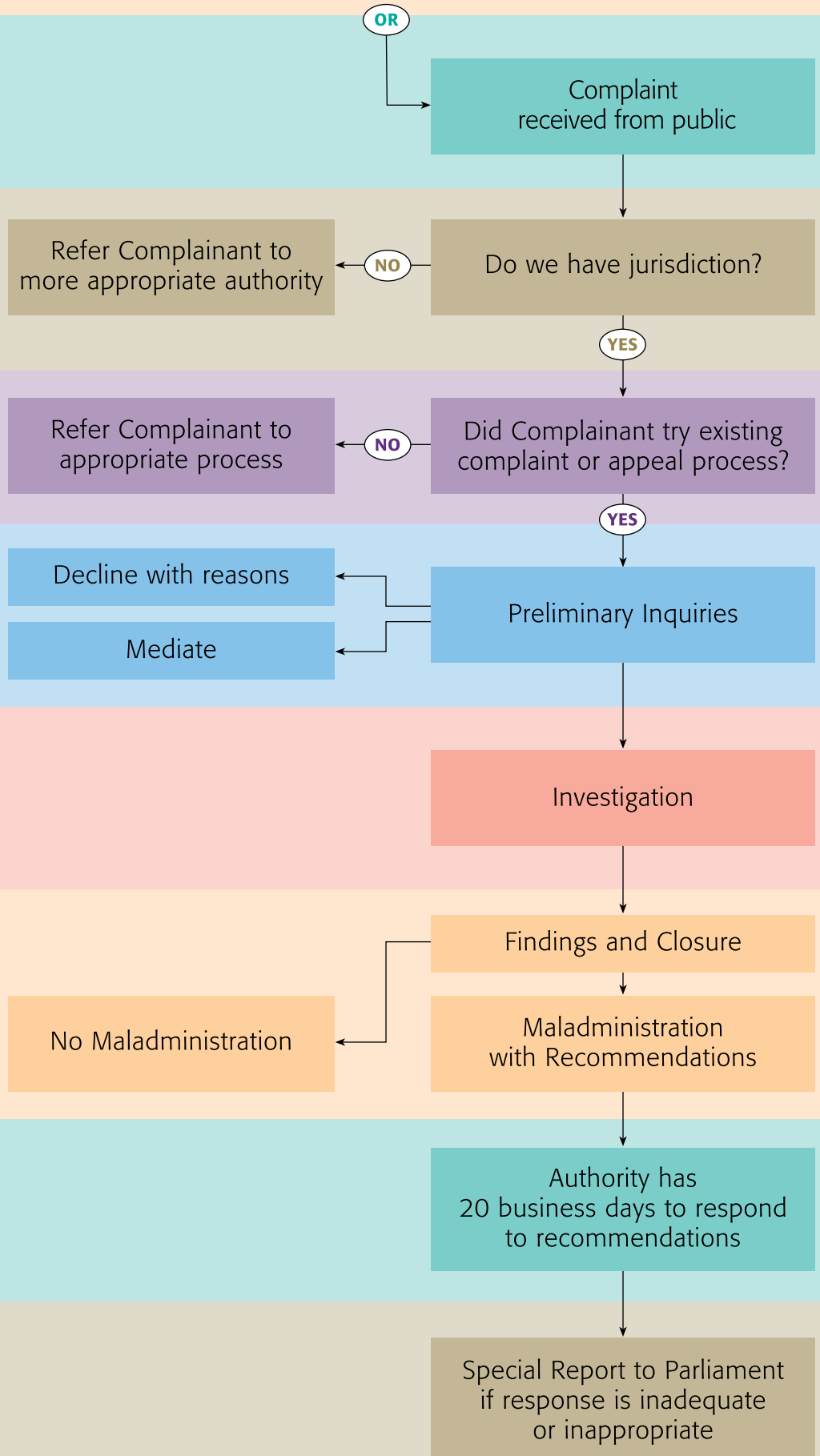
- Ombudsman may visit sites, require documents, question under oath, summon any witness
- due process to respond
- update case periodically
- Obstruction=Contempt of Court

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

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

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

**COMPLAINT PROCESS – FREE AND AVAILABLE TO ANYONE**  
 Ombudsman may investigate in the public interest even if no complaint



*For The  
Good Of  
The Public*



*And Those  
Who Serve  
The Public*

**OMBUDSMAN FOR BERMUDA**

Suite 102 • 14 Dundonald Street West • Hamilton HM 09 • Bermuda  
TEL 441-296-6541 • FAX 441-296-7734 • [www.ombudsman.bm](http://www.ombudsman.bm) • [complaint@ombudsman.bm](mailto:complaint@ombudsman.bm)