

Annual Report 2007–08

Fourth Annual Report of the Office of the Complaints
Commissioner of the Cayman Islands addressing the Fiscal
Year July 2007–June 2008



Office of the Complaints Commissioner



Office of the Complaints Commissioner

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Sister Islands Office

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Cayman Brac

Aim of the Office: To investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.



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4 April 2013

The Honourable Mary Lawrence
Speaker of the Legislative Assembly
Legislative Assembly
Grand Cayman

Dear Madam Speaker,

Re: Amended Annual Report 07-08

I am pleased to submit the former Complaints Commissioner's Annual Report for the period of 1 July 2007 to 30 June 2008, pursuant to section 20(1) of the Complaints Commissioner Law (2006 Revision).

Additional copies have been delivered to the Clerk for distribution.

The Chairman of our Financial Oversight Committee has agreed to introduce the Amended Annual Report.

Sincerely,


Nicola Williams (Ms.)
Complaints Commissioner

cc Honourable Cline Glidden, Chairman

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1 Executive Summary

The fiscal year 2007-08 was another busy and fulfilling year for the Office of the Complaints Commissioner. As time passed, we continued to become better known in the community and were gratified by the evolving and improving nature of customer service in the public sector.

We considered almost 500 enquiries, around 10% of which went on to become fully-fledged investigations. We received more enquiries than we had budgeted for, yet the actual number of complaints that gave rise to investigations was more manageable. Indeed, the number of complaint investigations in 2007-08 was fewer than half the number from two years ago. We attributed the drop to several encouraging factors: a tightening of the intake processes; the existence of internal complaints processes in government entities; and improvement in government departments.

A cross-section of complainants revealed some interesting trends about our users. Most were Caymanian residents of George Town between the ages of 30 and 50 and more men than women filed complaints. We also reached out to the Sister Islands, completing seven investigations there. The number of companies seeking assistance from the OCC also demonstrated the credibility of the office within the business and professional sectors.

We had anticipated that between two and five public-interest investigations would be completed and sent to the Legislative Assembly, and in the event two (plus our Annual Report for 2006-07) were completed and another two were started. One Special Report was completed and tabled in the Legislative Assembly. We monitored 92 recommendations, well above the target of 20-50 recommendations, and by year's end, we had evidence that 38 recommendations from last year and this year had been complied with.

With the support of the Chief Secretary, we continued the training sessions for civil servants on the value of internal complaints processes (ICPs), and many entities instituted internal complaints departments or processes. Last year, we reported that two studies were done to document the progress in this area. A third study was completed in March 2008. With each study, greater numbers of government entities were able to tell us that they had implemented either informal or formal ICPs.

In some cases, the OCC was able to hear both sides of a complaint within a day or two, and thereafter resolve the dispute. However, the more complex the allegation and the more people and documents involved, the more time elapsed before the investigation could reach completion.

The OCC was invited to make contributions to the Chief Secretary's Review of the expansion of the Civil Service, to the Central Tenders Committee's process and procedures manual, and to the Governor's FACE (Five-star Award for Customer service Excellence) process. We provided a submission to Sir Richard Tucker in the Commission of Enquiry regarding Hon. Charles Clifford on the role of the OCC and the code of conduct for civil servants and requirements for a civil servant entering political life. And we advised Mr Vijay Krishnarayan, a representative of the UK Department for International Development's programme, Building Human Rights Capacity in British Overseas Territories.

Also this year, former analyst Petula Twinn completed a third edition of a booklet entitled *Small Claims Handbook*, designed to assist residents in pursuing available legal remedies through the Summary Court. This booklet is a plain-language guide to making a

claim and enables complainants to seek redress for complaints that fall outside the jurisdiction of this office. It has been used, for example, to make claims against a private car vendor and a landlord. Hundreds of copies are now in circulation.

A number of key strategic ownership goals were established in 2006-07 for a period of two years (2007-08 and 2008-09). The goals, which were all complied with, were as follows:

1. Establish a presence on the Internet for informational purposes and to register complaints online.
2. Implement a case management system, Modified Case Tracker.
3. Implement a performance-appraisal system.
4. Provide a bi-monthly report to the media on the work of the OCC.
5. Increase public awareness through media interviews and advertising.
6. Complete in-house training on human rights.

Our budget for 2007-08 of \$954,442 was satisfactory. We were prudent in our spending and returned money to the central treasury at the end of the year, repeating the trend from past years.

While the OCC is independent, it must also account for the manner in which it uses public funds. Section 45 (2) of the Public Finance and Management Law provides for the appointment of a financial oversight committee. The members of the committee are the Hon. Alden McLaughlin, Jr (Chairman), Mr W. Alfonso Wright, Mr Moses I. Kirkconnell, JP, Ms Lucille D. Seymour, BEM, and Mr Rolston M. Anglin.

The staff of the OCC included Commissioner John A. Epp, PhD, MCJ, LLB; Mrs. Susan K. Duguay, Administrative and Investigative Officer; analysts Mr. Scott D. Swing, MEd, BA, and Mrs. Barrie Quappe, BSN, BFA, Executive Assistant to the Commissioner Mrs. Bridgette von Gerhardt; and receptionist Mrs. Claudine Simons. A special mention to former analyst Ms. Petula Twinn and former executive assistant Ms. Giselle Webb, who are continuing in the public service in new roles, and former apprentice analyst Ms. Pamela Mendez, who, having completed her final year reading Law and her professional practice course, left us on schedule to join the law firm of Appleby.

2 Former Commissioner's Message

Reflecting on the fourth year of operation of the OCC (2007-08) brings a feeling of optimism for the perpetual success of this institution. Our efforts to establish credibility within the community continued to show positive results. We were pleased to receive expressions of gratitude from some residents who were assisted. We also were commended by the government of the day in the booklet 'The Cayman Islands Constitution: A Reflection of who we are: Explanatory Notes' (January 2008) at page 13: "It is good practice in a democracy to provide independent checks on the efficiency, fairness and integrity of all our institutions. Caymanians have seen that the creation of the office of the Complaints Commissioner has had a profound effect in investigating government agencies whose practices contravene the principles of fairness, efficiency and good administration. The PPM government believes that the Office of the Complaints Commissioner should be just the first step towards promoting transparency and integrity in government and ensuring that decisions are made in the best public interest."

Our desire to better equip our team was met by continued training programmes such as the one provided by the Ombudsman of Ontario and his team.

Our powers of investigation were clarified and affirmed by declaration of the Grand Court arising from a case that began in 2007-08. Regulations under the Complaints Commissioner Law (2006 Revision) were affirmed in August 2007 (but not Gazetted until August 2008.)

The matters which we investigated on our own motion continued to be topics of wide significance and complexity. Two investigations of note included the safety and regulation of the marine environment, and the reputation and operation of the national airline during hurricane Dean. The reports are on our website at www.occ.gov.ky.

We continued our efforts to promote the establishment of internal complaints processes in government entities to improve customer service. It is our view that these efforts have had a positive impact on government service and have reduced our case load.

There have been some disappointments. Promised legislation has not been forthcoming on the safety and operation of small commercial vessels. Our continued questioning and review of the functioning of labour tribunals and the labour appeals tribunal contributed to the decision of the Ministry of Employment to retain consultant Gerry Samuel Goolsaran in March 2007 to review that and related issues. But the expected new legislation and better service to the public has not materialized.

The establishment of the Legislative Committee with responsibility for oversight of the OCC was a welcome event, but attempts to meet with the Committee have been generally unsuccessful. Amendments to the powers of investigation and jurisdiction of the OCC, adopted by the committee, have not been moved forward by the Chairman. Reports arising from our investigations have not been debated in the Legislative Assembly.

I feel fortunate to have the privilege of working with a good team. Together we are pleased to have had the opportunity to assist in the encouragement of better governance in these Islands. We have had the satisfaction of seeing positive and lasting change in certain administrative practices, which will benefit the residents of the Cayman Islands. Also, we have seen, through our independent investigations, examples of the good work done by many civil servants. The civil service, in the main, usually works well.

As I will be demitting office in the months ahead, I will not have the opportunity to write another annual report, and in consequence I take this opportunity to state that it has been an honour and privilege to serve.

John A. Epp
January 2009

3 The Oversight Committee of the Legislative Assembly

The Office of the Complaints Commissioner is an independent office.

The Cayman Islands (Constitution) (Amendment) Order 1993 amended the Constitution of the Cayman Islands to establish the Office of the Complaints Commissioner. The Constitution, in section 49(N)(5), states, "In the exercise of his functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority."

While the OCC is independent, it must also account for the manner in which it uses public funds. Section 45 (2) of the Public Finance and Management Law provides for the appointment of a financial oversight committee:

“45 (2) Unless the context otherwise required, Part IV shall apply in respect of the Office of the Complaints Commissioner as if –

- (a) every reference to the Governor in Cabinet or a minister were a reference to the committee of the Legislative Assembly responsible for overseeing the performance of the Office of the Complaints Commissioner, or if no such committee exists, the Speaker; and
- (b) every reference to a ministry were a reference to the Office of the Complaints Commissioner.”

The members of the committee are the Hon. Alden McLaughlin, Jr (Chairman), Mr W. Alfonso Wright, Mr Moses I. Kirkconnell, JP, Ms Lucille D. Seymour, BEM, and Mr Rolston M. Anglin.

4 Introduction of Staff

The Office of the Complaints Commissioner is a challenging, stressful, and rewarding place to work. The OCC is proud of the members of its 2007–08 team, who are introduced below.

Commissioner

John A. Epp, PhD (Law) (Liverpool) 2001, MCJ (Texas) 1990, LLB (Sask) 1982, BA (Sask) 1979, called to the Bar of Saskatchewan in 1983. Mr Epp began his professional career in Canada and eventually specialised in insurance litigation. From 1991 to 2004, he served in the Attorney General Chambers of the Cayman Islands as a recognised law teacher of the University of Liverpool. He served as a chairman of the Public Service Commission Tribunal. He is a certified NITA skills trainer, and regularly participates in intensive trial advocacy programs. He is the author of *Building on the Decade of Disclosure in Criminal Procedure* (London: Cavendish, 2001), and the co-author of *Legal Aid Provision 2002* (Grand Cayman: CILS Academic Press, 2003). He accepted the appointment as Cayman’s first Complaints Commissioner in July 2004.

Administrative and Investigative Officer

Susan K. Duguay, BSS (University of Western Ontario) 1982. Although Mrs Duguay began her career in the public service of Canada, after completing a college diploma in Public Relations (Algonquin College) 1983, she gravitated to the private sector, where she remained for the balance of her career, holding various administrative and financial positions in offshore jurisdictions. Mrs Duguay, who is fluent in French, Spanish, and English, joined the OCC as its first Administrative and Investigative Officer on 4 July 2006.

Analyst

Scott D. Swing, MEd (Victoria, BC) 2003, BA (Anderson, Indiana) 1991. Mr Swing began his career in the Cayman Islands as a teacher at Triple C School. Later he taught at John Gray High School, and for three years he served as Vice Principal of First Baptist Christian School. After returning to university to complete his master’s degree in leadership studies, he served the Cayman Islands Chamber of Commerce as the

Programmes Director, focusing on the improvement of the Professional Development and Training Programme and the Better Business Bureau. Mr Swing, who is an accomplished sculptor, joined the OCC on 1 December 2004.

Analyst

Barrie S. Quappe BSN (Wisconsin) 1998, BFA (theatre) (Miami) 1981. Mrs Quappe began professional work in New York City with the Caribbean Tourism Association. She worked for many years as an entertainer and talk show host on local television and radio and spent time working with the Cayman Islands Chamber of Commerce where she headed up membership services. Upon achieving her BSN, she worked at the Cayman Islands Hospital CCU and at the Chrissie Tomlinson Memorial Hospital as a cardiovascular nurse specialist. She has served as a board member on the Health Services Authority Board and is a past President of the Cayman Music and Entertainment Association (CMEA). Mrs Quappe and her husband, Chuck Quappe, were recognised by the Cayman National Cultural Foundation for "Artistic Excellence" in 2007. She joined the OCC on 1 October 2007.

Executive Assistant to the Commissioner

Bridgette von Gerhardt is a graduate of Cayman Brac High School and the Pitman secretarial programme. Mrs von Gerhardt began her career in the Brac before moving to Grand Cayman to work at Cayman National Trust. Later she served as the Administrative Assistant to Sir Vassel Johnson. After six years in Chile, where she gained a command of the Spanish language, she joined the Cayman Brac Teachers' Centre, assisting the Education Officer. She joined the OCC on 1 December 2004. She returned to Chile for approximately 18 months in the spring of 2006 and then rejoined the OCC in the spring of 2008.

Receptionist

Claudine Simons was born and raised in Grand Cayman and is a Cayman Islands High School graduate. Ms Simons began her professional career in the banking industry, serving in many different capacities for 13 years. When she is not working, she loves spending time with her family, especially her children and she loves to travel. She joined the OCC on 24 September 2007.

Special mention

The OCC is grateful for the service of Analyst Petula Twinn and Executive Assistant Giselle Webb. Both are continuing in the public service in new roles. We benefited from the contribution made by our apprentice analyst, Pamela Mendez, who, having completed her final year reading Law and her professional practice course, left us on schedule to join the law firm of Appleby.

5 Training

During the third week of December 2007, the entire OCC team undertook an advanced training programme on investigations designed by the Ombudsman of Ontario. The training was conducted by Ombudsman André Marin and Lead Investigator Gareth Jones. Specialist training in obtaining evidence from computers was received from Deloitte.

In-service training continued through the remainder of the year. For example, Ms Simons attended a course designed to assist receptionists. The Commissioner attended the annual

meetings and seminar series of the Canadian Forum of Ombudsman in St John's Newfoundland and was a presenter at the Canadian Association of Civilian Oversight of Law Enforcement, held this year in Regina.

Mr Swing continued his studies in the course entitled "Information Access and Protection of Privacy", offered online by the University of Alberta. He hopes to complete his certification through this programme in the first quarter of 2009. He attended the Caribbean Ombudsman Association Meeting in Jamaica in June 2008, where the topic of human rights was discussed. Mrs Duguay and Mrs Quappe attend the Caribbean Ombudsman Association bi-annual meetings and lecture series in Bermuda in May 2008. Ms Webb learned about supervising reception through a mentoring programme designed by Mrs Duguay.

6 Translation Services

On the basis of the broad cultural diversity in the Cayman Islands, it was anticipated that the OCC would better serve the public by being able to assist in languages other than English. The Administrative and Investigative Officer, Mrs Susan Duguay, is able to assist people in English, French, and Spanish. The Executive Assistant, Mrs von Gerhardt, is able to assist people in Spanish. For services in 50 other languages, the OCC has contracted for translation services by telephone with All Languages Ltd of Toronto, Ontario.

7 Role and Function of the Office of the Complaints Commissioner

7.1 ROLE

The Office of the Complaints Commissioner exists to safeguard the community in its dealings with government agencies. The Office has three major statutory roles:

- *Complaint investigation:* the investigation and review of the administrative actions of Cayman government officials and agencies, upon receipt of complaints from members of the public, groups, and organisations.
- *Own motion investigation:* the investigation, on the initiative or "own motion" of the Commissioner (ombudsman), of the administrative actions of Cayman government agencies – often arising from insights gained from handling individual complaints.
- *Complaint monitoring:* the monitoring of the administrative actions of Cayman government officials and agencies, upon receipt of our recommendations.

The complaint and own motion investigation roles of the OCC are the more traditional roles that constitute the bulk of the work of the office. The guiding principle in an investigation is whether the administrative action under investigation is unlawful, unreasonable, unjust, oppressive, improperly discriminatory, factually deficient or otherwise wrong. At the conclusion of the investigation, we can recommend that corrective action be taken by an agency. This occurs either specifically in an individual case or generally by a change to relevant legislation, administrative policies or procedures.

A key objective of the OCC is to foster good public administration within Cayman government agencies, ensuring that the principles and practices of public administration are sensitive and responsive to the interests of members of the public.

The OCC does not represent the complainant or the government administration. It conducts an independent review and makes objective reports to the parties or the Legislative Assembly. It can address complaints that occurred within the past 12 months if the subject of the complaint is a government entity and if the complaint is not excluded by schedule 2 of the CCL.

The OCC has jurisdiction to consider decisions taken in the course of “maladministration” by a government entity. Government entities include a ministry, company, department, portfolio, statutory board or authority. Maladministration is defined in the CCL as “inefficient, bad or improper administration”. This includes unreasonable conduct (for example, delay) or abuse of power or authority. Abuse of power or authority may include an action based on a mistake of law or fact; an action which is unreasonable, unjust, oppressive, or improperly discriminatory; or an action based on *practices or procedures* which are unreasonable, unjust, oppressive or improperly discriminatory.

Examples of maladministration taken from the reports of the Parliamentary Ombudsman of the United Kingdom include bias, partiality, neglect, inattention, delay, abuse of power, incompetence, ineptitude, perversity, rudeness, unwillingness to treat the resident as a person with rights, refusal to answer reasonable questions, neglecting to inform a complainant about rights or entitlement including appeal routes, knowingly giving misleading or inadequate advice, offering no redress, faulty procedures, failure by management to adequately monitor compliance with procedures and failure to reduce the effects of rigid adherence to the letter of the law where that produces inequitable results.

The OCC also has jurisdiction to consider the inequitable or unreasonable nature or operation of any enactment or rule of law.

7.2 PRIMARY FUNCTIONS

The primary functions of the OCC are to investigate; to recommend; to report; and to monitor.

7.2.1 Investigate

A key objective of the OCC is to contribute to public discussion on administrative law and public administration and to foster good public administration that is accountable, lawful, fair, transparent and responsive. We pursue this objective in different ways – by looking in depth at an issue arising in a particular ministry/department/portfolio; drawing attention to problem areas across government administration; conducting own motion investigations; working jointly with ministries/departments/portfolios to devise solutions to the administrative problems that arise within government; and making submissions to external reviews and enquiries that are examining issues in public administration.

The OCC will investigate complaints made in writing that fall within the scope of the CCL, and matters directed to it for investigation by resolution of the Legislative Assembly. The OCC may also, on its own initiative, investigate matters which, in the Commissioner’s opinion, must be investigated in the public interest.

The purpose of the investigation is to ascertain whether “injustice” occurred as a result of maladministration.

The powers of investigation are stated to be the same as those of a Grand Court judge, although the Commissioner is not bound by the rules of court and can set his own procedure within the confines of natural justice. Some powers include the power to summon witnesses and receive confidential documents. Also, the Commissioner may order re-entry of a person removed from the Islands by the Immigration Department who is important to an ongoing investigation.

Throughout 2007–08, we did not have to order the re-entry of a person but we did have to issue formal summons. These were complied with in due course.

7.2.2 Recommend

The OCC may recommend action to be taken by an administrator when maladministration is found. The recommendations may address a specific action causing an injustice and may address laws, regulations or rules that lead to an unjust result. The OCC may recommend payment of compensation for the complainant who was wronged. In addition, the Commissioner may make such comments in relation to a case as he thinks fit, whether or not an injustice has occurred.

7.2.3 Report

The OCC must inform the government entity of the result of an investigation if injustice is sustained as a result of the actions taken by the entity's officer. If no action is taken by an administrator on a recommendation made by the OCC, the OCC must report this failure to the Legislative Assembly. Also, if the OCC conducts investigations on its own initiative, it must report the findings to the Legislative Assembly. A special report must be made to the head of department when serious misconduct is discovered in a department, and that report must be presented to the Governor and the Legislative Assembly.

7.2.4 Monitor compliance

The OCC must monitor compliance by government entities with recommendations made by the Office.

7.3 ADDITIONAL FUNCTIONS

The CCL authorises the OCC to organise the mediation of a complaint that is minor in nature, where the parties are willing to meet to attempt to resolve the problem. This can be an effective route where, for example, the member of the public must often interact with the same government officer. Mediation can help defuse tension or frustration and serve to begin a dialogue and open lines of communication.

To better perform the role and function stated in the CCL, the OCC, by implication, must inform the public service and the residents of the Islands of all aspects of the Office.

7.4 AREAS OUTSIDE THE JURISDICTION OF THE OCC (SCHEDULE 2)

1. International affairs – matters certified by the Governor to affect relations between the government and another country's government (or its international organisations).
2. Matters of national defence, external affairs and internal security (e.g., Emergency Powers Law).

3. Investigation of crime, or protection of the security of the Islands, by Police, Customs or Immigration.
4. The Governor's power of pardon.
5. Court proceedings, whether civil or criminal in nature.
6. Issues concerning the employment (e.g., hiring, promotion or firing) of government employees.
7. The Attorney General's powers of prosecution (e.g., beginning, overtaking or ending).
8. Legal advice given by the Attorney General to the government.
9. The Auditor General's actions (e.g., reviewing the government's accounts).
10. Matters under the Mutual Legal Assistance Treaties.
11. Contracts for services for government (but can investigate purchases of land).
12. Matters defined by the Constitution as outside of the authority of the court.
13. Any judicial function.

8 Demographics

Attached as Appendix B is an indication of the demographics of the people served by the OCC, based on 54 files closed during the period ending the fiscal year June 2008. In brief, most complainants are Caymanian, between the ages of 30 and 50 years, and often residents of George Town. Men are slightly more prone than women to file a complaint (19 males, 12 females, 16 companies). During this fiscal year, seven investigations arising from complaints made in the Sister Islands were completed. The number of companies seeking assistance from the OCC demonstrates the credibility of the office within the business and professional sectors. This office is committed to continuing a mixed-media campaign to increase the visibility of the OCC to all socioeconomic groups in Cayman society.

9 Intake and Case Flow Process

The basic intake process is depicted in a flow chart found below at appendix C.

10 Case Examples

The OCC deals with a diverse range of complex complaints where the results can differ widely. Below, we present a number of case studies reflecting that diversity and the very different outcomes that can occur. Other cases are discussed later in this report. Sometimes, government entities are found wanting and the OCC will offer recommendations to rectify the circumstances giving rise to the complaints and help to avoid a repeat in future. The OCC often finds that entities in question are not at fault but that the law or regulations are inadequate. And in many cases, neither the office in question nor the procedures are at fault and the OCC will find no maladministration. Investigations can involve a number of different entities and require the analysis of expert opinion and special reports. Names and some details of the selected complainants have been omitted owing to issues of confidentiality.

10.1 Case 1: Immigration Department accused of leaks - completed June 2008

When a complainant contended that the Immigration Department had violated the Public Servant's Code of Conduct by revealing information to a third party, the OCC found that the complainant had suffered an injustice as she was never told whether a suspected leak, which could have placed her in danger, had occurred or not. Although the person had first complained to the Immigration Department in February 2008 and had been promised a letter explaining the findings of the leak enquiry in May 2008, no such communication had been received by the end of this financial year – June 2008. The OCC recommended that, in future, the Immigration Department complete its investigations arising from complaints within one month and report those findings within a week of completion to the complainant. The OCC will continue to monitor the department's compliance of these recommendations.

Case 2: Immigration Department follows the rules – completed July 2007

One of the first cases to be completed in this financial year involved an employer who complained to the Department of Immigration that four of her workers had been issued permits for other employers before the complainant had released them. The OCC found the Immigration Department had acted appropriately because even though the complainant had not issued 'release letters' for the four former employees, they had effectively released themselves by cancelling their own permits owing to the intolerable working conditions under the complainant. The Immigration Law (2006 Revision) does not require a release letter if a permit is cancelled under such circumstances, and in this case all four permits were cancelled before new ones were issued. Accordingly, the Department had not breached any laws or regulations and therefore the complaint was unfounded.

Case 3: Port Authority not liable in accident – completed April 2008

Under the Complaints Commissioner Law (2006 Revision), the Commissioner cannot investigate an action where the complainant has another avenue of remedy. When a complainant came to the office contending that the Port Authority had refused to investigate his complaint after a work accident at a dock because the complainant was not a Port Authority employee, the OCC found that this was indeed the case. It also discovered the complainant had another course of redress. In this case, the Authority could not be held liable for the accident and the complainant's employer had already informed the Department of Employment Relations of the accident. The complainant was therefore entitled to pursue his direct employer for compensation for the accident and there was no maladministration on behalf of the Port Authority.

Case 4: The failure to convene Labour Appeals Tribunals – completed September 2007

A consistent failure by the Labour Appeals Tribunal (LAT) to meet and hear appeals in a timely manner due to a combination of factors, not all within its control, did however, result in considerable maladministration, injustices, cases of justice denied and well founded complaints. In some cases, complainants were waiting literally years to have their appeals heard. In September 2007, in the wake of two particular complaints to the OCC, the office recommended that the Secretariat of the LAT prepare a schedule to address all outstanding appeals before the end of January 2008 and that all appellants be

notified in writing of the status of their appeal. Having monitored the situation closely, the OCC found that the new Chairman of the LAT did make a considerable effort to convene hearings and address the backlog. Once the hearings were underway, the OCC had no further need to make recommendations.

Case 5: Ministry not at fault on musician's complaint – completed January 2008

In an unusual case, a complainant alleged that the Ministry of Communications Works & Infrastructure was failing to uphold the Memorandum of Understanding regarding airtime on local radio for Caymanian musicians. The complainant said his music was not being played on a specific radio station and the Ministry was not taking action. In the course of the investigation, the OCC found that the Chair of the Cayman Music and Entertainment Association (CMEA) had recently congratulated the station in question for its efforts in promoting local music and that overall the airtime given to Caymanian musicians had significantly improved. As the spirit of the MOU was being adhered to, the OCC found that the Ministry was not at fault. While the complainant may not have liked the details of the MOU or was disgruntled that his music was not being played on one particular station, the MOU was indeed being honoured and the complaint was unfounded.

Case 6: Immigration decisions need to be justified – completed September 2007

When the Immigration Department failed to adequately deal with a complaint over a refused visa application, the OCC found a case of maladministration. During its investigation, the OCC discovered that a discretionary decision to refuse a visa made by an immigration officer was arbitrary with no evidence to support it. The Immigration Regulations (2006 Revision) suggests that an application for a visa may be refused if the applicant fails to satisfy an officer that he or she will leave the island or is suspected of seeking entry to Cayman to look for work. In this case, the visa applicant had not previously overstayed nor was there any evidence she was seeking employment and therefore the decision to refuse the visa was unjust. As a result, the OCC recommended that the Immigration Department improve written instructions for the officer in question on the criteria used to decide visa applications.

Case 7: Lands & Survey service within the law – completed March 2008

When a member of the real estate sector complained that the commercial service offered by the Lands and Survey Department ("Lands and Survey") was biased towards an industry body and against individual agents, the OCC did not uphold the complaint. Legally operating a commercial service offering real estate agents access to its Geographical Information Service under the Public Management and Finance Law's revenue-generating recommendations, the department had entered into a discount agreement with the Cayman Islands Real Estate Brokers Association (CIREBA). The complainant accused Lands and Survey of not only refusing to offer her the same discount but also giving CIREBA greater access. Having established jurisdiction to investigate the most part of the complaint, the OCC found that all subscribers were given equal access to information depending on the fee they paid and were receiving equitable service. The discount given to CIREBA was reasonable because of the body's bulk purchasing power. Lands and Survey had also offered to negotiate an agreement with the complainant. The OCC decided the complaint was unfounded, but it did find that the investigation took longer than necessary, as the department did not respond in a timely

manner. However, as the Director acknowledged this and indicated that in future he would respond to the OCC in a timely manner, no recommendations were made.

Case 8: Documentation needs to be clear – completed June 2008

A complaint against the Department of Vehicle and Drivers Licensing accusing the department of overcharging unexpected fees on a suspended vehicle licence was upheld because of poor documentation. A motorist suspended his vehicle licence for an indefinite period while he acquired the necessary parts for its repair. After paying the back fees, he was led to believe that no more fees would be required until he reactivated the licence. However, when fees were later requested of him, he was told by the manager of the department that he had to pay because the suspension of a vehicle licence had a limit of three months. During the investigation of the complaint, the OCC found that a department clerk had originally advised the complainant that the suspension was open ended. Not only that, but the department's literature concerning suspensions indicated that no fees should have been due. The OCC recommended that the wording on the relevant documentation be clarified and that the internal accounts of the department be corrected to reflect that the complainant did not owe money. This was done.

Case 9: Status & Permanent Residency guided by AG – completed August 2007

A complainant stated that permanent residency was granted to his wife without his approval and complained that the Caymanian Status & Permanent Residency Board, which considered his wife's application without his signature, had based its decision on misrepresentation. But the OCC found that the board had not only considered all the factors on the application for residency, it was also guided by an opinion of the Attorney General. Even though the marriage was unstable, the board recognized that this was not an absolute bar to the granting of a Residency and Employments Rights Certificate (RERC). Moreover, in this case the board's primary concern was the welfare of the applicant's Caymanian child. As the wife was unable to apply for a work permit, she had no other recourse but to apply for a RERC. As a result, the OCC was satisfied that there was no failure on the board's part to properly review the application.

Case 10: Board decisions must follow the law – completed June 2008

When the Marine Conservation Board reversed a decision not to issue Turtle Capture Licences for the period November 2007 to April 2008, a complaint was received by the OCC suggesting the board had been interfered with by outside powers. When the OCC began its investigation, it was revealed that the board had first decided not to issue licences because it felt the Marine Conservation Law needed to be revised and was concerned that things were not moving fast enough. However, none of the turtlers were informed that this was what was behind the refusal and one of them complained to the Leader of Government Business. This provoked a meeting with elected members of Cabinet, which is what board members intended in order to bring government to the table to discuss what it perceived as necessary changes to the law. It was the OCC's finding that the turtlers had therefore been denied their right to a licence in an unfair process. The office also found the portion of Cabinet to be at fault when they called the meeting with the board to address the turtlers' complaints deviating from the proper route governing appeals against any decision made by the board. By calling the meeting with the board, the members gave the appearance of wrongly interfering with the process. As a result of the chain of events, the OCC recommended that the board follow the rules of natural

justice when making decisions and accurately state the reasons for them. It also recommended that elected members of Cabinet follow the process as stated in the relevant legislation.

Case 11: Immigration Department must hear applicants – completed June 2008

The OCC found that an employer and his employee were not given due consideration when the Immigration Department failed to give them a chance to answer allegations made against them during an appeal over a refused work permit. In the wake of the refusal, a complaint was made to the OCC that the employer was not invited to attend the appeal. The OCC found that a previous employer had denigrated the performance of the employee in writing to the board requesting that employee be refused any future permits. As neither the employee nor the employer were given the opportunity to see these written allegations and answer them, the OCC found a breach of the rules of natural justice. The OCC recommended that the Immigration Department consider the application afresh in a timely manner with no fee. It also stated that the Immigration Department must follow the rules of natural justice and give applicants the opportunity to answer allegations, and that the reasons given in writing to applicants must reflect the real reasons for a decision being made by the department. In the end, a new application was submitted and granted.

Case 12: The OCC is tied by Planning Law – completed July 2007

The OCC seeks to help all those who believe they are the victims of an injustice perpetrated by a government entity. However, there are times when it is impossible to achieve a favourable outcome because of the rule of law. When a complainant contended that the Planning Department had refused to take action regarding a zoning violation, the OCC found that the department had not violated the principles of good administration. In this instance, the OCC sought an independent legal opinion because of the complexity of planning law. It was the view of the expert attorney that the time limit for taking enforcement action against the landowner had expired and as a result, the planning Department was acting within the law and the complaint could not be upheld. The Commissioner agreed with that opinion and ruled no maladministration by the Department.

Case 13: Prison follows complaints procedures – completed May 2008

Being a convicted felon does not exclude persons from using the OCC. When an inmate complained that the prison had failed to deal with his official complaint over the loss of property and compensation, the OCC began an investigation which found the prison had followed the correct complaints procedure. When moved from one unit of the prison to another, the complainant said the prison failed to secure his property, which included some craft items. Having followed up the complaint the prison admitted that they had mishandled and lost the prisoner's property. The OCC found that the prison had informed the prisoner of the state of the complaint and duly compensated him for the loss of property. While the prisoner remained dissatisfied with the outcome and the level of compensation, the OCC found the prison system acted within reasonable bounds.

Case 14: Immigration Department fails to make timely decision – completed November 2007

A complaint that the Immigration Department failed to give a timely response was well founded – but because of the complaint’s unusual nature, the OCC made no specific recommendations. Having completed an application for asylum in November 2004, a complainant reported to the OCC that the Immigration Department had failed to notify him and two others of the state of their asylum applications more than three years later, in spite of repeated requests. This blocked their right of appeal. The OCC began an investigation that eventually resulted in the Chief Immigration Officer putting his decision in writing and sending it to the complainant. The OCC made a finding of maladministration against the Immigration Department because of the undue delay in the application. Considering the rarity, however, of an asylum application, the OCC declined to make a recommendation.

Case 15: Pension Board rules in line with the law – completed July 2007

When a complainant filed a complaint against the Public Service Pension Board (PSPB) suggesting he had been denied enhanced benefits despite his disability being employment-related, the OCC discovered that the board was not at fault. Whether or not the complainant was entitled to the extra benefits remained in question, but the OCC found that the board had acted on the recommendations of the Chief Medical Officer, who had said the disability was not related to employment injuries so the claim was refused, consistent with the Public Service Pension Law (2004R). As the board is expected to make decisions based on medical opinion it followed the letter of the law. The PSPB said the complainant did have the right to seek another opinion from a medical officer for submission, which it would then consider on its merits. Following such a submission that conversely established the disability was work-related, the enhanced benefits would be paid. The complaint was unfounded because the board’s decision was reached in accordance with the existing law based on the medical submissions.

Case 16: Tenders Committee makes sound decision – completed July 2007

The OCC established that a company’s complaint against the Central Tenders Committee (CTC) was unfounded when the investigation revealed that the committee had made a sound decision based on the evidence. When a local firm’s bid regarding a new emergency response centre was turned down, the company complained to the OCC that the CTC had made an error in its valuation. The OCC contacted the CTC and found it planned to review the complaint itself, so the OCC delayed its own investigation until the internal review was conducted. When the CTC concluded that the proper procedure had been followed, the OCC began its investigation. The office reviewed extensive documentation, interviewed board members and examined the process by which the decision was made. The evidence suggested that the bid by the complainant did have legitimate questions. The CTC was concerned that all the other bids had submitted considerably longer estimated ‘hours of work’ leaving the committee to judge that the bidder had considerably underestimated the project. The OCC found the decision was supported by the evidence and the CTC had not made any material errors.

Case 17: Human error at Immigration not maladministration – completed December 2007

A mistake made by an Immigration Officer in 2003 led to a complaint in 2007 from a resident who said the Immigration Department was not considering his work permit application and asking him to leave the island. The OCC found that a mistake at the

airport over entry and exit stamps had accidentally changed the complainant's computerized records and reset his rollover clock to 2010. When it was discovered that the complainant had not actually had a break in stay which would have accounted for this change, his record was amended to reflect a new "Actual Term Limited", which meant the complainant was already past due to leave the island. If the error had been allowed to stand, this would have undermined the normal immigration process. The change in the time the complainant was allowed to stay on island was not maladministration but human error. The Immigration Department admitted this had led to the complainant being wrongly given an extra three years to remain here when in truth according to the law, the complainant had already surpassed his term limits. In conclusion, the OCC found that a human mistake was not grounds for the office to uphold the complaint.

Case 18: OCC investigates Cayman Airways in media spotlight – completed December 2007

In the wake of a very public argument between Cayman Airways (CAL) and a local newspaper publisher, the OCC began an extensive investigation following the newspaper proprietor's official complaint against the Minister with responsibility for the government-owned airline and the airline's CEO. The complainant alleged that bias and abuse of power by the two men had prevented the orderly distribution of the newspaper. The dispute concerned an ongoing debt owed by the complainant to the airline. As the OCC has limited jurisdiction over commercial transactions, it did not make findings on this element. The OCC sought only to determine if there had been bias or abuse of power by either the Minister or the CEO. In an investigation that included independent expert testimony, press coverage, comments in the Legislative Assembly, abusive behaviour, a mounting debt, traffic problems and many other considerations, the OCC found that the decision to stop distribution of the newspaper was made by the Cayman Airways Board and not by either the Minister or the CEO. As the OCC had no need to make judgment on the validity of that decision, the complaint was determined to be unfounded as there could be no abuse of power or bias if the two men accused by the complainant were not ultimately the decision makers.

11 Matters Arising from Written Complaints

11.1 SPECIAL REPORTS

The Complaints Commissioner Law (2006 Revision), section 18(3) states that, where the Commissioner has made a recommendation and he is of the opinion that inadequate action has been taken to carry out the recommendations, a special report must be laid before the Legislative Assembly. One Special Report was completed and tabled in the Legislative Assembly.

11.1.1: Special Report: Immigration Department and refused entry. Submitted 18 January 2008, tabled 23 January 2008

On 19 December 2006, Mr AB filed a complaint with this office against the Immigration Department. His complaint was that, on 5 December 2006, his fiancée, YD, arrived at Owen Roberts Airport for a planned visit with him in Cayman Brac but was refused entry based on the fact that she did not have sufficient funds with her nor could her sponsor be contacted. The officers forced Ms YD to leave the island and return to Jamaica without contacting Mr AB. As he was the person sponsoring Ms YD's visit, Mr AB felt that the

officers should have contacted him before sending Ms YD back on the next flight to Jamaica.

This Office launched an investigation into this complaint by notifying the Chief Immigration Officer on 26 January 2007 in writing of the complaint and our intention to investigate.

As the result of our investigation, Mr AB's complaint was judged to be well founded.

While several Immigration Officers claimed that attempts were made to contact Mr AB using the Immigration telephones at the airport location, phone records obtained under our powers of investigation revealed that neither AB's cell phone number nor the number of his employer in Cayman Brac were called from either of the identified numbers at Immigration in the relevant period. The investigation also revealed that no attempts were made on 5 December 2006 to contact AB through the Cayman Brac Immigration Office or the Royal Cayman Islands Police Service.

Regulation 21(4) states that "[a]n application for a visa may be refused on the ground that the applicant (d) has failed to establish that he has sufficient financial resources or a qualified sponsor to support him and his dependants for the duration of his stay".

Regulation 21(5) states that "[a] person in possession of a valid visa seeking permission to enter the Islands may be refused permission only where the immigration officer is satisfied that (b) a change in circumstances since it was issued has removed the basis of the holder's claim to land".

Ms YD was required to have either sufficient financial resources or a qualified sponsor to obtain a visa. I found that regulation 21(4) must be considered when considering actions under regulation 21(5). When reviewing the "change in circumstances", an officer needs to consider the original grounds on which a visa is granted. The officers should also, in exercising their discretion, consider what is fair and reasonable given the information before them. I found that the fact that a visa may be issued with either a qualified sponsor or sufficient financial resources provides that a person could be admitted without sufficient personal financial resources provided they have the support of a qualified sponsor.

The fact that statements were made by the Immigration Department which indicated that attempts were made to contact Mr AB and that had he been contacted, Ms YD would have in all likelihood been permitted to land call for a conclusion that denial of entry was not being considered solely on the fact that Ms YD travelled with insufficient funds.

While I accepted that the Immigration Law provides immigration officers with wide discretion to perform their duties, it is settled law that discretion must be used in an appropriate manner.

The OCC found that the Department failed to make reasonable efforts to contact Mr AB and that Ms YD was wrongly denied entry and was a victim of an injustice. Mr AB's complaint was held to be well-founded and he too was a victim of an injustice, and the following recommendations were made to the CIO on 19 September 2007:-

1. The Department now compensate Mr AB for the cost of Ms YD's airfare from Jamaica to Cayman Brac and the cost of her ground transportation in Jamaica and incidentals in the total amount of C\$500.
2. The Department further inform its officers in the two aspects of the relevant provisions in regulation 21(4) and 21(5) (sufficient financial resources or a qualified sponsor) and the interaction between the two sub-regulations.

3. The Department prepare written guidelines which include that action must be taken by the relevant officer to make contact with a sponsor, including, where practicable, using other Immigration Officers or RCIP officers to alert the sponsor.”

It must be noted that while recommendations 1 and 2 have not been complied with, the CIO acted on recommendation 3.

The CIO has been provided in excess of two months in which to comply with the OCC recommendations 1 and 2. The Commissioner is of the opinion that adequate action has not been taken in this matter as at the date of the Special Report and the writing of this report.

12 Own Motion Investigations

The Commissioner can conduct an investigation as a result of a complaint or on his own motion (or initiative) if there are special reasons that make investigation desirable in the public interest. During the course of the 2007–08 fiscal year, four own motion investigations were undertaken or continued. A synopsis of the reports tabled in the Legislative Assembly are presented below. The other investigations which remained open as at the end of the fiscal year are summarised subsequently.

12.1 COMPLETED REPORTS

12.1.2 Investigation of Allegations against Cayman Airways Ltd in the wake of Hurricane Dean, 2007 – Own Motion Report 8 – tabled 23 January 2008

In mid-August 2007, the Cayman Islands were facing a threatened strike by hurricane Dean. Cayman Airways Limited (CAL) worked very hard to transport as many people as possible off these islands. However, on 16 August 2007, allegations that CAL was “price gouging” were brought to the attention of a number of MLAs including the Leader of Government Business, the Hon. Kurt Tibbetts, and the Minister responsible for Cayman Airways, the Hon. Charles Clifford. As a result of considerable public discussion and concern over the alleged overcharging for flights out of Grand Cayman on CAL, and some rather harsh allegations published in the news media, the OCC launched an Own Motion investigation under section 11(1) of the Complaints Commissioner Law (2006 R) on 21 September 2007.

This investigation considered whether the allegations of price gouging were well founded; whether CAL had a pricing policy and, if so, what that consisted of; what process is implemented when adjusting prices and inventory; what the ticket-sales policy was in the context of hurricane Dean; what the policy was for disseminating information regarding ticket sales and flight availability; what the customer complaint process was; and whether the explanation that the problems arose due to a “computer glitch” was actually given and, if so, whether it was correct.

We found the complaint of price gouging to be unfounded. Our investigation confirmed that no CAL fare prices were altered in the days immediately preceding or during the passing of hurricane Dean. All fares charged were found to be those fares ordinarily in the system.

But we found that CAL failed to adequately train staff in the full use of the new reservations system (Sabre). In addition, we found that CAL failed to establish an effective communication system. And CAL failed to make improvements to its internal complaints process, and this is maladministration.

While this investigation found no evidence which would warrant a finding of price gouging or an intention to mislead Members of the Legislative Assembly or the public, it did expose areas of maladministration and resulting injustice. In laymen's terms, our investigation exposed areas that were inefficiently administered, which resulted in some customers being charged more than CAL intended and some customers feeling that they were dealt with in an unreasonable manner.

In the light of our findings we made the following recommendations:

1. that CAL strategically looks at the skill set of its staff and arrange for additional staff to be sufficiently trained in Sabre so that, in the event the designated staff member is unavailable for any reason, CAL can call on other staff members to manipulate the relevant systems in a crisis;
2. that CAL develops a sales policy for emergency situations;
3. that CAL analyses the failures of its current communication system and sets a policy which includes a plan for communications in the event of an emergency. Once the policy has been established, CAL must train all staff to ensure that during an emergency they understand where to obtain essential information;
4. that CAL, as a matter of urgency, takes steps to finalize its internal complaints process and makes arrangements for implementation within one month of receiving this report.

(Note: compliance with the recommendations is discussed below in part 14.)

12.1.2 Cayman Turtle Farm and Waste Discharge into the Marine Environment – Own Motion Report 9 – tabled 25 June 2008

We commenced in January 2008 an Own Motion investigation into the apparent failure of Boatwain's Beach/Cayman Turtle Farm (1983) Ltd ("BB/CTFL") to comply with the Water Authority Law, including its apparent failure to obtain the required permit to discharge effluent from the Turtle Farm commercial operation (including turtle touch tanks), as distinct from the new water park, into the marine environment.

The Own Motion investigation was initiated in response to concerns about the BB/CTFL's non-compliance that had been expressed in both print and broadcast media. The alleged failure of BB/CTFL to give information to the Water Authority-Cayman ("WA-C") and its alleged failure to adhere to the law brought into question the administration of the BB/CTFL.

The investigation focused on three issues: first, whether a discharge permit is required for the Turtle Farm commercial operation (including turtle touch tanks) with its continuous discharge of untreated effluent at an estimated outflow of 10,000 gallons per minute or 14.4 million gallons per day; second, the failure of the BB/CTFL to get a discharge permit; and third, a potential conflict of interest (apparent bias) between Mr Joseph Ebanks as Acting Managing Director of BB/CTFL and his membership on the Board of Directors of the WA-C, which is the regulator.

The evidence of WA-C was that BB/CTFL had applied for a discharge permit but no discharge permit had been granted.

It was the finding of the OCC that it was maladministration for the management of BB/CTFL to operate without the required discharge permit. The management team of BB/CTFL had been given every opportunity to comply with the law and had not done so. Beyond that, it was clear that WA-C did not exert the kind of authority expected of a

regulator from 2007 onward when it became aware that BB/CTFL was going ahead into expanded operations without having resolved the issues arising from the first discharge permit.

It was the finding of the OCC that it was bad administration for the management to operate the facility by using electricity without proper authorisation and safety inspections. It was bad administration for the management to operate the facility without the required Building Code inspections, required improvements (if any), and ultimately being satisfied as to the safety of all buildings and pools. The situation was compounded by the fact that management did not have a settled timeline for the completion of inspections and improvements.

The law governing the board required that, at a minimum, Mr Ebanks should have excused himself from meetings when BB/CTFL matters were addressed. It was the finding of the OCC that it was bad or improper administration for Mr Ebanks to remain a member of the board.

The following recommendations were made:

1. that BB/CTFL make arrangements forthwith to meet the requirements of the regulator and do all things reasonably required to complete the licence process by 30 May 2008;
2. that the Acting Managing Director complete as a matter of urgency all steps necessary to complete the criterion for Certificates of Occupancy for the buildings and pools at BB/CTFL;
3. that Mr Joseph Ebanks resign from the board of the Water Authority–Cayman.

(Note: compliance with the recommendations is discussed below in part 14.)

12.2 PENDING REPORTS

12.2.1 Public Service Pension Board – Own Motion Report # TBA

In 1991, the Cayman Islands Government created a pension fund for civil servants in its employ. In 1999, the Public Service Pension Law, 1999 (PSPL 1999), was passed and put into effect in January 2000. The PSPL 1999 revised the very nature of the pension plan and created the Public Service Pension Board (PSPB) to oversee and manage the pension plan and the funds collected. The PSPL 1999 compelled exact accounting and reporting obligations of the PSPB and its agency, and created a new set of fiduciary and statutory duties and liabilities for the PSPB and its agency. A number of diverse stakeholders had an interest in, and a need for, such reporting. They included the PSPB, its managerial and administrative staff (“the agency”) and the executive and legislative branches of the government. Other stakeholders were pension contributors and beneficiaries, including those who were already receiving benefits, and the citizens of the Cayman Islands, who were and are ultimately concerned with any large and unfunded liability of the government as the sponsor and guarantor of the plan. An investigation was launched by the OCC after evidence surfaced that at least some of the reporting with respect to the public service pension plan had failed to occur. The investigation was suspended to allow to resolve challenges regarding the investigative powers of the OCC, and to allow the PSPB to focus on attempting to satisfy the Auditor General’s investigation, and to give the dedicated staff members to put its house in order. The results of this investigation, although planned for the Spring of 2008, now will be tabled in the Spring 2009 session of the Legislative Assembly.

12.2.2 Audit of the Existence of Internal Complaints Processes in Government Entities – Own Motion Report # TBA??????

In June 2008, we commenced an investigation to determine the extent to which government entities had correctly reported the existence in their entity of an internal complaints process for the use of their customers and the quality of the process. The results of this investigation will be tabled in the Spring 2009 session of the Legislative Assembly.

13 Complaint Resolution and Mediation

The majority of enquiries to this office are handled by referring complainants to the complaints officer in the agency concerned. The OCC assists enquirers by helping them to crystallise their complaint, explaining procedures that apply to their case, and making appointments for them at the relevant agency. This is consistent with good dispute-resolution principles, which stress that an agency should generally be given the first opportunity to consider a complaint and resolve it. Many government entities now have internal complaint-handling procedures that can deal effectively with the majority of the complaints they receive. By handling complaints directly, agencies are better placed to learn from their mistakes, to clarify any public misunderstanding about the agency's policies and practices, and to rebuild trust with the clients. Complaint referral is also often the most efficient means of addressing a person's complaint.

However, we have at our disposal another means to resolve disputes. The CCL authorises this office to organise the mediation of a complaint that is minor in nature, where the parties are willing to meet to attempt to resolve the problem. This can be an effective route where, for example, the member of the public must often interact with the same government officer. Mediation can help defuse tension or frustration, and can serve to begin a dialogue and open lines of communication. Although we did not commission a medication session during this year, the OCC last year was able to resolve a complaint between a local company and the Airport Authority through mediation.

14 Power of Recommendation and Comment

In the event that an investigation results in a finding of maladministration and injustice, the OCC can make a recommendation under section 18(6)(a) of the CCL. Some recommendations made were referred to in the case summaries above and others are noted below. Recommendations are monitored to encourage compliance, and if reasonable progress towards compliance is not made (in the case of recommendations arising from written complaints) a special report is made under section 18(3) to the Legislative Assembly. In the event that an investigation results in a finding of no maladministration or injustice, the OCC cannot make a recommendation. However, section 18(6)(b) provides the basis on which the OCC can make a comment. As from April 2007, the OCC decided to monitor all comments made to entities. Hence the OCC now records separate statistics for recommendations made, recommendations complied with (reported below), comments made, and comments "acted on". There is no output listed for monitoring comments.

A comment will be marked as "acted on" when we have evidence. If the comment is deemed extremely important, the OCC may choose to issue an "extraordinary report" to the Legislative Assembly under the provisions of section 20(1). If such a report is made then the OCC has completed the monitoring of that comment. If there is no evidence of

the comment being acted on (and if an extraordinary report was not sent to the Legislative Assembly) by the end of the fiscal year, then a statement is made in the annual report. That statement terminates the monitoring of the comments issued in that fiscal year.

14.1 COMMENTS MONITORED

A total of eight comments were monitored arising from the following six cases and one comment was the subject of an extraordinary report tabled on 18 January 2008.

14.1.1 The Liquor Licensing Board and Ministry of Tourism, Environment, Development & Commerce, JM – Written Complaint Number 60 made 4 May 2005 – Publication of Rules and Procedures – decision 14 November 2007

On 4 May 2005, JM filed a complaint with the OCC against the Liquor Licensing Board (“the Board”) alleging that his application for renewal of a Liquor Licence had been unfairly processed. We completed an investigation and held that the Board, in considering JM’s application, came to a decision through its interpretation of the rules and requirements established in previous meetings of the Board, and that the decision was based on sound reasoning.

Under the Liquor Licensing Law, the Board has the power to regulate its own process. However, the process established had not been set apart in a specific document but was immersed in the declarations and previous decisions of the Board recorded in the minutes of the meetings of the Board. As a consequence, the public did not have access to the rules, procedures and precedents of the Board. As such, this office, while finding no maladministration on the part of the Board in determining JM’s application, made comment that the Board must produce a document stating its rules and procedures.

The Permanent Secretary of the Ministry of Tourism, Environment, Investment and Commerce (“the Ministry”) responded stating that he noted that the Chairman of the Board (“the Chairman”) agreed that the Board should publish its rules and procedures within a reasonable amount of time and that he too intended to work on the matter.

In April 2006, the final draft of a handbook containing the rules and procedures was approved by the Chairman, who anticipated that it would be published and available to the general public at the Annual General Meeting of the Board in September 2006. The handbook was sent to Government Information Services (“GIS”) for publishing. However, it was sent on to Legislative Drafting. On 19 September 2006, this office was advised by Legislative Drafting that drafts of the Liquor Licensing Board for Grand Cayman (Procedure) Rules, 2006; and the Liquor Licensing Board for Cayman Brac and Little Cayman (Procedure) Rules, 2006 had been submitted to the Ministry for its comments and instructions. Further Legislative Drafting advised that until the Rules had been finalised, the handbook could not be made public. To date, the Rules have not been finalised and the handbook has not been published. The Commissioner is of the opinion that the Board made reasonable efforts to comply with the comment in attempting to have the handbook published, however, publication has been unduly delayed by the inaction of the Ministry.

14.1.2 Complaint about HSA reveals other concerns – 5 December 2007

A complaint filed with the OCC concerning the treatment of a mentally ill patient led the office in an investigation which although it did not uncover maladministration, raised areas of concern. The HSA discharged a female patient diagnosed with a bipolar disorder

and a drug misuse problem to the police, saying it had to do so since the only rehabilitation facility on the island did not accept women. The OCC found that the HSA had made a sound decision while noting the limited alternatives. However, the OCC chose to comment that the verbal instructions about the patient's medication issued to the RCIPS officer, to whom the patient was released, were insufficient and should have been given in writing. When the police released the patient, they were not fully aware of how the medication she was taking could affect her once in a public place. After conducting the investigation, the OCC made comment that the HSA in future cases should give written information on patients' medications to the parties to whom the patient was being released to, as well as to the patient themselves. The HSA agreed to this course of action.

14.1.3 Electrical Trade Licensing Board and fairness – completed 31 March 2008 and Electrical Licensing Board and fairness – completed on 7 April 08

A local firm complained that it had been unfairly treated by the Electrical Trade Licensing Board of Examiners (ETLE) because of what the complainant judged to be an excessive request for information, while still refusing the application for an electrician's licence. The OCC found that the board had completed the process properly; yet other issues came to light during the investigation which gave the OCC cause to comment. The office found that the board was not giving enough detail in its written responses when refusing applications, which amounted to an injustice and could also cause unnecessary delays. The office also discovered that the board's composition, contrary to the law, was made up of only electricians and engineers. The OCC therefore commented that during the application process, the ETLE take advantage of electronic communication to inform customers of its decisions more speedily and to include members from outside the electrical field on the board; a suggestion accepted by the Leader of Government Business.

14.1.4 Ministry of District Administration, Planning, Agriculture & Housing and tendering - completed 22 April 2008

The Ministry must familiarize its with the rules for tendering and ensure that all persons responsible for departmental tendering within the Ministry are following the rules.

14.1.5 Immigration Department and explanation - completed 15 November 2007

The Department should include a brief summary of the wording of the relevant Regulation in a cover letter accompanying the reduced refund. This may avoid the confusion found in this type of case in the future.

14.1.6 Labour Tribunal and Secretariat - completed 9 May 2008

The Department of Employment Relations, which serves as the secretariat to the tribunal, should verify that all parties scheduled for hearings have been duly notified. Due to the significant delay in scheduling hearings for these cases, significant effort may be required by both the employers and complainants to locate witnesses, review documentation, and in some cases make travel arrangements. This should include a reminder telephone call.

The Secretary should provide a statement of procedure to the parties. Key procedural points must be settled including the possibility of a case going forward without the complainant being present, i.e. statement read as his/her evidence, and whether the complainant can send a layman friend to present the case.

Another issue that must be addressed is the Immigration status of a complainant who returns to Cayman to present a case. The costs associated with gaining a visa would not have been incurred by the complainant had the Cayman Brac tribunal been properly constituted since 1999. Similarly, accommodation costs for complainants should at least be discussed in the overall consideration of the consequences of the previous situation. As the lack of a tribunal in Cayman Brac caused the long delay, it becomes the responsibility of the Department to ensure access to the new tribunal.

14.2 RECOMMENDATIONS COMPLIED WITH

The test for compliance is substantial, not exact, compliance.

Number of recommendations made in any year but complied with in 2007–08: 38. In some situations, a long period of time lapses before a recommendation is complied with, i.e., amending legislation. In other situations, recommendations are seemingly ignored in spite of the pledge made on behalf of government by the Attorney General recorded in Appendix A. (This occurs to other high profile officers as well, including Justice Sir Richard Tucker who made recommendations in the Charles Clifford Enquiry, April 2008.)

Here are some examples of recommendations made and complied with:

14.2.1 Investigation of Allegations against Cayman Airways Ltd in the wake of Hurricane Dean, 2007 – Own Motion Report 8 – tabled 23 January 2008

In my report I made the following recommendations:

1. that CAL strategically look at the skill set of its staff and arrange for additional staff to be sufficiently trained in Sabre so that in the event the designated staff member is unavailable for any reason, CAL can call on other staff members to manipulate the relevant systems in a crisis;
2. that CAL develop a sales policy for emergency situations;
3. that CAL analyse the failures of their current communication system and set a policy which includes a plan for communications in the event of an emergency. Once the policy has been established, CAL must train all staff to ensure that during an emergency they understand where to obtain essential information;
4. that CAL, as a matter of urgency, take steps to finalize its internal complaints process and make arrangements for implementation within one month of receiving this report.

Compliance: The OCC was provided with training records and the new sales policy as well as the details of the new internal complaints procedure for customers. Analysts did a site visit to review the procedure. Based on the evidence provided, I was of the opinion that the entity had substantially complied with recommendations numbered 1, 2 and 4.

14.2.2 Cayman Turtle Farm and Waste Discharge into the Marine Environment – Own Motion Report 9 – tabled 25 June 2008

The following recommendations were made:

1. that BB/CTFL make arrangements forthwith to meet the requirements of the regulator and do all things reasonably required to complete the licence process by 30 May 2008;

2. that the Acting Managing Director complete as a matter of urgency all steps necessary to complete the criterion for Certificates of Occupancy for the buildings and pools at BB/CTFL;

3. that Mr Joseph Ebanks resign from the board of the Water Authority- Cayman.

Compliance: The OCC was provided with a copy of the licence (although it was obtained as quickly as required) and a copy of Mr Joseph Ebanks' letter of resignation from the board. Based on the evidence provided, I was of the opinion that the department had substantially complied with recommendations numbered 1 and 3.

14.2.3. Planning causes injustice over elevator inspections – completed 5 March 08

In an extensive and very complex investigation, the OCC found maladministration at the Department of Planning with regard to the process of elevator inspections which resulted in a lengthy list of recommendations. A local contractor submitted a long complaint against the Building Control Unit ("BCU") within the Planning Department alleging unfair practices, bias, interference with business and conflict of interest. The complainant suggested that his elevators were the only ones which were ever required to be inspected and because of that he was experiencing unfair treatment which had caused both delays and extra costs on his projects. He also suggested that the Chief Electrical Inspector in the BCU was closely associated with one of the complainant's competitors, which undermined the credibility of the department. Over a period of more than five months, the OCC closely examined the detail of the complaint, conducted numerous in depth interviews with experts and various interested parties, cross referenced information with other involved entities and studied closely the various laws, regulations and guidelines. The resulting report made 12 recommendations based on the maladministration and injustice suffered by the contractor. The investigation revealed that there were faults with literature, reporting requirements, notification procedures, time frames, organization of the process, training of inspectors and officers and inconsistencies in applying rules. The OCC did not find a conflict of interest as such regarding the Chief Electrical Inspector, but noted that the department had acknowledged a public perception of one and steps had been taken to deal with that perception.

In my report, I made the following recommendations:

1. that the BCU change the application form for planning permission and building permit to include a description of the elevator equipment to be used;
2. that the BCU require inspectors of any aspect of a building site to report evidence of the likely installation of an extraordinary piece of equipment;
3. that where a change in the emphasis of enforcement is planned, the BCU should send advance notice to the stakeholders. The amount of advance notice should be commensurate with the anticipated impact;
4. that the cost of initial installation inspections and follow-up inspections be borne by the BCU;
5. that the BCU pay the costs of training their staff and fire officers;
6. that the training of fire officers in the operation of MRL elevators be arranged forthwith and be completed prior to March 2008;
7. that the information required by the BCU to make a determination on an application for equipment approval be stated in detail and published;

8. that elevator installation inspections be scheduled two weeks in advance to reduce the risk that independent inspectors will be unavailable;
9. that when the BCU retains an elevator installation inspector, he train others in the technical aspects of inspections so that more than one inspector will be on the staff of the BCU;
10. that inspection reports be completed and given to the relevant party within one week of the inspection;
11. that the inspection process be centrally organized by June 2008;
12. that the BCU consistently apply the elevator equipment approval and installation inspection requirements.

Compliance: The OCC was provided with a draft elevator installation application form on 2 October 2008, and evidence that inspectors were reminded to report irregular equipment installation. The BCU also provided proof of payment of inspection fees, and training expenses and the completion of the training of fire officers. Other evidence was gathered, and based on that I was of the opinion that the department had substantially complied with recommendations numbered 2, 4, 5, 6, 7, 8 and 11.

14.3 RECOMMENDATIONS MONITORED

We continue to monitor the implementation of recommendations. For example:

14.3.1 Investigation of Allegations against Cayman Airways Ltd in the wake of Hurricane Dean, 2007 – Own Motion Report 8 – tabled 23 January 2008

In my report, I made four recommendations and one has not yet been complied with:

that CAL analyse the failures of its current communication system and set a policy which includes a plan for communications in the event of an emergency. Once the policy has been established, CAL must train all staff to ensure that during an emergency they understand where to obtain essential information.

Monitoring efforts included a meeting with CAL staff, a warning and eventually a public announcement through a media release on 21 July 2008 stating my dissatisfaction and a follow up meeting with CEO Patrick Strasburger on 10 September 2008. In consequence of his resignation, a meeting was held with CEO Designate Olson Anderson on 21 October 2008.

14.3.2 Cayman Turtle Farm and Waste Discharge into the Marine Environment – Own Motion Report 9 – tabled 25 June 2008

In my report I made three recommendations and one has not yet been complied with:

that the Acting Managing Director complete as a matter of urgency all steps necessary to complete the criterion for Certificates of Occupancy for the buildings and pools at BB/CTFL.

Monitoring efforts included regular communications with CEO Mr Joseph Ebanks, for example on 16 September 2008 and 25 November 2008, the latter indicating significant progress towards full compliance.

14.3.3. Planning causes injustice over elevator inspections – completed 5 March 08

In my report, I made 12 recommendations and five have not yet been complied with (listed above).

Monitoring efforts included and meetings and follow up communications with Director Mr Kenneth Ebanks, for example on 16 July 2008 and with Chief Building Control Officer Mr Emerson Piercy on 17 November 2008. Progress toward compliance is being made.

14.3.4 Public Transport Board still being monitored – completed October 2007

When a local tour operator complained that its business was being adversely affected by the failure of the Public Transportation Board (“PTB”) to meet regularly, make timely decisions, refund fees and that its regulations did not mesh with those at the Immigration Department, the OCC found the PTB was indeed dysfunctional. As this was not the first complaint received by this office concerning the PTB, a meeting with the Minister concerned, Hon. Charles Clifford, was convened. The Minister admitted that the complaint was supported by the facts. But he went on to outline plans to improve matters, including legislative reform and the search for suitable applicants to fill new posts, including a director and a supervisor. The OCC found maladministration matching the complaint and recommended that the PTB provide the complainant with a letter of apology, establish a secretariat with sufficient staff and resources to address the board’s administrative needs and that the Ministry puts forward proposed legislation to reform the PTB’s operations. A letter of apology was given, but the OCC will continue to monitor the progress of the other recommendations.

15 Special Projects

15.1 INTERNAL COMPLAINTS PROCESS

An internal complaints process can be defined as any process, formal or informal, which allows stakeholders to submit complaints to the government entity and to have the complaint dealt with in a responsible manner.

With the support of the Chief Secretary, we continued the training sessions for civil servants on the value of internal complaints processes, and many entities instituted internal complaints departments or processes. Last year, we reported that two studies were done to document the progress in this area. A third study was completed in March 2008. Their findings were as follows:

15.1.1 The Existence of Internal Complaints Processes in Government Entities in 2006 (tabled 5 March 2007)

Of the 79 entities that were studied, 34 claimed to have an internal complaints process (ICP). Seventeen entities did not have an ICP in place. Three were not contacted owing to time constraints. Twenty-five entities did not reply to the survey; therefore it could not be determined whether they had an ICP.

15.1.2 The Existence of Internal Complaints Processes in Government Entities in 2007 (submitted to the Legislative Assembly 24 April 2007, tabled 31 August 2007)

Of the 79 entities studied in the second survey, 61 entities (76%) were identified as claiming to have an ICP. While 18 of the entities studied did not have an ICP, many recognised the importance of having such a procedure and had started the process of developing one. Several entities that already had an ICP in place recognised, after reviewing documentation provided by the OCC, that changes could be made to their procedures which could create an even more effective ICP.

Following this second survey, the OCC recognised that encouragement and assistance were warranted in promoting the development of effective ICPs throughout government.

15.1.3 The Existence of Internal Complaints Processes in Government Entities in 2008 (submitted to the Legislative Assembly * June 2008, tabled 6 October 2008)

A third survey found that all 70 departments that should have had a formal ICP claimed to have one in place, either formally or informally.

15.2 SPECIAL PROJECTS

The OCC was invited to make contributions to the Chief Secretary's Review of the expansion of the Civil Service, to the Central Tenders Committee's process and procedures manual, and to the Governor's FACE (Five-star Award for Customer service Excellence) process. We provided a submission to Sir Richard Tucker in the Commission of Enquiry regarding Hon. Charles Clifford on the role of the OCC and the code of conduct for civil servants and requirements for a civil servant entering political life. And we advised Mr Vijay Krishnarayan, a representative of the UK Department for International Development's programme, Building Human Rights Capacity in British Overseas Territories.

15.3 PUBLICATIONS

This year, (former) Analyst Petula Twinn completed a third edition of a booklet entitled *Small Claims Handbook*, designed to assist residents in pursuing available legal remedies through the Summary Court. This booklet is a plain-language guide to making a claim and enables complainants to seek redress for complaints that fall outside the jurisdiction of this office. It has been used, for example, to make claims against a private car vendor and a landlord. Hundreds of copies are now in circulation.

16 Performance Targets 2006-07

The following output targets, results and variances are displayed below.

16.1 OUTPUT 1: INVESTIGATIONS

Statistics indicating in detail the work completed are set out in appendix D.

OCC 1 Public Interest Investigations			
Description ▪ Deal with enquiries and provide advice and guidance to the public that do not result in a formal investigation ▪ Investigate complaints made regarding injustice caused by improper, unreasonable or inadequate administrative conduct on the part of any Ministry/Portfolio and respective department, unit and section, government-owned company and statutory authority ▪ Undertake public-interest investigations			
Measures	2007-08 Budget	2007-08 Actual	Variance
<i>Quantity</i>			
Number of enquiries	200-400	492	+92
Number of complaints investigated	40-80	54	0
Number of public-interest investigations	2-5	2	0
<i>Quality</i>			
All complaints, enquiries and public interest investigations to be investigated by suitably qualified and trained staff	100%	100%	0%
All reports to be signed off by Complaints Commissioner or, in his absence, the acting Commissioner	100%	100%	0%
All complaints investigated in accordance with the parameters established by the Complaints Commissioner Law (2006 Revision)	100%	100%	0%
<i>Timeliness</i>			
All enquiries to be answered within 5 working days	90-100%	74%100%	-16%0%
Decision to investigate complaint and, if accepted, commencement of investigation of complaints within 1 month	95-100%	83%	0%
	80-100%	100%	0%
All complaints to be investigated within 4 months of complaint being lodged	80-100%		
All reports/public-interest investigations to be completed within 5 months of request			
<i>Location</i>			
Cayman Islands	100%	100%	0%

Outputs Delivered

OCC 2 Monitor Compliance with the Commissioner's Recommendations			
Description - Monitor the implementation of the recommendations or the report of the Commissioner and the timescales specified in the report of action to be taken - Provide Special reports to the Legislative Assembly where no adequate action has been taken to remedy the injustice or evidence found of breach of duty, or criminal offence			
Measures	2007-08 Budget	2007-08 Actual	Variance
<i>Quantity</i>			
Number of recommendations monitored	20-50	92	+42
Number of Special Reports delivered to the Clerk of the Legislative Assembly Committee	2-4	3	0
<i>Quality</i>			
All monitoring by suitably qualified and trained staff	100%	100%	0%
All reports to be signed off by Complaints Commissioner or, in his absence, the acting Commissioner	100%	100%	0%
All recommendations monitored in accordance with the parameters established by the Complaints Commissioner Law (2006 Revision)	100%	100%	0%
<i>Timeliness</i>			
Monitoring carried out on an ongoing basis until recommendations are substantially implemented or withdrawn, or until they are included in a Special Report to the Legislative Assembly	95%-100%	100%	0%
Special Reports submitted to the Clerk of the Legislative Assembly Committee within one month of Complaints Commissioner's determining that no adequate action has been undertaken or evidence found of breach of duty or criminal offence	95%-100%	67%	-28%
<i>Location</i>			
Cayman Islands	95%-100%	100%	0%

16.1.1 Targets and results, Output 1

As the tables above show, we received more enquiries in 2007-08 than we had budgeted for, yet the actual number of complaints that gave rise to investigations was more manageable.

Thus, our 2007-08 target for answers to enquiries made in the OCC, which was 200 to 400, was again far exceeded, as we answered 492 enquiries during the period in question. But our volume of investigations – 54 – was within our target of 40 to 80 investigations for the year. What is more, the number of complaint investigations in 2007-08 was lower than in 2005-06, when we investigated 113 cases. Some factors behind this included a tightening of the intake processes, the existence of internal complaints processes in government entities, and improvement in government departments.

We had anticipated that between two and five public-interest investigations would be completed and sent to the Legislative Assembly, and in the event, two (plus our Annual Report for 2006-07) were completed.

16.1.2 Targets and results, Output 2

This year, the Office monitored 92 recommendations, well above the target of 20–50 recommendations. By year's end, we had evidence that recommendations from last year and this year had been complied with in 38 cases.

We did not regard the number complied with as particularly low for at least three reasons: some recommendations were made late in the year and not enough time had lapsed for the OCC to state that the recommended improvement had become permanently instituted; some recommendations involved the construction of new buildings (i.e., Grand Harbour Department of Vehicle and Driver Licensing satellite office and inspection facility); and other recommendations required changes to legislation, which, in spite of the best efforts of the government entity in question, was beyond its full control. One example, discussed last year, was the changes to the Prison Law, which are still pending, but moving forward, according to the Attorney General.

16.1.3 Timeliness and targets

In some cases, the OCC was able to hear both sides of a complaint within a day or two, and thereafter resolve the dispute. However, the more complex the allegation and the more people and documents involved, the more time elapsed before the investigation could reach completion. All that said, and despite the OCC's timeliness targets for the year having been met, we still determined that some files were not progressing within a reasonable timeframe.

Most delays were caused by untimely responses by some – though not all – civil servants and ministers. Some investigations were delayed by changes in the senior ranks of the civil service. Others were delayed for reasons such as the need to take legal advice on the powers or the jurisdiction of the OCC.

Additionally, the passing of hurricanes affected timeliness, as did the turnover and training of staff, especially in handling enquiries. Delays also were sometimes the result of our need to use outside professional or technical advisers, who, in some cases, did not complete tasks in a timely manner. These advisers included those retained by the government entity under investigation as well as those retained by the OCC.

We set the following performance measures for the 2007–08 fiscal year and they are contained in our Annual Budget Statement:

- All enquiries to be answered within five working days (in 90 - 100 % of cases) of being lodged;
- All complaints to be investigated within four months (in 80 - 100 % of cases) of being lodged (allowing a one-month period first to consider accepting complaint);
- All reports/public interest investigations to be completed within five months (in 80 – 100 % of cases) of the request.

16.1.4 Enquiries answered in 2007–08 and Timeliness compared to 2006-07

Target: All enquiries to be answered within five working days (in 90% of cases).

Number of Enquiries	483
Cases reclassified as Enquiries	9
Total Enquiries	492
Percent completed within 5 working days	74%
Percent completed within 10 working days	85%
Percent completed within 15 working days	91%

16.1.5 Timeliness of answering cases, including those reclassified as Enquiries, 2006-07 and 2007-08

Duration in days	2007-08 Number of cases	2007-08 Percent of all Enquiries
1	274	56%
2	30	6%
3	21	4%
4	19	4%
5	21	4%
Over 5 days	127	26%
Total	492	100%

16.1.6 Timeliness of case investigations, 2007-08

Target: All complaints to be investigated within four months (in 80 – 100 % of cases) of complaint being lodged (allowing a one-month period first to consider accepting complaint). We met the target by completing 83% of the cases.

Duration in months of complaint investigation	2007-08 Number of cases	2007-08 Percent of all cases
1	11	20%
2	18	33%
3	7	13%
4	8	15%
5	1	2%
6	1	2%
7	1	2%
8	1	2%
9	1	2%
10	0	0%
11	0	0%
12	0	0%
Over 12 mo.	5	9%
Total	54	100%
Completed within 5 months (1 month to consider, 4 months to complete)		83%
Completed within 6 months		85%

16.1.6 Timeliness of Own Motion investigations, 2007-08

Target: All reports/public interest investigations to be completed within five months (in 80 – 100 % of cases) of the request. We met our target.

The investigation into the allegations against Cayman Airways Ltd in the wake of hurricane Dean was completed within four months: the investigation was commenced on 21 September 2007; the report was completed on 14 January 2008; and it was delivered to the Legislative Assembly on 18 January 2008. The investigation into Cayman Turtle Farm and waste discharge into the marine environment was also completed within four months: it commenced on 7 January 2008; the report was completed on 24 April 2008; and it was delivered to the Legislative Assembly on 5 May 2008.

One major change to note is in the definition of “completed”: in the first two years of the OCC, Own Motion Investigations and Special Reports were not considered complete until they were tabled in the Legislative Assembly. From last year, we were able to state that such work was complete when the report was submitted to the Clerk of the Legislative Assembly.

16.2 OUTPUT 2: MONITORING RECOMMENDATIONS

We accepted the following performance measures for the 2007–08 fiscal year:

- Monitoring carried out on an ongoing basis until recommendations are substantially implemented or withdrawn, or until they are included in a Special Report to the Legislative Assembly (in 95 – 100 % of cases);
- Reports submitted as required by the Speaker (in 90 – 100 % of cases);
- Special Reports submitted to the Clerk of the Legislative Assembly within one month of the Complaints Commissioner’s determination that no adequate action has been undertaken or evidence of breach of duty or criminal offence (in 90 – 100 % of cases).

The OCC met the first and third targets, but failed to file the Annual Reports by the due dates. As noted in last year’s report, which was due to be tabled in this year, delay was caused in part by the completion of the audit. The OCC’s Annual Report 2006–07 was delivered to the Legislative Assembly in 2008–09 (January 2009) after a prolonged delay in the audit office arising from the need to access Treasury records. We have taken steps to reduce the time of completion for the fiscal year 2007–08 audit. We completed and submitted three Special Reports (ICP Review 2008, Department of Immigration – Refused Entry, the Extra-Ordinary report on Liquor Licensing).

16.3 QUALITY MEASURES

We used suitably qualified and trained staff to investigate and monitor complaints, and we were alert to challenges to our jurisdiction and questions of fair process. We achieved these targets by recording any questions about the conduct of our team and our jurisdiction or process and by answering the questions fully through internal investigations or independent legal advice. Also, the Commissioner reviewed all findings and reports before they were finalised. In consequence, we met our quality targets.

16.4 STRATEGIC OWNERSHIP GOALS

The following key strategic ownership goals for the Office of the Complaints Commissioner were established in 2006–07 for a period of two years (2007–08 and 2008–09). The goals, which have all been complied with, are as follows:

7. Establish a presence on the Internet for informational purposes and to register complaints online.
8. Implement a case management system, Modified Case Tracker.
9. Implement a performance-appraisal system.
10. Provide a bi-monthly report to the media on the work of the OCC.
11. Increase public awareness through media interviews and advertising.
12. Complete in-house training on human rights.

17 Budgets 2006-07 and 2007-08

17.1 AMOUNT

Our budget for fiscal years 2006-07 (\$876,000) and 2007-08 (\$954,442) was satisfactory. We have been prudent in our spending and have returned money to the central treasury at the end of each fiscal year to date.

With some operational history, the process of forecasting and completing the budget requirements of the OCC was more manageable for the fiscal year 2008-09. The budget requested in spring 2008 for the 2008-09 fiscal year was approximately \$985,000. The budget increase can be attributed to increased fixed costs.

Appendix A

Hansard – Second Reading of the Complaints Commissioner Bill, 2003

Second Reading as recorded in Official Hansard Report 24 September 2003

The Complaints Commissioner Bill, 2003 – selected extracts:

Hon. W. McKeever Bush: Thank you very much, Madam Speaker. I am very pleased to present this Bill on behalf of Government. For many, many years we have talked about having such an ombudsman in this country and I am pleased that the United Democratic Party has seen fit to bring such legislation for the appointment of such a person.

Madam Speaker, and fellow Members of this Honourable House, as you may be aware,

“Section 49N of the Cayman Islands (Constitution) Order 1972 provides for the enactment of a law relating to the office, functions, jurisdiction and powers of a Complaints Commissioner. The section enables the Governor, after consultation with the Cabinet, to appoint a Complaints Commissioner”.

In light of Government’s continued commitment to open government, and to give people more opportunity to air their grievances, accusations and fault-finding, it is felt that this is an appropriate time for the appointment of such an independent officer whose function would be to ascertain whether injustice has been caused by the improper, unreasonable or inadequate administrative conduct of a Government entity. ...

As Leader of Government Business and Leader of the United Democratic Party I am indeed proud to pilot this legislation today. It has been long in coming promised by many Governments and talked about for probably ever since I have been in this Legislative Assembly and I am the longest serving Member.

This is a milestone in the platform of our administration. Over my near 20 years in Government and even before that, I have known about complaints that never got looked at, heard or addressed. This fundamental piece of legislation, Madam Speaker, will give the public and everybody an avenue to have their complaints investigated and the facts laid before the world.

I am glad that this is here today. When a person is making a complaint it cannot be frivolous but should be of a serious nature. Be assured Madam Speaker, that while this Bill will give the public much scope to have their grievances checked and aired about Government, it will also give a needed avenue for Elected Members and Cabinet persons and other civil servants (this is the side that I like about it) that when allegations are made they can be aired by an independent source.

When a Minister is accused of making somebody lose his job, from any public platform this Ombudsman will check it and air it and say to the world what has happened and when lies are told it will also bring out the truth. ...

I want to thank the Attorney General, his office and the Chief Secretary’s office, the Deputy who is standing in here today, and the Draftsmen for getting it here. We will probably find areas where we would have preferred to see something else but I say to all let us get someone in place because as far as I am concerned there are far too many people willing to accuse, to make allegations and to destroy public servants’ names and destroy elected officials’ names by merely getting up and making accusations that the whole world in their own heart of hearts know could not be so. I am really proud after

being elected here from 1984 to know that finally we are going to have somebody in place to do that.

Mr V. Arden McLean: Thank you, Madam Speaker. A generous gesture from the Leader of Government Business! I rise in support for this Bill for the establishment of a Complaints Commissioner office. This has been around for a very long time as I recall. A long time before I came to the forefront of politics the Minister of Education advocated having a Complaints Commissioner, Ombudsman or whatever we want to call it.

Hon. D. Kurt Tibbetts: Thank you, Madam Speaker.

As has been said before by my colleague, the Elected Member for East End, the Opposition is certainly in support of this Bill. However, I think perhaps in support of the Bill there may be some other areas which are directly affected that we might need to draw some attention to. ...

There is absolutely no question in my mind that, first of all, the Complaints Commissioner (as is said in the very first paragraph of the Memorandum of Objects and Reasons) in the exercise of his functions he would not be subject to the direction or control of any other person. That is exactly how I think it should be; there is no question in my mind about that.

Hon. Samuel Bulgin: Thank you, Madam Speaker.

I rise to give my support to the Bill for a Law to Provide for the Appointment and Functions of a Complaints Commissioner for the Investigation of Administrative Action Taken by Government Entities; and for Incidental and Connected Purposes. ...

In the usual tradition of things, Madam Speaker, I can tell you where an Ombudsman makes a recommendation Government always acts on the recommendation. It is similar to a declaration made by the Grand Court, where in itself it is made against Government it does not carry much force. However, Government in the true spirit of things always acts on the declaration – especially if it is the right of some other person that is involved.

Appendix B
Demographics of Closed Cases to 30 June 2007 by
postal district

District	Number	Female	Male	Company
West Bay	5	1	4	0
Seven Mile Beach	10	1	4	5
George Town	15	7	5	3
Airport PO	10	1	4	5
Savannah	1	0	0	0
Bodden Town	3	0	1	2
North Side	0	0	0	0
East End	1	0	1	0
Cayman Brac	7	4	3	0
Little Cayman	0	0	0	0
USA address	0	0	0	0
Canadian address	0	0	0	0
UK address	0	0	0	0
Jamaican address	0	0	0	0
Not applicable	2	1	1	0
Total	54	15	23	15

Nationality	Number	Female	Male	Company
Afghan	2	0	2	0
Canadian	5	1	4	0
Caymanian	36	7	13	16
Cuban	1	1	0	0
Jamaican	9	5	4	0
Filipino	1	1	0	0
Total	54	15	23	16

Age	Female	Male	Total
20-30	0	3	3
31-40	7	5	12
41-50	4	7	11
51-60	1	2	3
61-70	0	1	1
71-80	0	1	2
81+	0	0	0
n/a			7
Total individuals	12	19	31
Companies			16
Total cases			54

Closed cases: 54

Complainants: male, 19; female, 12; local companies, 16, unknown 7

Appendix C

Intake and Case Flow Process

COMPLAINT RECEIVED

Within jurisdiction?

No → Complainant advised where assistance may be obtained

Yes →

Attempts made by complainant to resolve complaint in other ways, including appeals?

No → Complainant referred to appeal process

Yes →

Sufficient information?

No → Complainant informed about materials to gather

Yes →

Has informal review determined if evidence is sufficient for informal resolution or investigation?

No → Complaint closed by letter

Yes →

What happened when informal resolution attempted with officer?

Successful → Closed file by letter

Not successful → Investigation

INVESTIGATION

Maladministration identified?

No → Complaint closed by letter

Yes → Consider Alternative Dispute Resolution? Yes or no

Formal discussions, resolution?

No → Discussion with section head or head of department

Yes → Resolution and/or Report

RESOLUTION AND/OR REPORT

May include recommendations or comment.

Appendix D
Statistics Summary to 30 June 2008

IN-OFFICE SERVICES COMPLETED 1 JULY 2007–30 JUNE 2008

1. Number of enquiries	496
2. Number of media enquiries	74
3. Number of written complaints closed	54
4. Number of own motion investigations commenced but not completed	1
5. Number of own motion reports filed with Clerk and tabled in Legislative Assembly	2
6. Number of recommendations monitored (including own motion)	92
7. Number of recommendations made in any year but complied with in 06–07	38
8. Number of recommendations being monitored	92
9. Number of recommendations made	48

Appendix E
Report of the Auditor General