



ANNUAL REPORT 2016

FRONT COVER

Built in 1850, Watford and Boaz Islands were connected by Little Watford Bridge, which was sometimes called 'piano bridge' for the noise it produced. Boaz and Ireland Islands were connected by Grey's Bridge.

Watford Bridge opened in 1903 to join Somerset and Watford Islands. Its reported cost was £11,400. Before then people who needed to travel by foot crossed between the islands by a ferry system operated by winches used to pull and release cables; the ferry also carried horses and carriages.

A second bridge was commissioned in its place in 1957. However, it began to deteriorate due to the harsh marine conditions and had to be demolished. The third bridge, which stands there today, was built in 1983. This new Watford Bridge was designed following research from the Department of Works & Engineering.

SOURCES:

- Jones, Elizabeth. "The Bridges of Bermuda." *The Bermudian*, 27 May 2015, www.thebermudian.com. Accessed 28 Jun. 2017.
- Bhattacharya, Raj. "Watford Bridge Bermuda." *Bermuda Attractions*, www.bermuda-attractions.com. Accessed 28 Jun. 2017.

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OMBUDSMAN FOR BERMUDA

29th June 2017

The Speaker
The House of Assembly
The Swan Building, Ground Floor
26 Victoria Street
Hamilton HM 11

Dear Honourable Speaker:

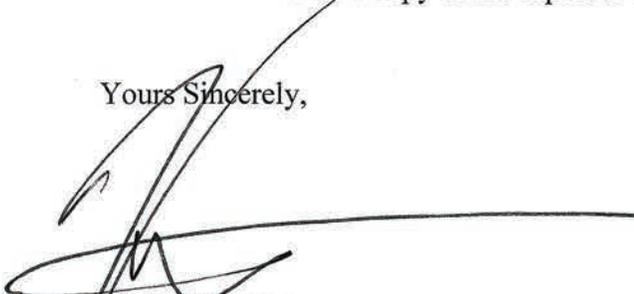
I have the honour of presenting my Annual Report which covers 1st January to 31st December 2016.

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

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Ordnance Island, St. George's Parish

OMBUDSMAN'S MESSAGE

It is my pleasure to present the Annual Report 2016 of the Office of the Ombudsman. 2016 was another busy year for our Office. Over 260 people contacted us, and we recorded a total of 285 cases. Details of our work are recorded throughout this Report.

We continued to give our attention to some matters mentioned in my last Report. We worked to advocate for authorities to establish their own internal complaint handling procedures, as a principle of good administration. We are encouraged by some progress in this area.

We are still prioritising the Government's oversight of senior care and the extent to which the Bermuda Monetary Authority's oversight of banks protects customers through effective complaint handling; the latter is discussed on page 41. We also investigated delays in processing applications by the Department of Immigration, referred to on page 28. Matters dealing with improving complaint handling in the Department of Corrections were another area of focus for improvements as part of our work with the Ministry of National Security, the Department of Corrections and the Treatment of Offenders Board; this example of collaboration between authorities is mentioned on page 40. These complaint areas touched on issues that affected people in vulnerable positions.

The work of this Office includes bridging differences and disconnections between members of the public and the authorities whose job it is to serve them. This year's cover features Watford Bridge and Flatt's Bridge. These are two of the major bridges connecting our main islands. As a people, Bermudians are bridge builders. There are over 40 structures identified as bridges in Bermuda according to the bridge register maintained by the Ministry of Public Works. Bridges are a part of living in Bermuda, with key bridges linking our main islands together. We tend to take our bridges for granted unless they are damaged or are closed due to stormy seas.



I am fond of bridges both real and symbolic. Bridges are structures we create to provide passage over obstacles on our journeys. "Bridge over Troubled Water" sung by Roberta Flack is my go-to song when I am upset and seeking solace. It works even better with a bit of chocolate. But it may not work for everyone. My son, for one, is not a fan. He finds it anything but uplifting. Down the hallway come the sighs and groans, "Oh please, mommy, not this sad song again".

Building a bridge requires careful contemplation. Bridges must be accessible. The work of our Office requires us first to be listeners. Opportunities for alternative dispute resolution require that when people have complaints they are heard. Sometimes being heard by an authority is enough to resolve a complaint. Sometimes an apology is sufficient. The fair, unbiased handling of complaints we receive requires a consideration of all sides. We seek to improve discussions and clarify matters between competing issues. We aim to secure fair outcomes as we support positive change.

Ombudsmen focus on protecting people from unfair actions and bad administrative decisions. When complainants bring matters to our attention, where necessary our Office adds

volume to their voices to ensure they are heard and appropriate attention is given to them. The protection of people should not be mistaken for advocating on behalf of the complainant against the authority. By necessity, bridges cannot be one-sided. Ombudsmen connect the parties and seek to build understanding and promote fairness. Bridge building includes relationship building with the public and with authorities. It is important that public authorities continue to be held accountable for their actions or omissions. In the same way, public authorities should have assurance that only reasonable and justified complaints against their decisions will be pursued.

Bridges span distances and allow us to see the other side. Bridges must be trustworthy, and people using them must be able to trust their structural integrity. Likewise the public are entitled to rely on the independence and integrity of this Office. This must be safeguarded against anything that undermines our work and that can discourage the public from raising their concerns to us. Threats to this Office can adversely affect people seeking rights and protections afforded to them. Integrity requires that just as we speak out on behalf of complainants who are impacted by maladministration, we must also highlight when an authority is adversely affected by circumstances beyond its control.

Our Office encountered instances where public authorities were confronting service delivery challenges due to the Government's cost cutting measures. Budgetary cutbacks and hiring freezes are not without consequences to service quality. Unreasonable demands on staff are unfair to both the employees and the public. If an authority is required to carry out a function but is not properly resourced to do so, our Office must look to the underlying causes rather than place the blame on the staff. An example of this was the increased demand on the Personal Services Section within the Department of Immigration, where there was no commensurate increase in resources. The scope of the increased need was greater than the Department could be reasonably expected to address without additional resources

and support. Integrity requires that in calling for better communication with applicants, we do not purport the Department is solely responsible for the service issues.

Employees of all public authorities are charged with the responsibility of serving the public. Effectively communicating the goals and aims of all authorities would greatly assist ministries and departments across the Government to work towards a common purpose. To do so more efficiently, the goals and aims should be clearly identified. Greater attention is needed in addressing gaps in succession planning, growth and continuity. Clear direction is to the benefit of us all.

Although this Office is non-partisan, we have indirectly felt the impact of significant events in 2016 which created a sense of national unease. In times of economic, political and social turmoil, this Office continues to consistently treat members of the public with dignity and respect. Fairness is a cornerstone principle of the institution of the Ombudsman. This requires respectful communication and professional service in dealing with all sides. While it may not mend the unease, it may serve to bridge the distance.

As we look forward, this Office is focused on doing its part in building bridges by finding ways to maintain connections, good communication and constructive working relationships with public authorities. The more connected we are, the harder it is to ignore how the community and those within it are affected. We believe this approach will lead to improvements in understanding within Bermuda as a whole.

The fundamental principles of fairness and good administration need to have a more prominent place in all areas of public life. This Office aims to mirror these principles in our own interactions every day and continues to develop our understanding of them through training. We seek to educate the public and public servants of these principles through presentations. This is an important function for this Office. In addition to finding ways to improve public services in

Bermuda, our Office is also a resource for public authorities as they enhance their performance.

My sincere thanks to members of the public who continue to entrust us with their complaints. Complaints brought to our attention help us identify areas of general concern. I also thank those who work in the various areas of the public service for their work, assistance and cooperation. My appreciation to all my colleagues for their knowledge and support.

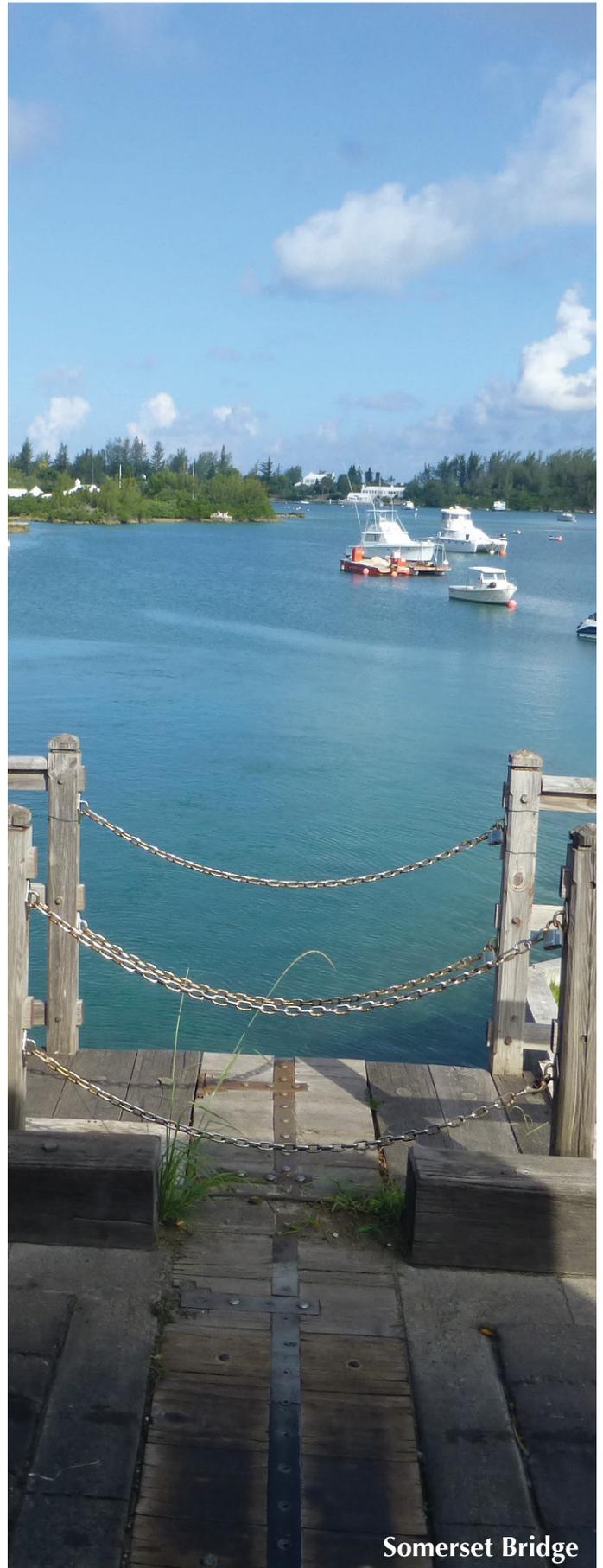
A very special thank you to my team here at the Office of the Ombudsman for their invaluable support. Their vision, knowledge, commitment and hard work ensure our Office is accessible and responsive. Thanks also to our summer intern, Dominique Johns, a business management studies student at Dalhousie University. My thanks to all those who have contributed to the achievements of this Office.



Victoria Pearman
Ombudsman for Bermuda

“Let’s build bridges, not walls.”

- Reverend Dr. Martin Luther King, Jr.

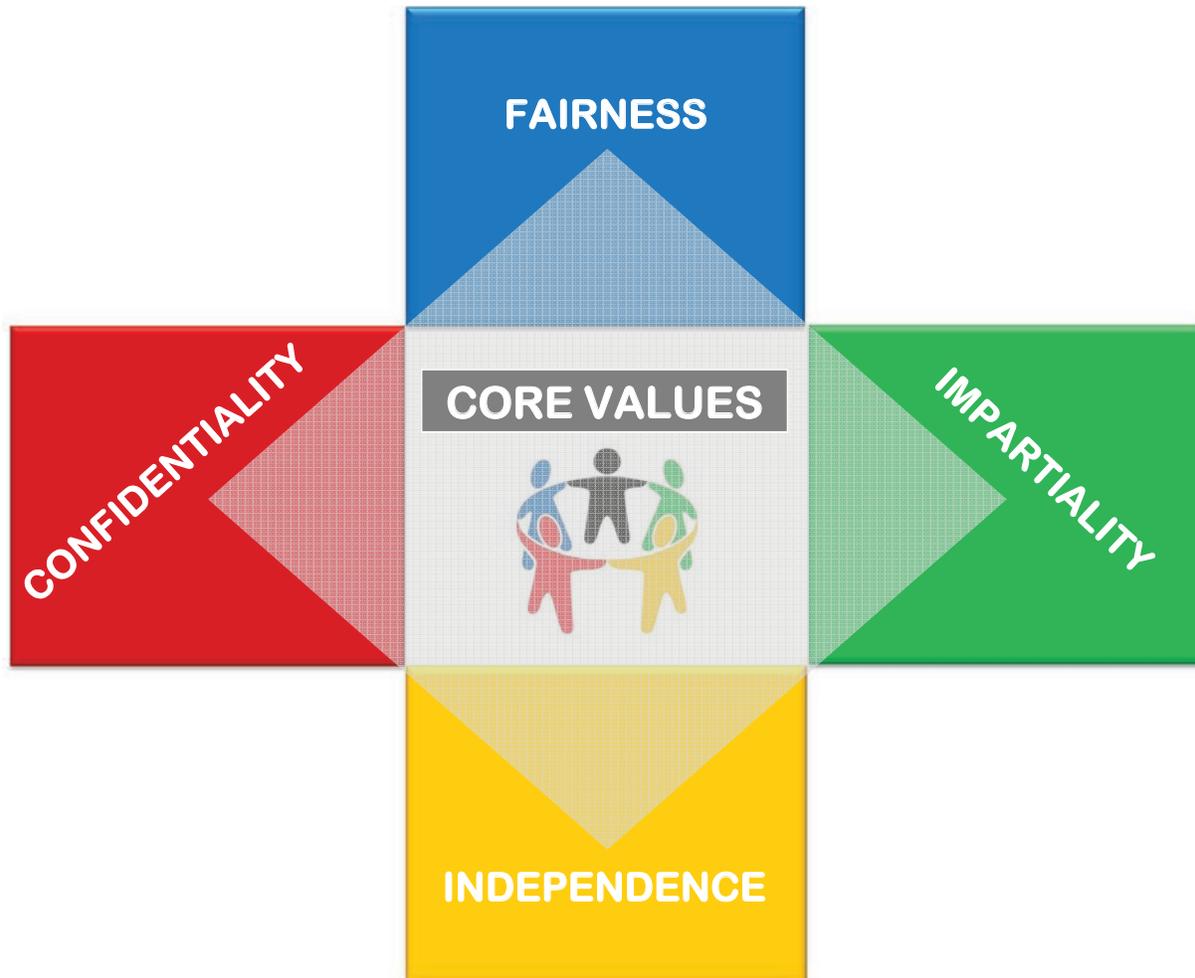


Somerset Bridge

MISSION AND VALUES

To investigate administrative actions of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority; and

Pursuant to an investigation, to make recommendations to an authority concerning administrative action that formed the subject of the investigation and, generally, about ways of improving its administrative practices and procedures.



“It was to me never reason for irritation but rather a source of comfort when these bodies were asked to adjudicate on actions of my government and Office and judged against it. One of the first judgements of our Constitutional Court, for example, found that I, as President, administratively acted in a manner they would not condone. From that judgement my government and I drew reassurance that the ordinary citizens of our country would be protected against abuse, no matter from which quarters it would emanate. Similarly, the Public Protector [Ombudsman] had on more than one occasion been required to adjudicate in such matters.”

- Dr. Nelson Rolihlahla Mandela, Former President of South Africa

International Ombudsman Institute Conference in Durban, South Africa in 2000

OMBUDSMAN'S OFFICE STAFF



VICTORIA PEARMAN
Ombudsman for Bermuda



CATHERINE HAY
Deputy Ombudsman / Investigations Officer



LAKAI DILL
Investigations Officer



LAMUMBA TUCKER
Manager – Finance & Administration



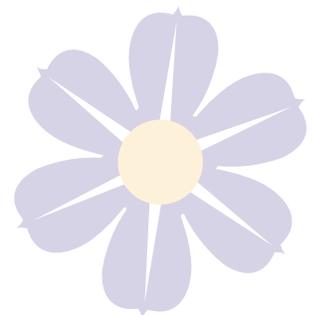
AQUILAH FLEMING
Complaint Intake Officer



ROBYN EVE
Executive Assistant



DOMINIQUE JOHNS
Summer Intern 2016



OVERVIEW



The Ombudsman first set out her strategic aims for her term, which commenced on 17 March 2014, in our Annual Report 2013. These strategic aims were: greater public access; greater public awareness; and championing best practice.

Our team has continued to work diligently to achieve these aims as we strive for greater accountability to the public, the Legislature, the Government and the Civil Service – all of whom have a vested interest in the success of this Office.

In our Annual Report 2016, we report on these efforts and our progress during this Office’s 11th year in service, using the Ombudsman’s strategic aims for its structure.

- The second section on “Greater Public Access” describes how the public can reach us and our outreach activities. It also includes updates on how various public authorities have made information held by these authorities more accessible.

- The third section on “Greater Public Awareness” begins with the ‘why’ of the Ombudsman. It reviews the ‘how’ and ‘what’ about our complaint handling in 2016 through summaries of cases and statistics, to help show how we do what we do. It also highlights information we learn about public authorities and their processes as we carry out our work.
- The fourth section on “Championing Best Practice” reviews our efforts to advocate for good administrative practice on selected issues throughout 2016. It also describes activities we took, and continue to take, to build upon our strengths and improve our processes.
- At the end, we feature two quick reference resources: an overview of the law that guides our work – the Ombudsman Act 2004 (“the Ombudsman Act”); and our definitions of all categories used for closed cases.

We hope you find our Office’s publications to be an interesting and informative insight into our progress toward improved performance and greater accountability to Bermuda. We welcome your feedback.



“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 recommendations into action, you are not only improving governance, but you are improving people’s everyday experience with the Government.”

- The Hon. Alex Scott, Former Premier
at the official opening of our Office in January 2006



Timber Footbridge leading to Hospital Island in
Lagoon Park in Sandys Parish

STRATEGIC AIM I: **GREATER PUBLIC ACCESS**

HOW TO MAKE A COMPLAINT

Anyone can make a complaint to the Ombudsman about Government's services. You do not have to be a Bermudian or a resident of Bermuda. Should you have questions about whether or not we can address your complaint, contact us.

Even if a complaint is outside of our jurisdiction, we will endeavour to assist you by providing information or by referring you to another body which may be able to look into the issues you raise. If you are aggrieved and are able to make a complaint to the relevant authority, you should do so at your earliest opportunity. It is better to seek assistance quickly than to remain uncertain on your own. Remember we are here to assist you.

If you are dissatisfied with how your complaint to a Government authority was addressed, or feel you were mistreated, we encourage you to reach out to the Ombudsman. You can contact us in various ways: by telephone; in person as a walk-in or by appointment; by email or online through our website; and by letter or fax.

ADDRESS:

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

OFFICE HOURS:

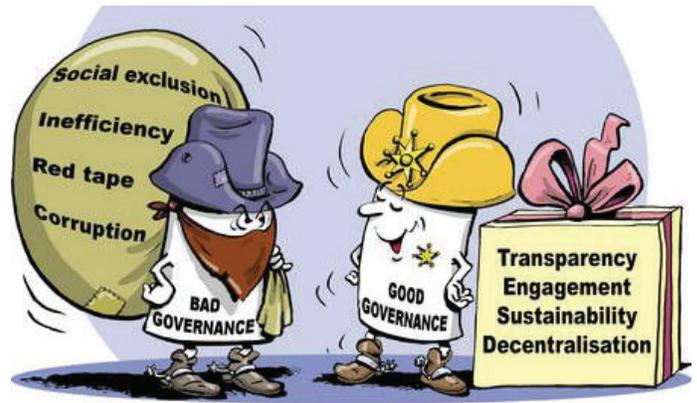
Monday to Thursday 9:00 a.m. – 5:30 p.m.
Friday 9:00 a.m. – 5:00 p.m.

CONTACT:

Tel: (441) 296-6541
Fax: (441) 296-7734

Emails: complaint@ombudsman.bm
info@ombudsman.bm

Online: www.ombudsman.bm
www.facebook.com/bermudaombudsman



POINTS OF CONTACT

One of our primary outreach tools is the Ombudsman for Bermuda's website, found at www.ombudsman.bm. Not only can people submit a complaint to us by an online form, they can also find all of our special reports and annual reports in a downloadable format.

In terms of online traffic in 2016, our website hosted 2,266 users and 6,002 page views. Of those page views, 38% were made by new visitors and 62% were made by returning visitors. The average session duration on the site was one minute and 23 seconds. January was the busiest month for site traffic with 733 views and was closely followed by November at 690 views.

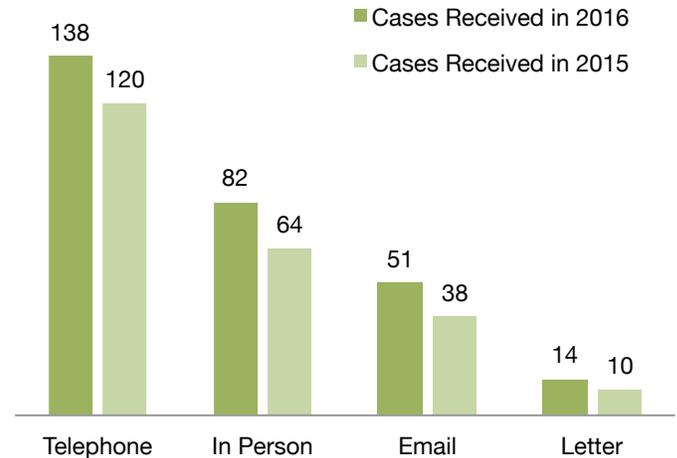
In comparison, in 2015 we hosted 2,532 users where 78% were returning visitors and the peak month was June. In 2014 we hosted 2,142 users where 74% were returning visitors and the peak month was also June. From 2014 to 2015, there was an 18% increase of online traffic to our website. We note a minimal decrease in online traffic from 2015 to 2016.

A majority of complainants in 2016, a total of 77%, contacted us either by telephone or by visiting our Office in person. This is a consistent trend. Complainants want to be heard. Contacting us by telephone or speaking in person means that questions can be more quickly acknowledged, and we can clarify what we can or cannot do for the complainant. This direct interaction also allows us to gather the information we need to assess the complaint and determine what further information we may still need.

Figure A: How People Contacted Us in 2016

	<p>Telephone 48%</p> <p>138 by phone</p>
	<p>In Person 29%</p> <p>82 by walk-in or appointment</p>
	<p>Email 18%</p> <p>51 by email or website</p>
	<p>Letter 5%</p> <p>14 by letter (mailed, hand delivered or faxed)</p>
Total Contacts in 2016	285

Figure B: How People Contacted Us: 2 Years at a Glance



OMBUDSMAN ‘OUT AND ABOUT’

During 2016 we conducted nine education sessions across Bermuda. We presented on our complaint handling process and the fundamentals of good governance before Youth Parliament, Rotary Club of Sandys, Age Concern members, as well as the Department of Corrections. The Ombudsman also spoke before one of her favourite audiences – primary school students – with a visit to P3 Liverpool at Paget Primary, in what has become an annual tradition.



Photo used with permission

Once again we presented to a group of Bermuda’s future leaders at Youth Parliament with a focus on our statutory functions, case scenarios and an overview of systemic investigations. We presented to staff at the Department of Corrections about the role of this Office and our complaint methods. We also gave presentations for inmates at the Co-Ed Correctional Facility and Farm Facility. Our

PATI Update

The Public Access to Information Act 2010 (“PATI”) ushered in a new era of transparency for the Government, which took effect on 1 April 2015. As an advocate of good administration in Bermuda’s public authorities, providing the public with access to records held by the Government promotes accountability and will improve administrative practices in the Government, if members of the public avail themselves of the right of access.

From 1 January to 31 December 2016, the Office of the Ombudsman did not receive any PATI information requests from the public. Likewise no requests were received in 2015. To obtain a copy of our PATI Information Statement and learn about records that can be made available to the public, stop by our Office or visit our website to download it.

complaint team discussed the rights of inmates under our legislation, what we can and cannot investigate, the process to make a complaint and how we can assist them generally. The Ombudsman was also invited to address the Rotary Club of Sandys and their guests, where she presented on the work of our Office and the Annual Report 2015.

Our Investigations Officer, Ms. Dill, represented us on a panel discussion hosted by the Information Commissioner's Office for its 'Right to Know Day'. We also welcomed members from Age Concern to our Office as part of Dame Jennifer Smith's Foundation of Civility Forum. We provided an overview of the functions of our Office, guidance on making a complaint and highlighted aspects of our work that might have been of particular interest to them. We will continue to offer presentations to authorities and other groups on complaint handling and good administration.

In addition to these presentations, the Ombudsman participated in other events around the community. She was pleased to don her robes once again and speak at a special sitting of the Supreme Court in honour of the retirement of the Honourable Justice Norma Wade-Miller. Ms. Pearman spoke about the lessons she learned from appearing before Justice Wade-Miller and thanked her for her years of service.

The Ombudsman also attended the Adult Education School annual art auction, "Transformations IV". The event featured over 20 local artists and raised funds to increase the capacity and scope of support offered to adult learners in Bermuda.

Finally, in 2016 the Supreme Court celebrated 400 years of continuous court services in Bermuda. The Ombudsman joined a special sitting to mark the anniversary which was overseen by Chief Justice Ian Kawaley. A few weeks later the Ombudsman went to a reception in St. George's unveiling a travelling exhibition entitled "Four Centuries of Continuous Court Service", which also commemorated the occasion.



Gala celebrating 400 years of continuous court services in Bermuda

ACCESSING PUBLIC INFORMATION

We continuously learn more about the Government's efforts to inform the public about services provided by public authorities and their processes. We also learn about ways in which public authorities are working amongst themselves to share information more effectively. Here is a selection of information on some of the most useful topics of public interest that we learned about during 2016.

"The secret of change is to focus all of your energy, not on fighting the old but on building the new."

-Socrates

Did You Know:

ONLINE HEALTH LIBRARY

The Ministry of Health and Seniors has taken the initiative to make important and useful information accessible to the public online. In December 2016 it issued its first one-page quarterly newsletter which covers several salient topics. Additionally, the Ombudsman commends the Ministry for publishing its updated complaint handling policy, which took effect on 1 April 2017. Another important Ministry initiative is its 'Roadmap 2017-2019', which reported on the activities of its various departments and quangos in 2016 and also outlined priorities for the upcoming years. The Ministry's online library can be found on the Government portal at www.gov.bm/health-library.

Did You Know:

GOVERNMENT PROCUREMENT

The Government set up the Office of Project Management and Procurement ("OPMP") to provide oversight of all Government procurement and capital projects, to ensure that there is no bias in awarding contracts, and to handle complaints. As part of its efforts to implement public service reform, the Government has committed to creating an environment in which the Civil Service applies best practices when undertaking procurement and project management.

To that end, OPMP was tasked with developing a code of practice that outlines how public officers are to procure goods, services and works on behalf of the public. In the 2016 Speech from the Throne, the Government committed to placing the code of practice within a new unified legislative framework for procurement. Specifically, the new framework intends to replace relevant sections of the Public Treasury (Administration and Payments) Act 1969 and the Good Governance Acts of 2011 and 2012. It would also meet the requirements of the United Nations Convention Against Corruption. OPMP continues to work with the Attorney General's Chambers to develop the procurement legislation that will form part of the new legislative framework.

In 2016 OPMP did not handle complaints from members of the public. Instead the team provided another form of dispute resolution, in which they worked with Government departments to provide feedback to bidders on the procurement process. Typically, OPMP would become involved in debriefing a bidder when a dispute arose because the bidder's proposal had not been selected. OPMP is able to assist by suggesting practical ways of improving a bidder's proposal, so the bidder may improve his chances of being awarded a contract in the future. Visit the Government portal to view a listing of available Government contracts, including links to information packages on the request for proposals, at www.gov.bm/procurement-notice.



"I'm sorry Parker, but I don't think it's confusing enough."

Did You Know:

PENSIONS AND MORE

A social insurance pension is not the same as an occupational pension, and different authorities are responsible for them. The Department of Social Insurance manages contributory and non-contributory pensions. The Accountant General Department manages occupational pensions for Government employees, called superannuation. The Pensions Commission monitors occupational pensions for private sector workers.

The latest information on the financial status of the Government's contributory pensions fund was published in May 2016, covering the period from 1 August 2011 to 1 August 2014. It reminded us that social security schemes operate on the basis that future generations fund the benefits of current contributors. The impact of Bermuda's birth rate and the size of the labour force are important factors for understanding how this pension fund works. All workers in Bermuda are required by law to pay into the contributory pensions fund from their 21st to their 65th birthday.

Seniors become eligible to receive a social insurance pension after their 65th birthday. To begin receiving an occupational pension, the normal retirement age is also 65; some professions, such as the police and prison services, allow for earlier retirement. Seniors do not receive either benefit automatically upon reaching 65. Before retirement seniors must submit paperwork to the appropriate department. The law requires seniors to submit

a 'proof of life' form every year. Failure to comply with this requirement can lead to the benefit being suspended.

People may wonder if more information-sharing between Government departments could address the need for seniors to prove they are still alive. Some feel this requirement is insensitive. For instance, it has been suggested that the Registry General can alert Social Insurance once a death certificate is registered. While the 'proof of life' procedure may feel burdensome, governments world-wide have clear reasons for requiring them: to reduce the risk of fraud by requiring pensioners to confirm they are the people actually receiving the benefit; and to confirm where they currently reside.

When it comes to learning about pensions, sooner is better. In addition to research, it also helps to keep good records about employment history and confirm that employers are making the required contributions on behalf of employees. There are many variables that impact how pension entitlements are calculated. Contact the appropriate department to learn more.

Source: Morneau Shepell. Actuarial Review of the Contributory Pension Fund of Bermuda as of August 1, 2014. Report for the Government of Bermuda's Department of Social Insurance, 10 May 2016, www.gov.bm/department/social-insurance. Accessed 28 Jun. 2017.

Did You Know: RESTRICTED LAND USE AGREEMENTS

The Government has the power to enter into an agreement to restrict or regulate the use of land under the Development & Planning Act 1974. These are referred to as 'Section 34 Agreements'. The Department of Planning maintains a public listing for these Agreements. Since 1983 a total of 132 Section 34 Agreements have been made – the last in 2013 for property on Marshall Island.

Did You Know: POSTING PLANNING APPLICATIONS

The Department of Planning now requires applicants to post a sign at the site of a proposed development to provide the details of the planning application. Previously the Department

had required that planning applications be advertised only in the official gazette, which is currently the Royal Gazette. However, over the years, the Department received feedback, including suggestions from this Office, that this advertising policy had several drawbacks and could be improved.



For example, if applications were advertised once and if someone did not see the advertisement, the opportunity to object to or comment on the proposal was missed. This was particularly problematic for people who travelled frequently. It was hard to know exactly where the property subject to the application was located as no map was provided with the advert. Some properties do not have municipal street numbers, such as vacant lots. If people had viewed the notice of the application, they might not have realised that the development was in relation to a property neighbouring their own.

To better serve the public, the Department took the step of requiring applicants or their agents to display at the site of their proposed development a notice of their application. With this initiative, the Department aims to raise public awareness and improve communication with the public about proposed developments. Applicants or their agents must prepare the sign and post it in a location on the site, such as on a building, post or pole.

The sign must be red, laminated, clearly visible to the public and clear of any obstructions. The sign must provide the planning application number, the applicant's name, a description of proposal and the Department's contacts. The sign has to be installed as soon as the Department has provided the information required to be displayed. The applicant or agent must also provide photographic proof to the Department that the notice has been installed on site.

Once the planning application has been determined, there is a 21-day period to appeal the decision. The sign should be removed no sooner than one week after the appeal period has ended. This means that most signs should be removed no sooner than one month after the decision has been made.



COMMENTARY: LAND TITLE REGISTRY

A title-based land registration system will drastically change how property law works in Bermuda. For the past two years, we have informed the public about Government's lack of progress with opening the Land Title Registry Office ("LTRO"), which now falls under the Department of Land Title and Registration within the Ministry of Public Works. The Ombudsman had been very concerned that, while set-up had actually started in 2005, 11 years later it was not yet operational.

In 2016 Government explained the delay had resulted mostly from prolonged consultation with one of its primary stakeholders – attorneys.

The total cost of running and setting up the office from 2005 to 2016 has reached over \$11 million. If the LTRO were operational, it is projected that its minimum annual income would be \$1.1 million. In this Annual Report, we had hoped to report that the LTRO was fully functioning. While some progress has been made, that is still not the case.

The passage of the Land Title Registrar (Recording of Documents) Act 2017 in February paved the way for the Deeds Registry to merge with the LTRO as of 1 April 2017. The LTRO assumed responsibility of services for public searches of property, land transfer notices, and registering deeds, mortgages and voluntary conveyances.

Digitising the Deeds Registry has proven to be difficult because the physical state of the records posed a health and safety hazard. This resulted in a temporary closure soon after the merger. It is one example of the numerous obstacles experienced in making the LTRO fully operational.

The LTRO awaits the enactment of the Land Title Registration Amendment Act 2017 and its regulations. Though passed in 2011, the Land Title Registration Act 2011 is not yet in force. It had been hoped that the pending bills would be debated before Parliament's summer recess. These are the final legislative steps needed before the LTRO becomes fully operational.

Meanwhile, the LTRO has been preparing itself in various ways. It has fully mapped out its processes, policies and procedures, including a training manual for staff. It has created numerous practice guides and standardised forms to facilitate the registration process. (A list of its technical guides can be found on the LTRO's public access to information statement.) It has also consulted widely with and trained stakeholders who will regularly use the registration system.

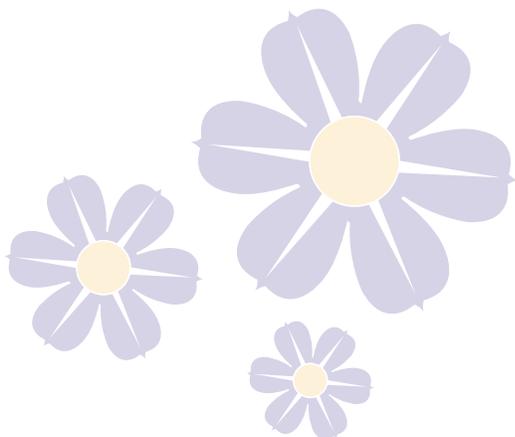
In addition to pushing for its legislation to be tabled, the LTRO is now working to create an electronic database from the Deeds Registry, now under its management, for the period 2000

to 2016. It has already registered all Government-owned land, which was used to test the new electronic system. Once operational, the public will be able to conduct property searches online rather than being limited to manual searches at the LTRO.

Since the LTRO mailed out an information brochure to all households, the public has responded enthusiastically. There seems to be great anticipation for Bermuda's new land title registration system. The public is encouraged to continue to learn about the benefits which will become available once Parliament passes the final pieces of legislation to allow the LTRO to go live.

The Ombudsman views the postponement of implementing the LTRO over the years as a matter of concern. Again we urge the Government to take the final steps necessary as a priority. (For our previous commentaries, see Annual Report 2014 pp. 24-25 and Annual Report 2015 p. 19. Download the reports from www.ombudsman.bm)

The LTRO is located at Milner Place, 32 Victoria Street, Hamilton HM 12, and is open to walk-ins.



STRATEGIC AIM II: **GREATER PUBLIC AWARENESS**

WHERE THE OMBUDSMAN'S STRENGTH LIES

In August 2016 the Office of the Ombudsman celebrated its 11th anniversary. Despite this, the concept of the Ombudsman remains a relatively new one to Bermuda. One of this Office's objectives is to educate the public on its role. By definition, the Ombudsman is a constitutional officer with jurisdiction to investigate maladministration of public authorities. But in practice, what does that mean?

This Office was established to provide efficient and flexible dispute resolution for the public. All our services are free to complainants. Previously, members of the public could only take court action to challenge the Government's administrative decisions by way of judicial review. Such court actions are costly and time consuming. The Ombudsman offers opportunities for alternative dispute resolution through persuasion, negotiation and mediation, and where those are unsuccessful, through investigations.

Put that way, creating an office of the Ombudsman is a significant positive step forward for the public in terms of holding the Government accountable. But one of the challenges faced by Ombudsman institutions the world over is explaining that, while the Ombudsman has many powers, she does not have cure-all administrative super powers.

Within the last seven months the institution of the Ombudsman was criticised in two opinion columns in the Royal Gazette (see note 1). In these two pieces the primary criticism launched at the role of the Ombudsman is that it is a toothless tiger that does not make a significant difference in the lives of ordinary people.

This is not the first time an Ombudsman has been criticised for being a toothless tiger – a big cat that is all roar with no real bite. This analogy is used by critics to highlight that an

Ombudsman's ultimate sanction is to publicly issue non-binding recommendations and findings of maladministration on the part of an authority.

Dr. Victor Ayeni, an expert on the Ombudsman institution and friend of our Office, astutely asked, "Have you ever seen a tiger and thought, 'We should check to see if it has teeth before we decide whether or not we should respect or fear it?'" We may not have the same 'teeth' as the Court, but we have our own unique strengths and powers.

This limitation on Ombudsman powers, seen by some as a weakness, is seen by most Ombudsmen as a strength. Initially this may seem counterintuitive; some of our complainants are disappointed to learn that if the Ombudsman upholds their complaints, they will not be able to receive financial compensation or be guaranteed that an authority will implement our recommendations.



Cockburn Bridge in Sandys Parish, credit to www.bermuda-online.org/seesandy.htm

However, there are many reasons why the Ombudsman's strength lies in relying on the power to persuade authorities rather than requiring them to take action. First, giving the Ombudsman power to make binding orders would effectively be duplicating the form and function of the courts. Although both are dispute resolution bodies, the Ombudsman is meant to be more flexible, agile and swift than the courts. Issuing binding orders, which may be costly and cumbersome for an authority to implement, would subject an Ombudsman office to litigation and the need to spend financial resources on defending against actions in court (see note 2).

The Court has even recognised that there are instances in which a complainant derives greater

benefit from the Ombudsman's flexible process than she would have had she sought judicial review. The Chief Justice Dr. Kawaley (then Puisne Judge) reminded a complainant of this in a case in which the complainant sought to judicially review a matter already investigated by the Ombudsman: "the non-adversarial and facilitative nature of the way in which the Ombudsman's jurisdiction is exercised quite possibly encouraged the Department to go further than it could be compelled by this Court to do through the more brittle tool of judicial review relief" (see note 3).

The non-binding characteristic of the Ombudsman's recommendations also serve to remove a level of defensiveness on the part of an authority. Findings and recommendations are not handed down without first discussing them with the authority, which may present objections to them as well as offer alternative suggestions that may remedy the harm. We seek to issue recommendations that can be implemented and engage with authorities to seek solutions to the harm in question. In this way, the institution of the Ombudsman is progressive and has been adopted throughout the world. In most instances, the Ombudsman's recommendations are implemented. All the recommendations this Office made in 2016 were accepted.

The public must remember that our powers do not end at issuing findings and recommendations. We have the power to follow up on our recommendations and, if necessary, publicise them. The public authority that is the subject of the investigation is required by law to provide an adequate response to each recommendation. Where the public authority fails to provide a response or provides an inadequate response, the Ombudsman may issue a special report to Parliament, which publicises the findings of the Ombudsman's investigation. It has been found that publicly naming and shaming may be seen by the authority as a sanction. Authorities usually wish to avoid critical publicity, which also serves as an incentive to accept and implement the Ombudsman's recommendations.

Publicising maladministration is used when an authority has refused to implement our recommendations and presents inadequate reason for doing so. Members of the public may wish for us to use this power more frequently. It must be used sparingly and in exceptional circumstances, as its misuse would serve to weaken the Ombudsman's relationship with authorities within her remit. "A well-functioning ombudsman office cultivates a strong working relationship with other institutions of government and should have a reputation for impartiality and neutrality. [In doing so,] public officials are likely to recognise the importance of the ombudsman office's recommendations regarding administrative practices" (see note 4). The Ombudsman has made it a priority to strengthen relationships with authorities within our jurisdiction. We believe we have been successful in our role when local authorities seek the assistance of our Office in their complaint handling and our advice on the principles of good administration.

Our Office serves the public by assisting in the resolution of complaints about poor administration. This does not always involve investigations and special reports. To do so would be a waste of resources because many complaints can be resolved at an early stage. The flexibility of our process enables us to adjust to the practicalities of an individual's circumstances. Throughout this Ombudsman's tenure, she has found that public authorities and civil servants are willing to work towards providing quality services with limited resources. The role of the Ombudsman is to protect the public, not punish authorities, and to assist the Government in improving the quality of its services by adhering to principles of good administration.

"If you think smallness means insignificance, then you have never been in bed with a mosquito."

- African Proverb

Source Notes

- 1) Wasi, Khalid. "Limits of Ombudsman Point to Potential Abuses." *The Royal Gazette*, 29 Sept. 2016, www.royalgazette.com/opinion/article/20160929/limits-of-ombudsman-point-to-potential-abuse. Accessed 28 Jun. 2017.
- . "It Seems Dame Lois Was Right." *The Royal Gazette*, 25 Apr. 2017, www.royalgazette.com/opinion/article/20170425/it-seems-dame-lois-was-right. Accessed 28 Jun. 2017.
- 2) Gottehrer, Dean M., and Michael Hostina. "Essential Characteristics of a Classical Ombudsman." Organization for Security and Co-operation in Europe's Human Dimension Implementation Meeting, 8 Apr. 1998, Warsaw, Poland, siteresources.worldbank.org/INTLAWJUSTINST/Resources/Essential.pdf. Accessed 28 Jun. 2017.
- 3) Anthony L. Keith Davis v. the Minister of Economy Trade and Industry and the Minister for National Security. Supreme Court Bermuda, 2012, www.gov.bm/court-judgments. Accessed 28 Jun. 2017.
- 4) Ayeni, Victor. "The Role and Effectiveness of the Ombudsman Institution." National Democratic Institute for International Affairs, 2005, Washington, D.C., series paper, www.ndi.org/node/23777. Accessed 28 Jun. 2017.

VOCAB ALERT:

The Ombudsman has the power to:

- Investigate complaints on her own motion, without a complaint made to our Office;
- Make findings of maladministration and make recommendations at the conclusion of an investigation;
- Request full access to public authorities, including information and documents held, other materials submitted by other organisations, classified materials;
- Enter and inspect any premise operated by public authorities;
- Obtain evidence from anyone, and issue summons to examine anyone under oath;
- Find a person in contempt of Court for obstructing or misleading our Office; and
- Issue special reports to Parliament when authorities fail to provide an adequate response to recommendations made.

COMPLAINTS OVER 11 YEARS

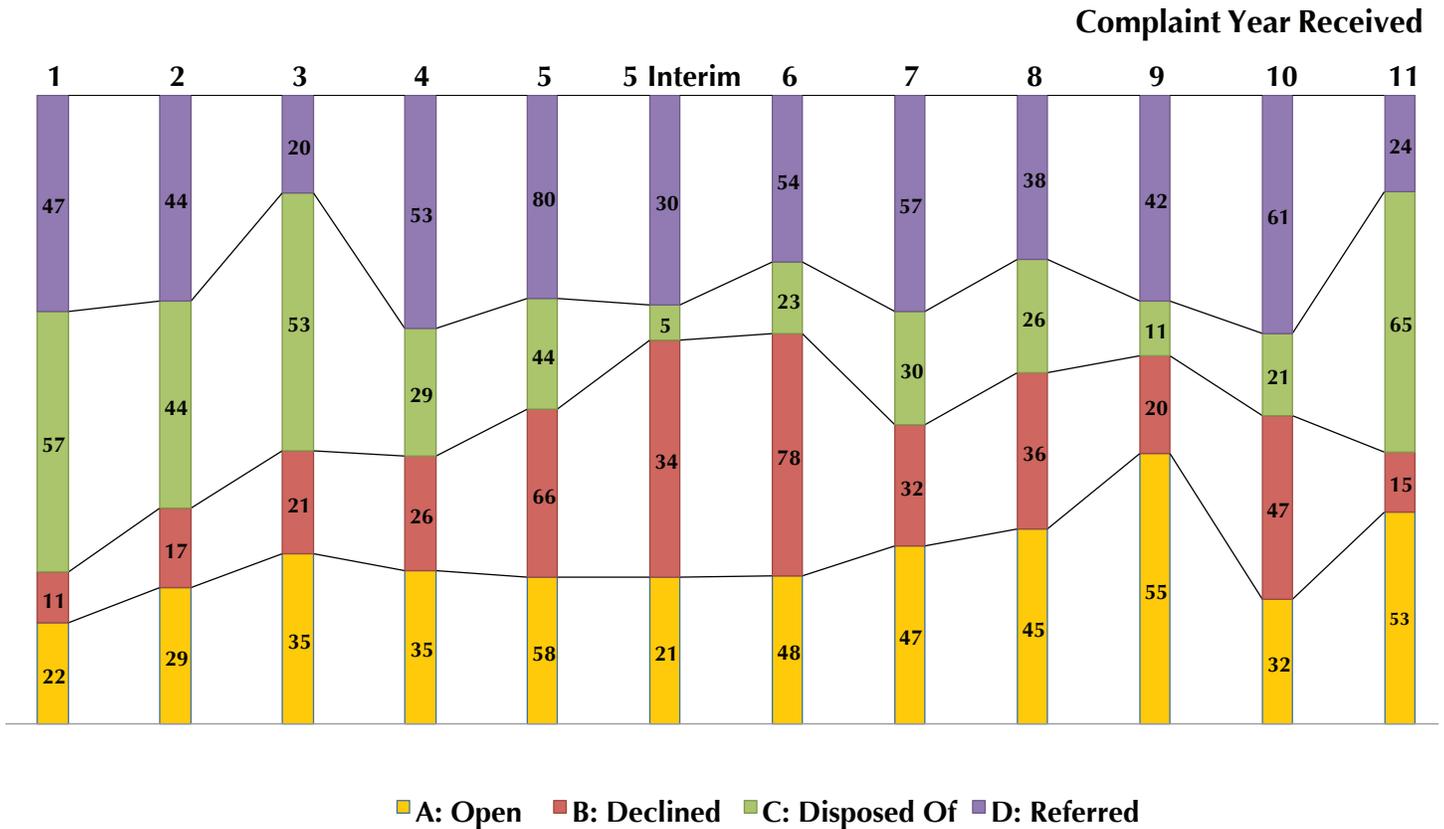
Over the 11 years of our existence, this Office has handled over 1,800 individual complaints. Figure C is a representation of how these complaints were handled based on the year in which they were opened. This snapshot summarises data previously published in our annual reports.

It shows four basic categories for how complaints received annually were addressed by the end of each reporting year. It compares a total of eleven

12-month periods plus an interim five-month period (called “Year 5 Interim”). Reporting years one to five ran from August to July (due to the start of our first Ombudsman’s term), then for year six onwards we shifted to align with the calendar year – from January to December – to make reporting easier. That explains “Year 5 Interim”, which was the five-month transition period between years five and six.

Figure C: Individual Complaints per Year and per Disposition – total 1,841

Complaints ‘disposed of’ were within our jurisdiction, addressed and then closed during the complaint year received.



“If you close your eyes to facts, you will learn through accidents.”

- African Proverb

CASEWORK IN 2016

From 1 January to 31 December 2016, we worked to address a total of 355 cases (see Figure F). Our 2015 and 2016 complaint activity may appear to be substantively higher when compared to the past years for two reasons (see Figure C).

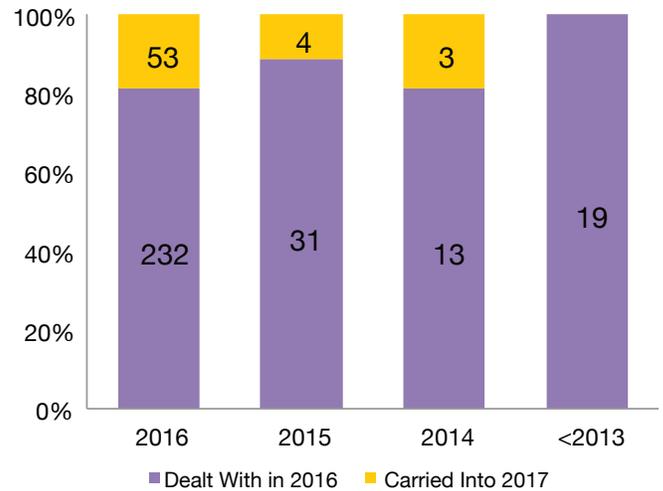
Figure D: Cases Received in 2016

Disposition	Year 10
Open	53
Declined	15
Disposed Of (Addressed)	65
Referred	24
<i>SUBTOTAL</i>	157
Enquiry	128
<i>TOTAL</i>	285

In 2015 we began to capture information on ‘enquiries’. These were instances when people contacted us to seek information without making a complaint. Most enquiries were addressed immediately, but sometimes more time was needed to provide the person with guidance. We received and dealt with a total of 128 ‘enquiries’ in 2016, compared with 71 ‘enquiries’ opened in 2015 which represents an 80% increase.

In addition to the ‘enquiries’, we received 157 new complaints in 2016. The number that more accurately describes new cases received in 2016 is 285, this being the total number of complaints plus enquiries (see Figure D). But this number still does not capture the full scope of our caseload in 2016. We need to add to it the data about complaints that had been carried over from 2015 and remained open on 1 January 2016, which were 70 complaints that had been opened in years prior to 2016. (A further reconciliation showed that the number of active complaints at the end of 2015 was not 64 as previously reported but 70.)

Figure E: Cases Open in 2016



When these two factors are considered, we demonstrate that during 2016 we worked to address a total of 355 cases (see Figure G). Of this total, 295 cases were closed in 2016, and 60 cases were carried over into 2017 (see Figure J). Of those 60 cases carried over into 2017, 16 were closed by 28 April 2017, leaving a total of 44 cases open that had been received in 2016 and years prior. Also of those 60 cases carried over into 2017, 53 were from 2016, 4 were from 2015, and 3 were from 2014.



“To get lost is to learn the way.”

- African Proverb

Figure F: Cases Worked On in 2016 per Disposition – total 355

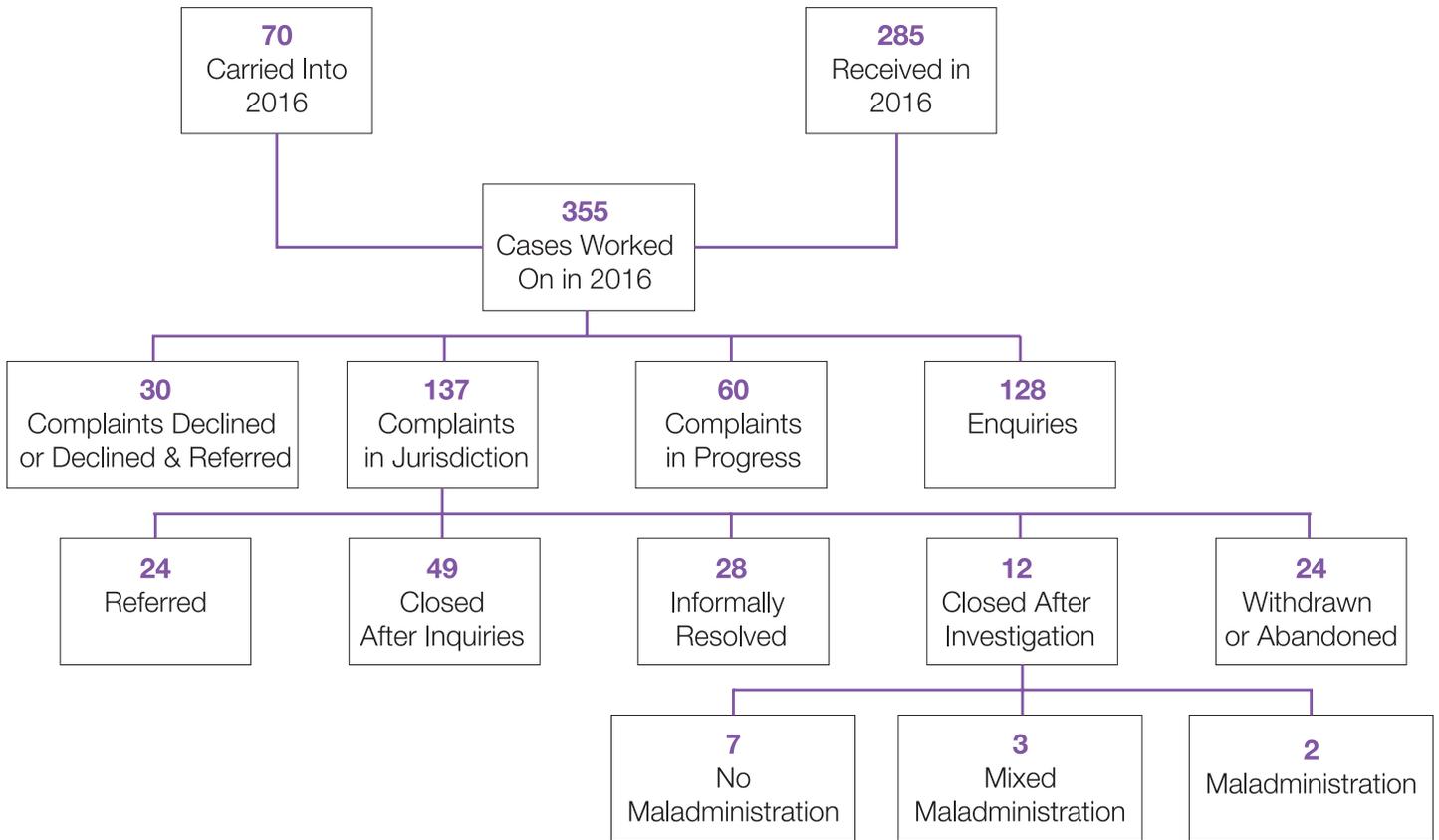


Figure G: Cases Worked On in 2016 per Disposition and per Open Year or Period – total 355

Disposition	2016	2015	2014	<2013	TOTAL
Abandoned	2	0	0	0	2
Closed After Inquiries	19	12	5	13	49
Closed After Maladministration	0	0	1	1	2
Closed Mixed Maladministration	0	1	0	2	3
Closed No Maladministration	0	3	2	2	7
Declined	15	4	2	0	21
Declined and Referred	7	2	0	0	9
Enquiry	128	N/A	N/A	N/A	128
Informally Resolved	27	0	0	1	28
Referred	17	5	2	0	24
Withdrawn	17	4	1	0	22
TOTAL CLOSED IN 2016	232	31	13	19	295
Carried Into 2017	53	4	3	0	60
TOTAL WORKED ON IN 2016	285	35	16	19	355

To summarise our work on new cases opened in 2016:

- We received 285 new cases: 157 complaints + 128 enquiries.
- Of the 157 complaints, 135 were in our jurisdiction, and the other 22 were not.
- We assisted 7 of the 22 that were Declined with additional resources, plus 17 of those 135 within jurisdiction – giving a total of 24 that were Referred. *We helped them raise their issues with the right entity or directed them back to the authority complained of.*
- 19 complaints were Abandoned or Withdrawn by the complainant.
- 27 complaints were resolved between the complainant and the authority with informal intervention by us.
- 19 were Closed After Inquiries.
- 23 people either came back to us or raised more than one complaint issue during our complaint intake process, meaning that the total of 285 cases were raised by over 260 people. *We do not always record a caller's name if the initial call addresses the question completely, and we close the case as an 'enquiry'.*

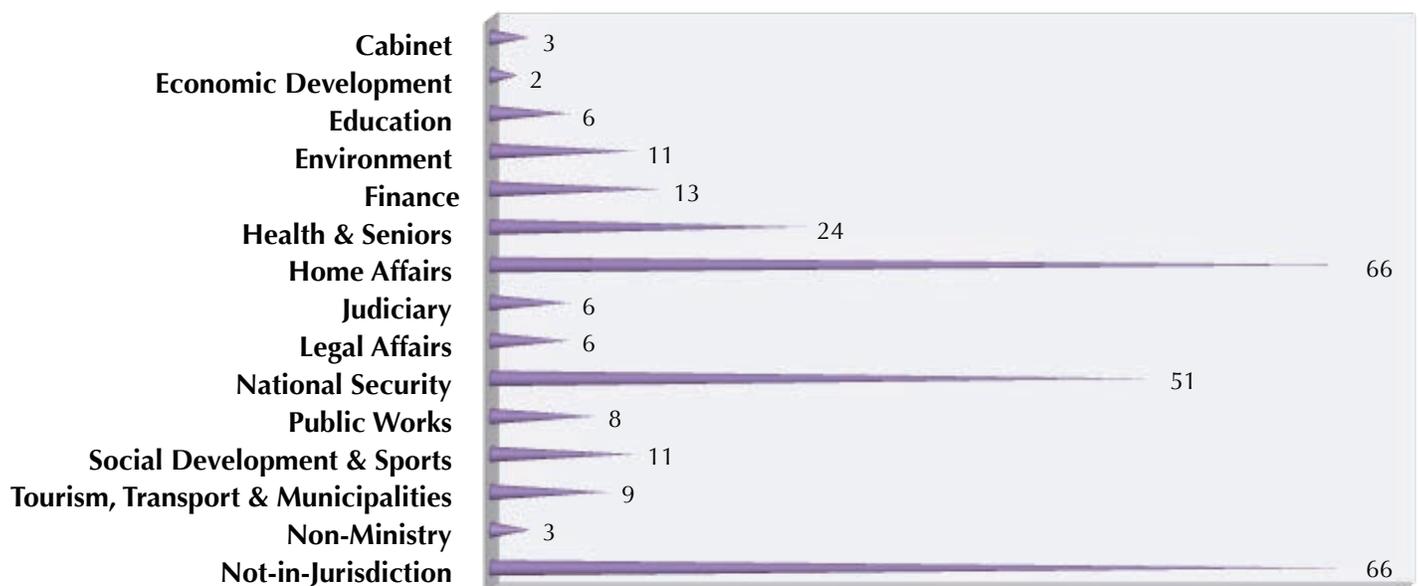
See page 50 for an explanation of how we categorise closed complaints.



“Maybe you should reconsider those place cards.”

Figure H shows a breakdown of the cases we received in 2016 by the relevant Ministry according to the Government’s organisational chart as at year-end. (As of May 2016, several changes were made to the organisation of Ministries, departments and other bodies under the Government’s responsibility.) The graph also includes two other categories for: ‘Non-Ministry’, which are Government-funded bodies but not part of a Ministry; and ‘Not-in-Jurisdiction’, which are bodies that do not fall under the Ombudsman Act.

Figure H: Cases Received in 2016 by Ministry



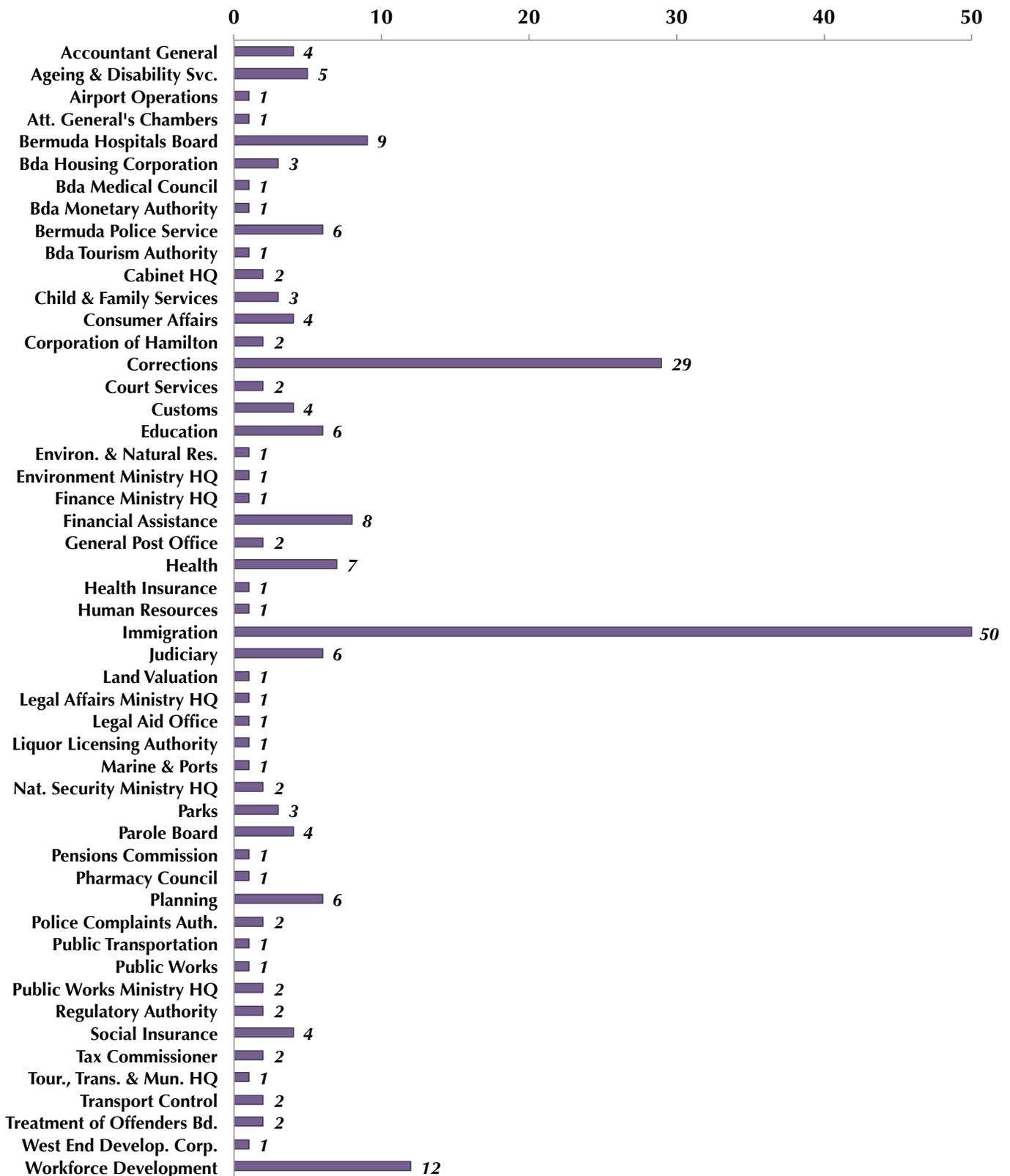


Figure I: Cases Received in 2016 by Authority – total 216

Figure I shows the total number of cases received in 2016 in respect of the relevant authority that falls under the responsibility of a Ministry. The figures do not include 69 cases that were made against Non-Ministry bodies or other bodies Not-in-Jurisdiction. Readers should note that the Human Rights Commission was made a Non-Ministry department in 2016 and therefore is not included in Figure I.

"Faced with the choice between changing one's own mind and proving there is no need to do so, almost everyone gets busy with the proof."

- John Kenneth Galbraith, economist and public officer



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CartoonStock.com

OUTSTANDING COMPLAINTS

Of the 70 outstanding complaints worked on during 2016, we concluded 12 complaint investigations resulting in findings.

The Ombudsman made a total of 21 recommendations (4 general and 17 specific), at the conclusion of 5 out of the 12 investigations. Each recommendation made in 2016 was accepted by the authorities for implementation. See the complaint summary on page 30 for an example of our progress on tracking the implementation of recommendations.

Since the Annual Report 2013, we have stated that one of the Ombudsman's strategic aims was to tackle outstanding complaints. These had been carried over previously during our Office's systemic investigations, the last three of which had overlapped in time. Concentrating on individual cases has remained our team's priority. While the Ombudsman did not publicly launch any new systemic investigation in 2016, some of the cases we worked on revealed that the issues were wide-reaching. For instance, we dealt with one particular series of complaints that concerned the same complaint issues under the umbrella of one investigation; see our commentary on page 28.

In the Annual Report 2015, we explained on page 26 that our team was continuing to work to address a remainder of 18 cases that had been carried into 2015 from previous years. Our goal was to close all 18 cases before the start of 2017.

We nearly reached our goal, but did not achieve it fully. By 31 December 2016, we had closed 15 of the 18 cases that remained from that period, leaving a new total of three cases that were received before 31 December 2014. As of 28 April 2017, each of the outstanding cases was in the investigation stage of our complaint process.

With the implementation of a newly customised electronic complaint management system, we remain hopeful that we will report a significant reduction in the number of complaints that are open for six or more months. See page 44 for an update on our progress with improving our internal processes.

CASEWORK IN CONTEXT

There are notable peaks in complaints that can be observed for certain Ministries and authorities in 2016. These numbers represent complaints and enquiries made, not findings of the Ombudsman in relation to the cases. These numbers alone do not indicate whether the complaints were upheld by the Ombudsman through our inquiries.

Some of these departments have a higher volume of public interaction than others and thus may have a higher volume of service users. One particular spike was shown in the complaints we received about the Department of Immigration – a total of 50. The following commentary provides greater context for this number.

Figure J: Cases Carried Into 2017 - total 60

Case Status as at 31-Dec-16	2016	2015	2014	TOTAL
Reopened	1	0	0	1
New	4	0	0	4
Acknowledged	20	0	0	20
Preliminary Inquiries	17	2	0	19
Investigation	11	1	3	15
Findings & Recommendations	0	1	0	1
Mediation	0	1	0	1
Total Cases Carried Into 2017	53	4	3	60
Cases Carried Into 2017 Then Closed by 28-Apr-17	16	0	0	16
Total Cases Carried Into 2017 & Open as at 1-May-17	37	4	3	44

COMMENTARY: PUBLIC UNINFORMED

In 2016 our Office received 35 complaints of unreasonable delay in the Department of Immigration's ("Department") processing of outstanding applications. Applicants also complained that when they contacted the Department for updates, they were not given sufficient reasons for the delays or even provided with revised timeframes for processing the applications. The majority of these applications had been submitted in 2014. They were a mix of applications for Bermudian status, naturalisation as a British Overseas Territories Citizen ("BOTC"), and permanent residency certificates ("PRC"). The first complainant was a young man from a 'mixed status' family, whose delayed application meant he could not make arrangements to choose when and where he wished to study abroad.

Our response to the initial complaint was to contact the Department to obtain the status of the young man's application. The information provided revealed a considerable backlog and a number of complex issues. After months of discussion, and receiving more complaints, we shifted our approach to focus on the systemic issues highlighted by the complaints rather than focusing on specific applications. This led the Ombudsman to commence a formal investigation into the delays and the communication of these delays to applicants. This meant our review would benefit those who complained and those who did not. Individuals who complained were not given preferred treatment, as our Office agreed with the Department that fairness required that applications should be handled in the order received. The increase in the number of people coming to our Office was largely due to referrals and the Royal Gazette's news article of 16 August 2016.

While our Office's responses to the complaints did not delve into the technicalities of immigration law, knowing the background was important to understand the issues under investigation. A 2014 court decision required the Department to implement a temporary application process to allow for PRC holders to

apply for Bermudian status. In May 2014, the Department had estimated about 1,455 PRC holders could have been eligible for Bermudian status under section 20B of the Bermuda Immigration and Protection Act 1956 ("BIPA"). A year prior, the Ministry of Home Affairs ("Ministry") had taken its case to the Supreme Court to appeal a 2013 decision by the Immigration Appeal Tribunal ("IAT") that had granted Bermudian status to a PRC holder. It was the IAT's decision that initially required the Department to create a new process for section 20B applicants. This subsequently led to the Government's controversial 'pathway to status' initiative.

In June 2015, the Ministry reported publicly that the Department had received over 700 section 20B applications. Then in August 2016, the Ministry further reported to Cabinet that 853 section 20B applications had been submitted to date. Section 20B applications were often accompanied by separate applications for naturalisation or registration as a BOTC, which would be required for any PRC holder who was not already a Commonwealth citizen. This explained the significant increase in applications reported by the Department in the Government's budget books, an almost 500% increase in naturalisation and 600% increase in section 20B applications between 2013/14 and 2014/15 fiscal years.

Based on the numbers alone and no increases in the staff compliment, delays in the Department's standard processing timeframes were inevitable. For approximately one year from the 2014 court decision, little if any action was taken or resources made available to address this increase or to notify applicants of the inordinately long waiting periods. In late 2015, efforts by the Ministry and the Department were made to address the backlog, for instance a firm was enlisted to assist with the administrative responsibilities required to process section 20B applications.

Without prejudging issues that remain under review, our Office can report that, with the intervention of the Ministry under the current

Permanent Secretary, proactive measures were taken to address the backlog. The Department was short-staffed due to resignations, unfilled posts and hiring freezes. There had been only one senior officer who was trained and available to carry out the final vetting before the Department sent applications to the Ministry for its final determination. This placed an unfair and unrealistic burden on this officer to process these applications while carrying out other demands, including new requirements for processing BOTC (Bermuda) passports. We can report that this officer now has received temporary support staff, including provision for a supervisory post. In addition, the Ministry has obtained temporary assistance for vetting applications. Through acknowledging the problem, collective efforts have notably reduced the Department's backlog on these applications.

These complaints about backlogged applications illustrated that authorities must accept responsibility for communicating with those to whom they provide services. As authorities balance and allocate their limited resources, they must be mindful of how delays affect people's lives. The complaints further demonstrated how the Government is required to swiftly respond to changes that might arise, including judicial decisions. Such changes may require updating administrative policies and processes and assessment of the resources authorities require.

“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

VOCAB ALERT:

- ‘Systemic’ refers to something affecting a group or a system that goes beyond the particulars of an individual's complaint.
- A ‘mixed status family’ refers to a family where one or more siblings have been granted Bermudian status while another sibling is not eligible for Bermudian status under the current legislation. This arises due to the cut-off birthday stated in BIPA for those who were not born in Bermuda and are seeking to be granted Bermudian status.
- Section 20B of BIPA provides criteria for how a person who is considered to be a long-term resident could be eligible to apply for Bermudian status in ‘other cases’, besides the more usual cases where a person is connected to Bermuda by Bermudian parents.



“I'll ask someone else. Didn't realize you were still dealing with that backlog.”

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Did You Know:

BERMUDIAN STATUS VS BOTC CITIZENSHIP

An applicant may be eligible for Bermudian status while being ineligible for naturalisation as a British Overseas Territories (Bermuda) Citizen. In other words, a person may enjoy the benefits of holding Bermudian status without being able to obtain a 'Bermuda' passport. Similarly an applicant may be eligible to be naturalised as a British Overseas Territories (Bermuda) Citizen without being eligible to apply for Bermudian status.

This may seem like an anomaly. The Bermuda Government sets the rules for the eligibility and granting of Bermudian status, whereas the UK Government determines eligibility for naturalisation for British Overseas Territories Citizenship.

In most cases, a person will be eligible for both. Any person who is not a Commonwealth Citizen must be naturalised as a British Overseas Territories Citizen before they can acquire Bermudian status. However, there are circumstances where the Bermuda and the UK legislation differ, which results in individuals being eligible to apply for one and not the other. For instance, the differences between the laws applicable to an individual's criminal record in Bermuda and the UK can have an impact on their eligibility for Bermudian status or naturalisation.

For questions about eligibility for Bermudian status or naturalisation as a BOTC, find information on the Government web portal at www.gov.bm or contact the **Department of Immigration**.

VOCAB ALERT:

We use **enquiries** (with an 'e') when our questions are general and typically do not disclose the specific details about the complainant's issue. When we invoke our formal fact-finding powers, we use **inquiries** (with an 'i').

SELECTED COMPLAINT SUMMARIES AND DID YOU KNOWS

Complaints are opportunities for improvement. The public may think that only authorities have something to learn. Addressing complaints requires all parties to reflect on their roles in the matter. When the Ombudsman becomes involved, complaints also act as tests for how effective we are in our function of bringing about resolution. All complaints – no matter their size or weight – really are opportunities for learning for complainants, authorities and the Ombudsman.

Here is a selection of anonymised complaints that were closed by our Office in 2016. These complaints resulted in information that we have chosen to share for its public benefit, including reflections on each case. Complainant details have been altered to protect confidentiality. We also include useful 'did you know' information that may relate to the summaries.

SUMMARY: MONITORING PROGRESS

BERMUDA HOSPITALS BOARD

ISSUES: In an investigation concluded in 2015, the Ombudsman found that an electronic communication system for a fundamental public service provided by the Bermuda Hospitals Board ("BHB") was inefficient and recommended that it be upgraded. She also found the nature of a post within the BHB conflicted with the functions of that office. Based on her findings, she recommended several improvements.

INTERVENTION: In 2016, the Ombudsman reviewed the BHB's implementation of her recommendations. The upgrades to the electronic system had cost implications and would take some time to complete. Therefore the Ombudsman recommended an interim solution. As a result of the Ombudsman's recommendations and the continuous review of their implementation, the authority has reported it is poised to introduce a system that will have a positive impact on members of the public.

Following the Ombudsman’s recommendation, the BHB changed the name and responsibilities of that post. The change also required the post-holder to notify service users at initial contact that there are limitations to her ability to advocate on their behalf.

INSIGHT: As public authorities are often the only organisations to provide particular services, the Ombudsman’s work to improve service provision can have far-reaching impact. This is why, following findings of maladministration, it is important that the Ombudsman monitor the implementation of her recommendations to keep matters under review.

“If you wish to move mountains tomorrow, you must start by lifting stones today.”

- African Proverb

**SUMMARY:
BACKLOGGED**

ACCOUNTANT GENERAL’S DEPARTMENT

ISSUES: A recipient of Government Employee Health Insurance (“GEHI”) had been waiting two years to be reimbursed for a procedure that had taken place off-island. After several follow-ups, the insured became disillusioned that the claim would not be reimbursed anytime soon if at all.

INTERVENTION: Within hours after the insured contacted us, we reached out to the GEHI staff member who was his main contact. Thirty minutes later, we received a call back. The staff member explained that generally GEHI had been dealing with a backlog of claims with very limited staff to address it. In recent months, however, the backlog had been reduced significantly. In addition, there was a further delay because the original claim was not written in English. GEHI had set it aside for later review because of difficulties in getting an adequate translation. This claim had been earmarked to be resolved shortly. We relayed the news to the insured. Three weeks later we closed the case after receiving confirmation that the claim had been processed.

INSIGHT: This was one of several examples of backlogs across the Government that we learned about during the year. Sometimes authority staff can become weary of having to apologise for delays without being able to accurately give a realistic timeframe for processing. Backlogs impact both those receiving and providing services. Where authorities are aware of significant delays, they have a responsibility to proactively notify their service users about delays in their processing timeframes.

**SUMMARY:
A WIDOWER’S COMPLAINT**

DEPARTMENT OF SOCIAL INSURANCE

ISSUES: A senior’s wife of many years passed away at the age of 66. Soon after, the senior noticed that his wife’s social insurance payments had stopped. Six months after her death, the senior went to the Department of Social Insurance (“DOSI”) to inquire about the status of his late wife’s benefit.

The senior claimed that a DOSI staff member told him he needed to fill out a form and provide copies of several official documents, including his late wife’s passport. He complied and submitted the documents.

About five months later, he was told that he could not receive both his and his wife’s social insurance awards. He could only apply to receive his late wife’s social insurance award if her award was higher than his own.

The senior complained to our Office. He felt it was unfair for DOSI to stop paying his late wife’s social insurance award because she had paid social insurance contributions for several decades and only received social insurance benefits for one year before she died. He pointed out that her social insurance contributions had reduced the couple’s household income over the years.

INTERVENTION: We made preliminary inquiries with DOSI and established that its decision was made in accordance with its governing statute. We declined to investigate the senior’s complaint.

However, we encouraged DOSI to ensure its staff, particularly those who interact with clients, were aware of this policy and could accurately answer clients who asked about it. As a result of the Ombudsman's suggestion, DOSI now has a pamphlet explaining this policy for clients who find themselves in similar circumstances to the senior.

INSIGHT: In this case, DOSI's governing legislation set out the eligibility rules for social insurance. This Office does not launch investigations into whether or not a law is fair. However, at the conclusion of an investigation, we can recommend that legislation be reviewed. We advise individuals who disagree with legislation that they can advocate for parliamentarians to amend current legislation or even pass new law.

Another option is to consult with an advocacy group or campaign. In Bermuda there are several groups that advocate for legislative change on behalf of groups or about certain issues. Examples include: Age Concern for seniors; the Bermuda Environmental Sustainability Taskforce, Green Bermuda and the Bermuda National Trust for environmental protection; and the Family Centre and the Coalition for the Protection of Children for children and families.

Did You Know:
SURVIVING SPOUSE'S SOCIAL INSURANCE ELIGIBILITY

The Contributory Pensions Act 1970 does not allow a person to receive two social insurance benefits at the same time. For example, a widower who had been receiving a benefit at the time his spouse died could not receive both his own benefit and his spouse's benefit after her death. A senior may apply to the Department of Social Insurance to receive his late wife's social insurance benefit if her award was higher or more advantageous than his own.

For questions about eligibility for social insurance benefits, contact the

Department of Social Insurance at 294-9242.

SUMMARY:
RESPONSE PENDING

DEPARTMENT OF IMMIGRATION

ISSUES: A spouse of a Bermudian had been separated from his wife for many years. He believed that, because of the separation, he needed a work permit. Some years later, the Department of Immigration ("Immigration") investigated an allegation that the couple were no longer living together as husband and wife. At the same time, a work permit application had been submitted to Immigration. While the investigation was underway, the spouse had difficulty with the application.

INTERVENTION: The spouse complained to us that Immigration's delay was affecting his livelihood. By the next week, we had confirmed that, in fact, the spouse did not need a work permit while legally married to a Bermudian. We also found that Immigration had actually finished the investigation two weeks before. Immigration immediately contacted the spouse to update him about the investigation. It also wrote a letter to the spouse confirming the reason for its decision, to ensure the spouse would not have the same issue again.

INSIGHT: Sometimes we add value by helping to manage a complainant's expectations about how much time might be reasonable for an authority to do its work with due diligence. This was not the case in this instance. Our inquiry prompted Immigration to check the investigation file. From there, a manager quickly saw that a staff member had missed some follow-through steps after the investigation was closed, including contacting the spouse. Because the spouse did not hesitate to reach out to us, Immigration's management discovered that the file had been closed in error.

Did You Know:

FREE FROM IMMIGRATION CONTROL

As long as they remain married, spouses of Bermudians are ‘deemed to belong’ to Bermuda under the Constitution. This means even if the spouses are separated but not divorced, non-Bermudian spouses are free of immigration control, meaning they do not need a work permit or the Department of Immigration’s permission to reside here.

SUMMARY:

FUNDING UNCERTAINTY

DEPARTMENT OF EDUCATION

ISSUES: The Department of Education (“Education”) had been paying tuition for a child with special needs to attend an overseas institution for a number of years. The child’s family complained to Education that by early August they still did not know if the tuition had been paid for the upcoming academic year. Within days, Education responded that, in fact, there was no budget for the child’s tuition because the payment agreement had expired at the end of the previous year. Education was puzzled by the family’s query because the agreement was in writing. The family was shocked that Education had interpreted the agreement to have ended without specific notice or clarification earlier that year.

INTERVENTION: We considered the urgency and the type of work needed to resolve the disagreement. We launched a formal investigation a day after receiving the complaint. Over the next four months we communicated with the parties to establish the facts and clarify the parties’ positions. We also reviewed documents and interviewed staff. During this time, within two months of the complaint, Education addressed the immediate concern of the child’s placement. The Ombudsman’s decision did not find in favour of the family. Due to insufficient evidence, the Ombudsman was not able to choose between conflicting accounts of a significant event. Despite the disagreement, the child successfully completed

a programme locally by the end of the academic year – achieving both the family and authority’s ultimate goal.

INSIGHT: We saw the importance of documenting verbal communication in some way, such as a follow-up email to summarise what was discussed, decided and any next steps. This was clear not just from our review of what had previously happened between the complainant and the authority, but also from our own exchanges with the parties. This case was a useful reminder that making a note at the time of an event far outweighs any belated attempt to recapture it.



Footbridge along the railway trail in Sandys Parish

Did You Know:

SPECIAL NEEDS

Special education in Bermuda has caught this Office’s attention from the very beginning. In July 2013, the Government published a discussion paper entitled “Inclusive and Special Education: Getting It Right for Every Child”. It updated the public on the Ministry of Education’s progress and efforts towards a special education process and policy framework. This push was largely the result of a formal recommendation made in 2010 by the former Ombudsman

which led to a full operational review of the Department of Education's Student Services Section and the formation of a policy team to lead the way forward.

This year the Board of Education has launched a public engagement process as part of its strategic planning initiative with the aim to reform public education in Bermuda. Members of the public are encouraged to join the conversation. More information can be found at www.educatebermuda.com.

SUMMARY: A CLOSER LOOK

DEPARTMENT OF CORRECTIONS AND MINISTRY OF NATIONAL SECURITY

ISSUES: An inmate did not receive a response to an appeal to the Ministry of National Security ("the Ministry"). The appeal concerned an adjudication whereby the Treatment of Offenders Board ("TOOB") sanctioned the inmate with six months' loss of remission.

INTERVENTION: The Ombudsman contacted the Ministry and was informed it had not received the appeal form or the accompanying letter from the inmate. The Ombudsman arranged to view the inmate's file. She discovered the inmate's original appeal letter. This demonstrated that the Department of Corrections ("Corrections") had not sent the appeal documentation to the Ministry. The Ombudsman urged Corrections to provide the inmate's appeal form and letter to the Ministry as soon as possible, which was given in the absence of a formal investigation so the matter could be handled without delay. The Ombudsman also suggested that Corrections apologise to the inmate for its failure. Corrections agreed to send the appeal documentation as well as apologise to the inmate.

Once the Ministry considered the matter, the inmate's appeal was upheld, and the punishment was revoked. This meant the inmate's early release date was restored, and he was released within two months of the appeal being upheld, as opposed to eight months.

INSIGHT: A closer look revealed that what appeared to be the unresponsiveness of one authority was actually the failure by another. It also highlighted inmates' reliance on officers to get things right, as inmates' liberty may depend on this.

VOCAB ALERT:

Remission

An inmate's sentence is split into thirds.

- Upon serving one-third of a sentence, an inmate is eligible for parole.
- Upon serving two-thirds of a sentence, an inmate is eligible for early release – referred to as an inmate's early release date.
- Upon serving the entire sentence, an inmate must be released – referred to as an inmate's latest release date.

Remission is the period of time between an inmate's early and latest release dates. This means that a punishment of loss of remission changes the early release date to a later date. Internal adjudicators, such as Corrections or the Ministry, can discipline an inmate for breaking a rule with the loss of remission. There are other punishments available to the internal adjudicators, such as loss of privileges.

SUMMARY: ENTREPRENEUR WITH OUTSTANDING GOVERNMENT DEBT

TRANSPORT CONTROL DEPARTMENT AND DEPARTMENT OF SOCIAL INSURANCE

ISSUES: An entrepreneur was unable to license his business van with the Transport Control Department ("TCD") because of an outstanding debt owed to another Government department, the Department of Social Insurance ("DOSI"). In accordance with a longstanding policy, before the vehicle could be licensed TCD required the entrepreneur to present a letter evidencing that he and DOSI had agreed on a payment plan. DOSI refused to provide the entrepreneur with

the letter. The entrepreneur complained that in his case TCD's policy was too harsh because without his van he would be unable to earn sufficient funds to repay the debt. The entrepreneur also complained that his van's current license would have expired within seven days of making his complaint to us.

INTERVENTION: The Ombudsman called DOSI to speak with the officer who made the decision not to provide the letter. The Ombudsman was informed that DOSI's policy gave officers the discretion to issue letters to debtors for TCD licensing where payment plans had been agreed. The officer agreed to issue the letter provided that the entrepreneur agreed to a satisfactory payment plan. The entrepreneur agreed to DOSI's offer, and DOSI issued the letter before his van license would expire.

INSIGHT: There are times when we receive complaints that present strict timelines. If the facts are not in dispute, matters may allow for informal resolution. The Ombudsman chose to speak by phone with both the entrepreneur and the officer. This allowed us to resolve the entrepreneur's complaint quickly without a disruption to his business.

SUMMARY:
DELAY – JUSTIFIED OR NOT?

DEPARTMENT OF WORKFORCE DEVELOPMENT

ISSUES: An employee was not happy that she had been denied salary increments, due to repeated negative performance appraisals to which she had strongly objected on each occasion. She followed the required process to address her concerns to management and others. Eventually she complained to the Department of Workforce Development ("DWD"), in hopes of getting an objective assessment of the facts of her case. About 17 months later, she approached our Office because she was frustrated and unclear about the status of the independent assessment.

INTERVENTION: By the time the employee came to us, the issue, though protracted, was still sensitive to her. She felt victimised by her

employer over the years for being outspoken. Management at her job had since changed, and there were also different staff at DWD dealing with her case. She complained to us that DWD was not responsive to her attempts to contact it. Our first approach was to speak with DWD and to review a portion of its file. Based on our review, we were able to establish a more accurate timeline of DWD's active involvement in the case. However, we had unanswered questions about DWD's record keeping. We launched a formal investigation to clarify the remaining facts. The Ombudsman ultimately determined there was no evidence that the authority was unresponsive, despite the significant time lapse from the employee's initial contact with DWD.

INSIGHT: As an office of last resort, we must think through, document and justify our actions. This is particularly the case when complainants have no other options for redress. In this case, complaining to DWD was this employee's last recourse to address the substantive issue. Since the Ombudsman is prohibited from directly investigating personnel matters, our focus was on DWD's responsiveness to her complaint. We could not assess the fairness of the employer's decisions to have denied her salary increments. Since DWD was still addressing the case, we were cautious that our intervention did not halt its substantive work in any way.



Did You Know:

UNIONISED WORKERS' LABOUR COMPLAINTS

The Department of Workforce Development will not investigate employment grievances involving unionised workers until after the relevant grievance procedures have been exhausted, or unless the parties involved have agreed to the Department's intervention.

SUMMARY:

BURDEN OF PROOF

POLICE COMPLAINTS AUTHORITY

ISSUES: A complainant was convinced that a Government employee was accessing confidential Government information to take revenge on him for a disagreement between them. He felt targeted, helpless and exposed. He believed the employee was abusing his power and should be disciplined by management to prevent further incidents. He complained to the employee's manager and to an independent complaint handling body, the Police Complaints Authority ("PCA"). After about four months, the PCA told him that the information he had provided did not substantiate his allegation, so it could not take further action unless he provided new information.

INTERVENTION: The complainant complained to us that the PCA was too slow and not thorough enough in obtaining key information. He queried whether the PCA should require him to provide new information when he believed only the Government had access to the technology needed to investigate the employee's alleged wrongdoing. After gathering as many details from the complainant as possible, we reached out to the body to better understand the reasons for its decision to close the investigation. We learned that the PCA's preliminary examination revealed nothing of concern. For the PCA to take further action, it required the complainant to provide more information to substantiate his allegation. We considered the PCA's reasons, the complainant's questions about what was fair in this type of situation and what steps the

PCA had taken to investigate his allegation. We agreed that the PCA, based on the information before it, had taken the matter as far as it could. To assist the complainant, we researched private sector resources that he could consider using to substantiate his allegation.

INSIGHT: The complainant raised a valid question: how far do complainants need to go to substantiate their allegations, when independent bodies have the resources and powers to find the evidence by investigating? Our response was: it depends. Independent bodies have limited resources and powers. This limit requires them to assess the extent to which complainants' allegations can actually be substantiated through use of its resources. In this case, the complainant himself admitted the alleged incidents were hard to believe and very difficult to substantiate unless expensive technology were to be applied to the investigation. Sometimes we are required to decide what is most likely to have occurred and what is most reasonable to expect of an authority.

SUMMARY:

NOT PERFECT BUT PRACTICAL

DEPARTMENT OF HEALTH AND DEPARTMENT OF WORKFORCE DEVELOPMENT

ISSUES: An employee claimed that he was dismissed from his job because he reported his employer had breached the Occupational Safety and Health Act 1982 ("OSHA"). The employee noted that a dismissal for making a report amounts to a breach of OSHA which protects whistle-blowers. The employee made a complaint with the Department of Health ("Health"), which is responsible for investigating such breaches. He was informed that it would be more appropriate to make a complaint of unfair and wrongful dismissal to the Department of Workforce Development ("DWD"). Instead the employee decided to complain to us that Health had failed to investigate his complaint.

INTERVENTION: Our Office contacted Health. We were informed that there was only one officer in the section who was responsible for investigating all reported breaches of OSHA

island-wide. Due to the hiring freeze, there would be a single officer for some time. She was also informed that the breach complained of had been rectified before the employee made her complaint to Health. What remained unaddressed was the issue of unfair and wrongful dismissal. The officer further stated that he could have investigated the matter; however, it would not have been practical considering he was the only officer in his section. He further explained that he had a heavy caseload, the breach had been rectified, and that the Employment Tribunal would not be prevented from making a finding of unfair and wrongful dismissal based on the reporting of breaches of OSHA. In light of this, the officer concluded that the most appropriate body to handle this issue was DWD. The officer informed our Office that he maintained a close working relationship with DWD and had referred many similar cases there.

INSIGHT: This Office expresses no opinion on the hiring freeze. However, this policy can significantly affect the quality of public services unless adjustments are made. This complaint illustrated that civil servants are working together, even interdepartmentally, to manage their caseloads and ensure that the practical needs of the public are met. For this, those civil servants should be commended.



Pedestrian railway bridge at Store Hill, Smith's Parish, credit to Akil Simmons



Pedestrian railway bridge in Bailey's Bay, Hamilton Parish



Old railway bridge piers at Coney Island,
St. George's Parish

STRATEGIC AIM III: **CHAMPIONING BEST PRACTICE**

ASSESSING GOOD ADMINISTRATION

Ombudsmen worldwide benefit from shared tools and guidance on how to assess the actions of public bodies. In our work of investigating the conduct of authorities in Bermuda, we routinely refer to the “Principles of Good Administration” published by the UK Parliamentary and Health Service Ombudsman in 2007. These guiding principles provide clear and succinct language on how to define good administrative practices. We also routinely describe them in our presentations and correspondence to authorities regarding their complaint handling.

There are other useful resources to which authorities can refer for guidance on what administrative fairness means. These principles are based on decades of experience investigating complaints. They are, as broad statements, intended to promote a shared understanding of how the Ombudsman will consider the cases of complainants and how we will assess the authorities’ delivery of service to the public.

We refer you to:

- “Administrative Fairness Guidebook” from the Alberta Ombudsman (2013);
- “Defining Fairness in Local Government” from the Office of the Ombudsman in the City of Toronto (2013);
- “Principles of Good Complaint Handling” from the UK Parliamentary and Health Service Ombudsman (2008);
- “Principles for Remedy” from the UK Parliamentary and Health Service Ombudsman (2007);
- “A Guide to Principles of Good Complaint Handling” from the Ombudsman Association (2007); and
- “Code of Administrative Justice” from the British Columbia Office of the Ombudsman (2003).

IN THE "PRINCIPLES OF GOOD ADMINISTRATION", THIS MEANS...

- Getting it right
- Being customer focused
- Being open and accountable
- Acting fairly and proportionately
- Putting things right
- Seeking continuous improvement

PROMOTING GOOD ADMINISTRATION

In 2016 our complaint team has focused efforts on championing best administrative practices in particular areas, including (a) better coordination of complaint handling for inmates, (b) highlighting the gap in available recourses for banking complaints, and (c) identifying an area where complaint resolution bodies can expand their processes to address complaints about their own service delivery. Commentaries on these efforts follow next. We also include useful ‘did you know’ information that relate to the commentaries.

“If you would get ahead, be a bridge.”

- Welsh Proverb



COMMENTARY: RESTRUCTURING THE TREATMENT OF OFFENDERS BOARD

The Treatment of Offenders Board (“TOOB”) is empowered by the Treatment of Offenders Board Act 1979 to oversee the treatment of inmates held by the Department of Corrections. This includes reviewing how inmates are treated while they are incarcerated and adjudicating and sentencing inmates for breaches of the prison rules.

Early in the Ombudsman’s term, she noted a gap in complaint handling procedures for inmates. In 2016, following discussions with TOOB, the need for clarity of this body’s statutory mandate was agreed. TOOB acknowledged that it had been considering ways to address the gaps for some time.

The Ombudsman agreed to review the legislation outlining TOOB’s mandate and TOOB’s current processes as well as research similar organisations to determine whether TOOB was fully achieving its statutory mandate. At the conclusion of the review, it was found that TOOB are not fully utilising all of its legislative authority.

The review and research revealed that Parliament intended TOOB to act as the complaint handling body for inmates. TOOB’s current processes did not account for this. This was of particular importance as the Ombudsman must refer complainants under her Act to a body’s existing administrative procedure. In the case of inmates, this would be TOOB, unless the Ombudsman concluded it would not be reasonable to expect the person to resort to it. If TOOB were unable to fully utilise its complaint handling powers, it would be unreasonable for our Office to refer inmates to TOOB in the first instance.

We met with TOOB to discuss the research, and TOOB agreed with our conclusions. We consulted with the Commissioner and then met with the Minister and Permanent Secretary of National Security, who also agreed with our conclusions. The Ombudsman

recommended that a strong starting point in improving efficiencies was to implement policies and procedures for TOOB based on its statutory framework.

The Ombudsman highlighted that the legislation envisions that TOOB must collaborate with both the Ministry and the Commissioner and that the proposed policy and procedure manual should reflect this. Greater collaboration will support efficient handling and resolution of inmate complaints as envisioned by Parliament. We also suggested this could reduce the number of complaints made to this Office in the first instance, thereby reducing the Ombudsman’s involvement in complaints made by inmates. The Permanent Secretary agreed the Ministry would draft a new policy and procedure manual for TOOB.

TOOB also noted that an inmate cannot appeal adjudications made by Corrections staff. The Permanent Secretary agreed to inquire further into whether such an appeal mechanism exists and, if none were found, to implement one.

At the time of the writing of this report, this project had commenced, spearheaded by the Ministry. We have also shared our research with the Ministry. We will continue to provide feedback until the completion of the manual.

The Ombudsman’s collaboration with the relevant authorities demonstrates that the Ombudsman can help improve Government administration without requiring investigations. As Ombudsman investigations call for considerable resources, improving an authority’s administration without the need for an investigation is preferred. Authorities can become defensive since investigations may involve criticism. Further, investigations may strain the Ombudsman’s relationships with authorities under her jurisdiction, particularly where these authorities are aware of the administrative gaps and are actively working to fill them, as was the case with TOOB.

The Ombudsman's role is to strengthen public services, and this is best done where there is a respectful relationship between the Ombudsman and public authorities. This relationship can be jeopardised if the Ombudsman fails to appreciate the challenges faced by a public authority. This is why bridges should be mended and built, which is the theme of this year's Annual Report, rather than broken and burned. We commend the Permanent Secretary, the Commissioner and the Chair of TOOB for embracing the need for reform and facilitating the restructuring of TOOB's policies and procedures.



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**Did You Know:
GOVERNOR'S POWER TO PARDON INMATES**

The Bermuda Constitution gives the Governor power to grant pardon to persons convicted of an offence by a Bermuda court. The reasons for which the Governor may exercise his powers are not specified under the Constitution.

When inmates apply to be pardoned, the Department of Corrections compiles the information and documents required for the petition to the Governor. The petition is considered by the Governor's Advisory Committee on Prerogative of Mercy, who are appointed in accordance with the Constitution. The Committee has the power to regulate its own proceedings and may request further information for an inmate's petition from the Commissioner of Corrections.

The Committee makes a recommendation on an inmate's petition to the Governor. After receiving the recommendation, the Governor makes his final determination.

The Ombudsman is barred from investigating the exercise of the Governor's power to pardon anyone convicted of a criminal offence or his power to commute their penalties.

**COMMENTARY:
BANKING COMPLAINTS OVERSIGHT**

People have contacted us to complain about the practices and policies of local banks. Our Office has no jurisdiction to investigate private sector entities such as banking institutions. In the first year of the Ombudsman's term, she initiated discussions with the Bermuda Monetary Authority ("BMA"), Bermuda's financial sector regulator, to find out how it addressed bank related complaints. The BMA is a prudential regulator. It exercises oversight of the financial stability of individual institutions. It actually does not investigate individual complaints about banking practices. Instead, when a customer approaches the BMA with a complaint they are unable to resolve with a bank or financial institution, the BMA refers the customer to Consumer Affairs.

In 2015 BermudaReal reported on these discussions in an online article about banking practices. A BMA spokesman confirmed to BermudaReal that it was aware of an increase in complaints from customers of local banks and that it was in discussions with the Ombudsman. The Ombudsman also provided a statement confirming our discussions with the BMA and Consumer Affairs.

This Office will continue to discuss with the BMA whether Consumer Affairs is the appropriate authority to deal with banking complaints. Consumer Affairs do not have the power or resources to successfully challenge bank policies and practices if they uncover underlying fundamental problems. Such systemic issues would clearly be a concern for the BMA. The existing process does not direct these matters to its attention. The act of receiving, investigating

and reporting on complaints may reveal unfair practices and other banking difficulties that have far-reaching impact particularly for any supervisor and regulator. It is important such bodies have the investigative power and the authority to address these issues and to provide remedies where applicable.

We continue to explore these matters and are seeking input and information with the aim of advancing effective discussions and generating meaningful solutions. We are advocating for stronger protections and fairer and better procedures for members of the public who have complaints about the conduct and practices of financial institutions. To the greatest extent possible, we will continue to advocate for stronger protections, fairer procedures and other substantial improvements. The ramifications of not adequately addressing this issue are far-reaching for individuals and families across the community. They affect people where it hurts.

Did You Know:

CONSUMER COMPLAINT TRENDS

As a Government section, Consumer Affairs (a) ensures that “unfair business practices” and “unconscionable acts” are not prevalent in everyday consumer business transactions and (b) regulates all rent-controlled residential properties in Bermuda. (Effective April 2014, the former department known as the Rent Commission was merged under Consumer Affairs.)



Consumer Affairs reported that in 2016 it:

- processed 584 clients of which 46 were applications for rent increases, 56 for eviction violations and 34 for substandard conditions of the rental unit;
- investigated 332 product recalls, of which 16 were pulled from sale or the required remedy applied; and
- carried out 1,134 civil or criminal investigations.

Important legislative and policy changes made in 2016 included:

- Cabinet approving for Consumer Affairs to regulate debt collection practices, which means that soon debt collectors will fall under its remit so it will have oversight of fair practices in this financial sector; and
- implementing a criteria for inspecting rent increases, which created an impartial and more consistent appraisal process when comparing rental properties.

Some of its consumer complaint trends for 2016 were:

- a decline of 30-66% over the past five years in its investigations into the most complained about industries (automotive, insurance, marine, hospitality, and trades);
- a 31% increase in 2016 in complaints against the legal industry, mainly about debt collection and legal fees; and
- 12 banking cases and 48 cases involving financial institution investments and pensions with overseas clientele.
- no complaint activity in the past two years about wholesale, special events and e-commerce industries.

Consumer Affairs also created new complaint categories to capture trends about private businesses offering visa and passport services, homeopathic products and treatments, and show quality animals and breeders.

For internal consumer trends, Consumer Affairs highlighted the airline industry for increases in corporate buy-outs and add-on fees; for instance, new fees are being introduced for overhead bags and for complaint filing. Another trend noted by Consumer Affairs was greater uniformity in the product safety standards across manufacturing countries, such as China, Singapore and Mexico.

COMMENTARY: HUMAN RIGHTS MECHANISM

In 2012 a significant amendment to the Human Rights Act 1981 (“the HR Act”) took effect. It strengthened and streamlined the complaint process for the Human Rights Commission. In 2016 the Commission transitioned from being an administrative body under the Department of Human Affairs to a Non-Ministry department, also relocating its offices and starting a rebranding initiative. At the same time, the Government dissolved the Department of Human Affairs, with those policy-related functions moving to the Ministry headquarters. Human Rights Commissioners are also now selected through a public application process for a three-year term.

These combined efforts mean greater independence for Bermuda’s national human rights institution. This important transition from the Government’s control strengthens its reputation as an oversight body.

Through complaint handling the Ombudsman has closely watched the Commission’s evolution over the years. Our complaint team also visited with its team in April 2016 to share lessons about each other’s respective approaches to complaint resolution.

We are pleased that, after working with the Commission, it is introducing another innovation. It aims to introduce a new process for complainants who might take issue with how the Commission handles discrimination complaints. In complaint resolution practice, this is known as a service delivery complaint process. It will provide parties a way to formally raise concerns about

case handling and how they feel they were treated by the Commission’s staff. In our Annual Report 2014, we identified the advantages of establishing internal complaint handling procedures. Our Office advocates for all public authorities to take this step in accordance with principles of good administration.

A service delivery complaint is not an appeal of a substantive decision. For the Commissioners’ decisions, the only available appeal mechanism under the HR Act is to the Supreme Court. However, the HR Act does not expressly provide that a complainant may appeal the Executive Officer’s decision not to investigate a complaint to the Commissioners or through other means. The Ombudsman can investigate the Commission’s administrative actions, including decisions by the Executive Officer not to investigate a complaint or to decline to refer it to the Commissioners.



CartoonStock.com

IMPROVING INTERNAL PROCESSES AND ACCOUNTABILITY

As a constitutional officer, the Ombudsman must demonstrate that our Office is accountable to the public. We strive to apply the same principles of good administration in our own process and review, at the same time that we uphold public authorities to these standards. Due to reasons of confidentiality, we cannot provide a detailed account to the public of all our actions. This makes it even more important for this Office to make every effort to demonstrate that our value to the public goes beyond resolving individual cases.

For us, accountability requires us to continually assess how and why we do what we do. We also reflect on how we can improve. At various points, our team has reflected on our own effectiveness, as a team and as individuals, in resolving complaints. Our current complaint team, who have been together since December 2014, agreed that we could enhance our work in four ways: reducing time gaps in progressing complaints; increasing the consistency of our approaches; using more informal and early resolution approaches; and tracking our performance using real-time monitoring tools. We also agreed that moving from a manual complaint management system would significantly reduce the potential of 'human error' in both our tracking and reporting.

“Where there is no bridge, the smallest plank is of great value.”

- Hungarian Proverb

In the Annual Report 2015, we announced that we had purchased a new electronic complaint management system (“CMS”). We had spent over a year researching and considering the best solution to meet our needs. We are pleased to update the public that our new CMS, which required customisation to suit our process, is promised to be fully operational for our team in the 2017/18 budget year.

Acquiring a new CMS also required us to comprehensively review each step of our complaint process, to ensure the system would capture all the necessary details. We also announced that we had written this Office's first complaint management policy and procedure manual. This process included working through the details of new approaches to informal and early resolution. Our next step will be to align our manual with our new customised CMS. With these important steps taken towards progress in the past three years, we are confident that future reports will feature more detailed and varied representations of our work.

In our efforts to implement best practices internally, we continue to review our performance measures that are published in the Government's budget book (called the *Approved Estimates of Revenue and Expenditure*). These measures help us to see the areas in which we are more effective and those requiring improvement. Readers will notice revisions to these measures in the coming years. To increase public access, we will also provide the public with more frequent updates on the actual outcomes for our revised performance measures through our website and social media presence.

Another way in which we are accountable to the Legislature is through an annual independent audit of our use of public funds, similar to other Non-Ministry offices that form part of the integrity branch of Government. This work is carried out by the Office of the Auditor General. Since February 2017, all our audited financial statements that are publicly available now can be downloaded from www.ombudsman.bm/financials.html.

STAFF TRAINING

A defining characteristic of Ombudsmen and their teams is that they are specialists in dispute resolution. Ombudsmen are trained to assist with addressing complaints in a fair manner and operating confidentially, impartially and in accordance with best practice. Ombudsman training is designed to share practices, standards, research and strategies at regional

and international conferences as well as during specially designed professional development programmes. This was a full year of training, both local and international, for our team.

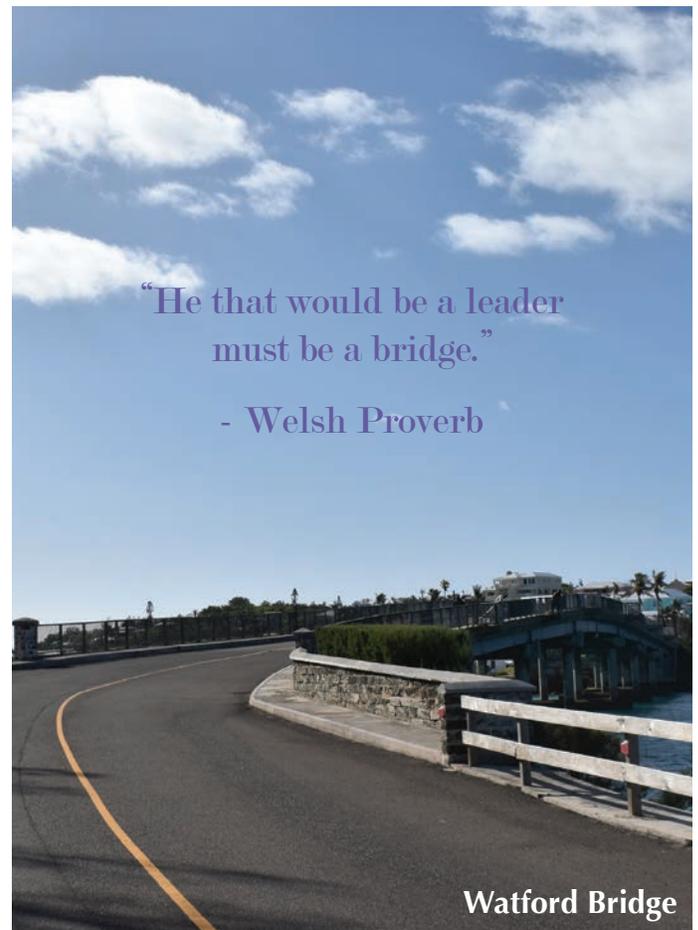
The year began with a customised, in-house training for our team with Dr. Victor Ayeni, Director of Governance and Management Services International and former Director of Governance and Institutional Development at the Commonwealth Secretariat. Dr. Ayeni is a friend to the Ombudsman for Bermuda family and an authority in the world of good governance research and practice. His ongoing relationship and historical knowledge of our Office provided invaluable insight. His visit included a public address on 21 January 2016 entitled “Ombudsman in Everyday Life”. (The video is posted to our website and Facebook page.)

Later in the year the Human Rights Commission (“the HRC”) invited us to a joint 2-day training course in Mental Health First Aid. Facilitated by Dr. Cherita Rayner and Dr. Shawnee Basden of the Bermuda Hospital’s Board (“the BHB”), this training was designed to provide complaint handlers with resources to help those experiencing a mental health problem and to guide them to the appropriate professional help. The BHB supported this programme as part of its efforts to educate staff and the community about mental health issues with the goal of decreasing the stigma related to mental illness. We appreciated the HRC sharing this opportunity with us. This course would be beneficial to other organisations that provide services to the public and interact with members of our community who may experience a crisis.

In June 2016 our Deputy Ombudsman, Ms. Catherine Hay, attended the four days of investigation training provided by the Workplace Institute in Vancouver, Canada. This training covered a number of topics, including effective fact finding, interviewing and using the internet as an investigative research tool. Not only was the material covered very pertinent and useful for the purposes of our Office, Ms. Hay found that the instructors were able to share from a wealth of experience. Mr. Gareth Jones, a facilitator of

that course, was subsequently invited to Bermuda by the Information Commissioner’s Office to provide a two-day investigation training for Government staff members held in March 2017.

In addition to specialised trainings for Ombudsman personnel, our team participated in the excellent training opportunities offered by the Department of Human Resources (“the DHR”). For the Ombudsman, these included training in systems thinking and leading change in the public service. She found that Ms. Terlena Murphy and Mr. Richard James’ managerial courses were outstanding. Ms. Shelly Richardson and Ms. Claudelle Richardson did an excellent job administering the training programmes for the DHR. As with the trainings with Ombudsman colleagues, trainings with members of the civil service provided multiple benefits. Beyond the content, the courses afforded us opportunities to meet employees from a cross section of public authorities and to gain insights into their experiences and challenges.



STAFF HIGHLIGHT ON COMPLAINT INTAKE OFFICER

In September 2016, our Complaint Intake Officer participated in the “Essentials for Ombuds” course in Toronto by the Forum for Canadian Ombudsman and the Osgoode Hall Law School of York University. Having served in her post for two and a half years at the time of the course, Ms. Fleming has gained experience in dealing with sensitive matters as she receives incoming complaints. At intake, complainants tend to be the most emotional. They are required to discuss issues that may have significantly impacted their lives and are faced with the realisation that they must take action in order to remedy a situation outside of their control. In her essay required to successfully complete the course, Ms. Fleming reflected:

The course provided powerful insights on how we as Ombuds institutions can ensure relational fairness in our dealings with the public. It highlighted that respect is a fundamental characteristic of fairness. It also highlighted that fairness is a basic human need and social experience as both hold respect as fundamental. Respect is subjective and depends on the individual experiences of that person. Being conscious of this will help to achieve fairness by acknowledging that complainants may be traumatised, and we should not make conclusions about their mental state. Fairness dictates that Ombuds institutions should make their processes as easy and efficient as possible to navigate. To do this, one must have regard to the fact that many complainants have been negatively and emotionally impacted by the action complained about.

These insights helped me to realise that emotional awareness is needed within the Ombuds institution so that the effect of the action complained of on the complainant is not dismissed. Without emotional awareness, it is sometimes wrongly assumed that the emotions of the complainant are irrelevant. Emotions have a place within the complaint handling process and are always relevant because emotions convey information.

AFFILIATIONS

Our Office continues to be an affiliate of these Ombudsman organisations.



CAROA – Caribbean Ombudsman Association
www.caribbeanombudsman.org



FCO – Forum of Canadian Ombudsman
www.ombudsmanforum.ca/en



International Ombudsman Institute
Institut International de l’Ombudsman
Instituto Internacional del Ombudsman

IOI – International Ombudsman Institute
www.theioi.org

OMBUDSMAN ASSOCIATION

OA – Ombudsman Association (formerly British and Irish Ombudsman Association)
www.ombudsmanassociation.org



USOA – United States Ombudsman Association
www.usombudsman.org

INTERNATIONAL CONFERENCE HIGHLIGHT

The Ombudsman for Bermuda joined with Ombudsmen from around the world in November 2016 in Bangkok, Thailand. Ms. Pearman was invited to speak at the 11th World Conference of the International Ombudsman Institute (“the IOI”). The Conference is held every four years, and this year’s principle theme was “Evolution of Ombudsmanship”. The Ombudsman addressed colleagues on a key topic of the conference, “Ombudsmen in Times of Crisis and under Threat”, as part of a panel. The IOI has pledged to offer support for Ombudsmen whose authority is under attack.

The IOI is the global organisation for the cooperation of Ombudsmen from more than 90 countries and 170 institutions. This was the Ombudsman’s second international presentation. Ms. Pearman previously presented to the United States Ombudsman Association. Former Ombudsman for Bermuda, Arlene Brock, also presented at the Bangkok conference on the legal frameworks for African Ombudsmen as well as on the traditional divide between Ombudsman and human rights. Ms. Brock is currently Director of the African Ombudsman Research Centre in Durban, South Africa.

This was the first IOI conference held in Asia. It was hosted by Dr. Viddhavat Rajatanun, the Ombudsman for Chief Ombudsman of Thailand. Although the Thai people were in a year of official mourning following the recent passing of their beloved monarch, they were gracious hosts. Conference attendees were given a warm welcome and first-class care and attention. It was the Ombudsman’s pleasure to be a part of this historic occasion, and she thanks the host, Dr. Rajatanun.

The Ombudsman institution emphasises improvement and best practice. The collegial nature of Ombudsmanship conferences and trainings plays an important role in this development. The opportunity to share experiences and expertise is invaluable. One way this is achieved is by membership affiliations.



Ombudsman's photo on Thai stamp

SUPPLEMENTARY RESOURCES

OMBUDSMAN ACT 2004 – IN A NUTSHELL

CHAPTER VI A, SECTION 93A OF THE BERMUDA CONSTITUTION 1968 PROVIDES THAT:

- The Ombudsman is appointed by the Governor, after discussion with the Premier who will first consult with the Opposition Leader.
- The Governor can remove the Ombudsman from office for inability to perform the functions of the office, misbehaviour, or engaging in any other unapproved job.
- 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 may investigate, among other matters, administrative decisions, acts, recommendations; failure to perform an act or make a decision or recommendation; and failure to provide reasons for a decision or action. (Section 2)
- the Ombudsman determines if there is evidence of “maladministration” which includes, but not limited to, 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, and negligent. (Section 2)
- the Ombudsman reviews administrative actions of all Government departments and boards, public authorities, other bodies established by Parliament or a Minister, or other bodies whose revenues or fees derive from money provided or authorised by Parliament. (Section 3)
- the Ombudsman investigates administrative action of an authority:

§ further to a specific complaint; or

§ on the Ombudsman’s own motion – notwithstanding that no complaint has been made – where there are reasonable grounds to carry out an investigation in the public interest. (Section 5)

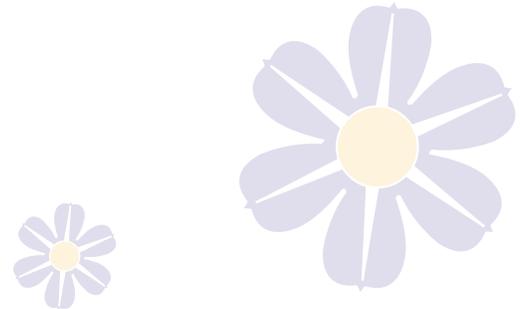
- at the conclusion of her investigation, the Ombudsman may make recommendations about the specific complaint and generally about ways of improving administrative practices and procedures. (Section 5)
- the Ombudsman may not investigate:
 - § until existing procedures or appeals have been exhausted unless the Ombudsman 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 looked into by the Courts;
 - actions taken by Cabinet, Ministers or Junior Ministers;
 - pardon power of the Governor;
 - action taken for investigation of crime or for protecting the security of Bermuda;
 - conduct of proceedings before the Courts or a tribunal; and
 - personnel and employment matters. (Section 6)
- complaints may be made in person (by walk-in or appointment), by telephone, by email (or website) or in writing by a person who is dissatisfied (or other suitable person) about actions within the last 12 months. (Section 7)
- individuals who are detained or confined are entitled to be given a sealed envelope to write to the Ombudsman. (Section 7)
- the Ombudsman may make preliminary inquiries before launching a formal

investigation or mediation. (Sections 8 & 10)

- the Ombudsman may decide not to investigate if:
 - § the complainant knew of the administrative action more than one year prior to the Ombudsman receiving the complaint;
 - § existing law or administrative procedure provide adequate remedy and there is no reasonable justification for the complainant not to have availed himself of that procedure; or
 - § the complaint is frivolous, vexatious or not made in good faith, or has been settled. (Section 9)
- 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. (Sections 11–13)
- all information given to the Ombudsman is privileged. It is not a violation of any relevant obligation of secrecy to provide information to the Ombudsman. No person may be penalised or discriminated against in the course of their employment for complaining, giving information or otherwise assisting the Ombudsman. (Section 14)
 - § Such employees may be protected as whistle-blowers under the Good Governance Act 2011.
- the Ombudsman makes recommendations as she sees fit including that an omission be corrected, decision be cancelled or altered, reasons be given, practice or course of conduct be altered, and enactment be reviewed. (Section 15)
- within 20 days of receiving the Ombudsman's recommendation, authorities must notify her of action taken or action proposed to give effect to the recommendation or reasons for failure to implement. She may submit a

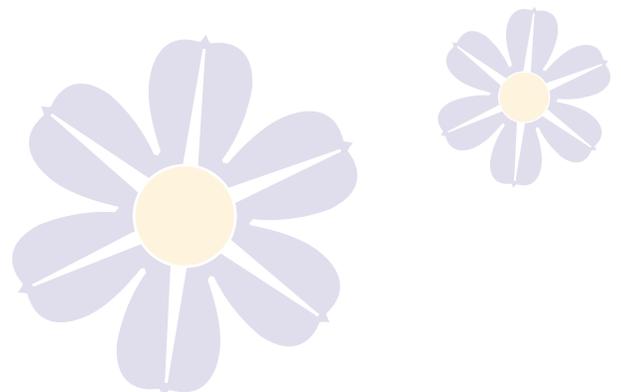
special report to Parliament if she deems the response inadequate or inappropriate. (Section 16)

- the Ombudsman submits an annual report and any special reports to the Speaker of the House of Assembly 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 before giving the authority an opportunity to be heard. (Sections 17 & 24)
- the Ombudsman and staff must maintain secrecy and cannot be compelled in Court proceedings to give as evidence information received in the course of their work. (Sections 20 & 21)
- any person who obstructs the Ombudsman in the performance of her functions commits the offence of Contempt of Court. Deliberately misleading or making false statements are summary offences. (Sections 25 & 26)



"True teaching is not an accumulation of knowledge. It is an awakening of consciousness."

- African Proverb



COMPLAINT DISPOSITIONS

Here is a description of each disposition category for closed cases, with reference to the relevant sections of the Ombudsman Act that provide guidance on our definitions.

Disposition	What It Means
Abandoned	Complainant did not provide sufficient contact information or respond to our attempts to make contact (see s.9(2)(a) re <i>decision not to investigate</i>).
Closed After Inquiries	We decided not to proceed with the complaint after making inquiries or based on an initial assessment because: (a) the issues within jurisdiction were adequately addressed; or (b) the questions we raised to the authority were sufficiently answered (see s.8 re <i>preliminary inquiries</i>). We may have used alternative resolution techniques (see s.10 re <i>mediation</i> ; and s.8 re <i>preliminary inquiries</i>). We also may have made general suggestions to assist the authority in improving its processes.
Closed Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of maladministration, and the authority provided its statutory response (see s.15(3) re <i>procedure after investigation</i> ; and s.16 re <i>authority to notify Ombudsman of steps taken</i>).
Closed Mixed Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of maladministration and no maladministration, and the authority provided its statutory response (see s.15(3) re <i>procedure after investigation</i> ; and s.16 re <i>authority to notify Ombudsman of steps taken</i>).
Closed No Maladministration	At the conclusion of a formal investigation, the Ombudsman made findings of no maladministration (see s.15(1) re <i>procedure after investigation</i>).
Declined	Issues raised were outside of our jurisdiction because of the subject matter and/or body complained of (see s.6(1)(3) and the Schedule re <i>actions not subject to investigation</i>). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re <i>decision not to investigate</i>) or determined to be frivolous (see s.9(1)(c) re <i>decision not to investigate</i>). In these cases, we may have declined outright or made inquiries to establish jurisdiction and/or determine whether there might be other forms of redress available for the complainant (see s.8 re <i>preliminary inquiries</i>).
Declined and Referred	Issues raised were outside of our jurisdiction because of the subject matter and/or body complained of (see s.6(1)(3) and the Schedule re <i>actions not subject to investigation</i>). Or, issues raised may have been within jurisdiction but were out-of-time (see s.9(1)(a) re <i>decision not to investigate</i>). We may have made inquiries to establish jurisdiction and/or determine whether there were other forms of redress available (see s.8 re <i>preliminary inquiries</i>). These inquiries may have included general or specific questions about the issues. We determined that there were other ways for the complainant to seek redress and provided information to the individual on possible next steps (see s.9(1)(b) re <i>decision not to investigate – alternative remedies</i>).
Enquiry	Person contacted us to seek information, not necessarily to complain, with questions about an authority's processes and/or our services. Person may have been aware that there were other steps to pursue before complaining to us. This may have included complaint letters addressed to authorities or other bodies that were copied to us.
Informally Resolved	Complaint was resolved between the authority and the complainant with informal intervention from us. We may have facilitated resolution by making brief, informal enquiries that prompted the authority's action and/or by coaching the complainant on how to approach the authority (see s.9(2)(c) re <i>decision not to investigate – settled</i> ; and s.8 re <i>preliminary inquiries</i>).
Referred	Complaint subject matter and/or body complained of fall within our jurisdiction, but there was a more appropriate remedy still available to the complainant (see s.6(1) and (2) re <i>restrictions on jurisdiction to investigate</i>). Complainant had not raised the issue with the correct authority or had not yet exhausted the authority's complaint handling procedure, and we determined that it was necessary and fair for the complainant to give the authority adequate opportunity to address the issues raised (see s.9(1)(b) re <i>decision not to investigate – alternative remedies</i>).
Withdrawn	Complainant requested that we take no further action on the complaint. This may have been done at any stage during the process (see s.9(2)(b) re <i>decision not to investigate</i>).

BACK COVER

The current Flatt's Bridge was built in 1966 from steel and concrete. When Bermuda's ship building industry was booming, the bridge used to open for vessels to pass between Flatt's Inlet and Harrington Sound, for a 10-shilling fee.

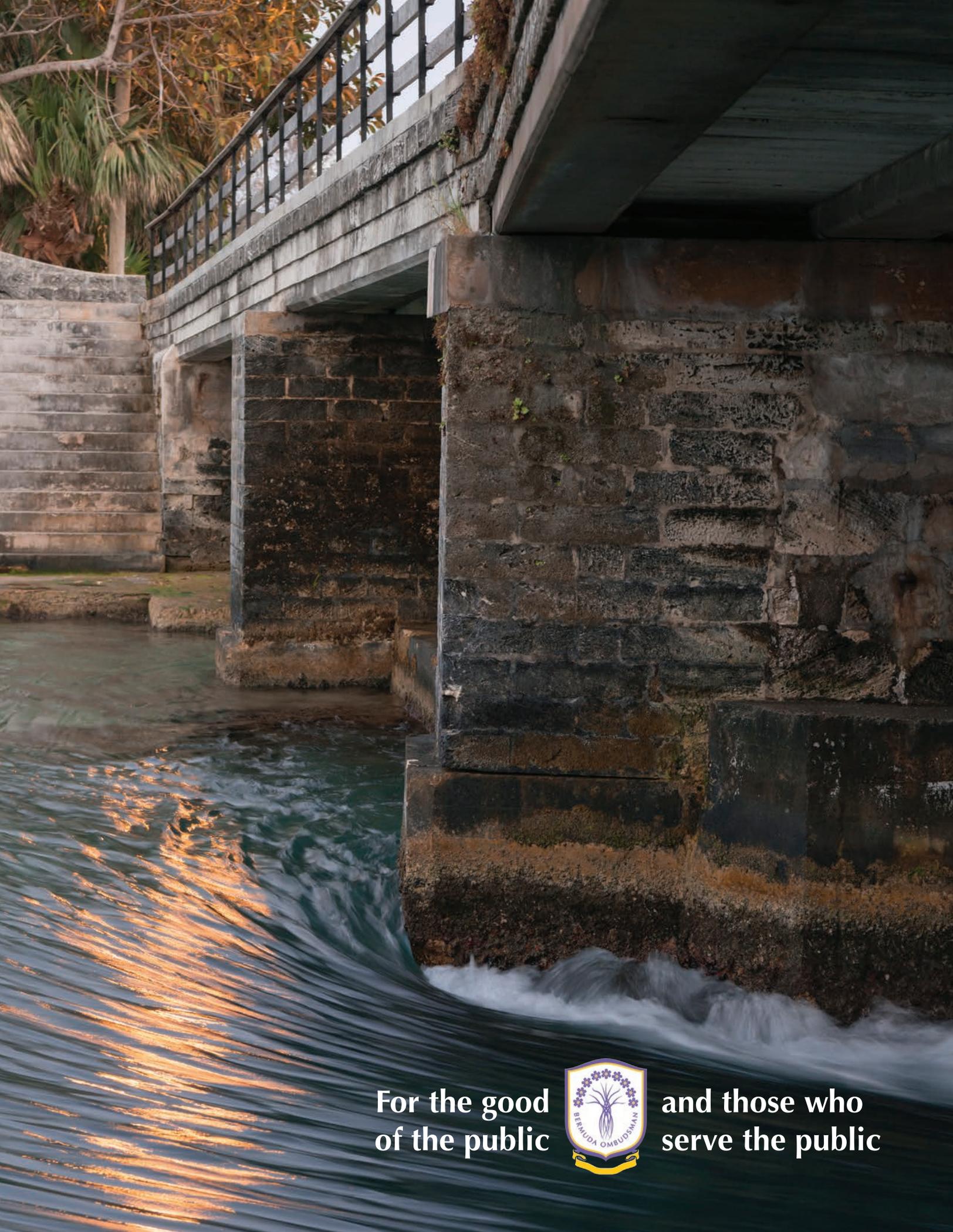
A footbridge that joined Smith's Parish and Hamilton Parish is thought to be our oldest bridge. The House of Assembly minuted its existence in 1620. Four years later, three other bridges were recorded – Somerset, Coney Island and Ferry Point Bridges – by Captain John Smith on his Bermuda map published in *The Generall Historie of Virginia, New-England, and the Summer Isles*.

SOURCE:

Jones, Elizabeth. "The Bridges of Bermuda." *The Bermudian*, 27 May 2015, www.thebermudian.com. Accessed 28 Jun. 2017.

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For the good
of the public



and those who
serve the public