



# ANNUAL REPORT 2015



“...as an ultimate objective, the Ombudsman can bring to the Legislature his observations on the misworking of administrative legislation. He can also focus the light of publicity on his concern as to injustices and needed change.

It must, of course, be remembered that the Ombudsman is also a fallible human being and not necessarily right. However, he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds. If his scrutiny and observations are well-founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good.”

- Re Alberta Ombudsman Act 10 D.L.R (3rd) 47 Chief Justice Milvain, 1970

### **FRONT AND BACK COVERS:**

Built in 1844, the Gibbs Hill Lighthouse considerably reduced the number of shipwrecks on the hidden reefs around the Island. It stands at a height of 117 feet on one of the highest hills on the Island. The tower contains a 1,000 watt bulb inside a revolving lens. Ships can see the light beam from 40 miles away, and airplanes can see its flashes from 120 miles away. It is now operated electronically and maintained by the Government's Department of Marine and Ports Services.

- Information from [www.bermudalighthouse.com](http://www.bermudalighthouse.com)

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## OMBUDSMAN FOR BERMUDA

28<sup>th</sup> June 2016

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

Dear Honourable Speaker:

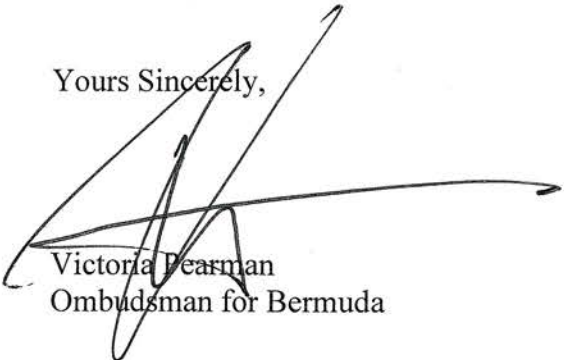
I have the honour of presenting my Annual Report which covers 1<sup>st</sup> January to 31<sup>st</sup> December 2015.

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 Dearman  
Ombudsman for Bermuda

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## OMBUDSMAN'S MESSAGE

It is my pleasure to present the Annual Report of the Office of the Ombudsman for Bermuda for the year 2015.

Last year, Victoria Park in the City of Hamilton was featured on the cover of our Annual Report. I may have been influenced by its proximity to our Office and familiar name. The cover showed a series of ropes holding up trees which had been uprooted and nearly devastated after Bermuda was hit by two hurricanes in the span of a week. Tied together, the trees supported each other. They stand strong again today.

This year's cover features Gibbs Hill Lighthouse, with which I am also acquainted. The lighthouse is in the neighbourhood of my childhood home to which I have recently returned to live. Children growing up on St. Anne's Road often played there, racing each other to the top of its 185 steps – with me bringing up the rear. There was also the excitement and jitters of trying to get to the top without being stopped by the lighthouse keeper, without a ticket or an adult. The beam was a constant in the dark after Mama's 'lights out' order or when power lines were blown down by storms.

Lighthouses are towers or structures displaying very bright lights for the guidance of vessels. They are a source of reliable illumination assisting navigation and the avoidance of hazards in following certain routes. They are usually funded and free of charge for users, not unlike our Office. The Ombudsman's role was famously described in an early Canadian authority as "bring[ing] the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds" (see inside cover for reference). The late Peter Woolcock, cartoonist and illustrator, humorously captured the metaphor of the Ombudsman's light in one of his cartoons.

Our Office opened to the public in September 2005 and celebrated its 10th anniversary in this reporting year. We later commemorated the anniversary with a week of training for



the Ombudsman's team, entitled "Advancing the Ombudsman's Impact – Roles, Services, Performance". Our training was with preeminent authority, Dr. Victor Ayeni, Director of Governance and Management Services International and former Director of Governance & Institutional Development at the Commonwealth Secretariat. This culminated with a well-attended public lecture by Dr. Ayeni entitled "Ombudsman in Everyday Life". Our training helped to change our focus from what has gone wrong, to how we can help to make it better. This is an important lesson we have learned.

The timing was serendipitous. When the date was fixed, we were unaware it had been 10 years earlier almost to the day that Dr. Ayeni had given a public address on the occasion of this Office's official opening on 19th January 2006. The address was held at the Bermuda National Library. Many thanks to the Director, Joanne Brangman, and her staff for accommodating this and visually recording it.

Our Office undertook an extensive review of outstanding complaints during 2014 and was pleased to report significant progress. Our main priorities in this reporting year were working to address complaints carried over from previous years and to improve complaint turn-around times. This is an ongoing part of our duty to be

accountable. We take it seriously and endeavour to model best practice. Additionally, considerable research and work was carried out in procuring an updated complaint management system to improve our efficiency. We look forward to fully implementing our new system in the next reporting year.

Our Office's 10th anniversary is an opportunity to reflect on our principles, gauge our position and plan our way forward. We are intent on continuing to reduce turn-around-time in complaint handling. We also are focused on awareness and accessibility to our Office with education and information. This requires both traditional and non-traditional outreach. Social media will not cover all those with whom we want to connect. It also remains our goal to reach out to Permanent Secretaries, Heads of Department and their staff to better understand our respective roles and develop improved relationships. This is done most effectively face-to-face, but also by the tone of our correspondence. We hope to build on our improved relationship and encourage opportunities for early informal resolution of complaints, where possible.

Our suggestion in our last report that departments should have their own internal complaint processes remains a goal. This will take some time as departments have indicated they are already stretched for resources as they grapple with the demands of their core work. Managing complaints will not tax the work of departments as it will ultimately save time and money. It will put the departments at the forefront of getting it right. Our wish list following our 10th anniversary year is ambitious yet attainable.

The work of our Office is normally neither glamorous nor heralded, but it is consequential. Our complainants are often people in our community who rely on us to confidentially ensure public officers hear and address their concerns, complaints and grievances. Most of our work is not reported publicly. We have learned that a single, seemingly small complaint can be the impetus for significant improvements. This mirrors what we have learned about our Office.

Even the work of a small team of six (seven including our student intern through the Summer Employment Programme) can make a big impact to affect change and improvement over time.

In the course of our work, we have encountered instances where cost cutting has significantly impacted staffing and service levels in the public sector. Departments have had to adjust to hiring freezes and budget cuts. During difficult economic times, competition for public resources and services intensifies. This is when a high standard of service in the public sector is required the most and warrants a renewed focus on good administration. Reduced funds do not mean that the public's entitlement to fair treatment by public authorities is diminished. We are mindful that civil servants are members of the public. Unreasonable expectations and demands on them come at a price and can compromise the quality of service and employee wellbeing.

Fair treatment in the provision of public services and in administrative decision making is a human right. No one should be required to convince officials that he has the right to be treated fairly and with respect. It is a human right to be treated fairly and with respect. It is not a privilege. This should be a guiding principle for the public service, and we can purposefully work together to make it so.

The Ombudsman is an ally and a resource in the cause of good governance. Watchfulness, vigilance and attentiveness are necessary. Understanding the Ombudsman's role requires an appreciation that she is not an advocate for any side, but an advocate for what is fair. The Ombudsman cannot permit any concerns over the relationship with Government, any entity or any individual to compromise the independence, integrity or authority of her work. Natural justice and scope for disagreement and objection are built into the Ombudsman's processes. Public confidence and trust are what encourage people to bring forward their matters. Statements that diminish the Ombudsman's authority undermine the public's right, willingness and confidence to complain. They also undermine the Civil Service's responsiveness to and respect for the

## Ombudsman's work and process.

In the next reporting year, we continue to balance our priorities and resources with matters we have under consideration. These may involve analysis of particular issues or systemic reviews, if necessary. Improvements in regulation and oversight of entities caring for seniors and persons with disabilities are an area of focus. Another area of focus is the sufficiency of effective oversight of financial institutions where members of the public allege unfair practices in complaint handling. In the case of private entities, we do not have jurisdiction to investigate unless the entity receives Government funding or was created by the Legislature or a Minister. We are in ongoing discussions with the Ministry of Health & Seniors as well as the Bermuda Monetary Authority, as the financial regulator, and Consumer Affairs. These public authorities are within my jurisdiction.

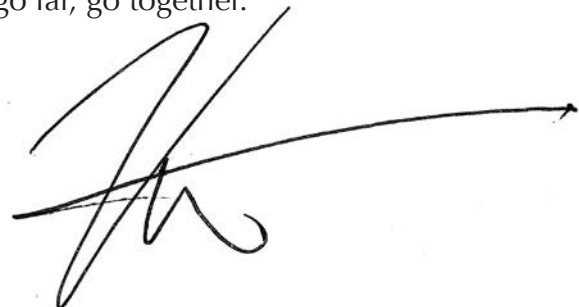
During our in-house training, Dr. Ayeni shared a surprising statistic. On average only 4% of people with grievances within a population complain. The remaining 96% of those who feel aggrieved do not formally make their feelings known. Therefore, I would like to sincerely thank those members of the public who bring their complaints to us. We appreciate the trust and confidence placed in our Office. We understand the seriousness of the issues at hand and the frustration that is felt. Matters you bring to our attention alert us to challenges which may impact the wider community. As an office of 'last resort', we do not take your complaints lightly. We always seek to assist in bringing about the best available resolution. This may mean at times that the response or proposed solution is not what complainants were expecting. It is our hope that, even in such cases, individuals will feel they have been heard and have received some outcome for their complaint.

To those who work in all sectors of the public service, I wish to thank you for the job that you do, often under difficult and challenging conditions. The knowledge and expertise you share with us along with the support you provide assists greatly in our efforts to uphold

our constitutional responsibilities. We appreciate the spirit of cooperation displayed by so many in order to achieve fair, timely and reasonable resolutions.

I wish to express a special thank you to my team at the Office of the Ombudsman. They are young, gifted Bermudians of whom I am very proud. They are dedicated to the work we are charged with and believe what we do has an impact on good governance in Bermuda. They fortify me. As they will be the first to read this, I want each of them to know their invaluable contributions are appreciated. I also wish to thank Georgé Wilson, a Business Studies and Politics graduate who worked as our 2015 summer intern. Ms. Wilson was instrumental in helping us to review files, conduct research and compile information in preparation for this report as well as general assistance on office projects. Teaching and learning are not one-way streets. Thanks to all international colleagues who are never too busy to discuss and share. It is gratifying to have the assurance that they are always on the other end of the telephone or just an e-mail away.

My thanks to all who have played a part and shared in the growth and accomplishments of the Office in 2015. Our team is committed to assisting the public and to assisting the Government to improve service to the public. This is in keeping with the tradition established in the first 10 years of this Office and our continued advancement as we navigate the challenges to come. As an African proverb that Dr. Ayeni brought to our attention teaches us, "If you want to go fast, go alone. If you want to go far, go together."



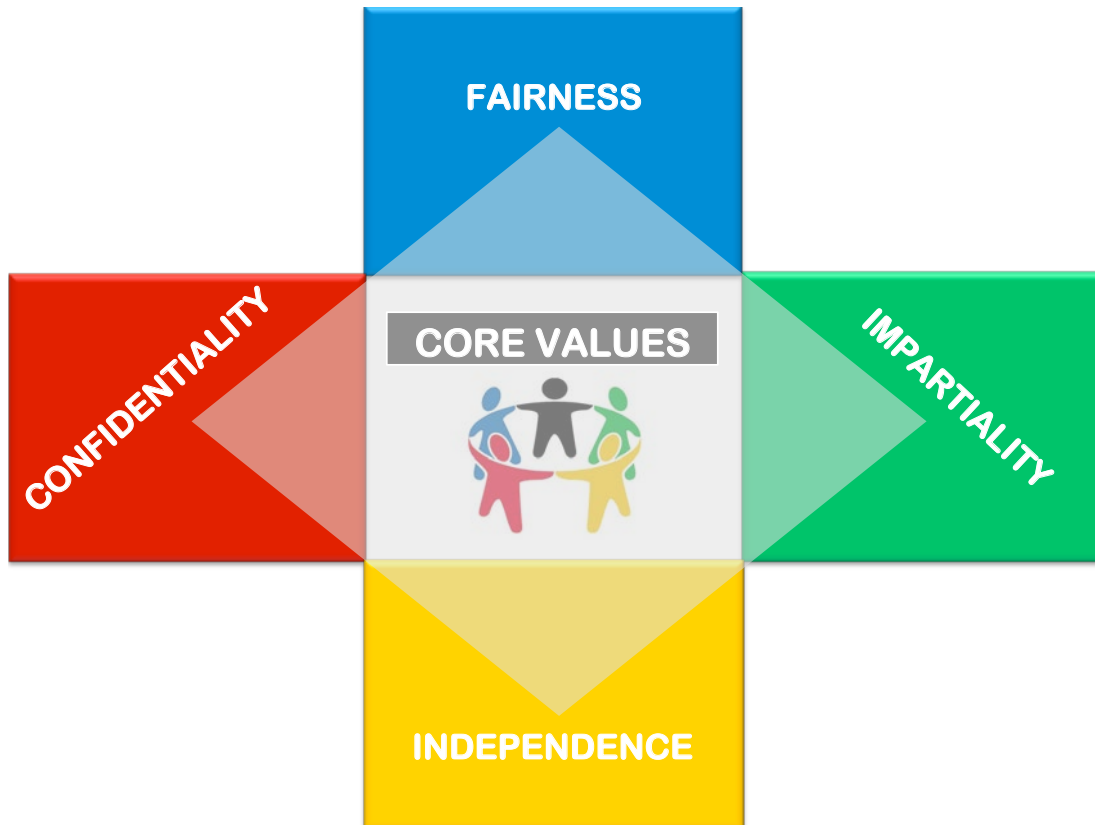
Victoria Pearman  
Ombudsman for Bermuda



## MISSION STATEMENT AND CORE 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



**Georgé Wilson**  
*Summer Intern 2015*

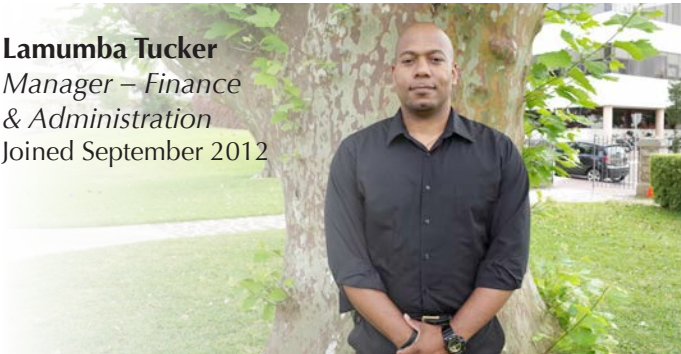
**Victoria Pearman**  
*Ombudsman for Bermuda*  
Joined March 2014



**Catherine Hay**  
*Deputy Ombudsman /*  
*Investigations Officer*  
Joined October 2011



**Lamumba Tucker**  
*Manager – Finance*  
*& Administration*  
Joined September 2012



**LaKai Dill**  
*Investigations Officer*  
Joined December 2014



**Robyn Eve**  
*Executive Assistant*  
Joined January 2016



**Aquilah Fleming**  
*Complaint Intake Officer*  
Joined March 2014



### **SPECIAL THANKS TO**

**Lynda Augustus**  
*former Executive Assistant*  
who left our Office in December 2015.  
Our appreciation for the invaluable support and assistance she provided cannot be overstated.

## CONGRATULATIONS TO FORMER OMBUDSMAN



*L-R: Former Ombudsman for Bermuda, Arlene Brock; Dr. Victor Ayeni, Director of GMSI; Ombudsman for Bermuda, Victoria Pearman*

The Office of the Ombudsman extends a warm congratulations to our former Ombudsman, Arlene Brock, on her appointment as Director of the African Ombudsman Research Centre (“AORC”) in KwaZulu-Natal, South Africa. Ms. Brock’s work as Bermuda’s first Ombudsman in creating this Office speaks for itself and has laid a strong foundation for our continued growth. It is AORC’s good fortune to have the benefit of her expertise and vision. We have no doubt that, with her guidance, AORC will contribute great things for Ombudsmanship and for people globally. This is an exciting opportunity, and we wish her every success in her new endeavour.

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“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  
in January 2006 at the official opening of our Office

## OMBUDSMAN FOR ALL PEOPLE

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

In pursuit of greater accountability to the public, the Legislature, the Government and the Civil Service – who all have a vested interest in the success of Bermuda’s national Office of the Ombudsman – our team has continued to work diligently to achieve these aims. In our Annual Report 2015, we report on these efforts and our progress during this Office’s 10th year in service. We also reflect generally on the work of the Ombudsman over the 10 years of our existence.

Continuing on from an initiative introduced in last year’s report, the Ombudsman’s strategic aims lay out a structure for presenting this Annual Report.

- The second section on “Greater Public Access” describes how the public can reach us, what the advent of the Public Access to Information Act 2010 (“PATI”) regime means for our Office, and suggestions on how complainants can help us assist them. We also describe useful information on how authorities operate and what policies, procedures, practices or laws guide their decisions in our ‘Did You Know’ section.
- The third section on “Greater Public Awareness” reviews our complaint handling both in 2015 as well as over the past 10 years. We first focus on the past year, providing selected summaries of complaints closed in 2015 with our reflections on important lessons learned. Then looking back over our 10 years, we report on our complaint handling since 2005 and provide an easy reference guide on the Ombudsman’s systemic investigations and special reports to Parliament.
- The fourth section on “Championing Best Practice” describes what we have done to build upon our strengths and improve our processes, as well as our outreach and training activities for 2015.
- The fifth section features quick reference resources, including an overview of the law that guides our work – the Ombudsman Act 2004 (“the Ombudsman Act”) and our complaint process flowchart.

This Annual Report is geared towards presenting our overall performance in the year 2015 in an easy-to-follow format. Our complaint handling data is illustrated using various figures, in a performance-focused way to give a snapshot of how our complaints process works. We provide more detailed information on how we addressed cases in 2015, including complaints carried over from previous years, along with our definitions of what each disposition category means. We also show basic comparisons of complaints from year-to-year during our 10 years.

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





“When you behave the same way, you get the same results.  
But when you behave differently, you get different results.”

- Spencer Johnson

## STRATEGIC AIM I:

### **GREATER PUBLIC ACCESS**

An Ombudsman exists to address complaints from the public. It is that simple. An Ombudsman can perfect her office's policies and procedures and have well-trained and proficient staff, yet without addressing complaints, she is not fulfilling her function. In keeping with this, an Ombudsman must focus on making her services accessible to all. Our Office has made accessibility a priority, and we wish to highlight our efforts to that end.

We want to remain relevant and responsive, so we keep abreast of developments and public opinion. We also gain insight when people come through our doors or approach us on the streets. It is gratifying to hear people express confidence in our ability to help address a wide variety of their concerns. We are also aware of a misconception that we are a 'catch all' office. In fact, our Office is one of last resort.

While the Office of the Ombudsman exists to help the public resolve complaints about Government services, there are areas where our powers may be partially or wholly restricted. There are good reasons for these restrictions. An Ombudsman is meant to be the final decision maker on what is and what is not administratively fair. To be effective in this way, an Ombudsman should avoid becoming side-tracked by matters within the purview of other bodies.

*See past commentaries on: (a) the "Evolution of the Modern Ombudsman" in our Annual Report 2010, with reference to the Ombudsman and other independent bodies forming the 'integrity branch of Government'; and (b) the "Indicators of Independence" in our Annual Report 2010 Interim.*

## **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 in a quandary on your own. 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; or 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.

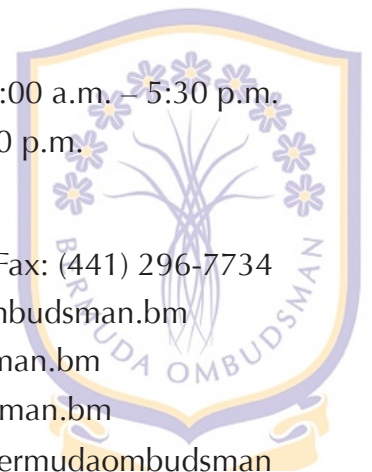
### **CONTACTS:**

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

Emails: [complaint@ombudsman.bm](mailto:complaint@ombudsman.bm)  
[info@ombudsman.bm](mailto:info@ombudsman.bm)

Online: [www.ombudsman.bm](http://www.ombudsman.bm)

[www.facebook.com/bermudaombudsman](https://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](http://www.ombudsman.bm). Not only can you submit a complaint to us by an online form, you can also find all of our special reports and annual reports in a downloadable format.

In terms of online traffic, our website hosted 2,523 users and 6,962 page views in 2015. Of those page views, 78% were made by new visitors and 22% were made by returning visitors. The average session duration on the site was one minute and 26 seconds. By far the busiest month for site traffic was June, corresponding with the release of our Annual Report 2014 which included updates on two systemic investigations.

In comparison, 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 hope to attract even more online users, locally and internationally, including to our social media presence at [www.facebook.com/bermudaombudsman](http://www.facebook.com/bermudaombudsman). Here we aim to regularly post facts of interest and provide important information from an Ombudsman’s perspective.

A majority of complainants in 2015, a total of 80%, 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 1: How People Contacted Us in 2015**

	<p><b>Telephone</b> 52% 120 By phone</p>
	<p><b>In Person</b> 28% 64 By walk-in or appointment</p>
	<p><b>Email</b> 16% 38 By email or website</p>
	<p><b>Letter</b> 4% 10 By letter (mailed, hand delivered or faxed)</p>
<b>Total Contacts in 2015:</b>	<b>232</b>

## EMPOWERING THE PUBLIC TO RESOLVE THEIR COMPLAINTS WITH AUTHORITIES

When things go wrong, sometimes the stress and frustration can feel overwhelming. There are practical steps that people can take to assist themselves in making a complaint. We encourage complainants to be proactive and to feel empowered, whether complaining directly to an authority or when coming to our Office.

### STEP 1 - BEFORE MAKING A FORMAL COMPLAINT, ASK YOURSELF:

- What is my concern? Make note of what your concerns and/or questions are. For example, do you feel you were treated fairly? Do you have a concern about an outcome or decision? Do you feel that a process is fair? Do not be afraid to write down more than one concern or question.

- How can I be assertive and effective? Try to be specific and use details to explain yourself.
- Have I taken ownership of an error or oversight on my part or by someone else on my behalf? Be honest with yourself.
- Have I spoken with the right person? Often misunderstandings can be solved informally by talking to the right person who is familiar with the issue. If addressing your concern will require more decision making power beyond the frontline staff, say that you wish to speak with someone more senior.
- Would it be good to ask a trusted friend or family member to help me? Set yourself up for success by seeking support or assistance when you need it.

## STEP 2 - BE PREPARED WHEN FILING A COMPLAINT:

- Keep a record of all communication with the authority and any other body you contacted about the issue (names, dates, what was said, agreed upon next steps for yourself and the authority).
- Compile and organise all relevant documents, emails and correspondence (this could include envelopes with post office date stamps).
- Take notes at each stage of the process. This will help you prepare a summary and timeline of what happened.
- Ask the authority to explain its complaint procedure and whether it is available in writing.
- Promptly carry out directions, instructions or guidance provided by the authority which that will assist you. Otherwise, make clear why you decided not to follow them. Delays on your part can make addressing your complaint more difficult.

**“We do not, and never will, accept the proposition that the business of the public is none of the public’s business.”**

**- The Hon. Ian Scott, July 1985**  
(Former Member of Provincial Parliament in Ontario, Canada)

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## MORE TRANSPARENCY IN GOVERNMENT: PATI

In April 2015, Gitanjali S. Gutierrez commenced her term as Bermuda’s first Information Commissioner. Ms. Gutierrez provides oversight of all public authorities’ application of the Public Access to Information Act 2010 (“PATI”). What this means for all of us is that public authorities have to provide more information about their activities and that any Bermudian or resident of Bermuda can request copies of public records. If the Government or public authority refuses to provide a record, there is an independent oversight body that has the final say.

Much like our first Ombudsman 10 years ago, Ms. Gutierrez has the arduous task of not only setting up a new public office and making decisions on appeals, but also educating the public on what PATI means for Bermuda. From the perspective of our Office, the power to request records from an authority is a very important one. There are limited exceptions which restrict access to a record. There is a presumption that a record should be provided unless a specific justification exists in PATI – for example, to protect confidentiality or other rights.

In the years before PATI, we received several complaints which hinged upon an authority’s refusal to provide a complainant with a document or other record. For instance, one individual complained that an authority was arbitrary in its classification of documents. The authority refused to provide the complainant with a document which she believed should have been classified as a document available to the public. That complaint is an illustration of the importance of PATI and the Information Commissioner’s Office (“ICO”). Now with



PATI in effect, public authorities can no longer implement their own classification policies deeming huge categories of records out of the public's reach.

As of April 2015, if an authority refuses to provide an individual with a document, the individual can apply for this decision to be reviewed – first by the authority's head and then, if the individual is still unhappy with a decision, by the ICO. The Information Commissioner's decisions are binding and they can be filed with the Registrar of the Supreme Court to be enforced in the same way as an order of the Supreme Court. Any party (including the requester, authority or a notified third party) to a decision by the Information Commissioner has the right to apply to the Supreme Court to judicially review her decision.

At our Office, we believe it is important for the public to be empowered to resolve disputes with public authorities. Being informed can positively impact the resolution of a complaint. The access to public documents created by PATI could have provided vital information for many of the complainants who sought the assistance of the Ombudsman before April 2015. It is our hope that members of the public will avail themselves of this right of access. Below is guidance from the ICO on how to make a PATI request.

## WHERE TO START

- *Decide which records you want.* Think about how a public authority keeps records of the type of information you are looking for (for example, in a report, policy document, manual, minutes of meetings, or email, etc.).
- *Figure out which office has it.* You should file your request to the public authority that holds the records of information you are looking for. There are over 200 public authorities. A good place to start is to search the Government portal or refer to the Government organisational chart ([www.gov.bm](http://www.gov.bm)).
- *Make your request to the information officer.* Each public authority has a staff member

assigned to take PATI requests called an information officer. Once you have decided which public authority to approach, you can find out how to file your request by looking at its Information Statement. An Information Statement tells you whom to send your request to and also describes the kinds of records held by a public authority. The Information Statements are listed on the ICO's website ([www.ico.bm](http://www.ico.bm)) and on the Government portal ([www.gov.bm](http://www.gov.bm)). Paper copies of the Information Statements are held at the ICO, the Bermuda National Library and the Bermuda Archives.

## WHAT TO INCLUDE IN YOUR REQUEST

- *Put it in writing.* Your request should be in writing. Requests can be made by email. Some public authorities may ask you to complete a PATI Request Form, but this is not mandatory.
- *Be specific.* Give as much detail as you can about the information you are looking for. Your request should clearly describe the records so that the public authority can understand what you are looking for and can search to find the records.
- *Decide how you want to receive the information.* Make it clear in your request how you want to receive the records. Keep in mind the public authority may charge you a fee. Consider asking for an email copy, which should be free. Be sure to provide your contact information so that the public authority can reach you about your request.

## TIPS WHEN MAKING YOUR REQUEST

- *Call ahead.* Once you know who the information officer is, call and ask for guidance about the public authority's procedures before you file your request.
- *Ask for help.* If you are unsure about what specific records to ask for, do not hesitate to admit that you are unsure. The public authority has a duty to assist you with making your request. They can even transfer your request to another public authority if the records are held by another public authority.

- *Have your ID ready.* When you make your request, the public authority may ask you for proof that you are Bermudian or a resident of Bermuda. This is to confirm your eligibility. Be prepared, but know that public authorities should not demand to keep a copy of your personal identification without your consent.
- *Insist on confidentiality.* Your identity must be kept confidential by the public authority. You should tell the information officer if you are worried about someone finding out about your request.
- *Be proactive.* The public authority has five days to acknowledge that it received your request and six weeks to decide if it can give you the records. This can be extended in certain cases. Monitor the deadlines. If you have not heard from the information officer, call and ask for an update. Remember, they are there to assist you.

#### WHAT IF THEY SAY NO?

- *Consider their reasons.* If you agree with the information officer's reasons for not giving you all or part of the records, or you are satisfied with the records they have given you (even if it is not all the records you asked for), then there may not be need to take further action.
- *Ask again.* If you are dissatisfied with the outcome, you can ask for the person in charge of the public authority to conduct an internal review of the decision. The information officer's decision should tell you how to ask for this. Some reasons to ask for an internal review are: you were not given access to all or part of the records; the information officer failed to decide within six weeks; the information officer chose not to give you the records in the way you asked for them; or you disagree with the fee (a full list of reasons are found in s.41 of PATI).
- *Appeal.* If, after you receive a decision by the head of the public authority, you are still dissatisfied with the decision, you can ask for the Information Commissioner to conduct a review and make a binding decision.

Be aware of time limits. For information on how to file an application for appeal with the ICO: go to [www.ico.bm](http://www.ico.bm); send an email to [info@ico.bm](mailto:info@ico.bm); call the ICO on 294-9187; or visit their office at Valerie T. Scott Building, 60 Reid Street, Hamilton HM 12.

#### DID YOU KNOW?

In our daily work, we learn new information about the Government's services and processes. Here is a selection of information on a variety of topics of public interest.

#### APPEALING A DEPARTMENT OF SOCIAL INSURANCE DECISION

The Department of Social Insurance ("DOSI") handles the day-to-day administration of the Government's Contributory Pensions Fund and oversees benefits to war veterans. It also distributes disability benefits and widow(er) benefits. When a person is eligible to receive his social insurance, he must file a claim with the Director of DOSI who is charged with determining claims made under the Contributory Pensions Act 1970 ("the CPA"). She is also charged with addressing "questions arising under or in connection" with the CPA (s.25 CPA).

If a person is aggrieved with the Director's determination on his question or of his claim, section 26 of the CPA provides the person with the right to appeal to a tribunal embodied under the CPA. An appeal must be made by notice to the Director within 30 days after the date on which the Director's decision was given (s.26(1) CPA). Further, if a person is aggrieved by a decision given by the Tribunal, he may appeal to the Supreme Court (s.28(1) CPA).

Under section 32(1) of the CPA, "All sums due to the [Contributory Pensions] Fund shall be recoverable as debts due to the Crown, and without prejudice to any other remedy, may be recovered summarily as a civil debt by the Director." In other words, the Director may take a legal action to recover a debt owed for any outstanding amounts (e.g. payments which a former employer failed to pay).

It is open to an individual to take legal action against a former employer under the CPA for failing or neglecting to pay any contributions it was liable to pay (s.33 CPA). There are time limitations which may need to be considered and addressed. However, these time limits do not commence at the time of the alleged wrong doing. Rather, the CPA anticipates that legal action under section 33 must be commenced within one year after the date on which the person would have been entitled to the benefit. This means that a court action may be taken against a former employer 20 years after the employer failed to make social insurance contributions on his employee's behalf, as long as the employee commences his action within a year of the date on which he becomes eligible for social insurance benefit.



## **STEPS FOR LODGING A HEALTH AND SAFETY COMPLAINT**

If you wish to make a complaint about health and safety conditions at your place of employment in the private sector, you may contact the Health and Safety Officer (“the Officer”) within the Department of Health. The Officer receives complaints about private entities concerning potential breaches of the health and safety standards outlined in the Occupational Safety and Health Act 1982 (“OSHA”). The Officer is responsible for many important areas, including the inspection of medical equipment at the King Edward VII Memorial Hospital and in medical practitioners’ offices as well as inspecting for asbestos and mould in buildings. He is also called to the sites of industrial and private accidents.

You can make a complaint by telephone and can choose to remain anonymous if you wish. Section 7C of OSHA protects employees from losing their job if they make a complaint of a breach of health and safety standards against their employer. After your complaint is made, the Officer may investigate the site complained of and take note of any breaches. Subsequently, he will discuss how the problem can be resolved with the management of the entity responsible for the breach. After the discussion, the Officer sets a deadline for the problems to be addressed. Depending on the level of danger, the Officer may require immediate action, may give a fine and/or may shut down the operations of the entity on the spot. However, he will not specify how the problem should be addressed as the managers have the ultimate responsibility of deciding how the problem will be solved. The Officer will follow up with the management of the entity once the deadline has passed to ensure that the entity site is in compliance with health and safety standards. If the deadline has passed and the entity still has not resolved the breach, the Officer may give the entity one last chance to rectify the breach before referring the matter to the Department of Public Prosecutions. An employer can be fined a maximum of one million dollars (s.21 OSHA).

Under section 19 of OSHA, the Officer’s reports are confidential and can only be subpoenaed by the Courts. Employees may request a summary of the reports arising from their complaints. The management of entities found in breach do not receive the full report; instead, they receive a list of problems and the date by which the breaches should be rectified. The reports are exempt from Public Access to Information requests.

Health and safety complaints about Government workplaces can be made to the Safety and Health Coordinator who falls under the Cabinet Office.

## **POLLUTION COMPLAINTS**

There are a variety of ways in which people can pollute our beautiful Island. There are also several Government agencies responsible for handling different types of pollution complaints.

The Department of Environment and Natural Resources (“DENR”) can assist you with complaints and questions about the following types of pollution:

- For air, including exhaust, fumes, dust or odours emitted from equipment or facilities (e.g. sewage treatment plants, electrical generators, spray paint facilities, sand sifters, rock crushers, etc.), or for open-air burning of any materials; and
- For water, including pollution of groundwater, ponds or seawater from any sources (e.g. fuel tanks, boats, ships, etc.).

If you witness the above types of air or water pollution, you may contact DENR at:

Tel 1: 239-2303

Tel 2: 239-2356

Tel 3: 239-2318

Email: [pollutioncontrol@gov.bm](mailto:pollutioncontrol@gov.bm)

Additionally, the following environmental concerns are addressed by other authorities:

- For asbestos, drinking water quality issues, air quality within buildings and industrial noise, contact the Environmental Health section in the Department of Health at:  
Tel: 278-5333  
Email: [envhealth@gov.bm](mailto:envhealth@gov.bm)
- For litter and illegal dumping, contact the Ministry of Public Works at:  
Tel: 278-0560  
Email: [recycle@gov.bm](mailto:recycle@gov.bm)
- For garbage collection, contact the Ministry of Public Works at:  
Tel: 292-7454
- For vehicle emission pollution, contact the Transport Control Department at:  
Tel: 292-1271

## CUSTOMS' SEARCH POWERS

An example of the Ombudsman’s restricted jurisdiction is seen in complaints about Customs’ search powers. Paragraph 4 of the Schedule to the Ombudsman Act prohibits us from investigating administrative actions taken for the purpose of protecting the security of Bermuda. While this means that our assistance with search powers complaints is limited, it does not prevent us from raising issues with the Collector of Customs when people reach out to us. The Collector was very responsive to our inquiries. She is willing to speak with those who have questions about search powers or have raised complaints and are not satisfied with the response received.

Over the last two years we have seen a number of complaints questioning Customs’ search powers at the L. F. Wade International Airport (“the Airport”). Through our inquiries, we have learned that Customs officers at the Airport are tasked with serving multiple functions in accordance with Governmental agreements and empowered by statute.

These includes the inspection of passengers for the purposes of immigration and health and security risk assessments. The breadth of questions that Customs officers may ask passengers extends beyond the import of dutiable and non-dutiable goods to broadly encompass many sensitive aspects of border control. This also means that a passenger who does not have goods to declare or travels with carry-on luggage only is not exempt from being inspected by Customs officers by virtue of standing in the ‘green channel’. Given its multiple functions, it can be routine practice for a passenger’s passport to be taken into a separate office for an immigration manager to complete a more thorough inspection of the record. It is also routine practice for a passenger to be questioned regarding his ability to sustain himself financially while staying in Bermuda.

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“Hands washed together come out cleaner than a single hand washed by itself.”

- Sierra Leonean Proverb

## NEW ONLINE EXAMINATION FOR GENERAL PRACTITIONERS

The Bermuda Medical Council launched a new, online qualifying examination for registration as a General Practitioner in Bermuda in January 2016, as part of its efforts to stay abreast of best practice initiatives. The standardised examination is administered through the National Board of Medical Examiners in the USA and proctored by qualified staff at the Ministry of Health & Seniors. For more information on the General Practitioners' registration process, contact the Bermuda Medical Council through its Executive Officer by email at [officeofcmo@gov.bm](mailto:officeofcmo@gov.bm).

## LAND TITLE REGISTRY

In last year's Annual Report, we provided 'Did You Know' information on Bermuda's Land Title Registry ("the LTR") and called upon the Government to take the remaining necessary steps to commence the operation of this office. The Government anticipated that the public would be able to start registering land in 2016. In November 2015's Throne Speech, the Government expressed its intention to table the Land Title Registration Amendment Bill in this Parliamentary session. Thereafter we sought updates from the Ministry of Public Works and the Ministry of Legal Affairs.

The LTR is still not operational and has yet to open its doors to the public. In June 2016 in preparation of this Annual Report, we have been told that "the Ministry of Public Works is still working towards the implementation timeline of 2016". As we said last year, we anticipate that the Government will ensure this is not delayed any further and will proceed with all necessary steps.

We stated in our Annual Report 2014 that "it was surprising to learn that Bermuda was so far behind much of the developed world in its exclusive reliance on a deed-based property transaction system. The length of time taken for Bermuda to adopt a title-based registration system and bring this office on line frankly is embarrassing and expensive.

In the past year there also has been lost revenues from fees the [LTR] should have generated".

The total cost of running and setting up the office from 2005 to 2016 has been over \$11 million. If the LTR were operational, it is projected that its minimum annual income would be \$1.1 million.

The LTR was set up between 2005 and 2006, the same time when the Office of the Ombudsman was established. Two experienced Land Title Officers were seconded from the UK Land Title Registry Office to assist with training the Bermudian officers and to help supervise them once the LTR had become operational. However, so much time has passed since the office was set up that the two secondees returned to their positions in the UK in 2014 and 2015.

The LTR currently has six employees, four of whom are Bermudian. The Bermudian staff includes:

- Two Land Title Officers who have undertaken the certificate in Land Title Registration Law and Practice and also were seconded to the UK in 2011 for six months to work in a UK Land Title Registry Office;
- A Mapping Officer who has also undertaken the certificate in Land Title Registration Law and Practice, and who has visited a UK Land Registry Office to learn about its functions; and
- A Trainee Legal Officer who has been seconded for two years to work in the UK to gain experience working in a jurisdiction where land registration is practiced and where she is working toward qualifying as an attorney.

For more information on the purpose and functions of the LTR, see pp.23-25 of our Annual Report 2014. Note that we referred to it then as the Land Title Registry Office. This year, due to department transitions, we refer to it simply as the Land Title Registry.

**Download the report from [www.ombudsman.bm](http://www.ombudsman.bm)**

STRATEGIC AIM II:  
**GREATER PUBLIC AWARENESS**  
**– 2015 IN FOCUS**

**2015 IN NUMBERS**

From 1st January to 31st December 2015, our investigations team of four worked to address a total of 333 cases (see Figure 5). Our 2015 complaint activity may appear to be substantively higher on comparing it with past years for two reasons (see Figure 12).

As of 1st January 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 answered immediately, but sometimes more time was needed to provide the person with guidance. We received and dealt with a total of 71 enquiries in 2015.

In addition to the enquiries, we received 161 new complaints in 2015. Hence, the number that more accurately describes new cases received in 2015 is 232, this being the total of complaints and enquiries (see Figure 4). But this number still does not capture the full scope of our caseload in 2015. We need to add to it the data about complaints that were carried over from 2014.

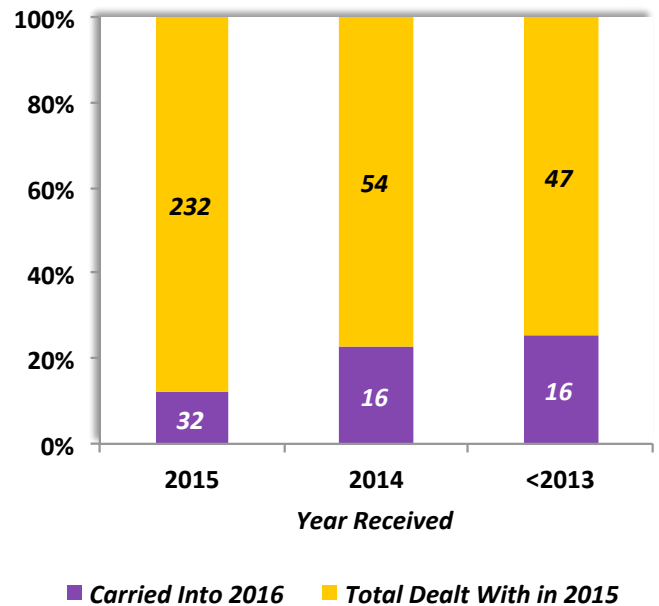
**Figure 2: Cases Received in 2015**

Disposition	Year 10
Open	32
Declined	47
Disposed of (Addressed)	21
Referred	61
<b>SUBTOTAL</b>	<b>161</b>
Enquiry	71
<b>TOTAL</b>	<b>232</b>

As of 31st December 2014, we carried over into 2015 a total of 101 complaints that had been opened in previous years. (A further reconciliation revealed that the number of active complaints at the end of 2014 was not 98 as previously reported but 101.)

When these two factors are considered, we demonstrate that during 2015 we worked to address a total of 333 cases (see Figure 5). Of this total, 269 cases were closed in 2015, and 64 cases were carried over into 2016 (see Figure 3). Of those 64 cases carried over into 2016, 33 were closed by 31st May 2016.

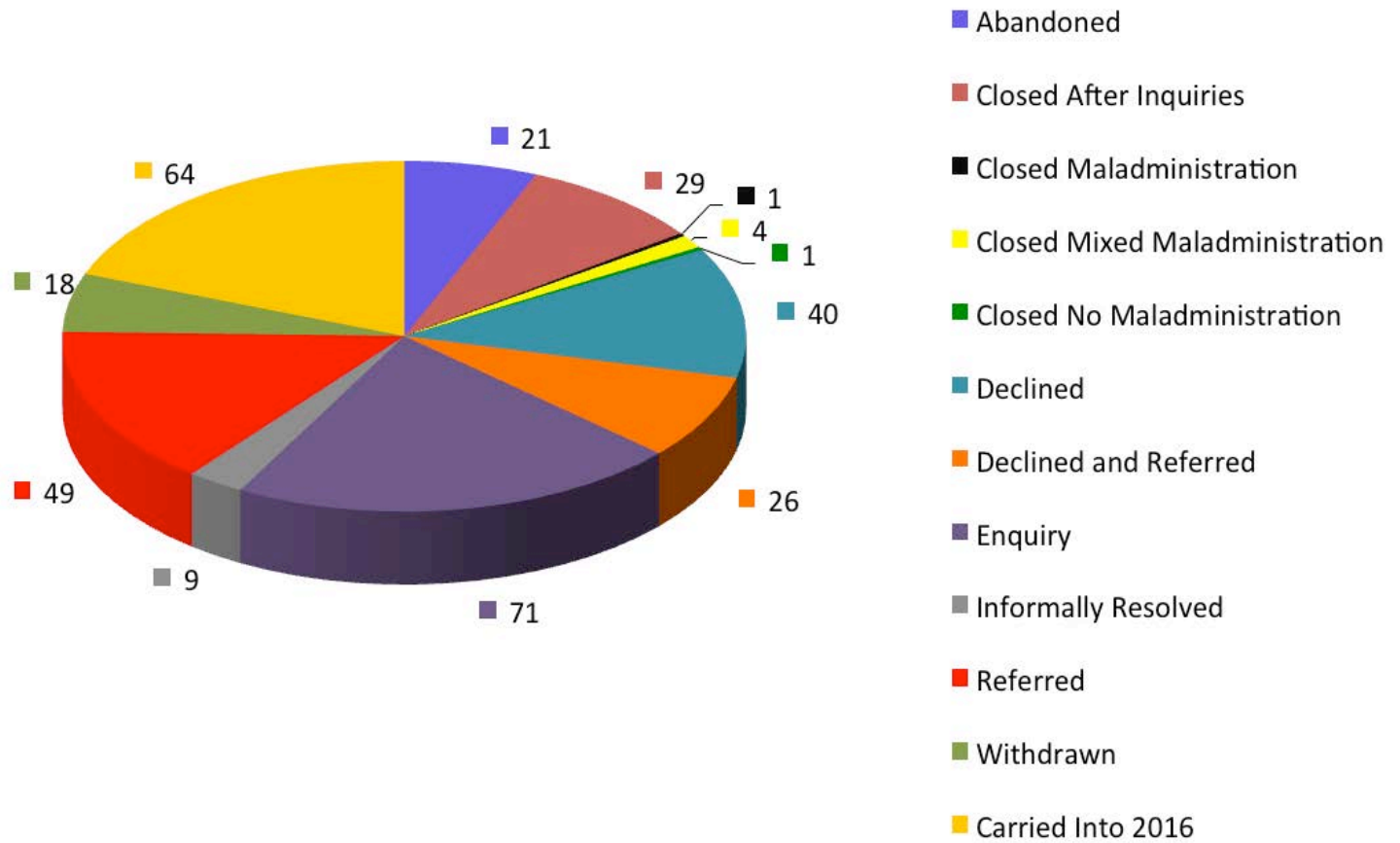
**Figure 3: Cases Open in 2015**



“To get lost is to learn the way.”

- African Proverb

**Figure 4: Cases Worked On in 2015 per Disposition – total 333**  
*(categories are listed clockwise from top centre)*



**Figure 5: Cases Worked On in 2015 per Disposition and per Open Year or Period – total 333**

Disposition	2015	2014	<2013	TOTAL
Abandoned	7	5	9	21
Closed After Inquiries	14	4	11	29
Closed Maladministration	0	0	1	1
Closed Mixed Maladministration	1	1	2	4
Closed No Maladministration	0	0	1	1
Declined	34	6	0	40
Declined and Referred	25	1	0	26
Enquiry	71	0	0	71
Informally Resolved	6	2	1	9
Referred	36	12	1	49
Withdrawn	6	7	5	18
<b>TOTAL CLOSED IN 2015</b>	<b>200</b>	<b>38</b>	<b>31</b>	<b>269</b>
Carried Into 2016	32	16	16	64
<b>TOTAL WORKED ON IN 2015</b>	<b>232</b>	<b>54</b>	<b>47</b>	<b>333</b>

**Figure 6: Here is a description of each disposition category, with reference to the relevant sections of the Ombudsman Act which provide guidance on our definitions.**

<b>Disposition</b>	<b>Definition</b>
<b>Abandoned</b>	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> ).
<b>Closed After Inquiries</b>	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.
<b>Closed Maladministration</b>	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> ).
<b>Closed Mixed Maladministration</b>	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> ).
<b>Closed No Maladministration</b>	At the conclusion of a formal investigation, the Ombudsman made findings of no maladministration (see s.15(1) re <i>procedure after investigation</i> ).
<b>Declined</b>	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> ).
<b>Declined and Referred</b>	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> ).
<b>Enquiry</b>	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.
<b>Informally Resolved</b>	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> ).
<b>Referred</b>	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> ).
<b>Withdrawn</b>	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> ).



To summarise our work on new cases opened in 2015:

- We received 232 new cases: 161 complaints + 71 enquiries.
- Of the 161 complaints, 102 were in our jurisdiction, and the other 59 were not.
- We assisted 25 of the 59 that were Declined with additional resources, plus 36 of those 102 within jurisdiction – giving a total of 61 that were Referred. We helped them raise their issues with the right entity or directed them back to the authority complained of.

- 13 complaints were Abandoned or Withdrawn by the complainant.
- 6 complaints were resolved between the complainant and the authority with informal intervention from us, and 14 were Closed After Inquiries.
- 1 complaint was investigated and resulted in findings and recommendations. In addition, we concluded 5 other investigations into complaints that were carried over into 2015.

**Figure 7: Cases Received in 2015 by Ministry – total 232**

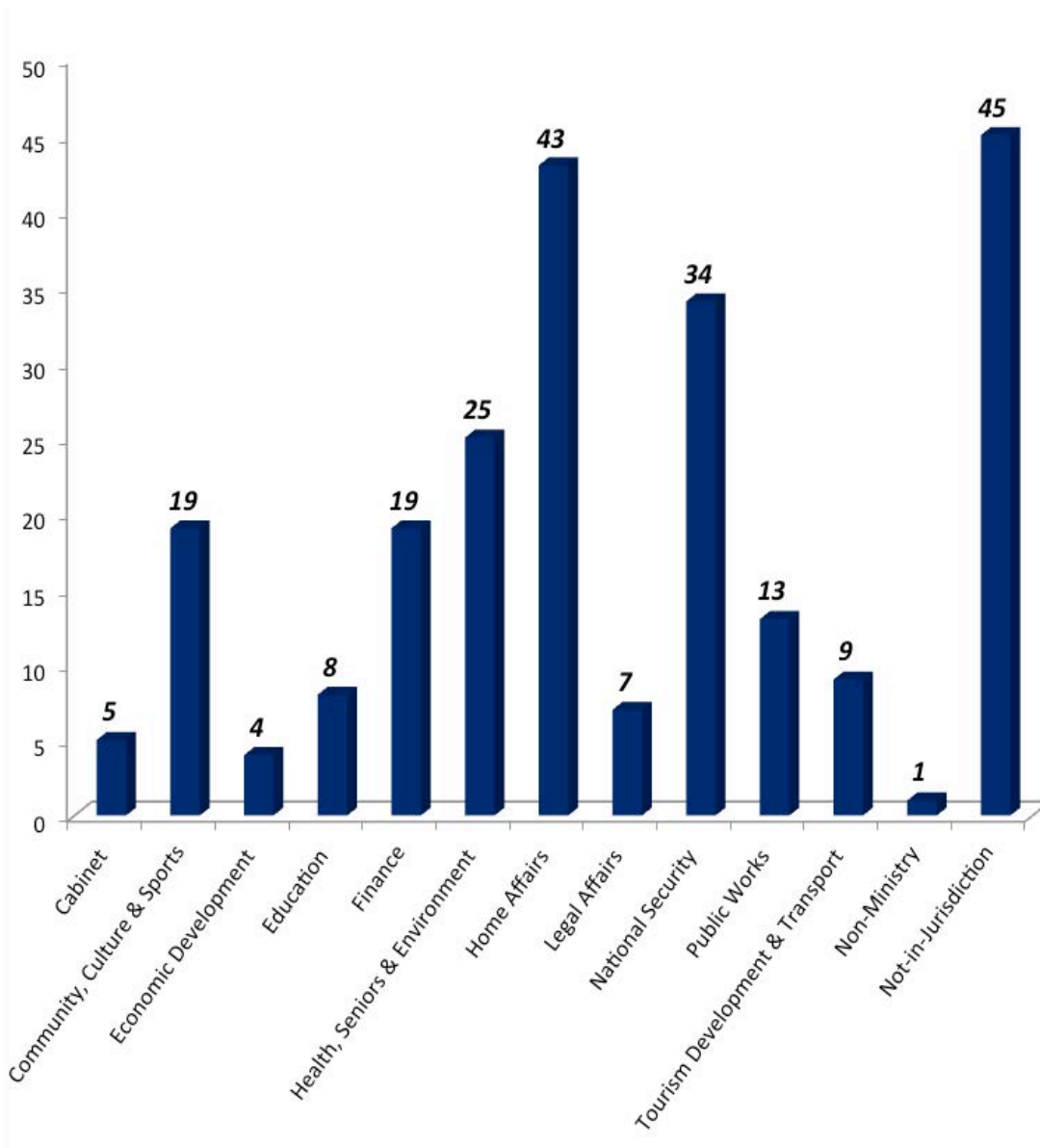


Figure 7 shows a breakdown of the cases we received in 2015 by the relevant Ministry according to the Government’s 2015 organisational chart.

(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 a breakdown of two categories of ‘Non-Ministry’ and ‘Not-in-Jurisdiction’ to depict the number of cases received against bodies which are Non-Ministry, not part of the Government’s executive branch, or not part of Government.

**Figure 8: Cases Received in 2015 by Authority – total 186**

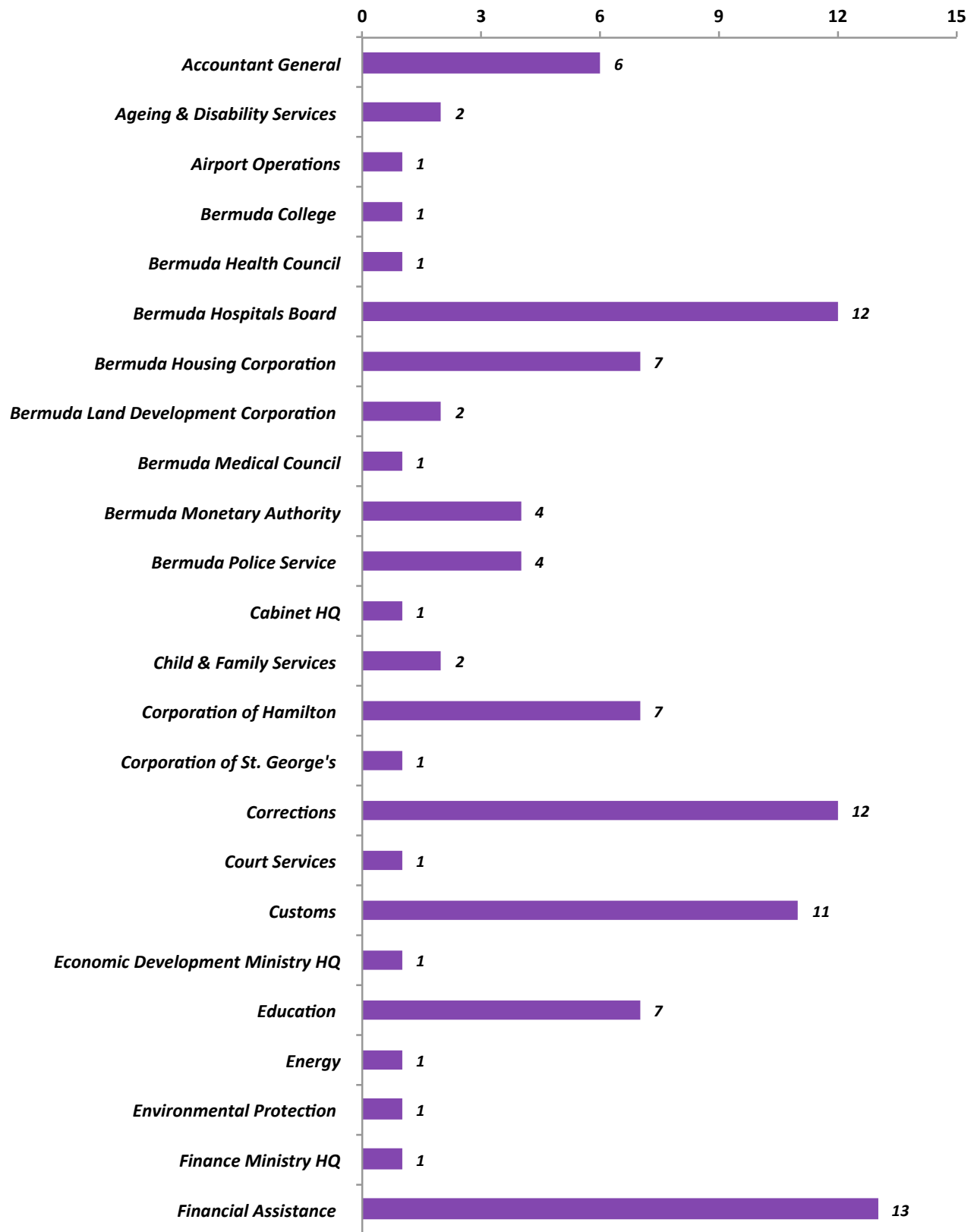
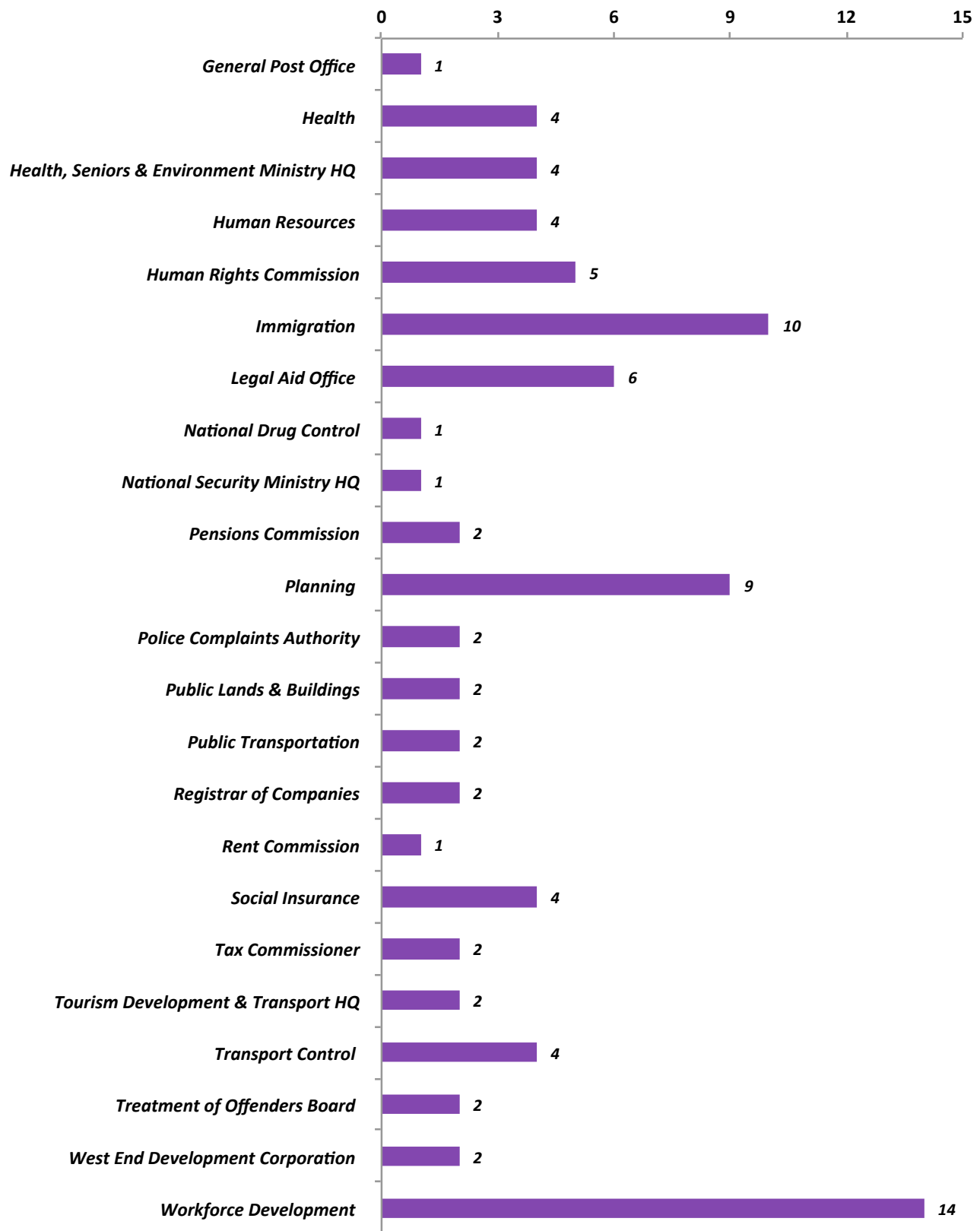


Figure 8 shows the total number of cases received in 2015 in respect of the relevant authority that falls under the responsibility of a Ministry. The figures do not include 46 cases that were made against Non-Ministry or other bodies Not-in-Jurisdiction. Some of these departments have a higher volume of public interaction than other areas and thus may have a higher volume of service users.



There are notable peaks in complaints that can be observed for certain Ministries and authorities in 2015. 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.

## RECOMMENDATIONS IN 2015

The Ombudsman may make recommendations concerning any administrative action that formed the subject of an investigation (s.5(1(b))). Specific recommendations aim to put complainants in the place they would have been in had no maladministration taken place. General recommendations are made to offer improvements for the authorities' administrative policies, procedures and practices. In addition to formal recommendations, when we observe that an authority's processes could be improved we can make suggestions.

Figure 9 depicts the Ombudsman's general recommendations arising from investigations into individual complaints that were concluded in 2015. It describes the number per type of recommendation and the number accepted or partially accepted by the authority before we formally closed the complaint. The authorities agreed to implement 86% of the general recommendations. The most prominent form of specific recommendation made was for the authority to write a 'without prejudice' apology letter to the complainant. (See a past commentary on the value of this tool in our Annual Report 2012.)

**Figure 9: Recommendations in 2015**

	Made	Accepted
<b>General</b>	23	19
<b>Specific</b>	6	6
<b>TOTAL</b>	<b>29</b>	<b>25</b>

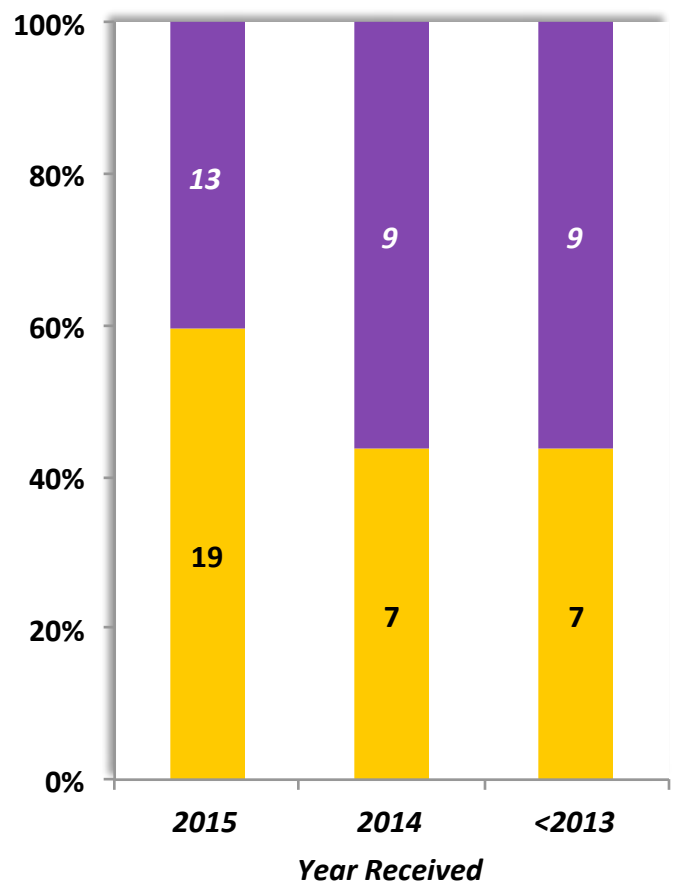
## OUTSTANDING COMPLAINTS

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. Our last systemic investigation was concluded in January 2014 (see Figure 13). We did not launch any new

systemic investigation in 2015 allowing us to concentrate on individual complaints.

As a result of implementing a prioritisation strategy, we are pleased to report that, as of 31st May 2016, we have addressed 82% (83 of 101) of all the outstanding complaints that had been carried into 2015. This leaves only 18 cases open as of 31st May 2016 which had been received in 2014 or prior (see Figure 10). Our goal is to address these remaining 18 cases by 31st December 2016. Based on our current trend shown in Figure 10, this goal is within reach. We also hope to report for 2016 a significant reduction in the number of outstanding complaints carried over more than six months.

**Figure 10: Cases Carried Into 2016 – total 64**



- **Outstanding as at 31-May-16**
- **Closed between 1-Jan-16 and 31-May-16**

## SELECTED COMPLAINT SUMMARIES

Complaints are opportunities to improve. The public may think that only authorities have something to learn. Addressing complaints requires all parties to reflect on their roles in the matter. And when the Ombudsman becomes involved, complaints also act as tests for how effective we are in our functions of bringing about resolution. So, 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 2015. 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.

### PRACTICE DOES NOT EQUAL POLICY

**ISSUE:** An applicant complained that an authority's registration process was outdated, mostly guided by ad hoc practices, and not transparent to the public. As a result of the authority's alleged failure to provide clear information, the applicant felt she was disadvantaged during the registration process, namely because she did not know what the benchmarks were. Failed registration had affected her ability to secure a new job. She suspected that her application had not been reviewed on its merits. She believed an officer of the authority prejudiced the process since this officer was aware of a related employment matter, the outcome of which had not been favourable to the applicant.

**INTERVENTION:** We carried out a formal investigation into the complaint, rather than informal enquiries, because the issues were complex, remained in dispute and required fact-finding. The investigation involved interviews, documentation reviews, and evidence analysis. The outcome included:

- § three findings of maladministration against the authority;

- § one finding of no maladministration upholding the authority's position;
- § seven recommendations to assist in general improvements; and
- § two recommendations to provide specific redress for the applicant.

The authority only challenged one of the general recommendations, citing resource limitations. In response, we invited the authority to reconsider how it could address the gap highlighted in its record-keeping in a way that, without additional effort, could be absorbed into its current process.

**LEARNING:** In this instance, a complaint about an administrative process escalated to allegations of sabotage. The authority recognised issues that could arise when it interchanged 'policy' and 'practice'. Our intervention led the authority to produce written policy and procedure documents as a priority. We also found that the authority had extended leniency beyond its stated requirements to accommodate the applicant, which helped to balance her perception of how she had been treated throughout the registration process. For us, it was a reminder that consulting regularly with authorities about their policies, procedures and practices can highlight general areas of improvement on which we might provide advice.

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### VOCAB ALERT

**'Policy'** is a formal, approved statement that describes a goal for how something is done. Policy should help to answer the 'why'.

**'Process'** is a way to do something from start to finish. It should answer the 'how' at a high level.

**'Procedure'** sets out the step-by-step tasks needed to carry out the process and achieve the policy. It breaks 'process' down into multiple, basic actions with details.

**'Practice'** means what is actually done.

## BEWARE OF TIME LIMITS

**ISSUE:** A complainant, identifying himself as a whistle-blower against his former employer, had promptly reported claims that he viewed as very grave to an authority. Dissatisfied with how the authority had dealt with his claims, he then complained to us that the authority failed to follow-through with its investigation of his claims, ultimately closing his file without adequately addressing the issues he raised about his former employer.

**INTERVENTION:** As we needed more information on why the authority had closed his complaint, we made preliminary inquiries. These included discussions with the authority and a comprehensive review of its file on the complainant's claims against his former employer. The file had a chronology of the authority's actions, along with correspondence between the authority and the complainant – starting from when the complainant first lodged his complaint until after the authority closed the file.

At the conclusion of our inquiries, we established that the authority had not investigated the complainant's complaint. The failure to investigate, however, was due to the complainant's failure to cooperate with the authority's process. We found that the complainant did not follow-through to submit a comprehensive complaint statement within two years of the events he had complained of, as is required. This meant that the authority could not proceed with its statutory process.

We provided the complainant with a detailed report on the authority's actions in relation to his claims, including the authority's frequent requests for the complainant to provide his completed complaint statement. We closed his complaint pursuant to section 9 of the Ombudsman Act.

**LEARNING:** For our review, we found the authority's detailed log to be the key for piecing together and assessing what happened with the complaint. The authority could demonstrate that it had repeatedly offered to assist the complainant in completing his complaint

statement. Contemporaneous logs that can be easily reproduced are invaluable for any organisation involved in some form of customer relations.

The complainant repeatedly had presented reasons for delaying the submission of his complaint statement. But the authority, much like other complaint handling bodies, had to weigh up the reasons for the delay against the possibility that his former employer would be prejudiced by the delay in responding to the claims.

Ultimately, the authority could not investigate the complaint because the complainant had not met the statutory deadline for submission. Such firm, statutory time limits must be observed by authorities and cannot be waived at the discretion of an authority. In this case, as the complainant had been reminded repeatedly about this time limit and offered assistance, we found that the complainant was the author of his own misfortune.

## NEXT STOP, 'REDRESS AVENUE'

**ISSUE:** A retiree's family claimed to have made an application for a financial award, to which the retiree was entitled, on her behalf about 13 years prior. Then ten years later, her family began to question whether she had ever received her award and decided to check with the authority. After reviewing its files, the authority informed the family that it had no record of an application for the retiree. Further, the authority explained that awards are made only once applications are received and that those made after the specified deadline are only eligible for a fraction of the awards. For the retiree, the difference would have been more than \$100,000. Her family complained of an unfair decision to our Office.

**INTERVENTION:** First we researched the statutory provisions that govern the authority and found that, where a person disagrees with the authority's decision, a request can be made that the head of the authority refer the matter to a tribunal to be decided. Then we followed up with the retiree's family. They claimed to have never been told of this avenue of redress. So we

reached out to the head of the authority directly, and she was willing to refer the issue to a tribunal for an independent review and determination.

**LEARNING:** We saw how easy it could be for people to feel hopeless and helpless when they do not have the relevant information to address issues that confront them. In the interests of fairness, it is imperative that authorities inform the public of all avenues of redress available to them because the public may not know. Likewise, as an advocate for oneself, it is very important that the public take the step to ask authorities whether there is any way their decisions can be appealed or reviewed, and then to document what is learned.

### **RETURN TO 'REDRESS AVENUE'**

**ISSUE:** An employee was laid off then terminated. He suspected his boss had fired him because he had raised attention to workplace health and safety issues. He immediately reached out to two separate authorities. Frustrated with the authorities' responses, he then contacted us to complain. He complained that the first authority's lack of follow-through on a previous inspection of his workplace had allowed the safety issues to worsen, which ultimately led to his layoff and then to him being fired. He also claimed that the second authority had not fully considered all aspects of his employment complaint.

**INTERVENTION:** Based on what the former employee told us, we decided to try to facilitate communication between him and the authorities by first gathering background information. From our inquiries, we learned that the first authority had looked into previous complaints about this workplace. But when the former employee had raised his concerns to the authority, he did so anonymously. This prevented the authority from being able to address some of the specific details of his workplace complaint. We also learned that the second authority had dealt directly with his employment complaint. The authority's records showed that it had been settled by mediation, where the former employee and his former employer were able to come to a better understanding of the circumstances leading up to

his layoff and termination.

After hearing the authorities, we conveyed to them that the former employee remained aggrieved. Both authorities agreed to review with him what had been done and what might be done moving forward. We closed his complaints by referring him to return to both authorities to pursue his concerns. To help with his follow-up, we provided two letters addressed to the former employee outlining what we had learned from our inquiries. We copied the second authority in one letter since it already had a complete file on his matter. But since he had been cautious about providing the first authority with his contact details originally, we chose not to copy the first authority in our letter, so he could determine the level of detail he wished to share.

**LEARNING:** Until we reached out about the former employee's case, the second authority was not aware that the former employee still had questions about how his complaint had been handled. By him returning, the second authority was able to help him pursue another avenue of redress still available. This led to his complaint being heard by an independent tribunal for determination on the facts of his case against his former employer. The former employee also saw that when he chose to make a complaint anonymously, he actually limited the first authority's ability to address his complaint in the way he had expected. We learned more details about the scope of the authorities' processes in addressing work-related complaints.

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### **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').

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## GIVING SUFFICIENT NOTICE

**ISSUE:** A consumer complained that the Government's efforts to communicate a policy change about increased rates to the public were too little too late. This resulted in unnecessary confusion about the change's actual impact. Feeling ambushed by the announcement of the change, the consumer had phoned an authority, but the call provided partial information only. He alleged that the Government's late notification reflected a level of insensitivity towards consumers. In particular, the consumer said he was concerned that the change had the greatest impact on senior citizens, whom he believed to have been disadvantaged by the substance of the change and the way in which it had been communicated. As his household was directly affected, he asked us to look into whether the Government had handled the matter fairly.

**INTERVENTION:** We first decided to make preliminary inquiries to determine our jurisdiction to review the complaint because it was not obvious who the decision-makers responsible for the change actually were. At the same time, we looked into whether there were other appeal mechanisms in place to review the complaint. We confirmed that the decision had not been made by the authority the consumer had called but by the Cabinet. Therefore, we had to decline to investigate the complaint because actions taken by the Cabinet or a Minister are not within our jurisdiction. Although we could not formally investigate, we invited input from the authority on our observations and encouraged the authority's efforts to implement solutions it had considered to address the communications gap identified by the complaint. The authority accepted our suggestions on ways to improve its communication plan moving forward. We also confirmed for the consumer the appropriate way to pursue his complaint, if he wished to take it further.

**LEARNING:** Even though our jurisdiction was limited in the matter, we were not prevented from discussing important issues arising from the consumer's complaint with the authority in the public interest. The authority also received

validation that it was on the right track to address an identified gap in its communication plan. We saw that regularly setting aside time to review Government's public announcements on policy that broadly impact the public would be a proactive solution.

## PRESERVING THE RELATIONSHIP

**ISSUE:** An entrepreneur approached an authority seeking to lease its property for a unique business venture. After the entrepreneur presented its proposal, the authority determined that Government would have to issue specific guidelines before any consideration could be given to leasing the property for the entrepreneur's business. After several months during which the entrepreneur consulted other Government departments, the authority notified her that it could not enter into a lease with her. The entrepreneur raised two issues with our Office, alleging that the authority: (a) had failed to provide reasons for its inability to enter into a lease with her; and (b) had delayed unreasonably in giving its decision and in providing further information that she had requested. Even still, the entrepreneur hoped to ultimately secure a lease.

**INTERVENTION:** As we sought to understand the negotiations between the parties, we conducted preliminary inquiries which included meeting with the authority and reviewing correspondence. We were alert to the fact that negotiations between the parties were commercial in nature. We did not review the actual decision made by the authority but the timeliness and quality of information about the process provided to the entrepreneur during the negotiations.

Having completed our inquiries, we advised the parties that we faced the choice of whether or not to pursue an investigation into the entrepreneur's complaint. Such an investigation would take time and could potentially impact any ongoing or future negotiations. We advised that it would be best for the parties to resolve the dispute between themselves and, towards this end, we suggested that the authority: (a) provide in writing reasons for its inability to enter into a lease with



the entrepreneur; and (b) give an account of its delay in giving the entrepreneur this information. After discussions and correspondence with both parties, the authority sent a letter to the entrepreneur in accordance with our suggestion. The entrepreneur agreed that an investigation would not be the best way forward for the parties, and we closed the complaint.

**LEARNING:** Our Office must approach complaints which involve authorities' contractual negotiations differently from complaints about the provision of Government services to the public. We recognise that reasonableness and fairness in commercial decisions will require a greater degree of discretion on the part of authorities, especially in assessing the commercial factors involved. Our inquiries assisted the parties by facilitating greater understanding of the other party's position. This complaint was one in which a full investigation, involving further fact-finding and interviews, would have possibly hampered their continued negotiations.

### **COINCIDENCE AND CLOSURE**

**ISSUE:** A professional, who had always dreamed of working as a civil servant, claimed to have submitted hundreds of employment applications to the Government over a long period. He had been unsuccessful for all and further claimed to have received limited, if any, feedback on his applications. Now nearing retirement age, the professional, who had a university education, wanted to find out why he had been unsuccessful on every attempt. He wrote to a Permanent Secretary who referred him to two Government officers ("the Referees") who could handle his concerns more appropriately. When he had not received a response from the Referees after almost two years, he made a complaint with our Office.

**INTERVENTION:** We made inquiries and, coincidentally, the same person who had referred the professional now held the posts of one of the Referees. Both of the current post-holders agreed to meet with him to advise on the Government's hiring process, why he might have been unsuccessful and to answer other questions he may have had.

**LEARNING:** What seemed to be a simple matter of unresponsiveness was actually an opportunity to provide answers to questions that had troubled the professional for a long time. It provided insight into how initiative may be taken to assist persons who are actively seeking positions within Government. It also provided an example of how an easy problem to remedy may lead to a significant outcome for the complainant. By addressing unresponsiveness, our Office was able to provide an avenue for the professional to gain closure.

### **IMPORTANCE OF SELF-ADVOCACY**

**ISSUE:** A family man alerted an authority that a vendor had insisted he pay more than the rates approved by the authority for his family to receive a service. Claiming the vendor was taking advantage of his vulnerability, he had decided to withhold payment from the vendor, and the matter ended up in the Courts. In reviewing the family's circumstances, the authority determined that the level of support it had been providing to the father should be reduced according to its regulations. The father complained that the authority did not fully consider his family's unique situation when reviewing the changes in circumstances arising from his dealings with the vendor. He also did not understand why the authority would not provide him with more guidance in how to handle the action taken against him by the vendor.

**INTERVENTION:** We were mindful of the sensitivity of the father's situation as well as the ongoing court matter which would address the specific issue with the vendor. We decided the best approach would be to make informal enquiries with the authority to better understand the legal basis of the relevant policy that had led

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**"He who forgives ends the argument."**

**- African Proverb**

it to reduce its support for the father. Once we were clear on what guided the authority, we met again with the father to explain the authority's position. We also learned there was an appeal process in place to review the authority's decision which the father had not yet pursued. As an office of last resort, we declined to take further action on his complaint but committed to keeping some general issues arising under continued review. We wrote the father to confirm what we had already shared with him in person. Our letter was also copied to the authority for its records.

**LEARNING:** In preparation for meeting with us, the father had to review and reorganise records that would have been critical to his court case. He also became clearer about the reasons, rooted in law, behind what the authority was able and unable to do for him. In responding to our general enquiries, the authority was prompted to consider which of its decisions would be subject to appeal. We were alerted to a possible trend in complaints about the unintended impacts of the authority's regulations, policies and procedures on its clients.

## **BALANCING EXPECTATIONS**

**ISSUE:** A job seeker applied for a Government position. He claimed the authority told him he was the successful candidate. He was asked to provide two professional references, which he did subsequently. Later the job seeker followed up on his application by email, on three separate occasions to three different individuals, asking about the authority's normal course of action where someone has been selected for a post. He did not receive a response from any of the individuals he emailed. The job seeker then heard that the post had been filled by someone else, leading him to think his references had not been considered. He contacted us, and we informed him that we do not have jurisdiction over employment matters. However, we agreed to make inquiries with the authority on the issue of its responsiveness to him.

**INTERVENTION:** When we reached out to the authority, it acknowledged that its officers had overlooked the job seeker's email address initially – mistaking it for spam – but that the job seeker's references had been received and considered. The authority asserted it had not informed the job seeker that he was the successful candidate but rather that he was shortlisted as a recommended candidate. The authority also acknowledged that the shortlisted candidates had not been notified that their applications had been unsuccessful – an aberration from its procedure. As a result of our inquiries, the authority voluntarily apologised to the job seeker for the collective oversights and formally informed him that the position had been filled. Additionally, the authority implemented new procedures to prevent an applicant from confusing being shortlisted with being chosen for a post.

**LEARNING:** It is important for authorities to balance the expectations of those utilising their services from the beginning. In doing so, authorities should use clear and unambiguous language. Furthermore, authorities should be available to those seeking clarity on their processes and use these as opportunities to balance expectations. Authorities should also be mindful to avoid miscommunication and failures to respond. In this case, the authority could have reduced the likelihood of this complaint arising had its officers' responded to the complainant's emails in a timely manner.

## **COURT MATTERS MAY BE ADMINISTRATIVE AND NOT JUDICIAL**

**ISSUE:** A plaintiff complained that a court officer had given consent for the defendant to take an action before fulfilling a requirement previously ruled on by a Court. As a result of the defendant taking this action, the plaintiff claimed that she was being prevented from collecting fully on the financial order already determined by the Court. She was further suspicious because she had learned of a personal relationship that connected the officer to the defendant in the case.

INTERVENTION: Since the complaint concerned court proceedings, we had no jurisdiction to investigate. However, we had questions about the right way for the plaintiff to pursue her complaint. To assist as much as we could, we reached out to the Chief Justice to determine whether the matter would be considered an administrative matter rather than a judicial one. The Chief Justice accepted the opportunity to review it where the alleged action was carried out by the officer in an administrative capacity. We provided the plaintiff with a letter detailing the crux of her complaint and referring her to the Chief Justice, also copied to him, to assist in the plaintiff's follow-up.

LEARNING: We seek to always add value for all persons who reach out to us, even where our jurisdiction is limited. This approach was helpful for the plaintiff. She learned of more appropriate institutions to review the substance of her complaint. While we learned that there is scope for the Chief Justice to receive complaints about administrative matters, the Chief Justice also became aware of a matter that may have gone unexplored had the plaintiff not reached out to us to complain.

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

**- Proverb from Burkina Faso**



## TYPES OF OMBUDSMAN REFERRALS

‘Referral’ is a common term used by Ombudsmen. But ‘referral’ can have different meanings which carry different expectations of the next steps for the complainant, the authority and our Office.

The Ombudsman Act gives guidance on one particular type of referral that might occur during or after an Ombudsman investigation, if we were to find evidence of “a breach of duty or misconduct on the part of any officer or employee of any authority, or of an offence” (s.12(3)). We have used this specific provision on a limited basis. In these instances, we refer the issues – not the persons involved – to the appropriate authority and then follow-through. Moving forward, we will distinguish these referrals if and when they occur in our complaint statistics.

Less formally and more frequently, referral means that the issue should be addressed by other more appropriate bodies at the time a person brings it to our attention. In some cases, we use referral to indicate that the person should go back to the authority complained of (“the referral body”) to give the authority the opportunity to resolve the issue. In other cases, the body complained of is not an authority defined under the Ombudsman Act, so we must decline the complaint, but we can refer the complaint to another body (“the referral body”). In all these cases, we refer the person – not the issue – to the more appropriate

body. If we determine it might be useful to alert the referral body about the person’s intended contact, we only do so with the complainant’s agreement. This is to protect the complainant’s confidentiality. Ultimately, the responsibility to follow-through on these types of referrals lies with the person who has raised the issue – not with us or the referral body.

Sometimes, in cases suitable for referral, we find that the substance of a complaint merits us taking an active interest in how the matter might be addressed by the referral body. In these circumstances, we may refer the issue to the authority, with or without the complainant’s background information, with a request that the authority review the issue and then update us on its assessment. This request occurs only after we discuss the issue with the authority to learn of its initial view on the matter. Authorities may find this type of referral helpful, particularly when issues appear systemic in nature and/or the matter has been addressed by them in the past. So, all referrals, regardless of their type, are an opportunity for us to assist each person who reaches out to us.

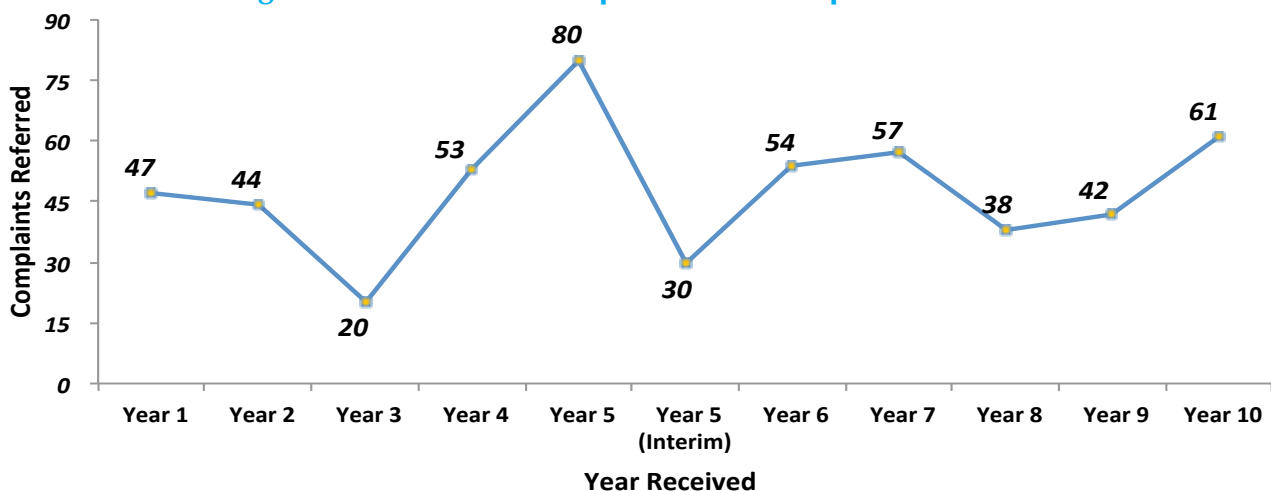
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“When elephants fight, it’s the grass that suffers.”

- African Proverb

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**Figure 11: Individual Complaints Referred per Year – total 526**



STRATEGIC AIM II:  
**GREATER PUBLIC AWARENESS –  
 10 YEARS IN FOCUS**

**COMPLAINTS OVER 10 YEARS**

We must try to remain responsive and relevant in our service to the public. As our Office continues to evolve, our statistical analysis and the way we present information about what we do must become more sophisticated. Statistics are an essential tool that helps us to visualise and illustrate our work and to better understand the big picture. It also helps us to measure the effectiveness of what we do and its value in practical, digestible facts that we can share with the public.

Figure 12 is a representation of how our Office has handled individual complaints, based on the year the complaints were opened, over the 10 years of our existence. This snapshot summarises data previously published in our Annual Reports. It shows four basic categories for how complaints received in each year were addressed by the end of that reporting year. It compares a total of ten 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.

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

- African Proverb

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*Figure 12: Individual Complaints per Year and per Disposition – total 1,684*

	A	B	C	D	TOTAL
<b>1</b>	22	11	57	47	<b>137</b>
<b>2</b>	29	17	44	44	<b>134</b>
<b>3</b>	35	21	53	20	<b>129</b>
<b>4</b>	35	26	29	53	<b>143</b>
<b>5</b>	58	66	44	80	<b>248</b>
<b>5 Interim</b>	21	34	5	30	<b>90</b>
<b>6</b>	48	78	23	54	<b>203</b>
<b>7</b>	47	32	30	57	<b>166</b>
<b>8</b>	45	36	26	38	<b>145</b>
<b>9</b>	55	20	11	42	<b>128</b>
<b>10</b>	32	47	21	61	<b>161</b>
<b>TOTAL</b>	<b>427</b>	<b>388</b>	<b>343</b>	<b>526</b>	<b>1,684</b>

**Key: Year Received**

- 1** Aug 2005 - Jul 2006
- 2** Aug 2006 - Jul 2007
- 3** Aug 2007 - Jul 2008
- 4** Aug 2008 - Jul 2009
- 5** Aug 2009 - Jul 2010
- 5 Interim** Aug 2010 - Dec 2010
- 6** Jan 2011 - Dec 2011
- 7** Jan 2012 - Dec 2012
- 8** Jan 2013- Dec 2013
- 9** Jan 2014 - Dec 2014
- 10** Jan 2015 - Dec 2015

**Key: Disposition Category**

- A** Open
- B** Declined
- C** Disposed Of\*
- D** Referred

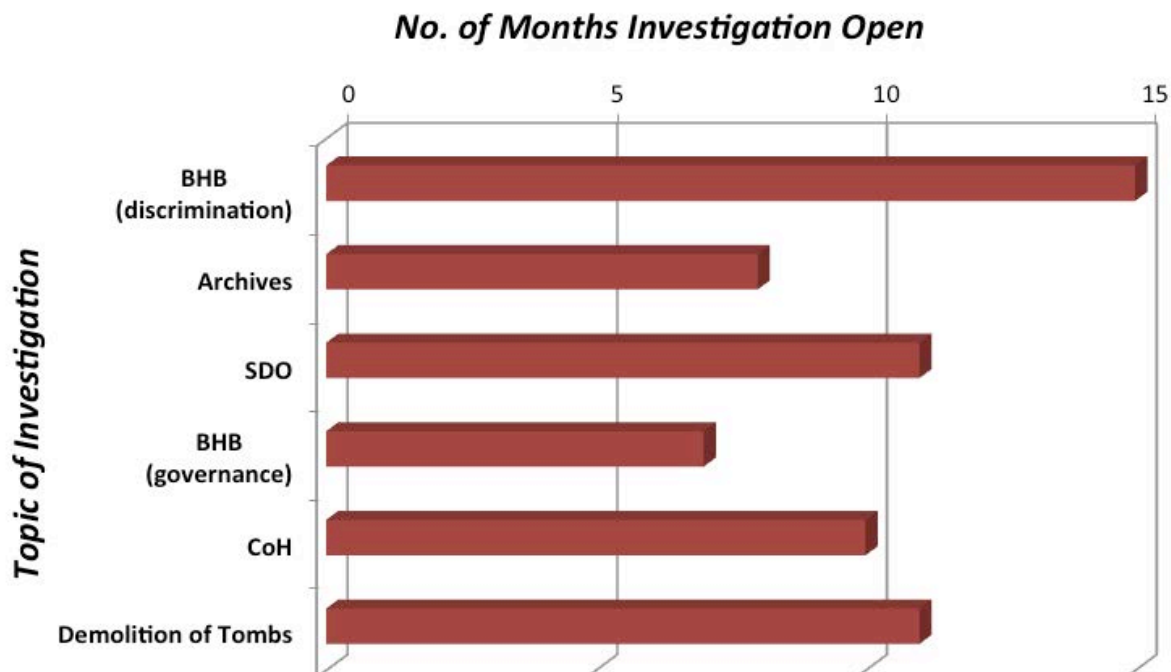
\* Complaints ‘disposed of’ were within our jurisdiction, addressed and then closed during the complaint year received.

**Figure 13: Systemic Investigations – total 6**

Systemic Investigation	Topic	Launched	Published	Last Updated in Special or Annual Report
1st: A Tale of 2 Hospitals: Who Gets the Benefit of the Doubt?	BHB (discrimination)	Year 2	Year 3	-
2nd: Atlantica Unlocked	Archives	Year 4	Year 4	Year 5
3rd: Today's Choices, Tomorrow's Costs	SDO	Year 6	Year 7	Year 8
4th: Review of the Clinical and Corporate Governance Review of the Bermuda Hospitals Board by Howard Associates	BHB (governance)	Year 7	Year 8	-
5th: 4X6=262	CoH	Year 8	Year 8	Year 10
6th: A Grave Error	Demolition of Tombs	Year 8	Year 9	Year 10

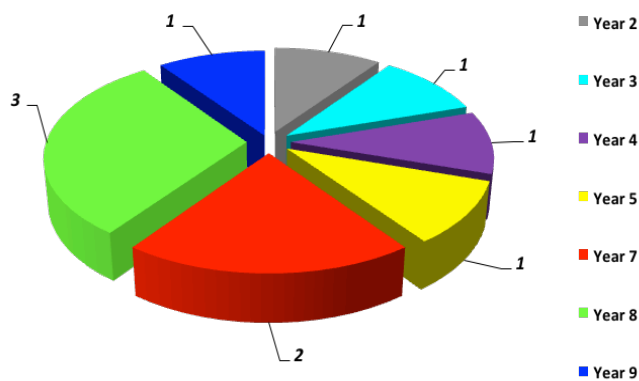
Figure 13 is another representation of complaints investigated by the Ombudsman due to issues of a systemic nature, which were initiated under her “own motion” power and then reported on and made public (see s.5(2)(b) re functions and jurisdiction; and s.24(2) re annual and special reports).

**Figure 14: Duration of Systemic Investigations**



The longest amount of time a systemic investigation has taken – between its launch and report to Parliament – was a total of 15 months. The shortest was seven months. Of the six systemic investigations launched between 2007 and 2014, five were completed within 12 months. In addition to the systemic investigation reports, the Ombudsman has tabled six reports that updated the public on our systemic investigations.

Figure 15 summarises the Ombudsman’s special reports to Parliament per reporting year, including systemic investigation reports, update reports on systemic investigations, and special reports on individual complaints. In this chart, Year 1 (August 2005 to July 2006) and Year 6 (January to December 2011) do not feature because no special reports were published.



**Figure 15: Special Reports to Parliament on Systemic Investigations per Year Published – total 10**

Comparing complaint statistics per category from year to year is not always straightforward. Some complaints involve more than one authority and this may not be captured at the outset. Compilations of complaints within ministries may need to be amended when Government’s organisational structure changes. In reviewing our past complaint statistics, we have found that some of the complaint numbers were inaccurately reported. We will continue to report where we find it necessary to make adjustments to previously reported complaint data.

As indicated last year, we have been working

to put in place an improved complaint management system to help us better manage complaints. Doing so will allow us to carry out a comprehensive examination of our internal complaint handling. Moving from a manual system for generating complaint statistics will significantly reduce the potential of ‘human error’. We look forward to presenting these improvements in our future reports.

### SPECIAL REPORTS OVER 10 YEARS

Ombudsman reports are meant to be consequential. They are a tool for promoting good administration. In addition to the annual reports, which primarily are meant to account to Parliament and to the public for an Ombudsman’s activities during the past year, she also can publish a ‘special report’. There are specific circumstances which guide the reasons for which special reports are made.

First, an important aspect of the Ombudsman’s work is to make recommendations for systemic improvement. These types of recommendations can arise from individual complaints. Where an Ombudsman investigates a complaint and makes recommendations, an authority is expected to carefully consider the recommendations and to respond to them, although it is not bound to follow them. However, the Ombudsman is empowered to report to Parliament and the public if an authority has failed to take any action pursuant to her recommendations, or if it has taken inadequate or inappropriate action



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

(see s.24(2)(b)). The Ombudsman for Bermuda has rarely had to report to Parliament that an authority has failed to follow or inadequately implemented her recommendations.

Second, the Ombudsman can exercise her “own motion” power to investigate issues, whether or not a member of the public has made a complaint (see s.5(2)(b)). This “own motion” power is rooted in the independence of an Ombudsman and her authority to act in the public interest. Usually, special reports are made to Parliament at the conclusion of an investigation which the Ombudsman has launched on her “own motion” on behalf of the public (see s.24(2)(a)). The issues covered could be systemic or narrow.

Figure 16 is a summary of the Ombudsman for Bermuda’s special reports to Parliament further to systemic investigations throughout our 10 years of service. Additional updates on the Ombudsman’s own motion systemic investigations have been provided within various annual reports. For instance, this was the case in the Annual Report 2014 when the Ombudsman provided updates on 4X6=262 and A Grave Error.

For those interested in our reporting on these systemic investigations, you may find all updates on special reports included in the Ombudsman’s annual reports to Parliament from 2007 to 2014 at the following:

- For A Tale of 2 Hospitals: Who Gets the Benefit of the Doubt?, see Annual Reports 2007 (pp. 24-31), 2008 (pp. 28-31), and 2010 (pp. 18-19).
- For Atlantica Unlocked, see Annual Reports 2009 (pp. 20-25), 2010 (pp. 20-23), 2010 Interim (pp. 18-22), and 2011 (p. 21).
- For Today’s Choices, Tomorrow’s Costs, see Annual Reports 2011 (pp. 32-39), and 2012 (pp.18-25).

- For Review of the Clinical and Corporate Governance Review of the Bermuda Hospitals Board by Howard Associates, see Annual Report 2012 (pp. 27-30).
- For 4X6=262, see Annual Report 2014 (pp. 35-36).
- For A Grave Error, see Annual Report 2014 (pp. 37-38).

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### **VOCAB ALERT**

**‘Systemic’** refers to something affecting a group or a system which goes beyond the particulars of an individual’s complaint.

**‘Own motion’** refers to an investigation commenced by the Ombudsman and not dependent on a complainant.

**‘Special report’** refers to any report to Parliament other than our annual report. This can be done for an investigation about an administrative action that was launched in the public interest, whether by the Ombudsman’s ‘own motion’ or following a complaint brought to us by an individual; or where the Ombudsman made a recommendation and the authority did not take adequate action within the time specified.

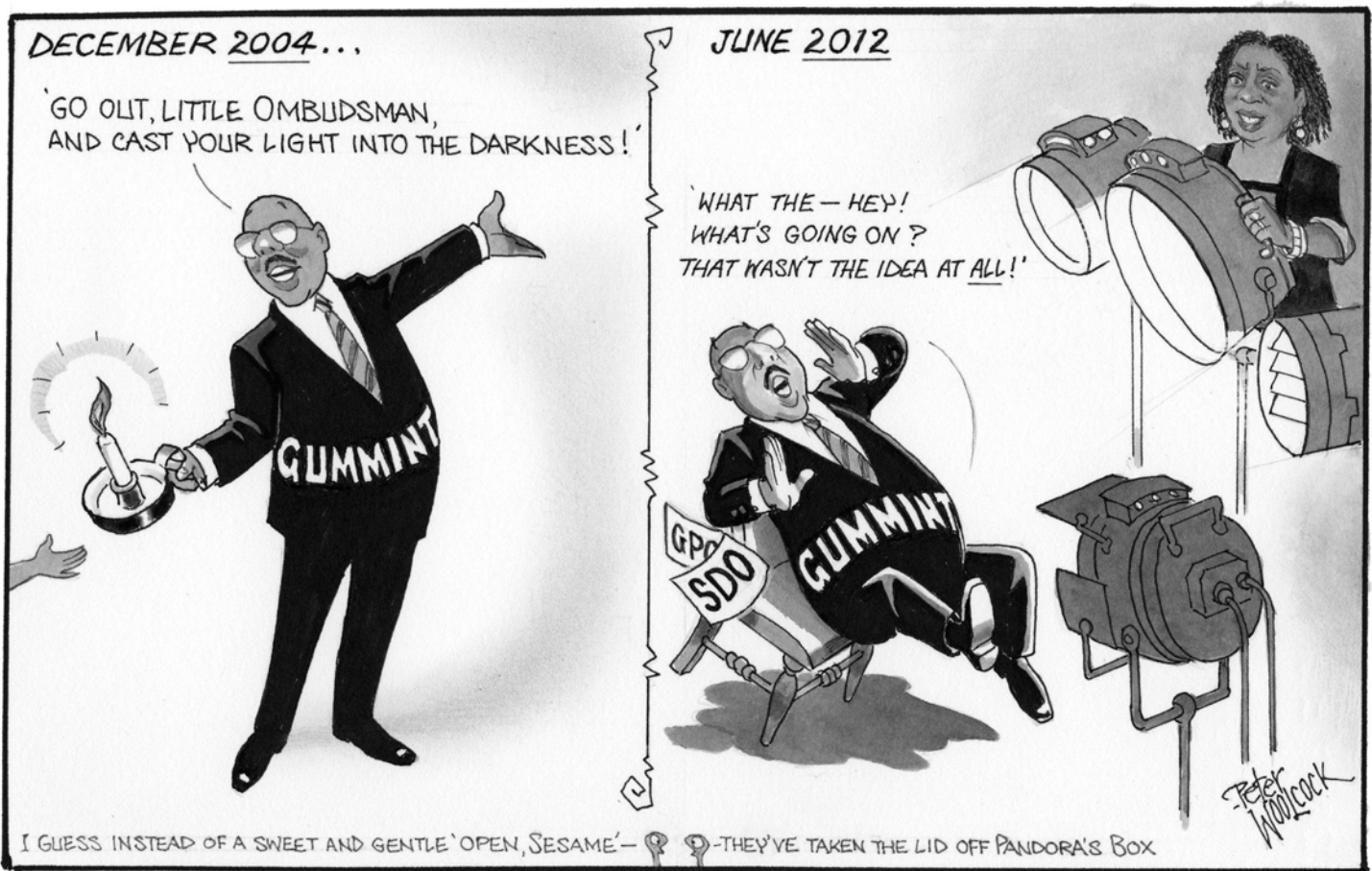
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The Ombudsman for Bermuda’s special reports to Parliament on systemic investigations are informative reference materials about public interest topics – totaling 556 substantive pages. Each report is available to the public to download from our website at [www.ombudsman.bm](http://www.ombudsman.bm). Limited print copies may be available to collect from our Office. Additionally, reference copies are accessible to the public at the Bermuda National Library, the Bermuda College Library, and the Bermuda Archives.



**Figure 16: Special Reports to Parliament on Systemic Investigations**

<b>No.</b>	<b>Publication Date</b>	<b>Title</b>	<b>Purpose</b>
1	2007, Mar 26	Process Appendix to the Ombudsman’s Own Motion Systemic Investigation into Allegations of Discrimination Involving Medical Professionals at KEMH	Special report on interim update on first systemic investigation
2	2007, Nov 02	A Tale of 2 Hospitals: Who Gets the Benefit of the Doubt? <i>The Ombudsman for Bermuda’s Own Motion Systemic Investigation into Allegations of Discrimination Involving Medical Professionals at King Edward VII Memorial Hospital</i>	Special report on first systemic investigation
3	2009, Jun 30	Atlantica Unlocked. <i>The Ombudsman for Bermuda’s Own Motion System Investigation into Allegations of Barriers to Access to the Bermuda Archives</i>	Special report on second systemic investigation
4	2010, Jun 04	Special Report – Pursuant to s.16(3) Ombudsman Act 2004. <i>Re: Response of the Cabinet Office (Ministry responsible) to ‘Atlantica Unlocked: the Ombudsman’s Own Motion Systemic Investigation into Allegations of Barriers to Access to the Bermuda Archives’</i>	Special report on Government response to second systemic investigation
5	2012, Feb 10	Today’s Choices, Tomorrow’s Costs. <i>The Ombudsman for Bermuda’s Systemic Investigation into the Processes and Scope of Analysis for Special Development Orders</i>	Special report on third systemic investigation
6	2012, Jun 01	Special Report – Pursuant to s.16(3) Ombudsman Act 2004. <i>Re: Response of the Cabinet Office and Ministry of the Environment, Planning and Infrastructure Strategy to the Ombudsman’s Own Motion Systemic Investigation into the Process and Scope of Analysis for Special Development Orders</i>	Special report on Government response to third systemic investigation (first update)
7	2013, May 10	Special Report to Parliament. <i>Diligent Development – Getting It Right. Update on the Legal Status of UK Environment Charter</i>	Special report on update to third systemic investigation (second update)
8	2013, May 17	Review of the Clinical and Corporate Governance Review of the Bermuda Hospitals Board by Howard Associates	Special report on fourth systemic investigation
9	2013, Dec 13	4X6=262. <i>Special Report: Ombudsman’s Own Motion Investigation into the Governance at the Corporation of Hamilton</i>	Special report on fifth systemic investigation
10	2014, Jan 31	A Grave Error. <i>The Ombudsman for Bermuda’s Own Motion Investigation into the Demolition of Tombs in the Marsden Methodist Memorial Cemetery at Tucker’s Point</i>	Special report on sixth systemic investigation



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## 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.

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. There are other useful resources to which authorities can refer for guidance on what administrative fairness means.

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).

## **IMPROVING INTERNAL PROCESSES AND ACCOUNTABILITY**

We are re-assessing how and why we do what we do. We also are reflecting on how best we can do what we do. The transition in our Office has led us to review afresh the foundation of complaint handling processes laid by our former colleagues. As a result of these reflections, we are taking two actions: (a) procuring an innovative electronic complaint management system (“CMS”); and (b) writing a complaint management policy and procedure manual to align with CMS.

Our Office’s primary objective for acquiring a CMS solution was to enhance the administration of complaints in three areas, namely a reduction in time spent, consistency of approach, and performance monitoring. We spent over a year in research and consideration of the best solution. In 2016, we sourced a new CMS and hope to further report on it soon.

The Office of the Ombudsman is a recipient of public funds, similar to other Non-Ministry offices that form part of the integrity branch of Government. Thus, we are accountable to the Legislature through an annual independent audit of our use of public funds. We also publish performance measures in the Government’s budget book (called the Approved Estimates of Revenue and Expenditure). In our efforts to implement best practices internally, we are reviewing our performance measures. Our priority is to be able to demonstrate our progress against revised measures.

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### **GOOD ADMINISTRATION MEANS...**

§ Getting it right

§ Being customer focused

§ Being open and accountable

§ Acting fairly and proportionately

§ Putting things right

§ Seeking continuous improvement

## OMBUDSMAN 'OUT AND ABOUT'

Throughout the year, we delivered education sessions on good governance and our complaint handling process before Youth Parliament and for new recruits at the Department of Corrections. In addition, the Ombudsman spoke for a second year at what promises to be an annual event before one of her most enthusiastic audiences – primary school students. At her first U.S. Ombudsman Association (“USOA”) conference, she presented before international colleagues, alongside a veteran Ombudsman from Arizona, on the topic of “Confessions of a New and a Retired Ombudsman”. She received positive feedback and was invited to return as a presenter.



*Above photograph is the 2015-2016 class of Primary 3 Liverpool at Paget Primary School (used with permission).*

Again in 2015 we presented to the new officers at the Department of Corrections about the role of this Office and our investigation process. Our presentation to the Youth Parliament focused on our functions arising from statutory requirements, case scenarios and an overview of systemic investigations. This was our second year presenting to this group of youth leaders. We will continue to offer education sessions to authorities and other groups to discuss complaint handling and good administration.

**"Without change there is no growth, and anything that is not growing is dying."**

**- Joyce Meyer**

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## STAFF TRAINING

A defining characteristic of an Ombudsman and their investigators is that they are specialists in dispute resolution, trained to assist with addressing complaints in a fair manner and operating confidentially, impartially and in accordance with best practice. Ombudsman training is to share practices, standards, research and strategies at regional and international conferences and during specially designed professional development programmes. This was a full year of training for our investigations team.

## OMBUDSMAN'S TRAINING

During her first year of appointment, the Ombudsman undertook one overseas training. In 2015, the Ombudsman travelled to various conferences and programmes to learn alongside colleagues and to introduce herself to the community with which our Office has its closest affiliations and relationships. On 8th May 2015, the Ombudsman travelled to Vancouver, Canada with the Deputy Ombudsman/Investigations Officer, Catherine Hay. They attended a focused pre-conference workshop on the "Fine Art of Fairness", prior to the four-day conference, "50 Years of Fairness: People, Purpose, Passion", hosted by the Forum of Canadian Ombudsman ("FCO") in conjunction with the Association of Canadian College and University Ombudspersons ("ACCUO"). The workshop course expanded on the "Essentials for Ombuds" training completed by the Ombudsman the year before. The course was particularly useful in its analysis of the components of fairness and their application to various practical situations. It reminded us that, contrary to popular belief, treating people the same could be the least fair approach, without consideration of their particular circumstances.

Again in May 2015, the Ombudsman attended the four-day biennial conference of the Caribbean Ombudsman Association (“CAROA”) in Curaçao, on “Human Rights, Good Governance and the Ombudsman”. The conference highlighted the importance of the inter-relation of key principles of good governance, the rule of law, human rights and freedom of information, as well as their importance for the Ombudsman to be a change agent in her country and in the region. While at the conference, the Ombudsman was elected as a member of the CAROA Council.

In June 2015, the Ombudsman attended a five-day course in London offered by Public Administration International for Ombudsmen entitled “When Citizens Complain”. The course was highly practical as it included visits to Ombudsmen, other complaint handling bodies and an alternative dispute resolution centre within the city.

At her first United States Ombudsman Association (“USOA”) conference, she presented before international colleagues, alongside a veteran Ombudsman from Arizona, on the topic of “Confessions of a New and a Retired Ombudsman”. The five-day conference in October 2015 was entitled “Ombudsmen: Confronting Prickly Issues” and included a pre-conference course for new Ombudsmen. The Ombudsman was well-received by fellow attendees and was invited to return as a presenter.

## **DEPUTY OMBUDSMAN/INVESTIGATION OFFICER’S TRAINING**

In October 2015, a five-day training at the Harvard Law School’s Programme on Negotiation on “Mediating Disputes” in Boston, Massachusetts topped our Deputy Ombudsman’s agenda. Ms. Hay found this course’s training on interest-based mediation very useful in assisting complainants and authorities to communicate and build understanding.

Ms. Hay also joined the Ombudsman for the four-day FCO/ACCUO conference in Vancouver which was attended by Ombudsman colleagues from across Canada and elsewhere.

Ms. Hay reflected that one of the most important insights she gained from this conference was a simple lesson rooted in empathy. “We should never describe any party to a dispute, whether an authority or a complainant, as a ‘difficult person’”, she said. “It seems obvious but we forget that all of us are capable of being ‘difficult’ in certain circumstances. A person is not difficult, rather he is demonstrating difficult behaviours. This simple change in the way we see another person allows us to take a step back and ask what may be sparking the offending behaviour and how we may help to address the source.”

## **INVESTIGATION OFFICER’S TRAINING**

For our second investigator, the “Essentials for Ombuds” certificate programme awaited in Toronto, Canada. After being in office for 10 months, this five-day training, facilitated by FCO and the Osgoode Hall Law School of York University, was meaningful to Ms. Dill in many ways. In her self-report essay, she reflected that:

“Before the training, I felt that I adequately understood the moral imperative of the Ombuds. However, I could not identify or define the combination of theoretical underpinnings that make the role unique in the realm of alternative dispute resolution and administrative oversight. It was further unclear to me what direct implications this unique framework had on the practical features of our day-to-day work. Now I am more at ease with the phrase ‘it depends’ (one of my boss’ favourite responses), the infamous sibling to ‘there’s no one right answer’. I can foresee the development of an Ombuds rubric for assessing complaints.”

The Ombudsman completed the same programme in 2014, and in 2016 our Complaint Intake Officer is due to attend as well.

## **TEAM TRAINING**

Our team participated in a webinar on “Ombudsman Innovations for Advancing Open Government” hosted by the Open Government Partnership Webinar Series. We also began to make arrangements for a

customised, in-house training with Dr. Victor Ayeni, Director of Governance and Management Services International and former Director of Governance & Institutional Development at the Commonwealth Secretariat.

Dr. Ayeni is a friend to the Bermuda Ombudsman family and a veteran in the world of good governance research and practice. His relationship and historical knowledge of our Office provided invaluable insight. The training, entitled “Advancing the Ombudsman’s Impact – Roles, Services, Performance”, took place in January 2016 and included a free public address on “Ombudsman in Everyday Life”. You can access the video posted to our website and Facebook page. The timing was highly beneficial for all our current staff to have the opportunity to learn alongside one another during an intensive five days. The public also benefited from Dr. Ayeni’s insight into the relevance of how the Ombudsman institution impacts the average citizen.

## AFFILIATIONS

Our Ombudsman colleagues from around the world played key roles in support of our work in 2015. Some highlights include:

### CARIBBEAN OMBUDSMAN ASSOCIATION

Thanks to CAROA President Dr. R. Lynch-Arduin and CAROA members for sharing insight on various issues, ranging from Ombudsman internal process topics to comparative legislation questions.



In May 2015, the Ombudsman for Bermuda was elected as a member of the CAROA Council.

### FORUM OF CANADIAN OMBUDSMAN

Thanks to FCO for facilitating comprehensive Ombudsman training over the years, especially beneficial for our new staff.



“Not to know is bad. Not to wish to know is worse.”

- African Proverb



### INTERNATIONAL OMBUDSMAN INSTITUTE & OMBUDSMAN ASSOCIATION

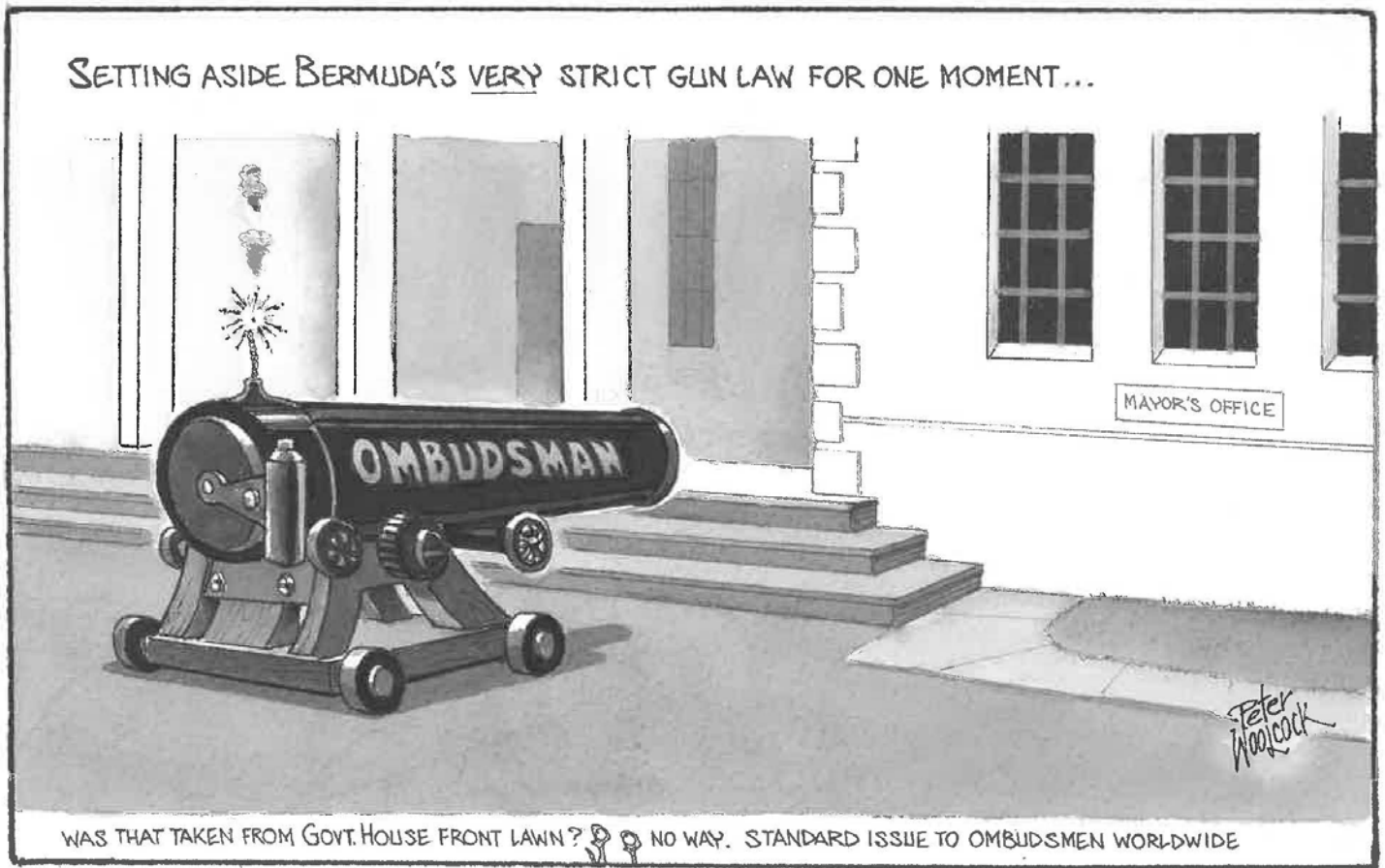
Thanks to the IOI President J. Walters and Secretary General Dr. G. Krauter as well as OA Chair L. S. Smith and Interim Secretary D. Galligan for the IOI and OA’s initiative on sending letters of concern and support to the Legislature encouraging Parliament’s support in response to dismissive responses to our Annual Report 2014.



### UNITED STATES OMBUDSMAN ASSOCIATION

Thanks to the USOA for new Ombudsman training in 2015, hosting the Ombudsman as a first-time presenter at its 39th annual conference in October 2015 in Arizona, and the invitation for her to return as a presenter.





"Smooth seas do not make skillful sailors."

- African Proverb

## SUPPLEMENTARY RESOURCES

### OMBUDSMAN ACT 2004 – IN A NUTSHELL

#### SECTION 93A OF THE BERMUDA CONSTITUTION 1968 PROVIDES THAT:

- the Ombudsman is appointed by 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 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 is 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)

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To obtain your own copy of our legislation and PATI Information Statement you can:

download it as a PDF from  
[www.ombudsman.bm](http://www.ombudsman.bm)

or, stop by our Office to pick up  
 a printed copy.

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## PATI INFORMATION STATEMENT

PATI ushered in a new era of transparency for the Government. 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 the public avails themselves of the right of access. From 1st April to 31st December 2015, the Office of the Ombudsman did not receive PATI information requests from the public.

**NOTES**

- “Own Motion Investigation”

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

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

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

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

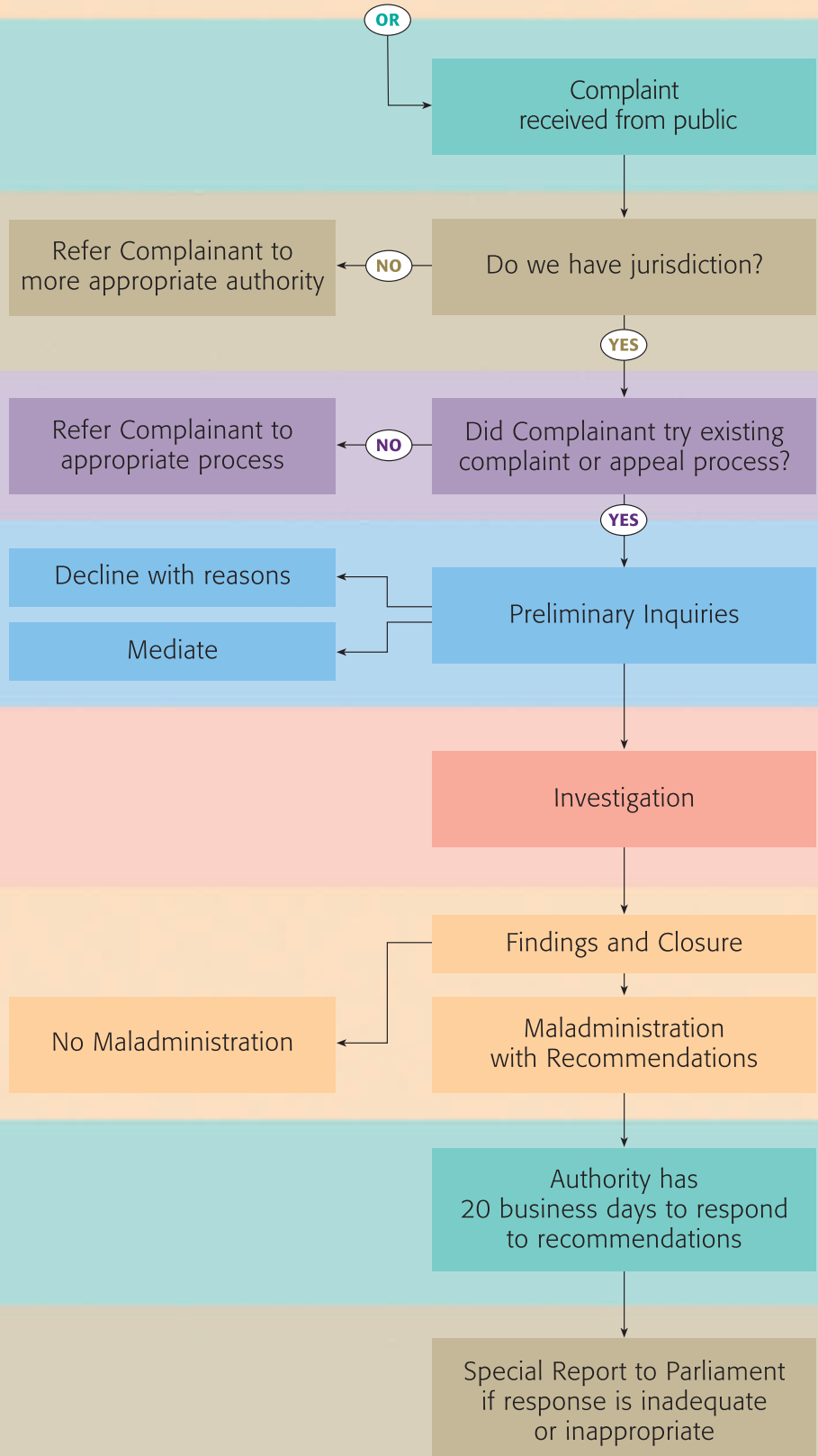
- Inquiries resolve complaint; or
- Investigation or mediation; or
- Ombudsman declines

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

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

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

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



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

- African Proverb

