

1 Executive Summary

The third year of operation of the OCC (2006–07) brought the attainment of some long-held goals and evidence that our efforts to establish credibility within the community have been successful. Not only did we receive expressions of gratitude from some residents who were assisted, we were cited by the *Cayman Observer* as the third of “10 people and organizations that enjoyed a particularly successful year”.

Our goal of establishing a fully functioning office with appropriate systems was met. Our desire to better equip our team was met by continued training programmes, and regulations have been developed to better clarify certain matters under the Complaints Commissioner Law (2006 Revision).

As the result of an initiative between the Caribbean Ombudsman Association and the Inter-America Institute for Human Rights, we learned that the OCC can quietly and effectively promote human rights by using concepts familiar to ombudsmen, i.e., equality, fairness, and good governance, and that it was appropriate for us to support the emergence of the CI Human Rights Committee.

The matters which we investigated on our own motion continued to be topics of wider significance and complexity than those initiated by residents. Two investigations of note include the safety and regulation of small commercial vessels, and the discipline of prisoners. The reports are on our website www.occ.gov.ky.

As a result of the work of the OCC, the quality of public administration was improved in several areas. Our continued questioning of the functioning of labour tribunals and the labour appeals tribunal contributed to the decision of the Ministry of Employment to review that and related issues. Recommendations from that review are expected to result in new legislation and better service to the public. We continued our efforts to promote the establishment of internal complaints processes in government entities to improve customer service. Where entities could not agree on who was to assist a resident, we facilitated discussions that resulted in written agreements between entities on who would assist in various situations. We contributed expertise to the draft freedom of information legislation and the new comprehensive tendering system for public capital projects.

The establishment last year of the Legislative Committee with responsibility for oversight of the OCC was a welcome event, and, while the first meeting did not occur until December 2007, early indications suggest that we will work together for the betterment of the office and those whom we serve. Amendments to the powers of investigation and jurisdiction of the OCC are under active consideration by the committee. The members of the committee are the Hon Alden McLaughlin, Jr (chair), 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; Ms Susan K. Duguay, administrative and investigative officer; analysts Scott D. Swing, MEd, BA, and Petula A. Twinn, PPC, LLB; Giselle Y. Webb, AD, executive assistant to the Commissioner; and Tessa V. Nixon, receptionist. In December 2006 the entire team participated in a training programme on investigations designed by the Ombudsman of Ontario. Other professional development activities included a course on media relations and the annual sessions of the Canadian Association of Civilian Oversight of Law Enforcement for the Commissioner. Mr Swing continued his studies toward certification in the University of Alberta online course “Information Access and Protection of Privacy”, and Ms Twinn completed courses in public speaking and presentation skills,

managing interpersonal relationships, and managing workplace stress. Ms Webb attended the Caribbean Ombudsman Association meetings in Costa Rica, where she learned about human rights issues, and Ms Nixon attended a course designed to assist receptionists.

1.1 ROLE AND FUNCTION OF THE OCC

The OCC has three major statutory roles: complaint investigation, own motion investigation, and monitoring of recommendations made. 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. 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.

The primary functions of the OCC are to investigate, to recommend, to report, and to monitor compliance with recommendations.

The OCC will investigate complaints made in writing that fall within the scope of the Complaints Commissioner Law, 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 or to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

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.

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 it 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.

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, it 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.

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

The OCC is also authorised to organise the mediation of minor complaints, where the parties are willing to meet to attempt to resolve the problem.

Areas outside the jurisdiction of the OCC are listed on page 15.

1.2 DEMOGRAPHICS

Attached as Appendix B is an indication of the demographics of the people served by the OCC, based on 44 written complaints investigated and closed during the period ending the fiscal year June 2007. In brief, most complainants are Caymanian, between the ages of 30 and 50 years, and often residents of George Town or West Bay. Men are more prone than women to file a complaint (23 males, 11 females, 10 companies). During this fiscal year two 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.

1.3 CASE EXAMPLES, MATTERS ARISING FROM WRITTEN COMPLAINTS, OWN MOTION INVESTIGATIONS, COMPLAINT RESOLUTION AND MEDIATION, AND POWER OF RECOMMENDATION AND COMMENT

Summaries of 15 complaint investigations, three Special Reports, four completed own motion investigations, and one pending own motion investigation are presented on pages 16–25. In addition, the development of a protocol on operations between the OCC and the RCIP, along with a summary of the events leading up to this protocol, is discussed.

A meeting was held in October 2006 between His Excellency the Governor, the RCIP Commissioner, the Attorney General, and the Complaints Commissioner wherein the provisions of the Constitution were reviewed. It was determined by the Attorney General, in his role as the officer responsible for the interpretation of the Constitution, that the civilian oversight of police administrative matters was within the remit of the OCC. It was not a matter of not trusting the RCIP Commissioner, but one of principle – accountability to at least one institution of the Legislative Assembly. The participants agreed that legislation to better clarify and support civilian oversight was worthy of discussion in Cabinet.

Most enquiries to the OCC 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.

In some situation, mediation is 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. During this year the OCC was able to resolve a complaint between a local company and the Airport Authority through mediation.

In the event that an investigation results in a finding of maladministration and injustice, the OCC can make a recommendation. 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) of the CCL 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, comments made, and comments “acted on”. Comments and recommendations are discussed on pages 25–32.

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, which completes 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.

In 2006–07 a total of 18 comments were monitored, one of which is the subject of an extraordinary report tabled in the next fiscal year. Total recommendations made in any year but complied with in 2006–07 is 33. The test for compliance is substantial, not exact, compliance. We continue to monitor the implementation of recommendations.

1.4 SPECIAL PROJECTS

Special projects undertaken by the OCC in 2006–07 included the continuation of training sessions for civil servants on the value of internal complaints processes, and the carrying out of two studies (2006 and 2007) to document progress in this area; preparation and submission of a brief on extending civilian oversight in law enforcement; and publication of two booklets – a second edition of the *Small Claims Handbook*, designed to assist residents in pursuing legal remedies through the Summary Court, and a booklet entitled *Good Administration and Your Rights*, which highlights the principles of fair and effective processes and the rules of natural justice. Both booklets are in wide circulation.

1.5 PERFORMANCE TARGETS

Our 2006–07 target for answers to enquiries made in the OCC, which was 200 to 400, was again far exceeded, as we answered 501 enquiries during the period in question. However, the investigations of residents’ complaints settled into a manageable number this year: our target was 40 to 80 investigations, and 44 were carried out. Some factors which led to the number of complaint investigations not being as high as last year included tightening of the intake processes, the existence of internal complaints processes in government entities, and improvement in government departments. We had anticipated that 2 to 5 public-interest investigations would be completed and tabled, and in the event 4 were done.

The Office also monitored 96 recommendations, well above the target of 20–50 recommendations. By year’s end we had evidence that 33 recommendations from last year and this year had been complied with. The number complied with (33) is not as low

as it seems, as 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; and some recommendations required changes to legislation, which, in spite of the best efforts of the entity, was beyond its full control.

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. Again this year, the OCC determined that many files were not progressing within a reasonable time. The most prevalent cause of the delay continues to be untimely responses by some – though not all – civil servants. The process of educating the members of the civil service in the role and function of the OCC continues to be very important. Not only does this increase the level of cooperation and positive interaction, it enables civil servants to understand that requests made by the OCC have to be answered in a timely manner.

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. Again, delays for those two reasons are understandable given the short history of the OCC.

Finally, delays are 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 include those retained by the government entity under investigation and those retained by the OCC.

With the guidance of the Budget Management Unit we accepted the following performance measures for the 2006–07 fiscal year.

Output 1 Investigations and Enquiries

The following targets were contained in our Annual Budget Statement.

- All enquiries to be answered within five working days (in 90 per cent of cases);
- All complaints to be investigated within four months (in 80 per cent of cases) of complaint 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 per cent of cases) of the request.

Our results are tabulated below.

Enquiries answered 2006–07 – Timeliness

No. of Enquiries	481
Cases reclassified as Enquiries	20
Total Enquiries	501
Percent completed within 5 working days	91

Including cases reclassified as Enquiries 2006–07

Duration in days	No. of cases	Percent of all Enquiries
1	427	85
2	12	2
3	11	2
4	4	1
5	3	1
6	3	1
7	1	0
8	5	1
9	2	0
10	1	0
11	2	0
12	4	1
13	4	1
14	2	0
15	0	0
Over 14 days	20	4
Total	501	100

Closed/Resolved	Percent of Enquiries
Within 5 days	91
Within 10 days	94
Within 15 days	96

Timeliness – Case investigations

Duration in months	Number of cases	Percent of all cases
1	11	25
2	10	23
3	6	14
4	6	14
5	1	2
6	2	5
7	2	5
8	1	2
9	0	0
10	2	5
11	1	2
12	0	0
Over 12 mo.	2	5
Total	44	100
Completed within 5 mo. (1 mo. to consider, 4 mo. to complete)		77
Completed within 6 mo.		82

We did not meet our targets for timely completion of own motion investigations. Own motion investigations are more complex and tend to experience all of the hurdles found in intermittently in investigations arising from written complaints.

One major change to note is in the definition of “completed”: in previous years, own motion investigations and Special Reports were not considered completed until they were tabled in the Legislative Assembly. From this year we are be able to state that such work is complete when the report is submitted to the Clerk of the Legislative Assembly.

Output 2 Monitoring

With the guidance of the Budget Management Unit we accepted the following performance measures for the 2006–07 fiscal year:

The following targets were contained in our Annual Budget Statement.

- 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 per cent of cases);
- Reports submitted as required by the Speaker (in 90 per cent of cases);
- Special Reports submitted to the Clerk of the Legislative Assembly within 1 month of the Complaint's Commissioner's determination that no adequate action has been undertaken or is evidence of breach of duty or criminal offence (in 90 per cent 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 2005–06 was delivered to the Legislative Assembly in 2007–08 and was tabled in 2008–09. We completed and submitted three Special Reports.

The following key strategic ownership goals for the Office of the Complaints Commissioner were established in 2006–07 for a period of two years. The goals, which have all been complied with, are 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 bimonthly 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.

1.6 BUDGET

The Budget Management Unit's Annual Plan Estimate 2005–06 proposed that the amount budgeted for operational expenses in the OCC in the fiscal year July 2005–June 2006 be \$670,000. This was approved by the Legislative Assembly.

Notice was given by the OCC that an additional staff member was required for 2006–07 and that an increase in the budget would be needed. A budget of \$876,000 was approved.

Our budget for fiscal year 2006–07 was satisfactory (\$876,000). 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 2007–08. The budget requested in spring 2007 for the 2007–08 fiscal year was approximately \$980,000. The budget increase can be attributed largely to increased fixed costs.

As part of the Public Finance and Management Initiative, government departments providing support services to any other entity are required to enter into Service Level Agreements. Given our budget, we carefully considered each proposal for service. For those services for which government is the only supplier, we monitor the cost of the service and adjust our usages accordingly. While we accepted a service contract with Treasury for the operation of our cheque-generating mechanism, we strongly objected to the fees charged last year. It was made clear by all concerned that our fee for the 2006–07 fiscal year would be reduced by more than 50 per cent. On that basis we accepted the current terms.

2 Commissioner's Message

Reflecting on the third year of operation of the OCC (2006–07) brings a feeling of cautious optimism for the perpetual success of this institution locally. Our efforts to establish credibility within the community continued to show positive results. Not only did we receive expressions of gratitude from some residents who were assisted, we were cited by the *Cayman Observer* (“Review of the Year [2006]”, 4 January 2007) as the third of “10 people and organizations that enjoyed a particularly successful year”.

Our goal of establishing a fully functioning office with appropriate systems was met. 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. Regulations have been drafted to better clarify certain matters under the Complaints Commissioner Law (2006 Revision). (They were affirmed in August 2007.)

The question of whether our office can play a role in promoting human rights came into focus as the result of an initiative between the Caribbean Ombudsman Association and the Inter-America Institute for Human Rights. We learned that the OCC can quietly and effectively promote Human Rights by using concepts familiar to ombudsmen, i.e., equality, fairness, and good governance, and that it was appropriate for us to support the emergence of the CI Human Rights Committee.

The matters which we investigated on our own motion continued to be topics of wider significance and complexity than those initiated by residents. Two investigations of note include the safety and regulation of small commercial vessels, and the discipline of prisoners. Own Motion investigation reports are on our website www.occ.gov.ky.

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 Goolsarran in March 2007 to review that and related issues. Recommendations from that review are expected to result in new legislation and better service to the public.

We continued our efforts to promote the establishment of internal complaints processes in government entities to improve customer service. In a similar vein, where entities could not agree on who was to assist a resident, we facilitated discussions that resulted in written agreements between entities on who would assist in various situations.

We contributed to the discussion of improved governance through initiatives such as the draft freedom of information legislation and the new comprehensive tendering system for public capital projects.

The establishment last year of the Legislative Committee with responsibility for oversight of the OCC was a welcome event, and, while the first meeting did not occur until

December 2007, early indications suggest that we will work together for the betterment of the office and those whom we serve. Amendments to the powers of investigation and jurisdiction of the OCC are under active consideration by the committee.

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.

John A. Epp

September 2008

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 2006–07 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,

Mr Epp 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. Mr Epp 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). Mr Epp accepted the appointment as Cayman's first Complaints Commissioner in July 2004.

Administrative and Investigative Officer

Susan K. Duguay, BA (University of Western Ontario). Although she began her career in the public service of Canada, after completing a college diploma in Public Relations (Algonquin College) 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

Petula A. Twinn, PPC (BVC London, Inner Temple) 2002, LLB (Hons) (Liverpool) 2001. Ms Twinn has worked in the public and private sectors, including periods of service in the judicial and legislative departments. While she was reading law, she worked as a secretary and then a law intern at Walkers. She began her professional career as an attorney at Truman Bodden and Company. Ms Twinn, who is a Florida Supreme Court-certified family-court mediator, joined the OCC on 1 June 2005.

Executive Assistant to the Commissioner

Giselle Y. Webb, AD (Phys. Sc.) (CI Community College). Ms Webb earned her associate degree while continuing to work full-time. She began her administrative career in the private sector but moved to the public sector after hurricane Ivan, first in the Ministry of Tourism – Housing Recovery Grant, and then as an Assistant Recruitment Officer with the Portfolio of the Civil Service, Personnel Department. Ms Webb was a member of Dance Unlimited, the national dance troupe, which represented the Cayman Islands at international events such as the Aberdeen Festival of the Performing Arts 2005 and CARIFESTA 2002 and 2004. Ms Webb joined the office on 16 May 2006.

Receptionist

Tessa V. Nixon began her career in Grand Cayman in the private sector. After 17 years she joined the public sector, serving in the Department of Children and Family Services. Her desire to assist people and be part of the mission of OCC led her to seek this post. She joined the OCC on 8 January 2007.

Special mention

We benefited from the contribution made by our apprentice analyst, Mr Brett Basdeo, who, having completed his final year reading Law and his professional practice course, left us on schedule to join the law firm of Maples and Calder.

5 Training

During the third week of December 2006 the entire OCC team undertook a training programme on investigations designed by the Ombudsman of Ontario. The training was conducted by Ombudsman André Marin and Lead Investigator Gareth Jones.

In-service training continued through the remainder of the year. For example, Ms Nixon attended a course designed to assist receptionists. The Commissioner attended a two-week course on media relations and the annual meetings and lecture series of the Canadian Association of Civilian Oversight of Law Enforcement, held this year in Vancouver.

Mr Swing continued his studies in the course entitled “Information Access and Protection of Privacy”, offered online by the University of Alberta. Mr Swing hopes to complete his certification through this programme in the first quarter of 2009. Ms Twinn completed courses in public speaking and presentation skills, managing interpersonal relationships, and managing workplace stress. Ms Webb learned about Human Rights at the Caribbean Ombudsman Association meetings held at the IAIHR in Costa Rica.

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. 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 arising after 15 December 2003 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 2006–07, 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, it 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 44 files closed during the period ending the fiscal year June 2007. 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 (23 males, 11 females, 10 companies). During this fiscal year two 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

To illustrate some of the diverse and complex investigations undertaken by the OCC, we present a number of case studies below. These samples reflect the wide-ranging situations and outcomes that the office deals with on a day-to-day basis. Sometimes government entities are found wanting and the OCC will offer recommendations to help rectify the

circumstances that gave rise to the complaints. On occasion the OCC finds that the entities in question are not at fault. 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: Oil spills at the landfill – Investigation completed 10 November 2006

The OCC is still monitoring the outcome of a complaint that raised environmental concerns at the George Town landfill. In February 2005, a complainant accused the Department of Environmental Health of failing to store waste oil drums from the George Town landfill securely, thereby contaminating the surrounding area. He reported that leaking drums were littering the Harquail Bypass after being displaced during hurricane Ivan in September 2004, and although the department was aware of the problem nothing was being done. The OCC investigation found that drums had not been properly sealed or stored. While the DEH was taking action to clean up the contamination at the time of the complaint, the OCC considered the complaint justified. Poor storage and the excessive number of waste oil drums that had accumulated at the landfill during hurricane season had evidently contributed to the problem. The DEH had also failed to keep accurate records of the waste oil it received. The OCC made seven specific recommendations to address storage and record-keeping. At the time of publication not all the recommendations had been implemented, so the OCC continues to monitor the situation closely.

Case 2: Refusal of a work permit – Investigation completed 29 August 2006

Evidence revealed that the Work Permit Board (WPB) had made the right decision over a work permit renewal complaint which was not upheld. A work permit holder came to the OCC complaining that his renewal application had been refused because his employer did not have a satisfactory training programme in place, but he believed that his employer did indeed have a programme and that other factors had influenced the board's decision. Investigations by the OCC and consideration of the evidence, including several resignations and contradictory submissions to the WPB by the firm, indicated that whatever training may have been in place was less than genuine. The OCC decided that the WPB's process and deliberations which led to the conclusion that the company had failed to meet the requirements regarding a proper training programme for Caymanians was sound. As a result the OCC found no case of maladministration.

Case 3: Failure of RCIP to resolve complaint in time – Investigation completed 8 September 2006

Some five recommendations were made to the RCIP Complaints and Disciplines Unit (CDU) after it failed to properly act on a complaint made to them by an alleged victim of car theft. Ten days after logging a complaint containing the details of the reported theft to the CDU, the resident made a complaint to the OCC. After conducting an investigation, this office found that although the CDU was hampered by the Vehicle Licensing office's delay in supplying documents pertinent to the case, it was still at fault. It failed to contact the complainant about the progress of his case until the OCC began its investigation. This case included input from the Governor and the Attorney General, as it also raised issues about the OCC's jurisdiction. Importantly, however, it led to a greater understanding by the RCIP that its internal complaints system needed to be reviewed, and further led to action to improve it.

Case 4: Proper procedures followed by RCIP – Investigation completed 13 April 2007

The Office of the Complaints Commissioner was established to investigate complaints that government departments fail to resolve. When one complainant reported that the RCIP had confiscated his belongings when he was arrested, and had given them away, the OCC discovered that the RCIP Complaints and Discipline Unit had investigated the accusations. After the OCC met with the CDU it was apparent that the case was being addressed properly and in accordance with procedure. The CDU ultimately resolved the case in favour of the complainant, and the OCC decided that proper action had been taken by the CDU so the complaint was unfounded.

Case 5: Wastewater and the Turtle Farm – Investigation completed 30 August 2006

A complex complaint in April 2005, accusing the Water Authority (WA) of failing to monitor the discharge of wastewater from the Cayman Turtle Farm (CTF), revealed environmental concerns, but the OCC investigation determined that the Water Authority was not at fault. When a concerned citizen reported that the discharge of effluent from the CTF into the sea was not being regulated, the OCC began a long investigation that involved a number of organisations and expert reports. The investigation was further complicated by the potential impact of a proposed dolphin facility at the same site. Over 16 months the OCC watched the WA watch the Turtle Farm and found that the WA complied with the WA Law and was calling the CTF to account. As well as hearing evidence from the Department of Environment, the OCC considered expert research and an impact study. In the end it found that the WA was doing all it could within its parameters as a regulator. (After writing to the CTF with its concerns, the WA deferred CTF's licence and warned of prosecution.) In a case dragged out by the CTF's failure to meet all the WA requests in a timely manner, the OCC concluded that the complaint against the WA was not founded.

Case 6: Explanation of decisions of Trade and Business Licence Board – Investigation completed 13 December 2006

Regardless of the reasons for a deferral, the Trade and Business Licence Board should explain its decisions to those directly affected; that was the conclusion of an investigation following a complaint against the board. When an application to operate a small business was deferred so the board could collect evidence from the National Roads Authority (NRA), the OCC discovered that the board had not informed the complainant. The board said that this was because of their concern that an explanation would have caused the complainant to call the NRA, which they believed would be inappropriate. The OCC concluded, however, that the board need only have said it was waiting for information from an unnamed government office. The OCC found in favour of the complainant and recommended that the board give applicants more detailed explanations of its decisions.

Case 7: Notification over placement of a garbage skip – Investigation completed 13 September 2006

A poorly placed garbage skip led to a resident's ill health and a complaint that involved the Department of Environmental Health and the Central Planning Authority (CPA) being upheld. When a resident found a skip some 20 feet from his bedroom window, rather than at the opposite side of the development site as expected, he registered a complaint with the OCC. The subsequent investigation revealed that, while the complainant was led to believe the skip would be sited in a given spot according to the

original plans, a later meeting of the CPA granted the developer permission to move it without offering the complainant a chance to object. The timely involvement of the OCC ensured that the skip was moved to the original location, and that new processes were adopted to ensure proper notification.

Case 8: Improvement of procedures by Public Transport Board – Investigation completed 20 June 2007

A letter of apology and the establishment of a secretariat were two of the recommendations made by the OCC to the Public Transport Board (PTB) after the Commissioner found the board had failed to respond in a timely manner to a complaint.

Following the submission of an application for a specialist transport service, the applicant came to the OCC complaining that the PTB had failed to provide him with the correct information and was slow to respond to enquiries. An investigation by the OCC discovered that administrative and communication problems within the PTB had led to a delay in response. The OCC concluded that while the PTB had provided accurate information it had not done so within an acceptable time period, and the second part of the complaint was well founded. The case also resulted in a promise from the Minister of Tourism, Environment, Investment, and Commerce that flaws in the administration of the PTB would be addressed.

Case 9: Assistance from Children and Family Services – Investigation completed 13 December 2006

One parent was approved to receive school lunch assistance for her children after the OCC found a case of maladministration at the Department Children and Family Services. After receiving a complaint from a parent who had been refused assistance, the OCC discovered that certain conditions had been imposed on her. However, under the Poor Person's (Relief) Law the department did not have the authority to do so. Moreover, there was an evident lack of regulations in the current framework guiding the department's decisions. The OCC was, therefore, concerned that arbitrary decisions could lead to injustice and discrimination. It was recommended that until relevant regulation was in place, temporary relief should be given to children without (illegal) conditions.

Case 10: License deferrals by the EBE – Investigation completed 14 November 2006

A local contractor complained to the OCC that the Electrical Trade Licensing Board of Examiners (EBE) had undermined the company's right to a timely appeal by twice deferring licence applications for its wireman and electricians. During its investigation the OCC found that because the EBE was unable to independently ascertain information about the applicant's qualifications, it twice deferred the contractor's applications. After a refusal and then a resubmission, the board finally granted the licences. The deferrals, however, caused a delay of more than three months, which was significant, and the contractor was prevented from following through with the right of appeal. As a result the OCC recommended that there should only ever be one adjournment to allow for more information before a decision is made, other than in exceptional cases.

Case 11: Explanation of reasons by Work Permit Board – Investigation completed 13 April 2007

Following a complaint that the Work Permit Board had granted a work permit to a local company for a position when a qualified Caymanian had applied, the OCC embarked on an investigation. It was revealed that the complainant had not received the correct

information from the board regarding why a work permit was granted when a Caymanian had applied. The board granted the permit because it believed a “suitable” Caymanian had not been identified. Under the immigration law, boards are not required to refuse work permits just because a Caymanian has made an application, but an employer must indicate why a Caymanian would not be hired. In this case the complainant was not given access to the information that led to the conclusion that he/she was not suitable. The Commissioner recommended that the board write a letter to the complainant giving reasonable details supporting the decision. The OCC also said that in future, when a Caymanian applicant may be refused a post because of negative submissions to or from an employer, the applicant should be given that information and invited to address the board.

Case 12: Poor administration of prisoners’ pay – Investigation completed 10 April 2007

After a prisoner at HMP Northward complained that the prison was forcing him to take lower-paid jobs following a back injury and that his internal complaint had not been investigated, the OCC initiated an investigation. It found that he was, in fact, offered reasonable work as well as reserve pay when work was not available. However, the OCC did find that prison work log sheets and records were poorly maintained, and recommended a number of improvements, including a new guide to pay grades. The OCC also found that the prison had failed to investigate the complaint that the prisoner had submitted through the internal system, as no documented evidence of any meetings which were said to have taken place were found. The prisoner also alleged that some prisoners were receiving higher pay even though they were not working, but the OCC found no evidence to uphold such a complaint.

Case 13: Patient-care and complaints procedures addressed at HSA – Investigation completed 19 June 2007

Patient-care and complaints procedures at the Health Services Authority (HSA) have significantly improved after recommendations by the OCC were implemented in the wake of a well-founded complaint. A patient complained that an HSA doctor had refused to administer treatment because he was another HSA doctor’s patient, and that the authority had not addressed the subsequent complaint. The OCC investigation found that the HSA did not have a policy outlining the principles doctors should follow; that there were no guidelines for dealing with non-emergency patients unable to wait for long periods to see a doctor; and that the complaints procedures were not well publicised. The Commissioner recommended that the HSA adopt policies similar to those laid out in the UK’s General Medical Council Handbook, improve staff awareness of procedures, and create a policy to take care of non-emergency patients needing urgent attention. Finally, the OCC recommended a new system to address patient complaints more effectively. An audit in July 2007 revealed that the HSA had largely complied with the recommendations.

Case 14: Port Authority operations compromised – Investigation completed 5 December 2006

Poor decisions, informal procedures, and maladministration were just a few of the issues revealed at the Port Authority following an OCC investigation in the wake of a complaint by a local carrier. The complaint stated that the Port Authority was failing to conduct operations in keeping with the Port Authority Law, was not holding monthly board

meetings, and was discriminating against carriers. While the OCC acknowledged that hurricane Ivan had made the Port's operations considerably more difficult, the fundamental problems were down to other factors. The office found that there were no formal procedures for extraordinary unloading, and that the board failed to meet regularly and had made decisions that were not properly recorded and were influenced by criticisms made by the complainant. It found that the Port conducted operations on an informal basis with little official documentation of comings and goings. As well as finding the complaint well-founded, the Commissioner made a number of recommendations to improve and formalise Port operations. Among others it said the Port Authority should hold regular, properly minuted board meetings, and all directives should be in writing. The Commissioner also noted that any criticisms made of the Port should not be allowed to influence any of its decisions. The establishment of and adherence to proper procedures for packing and the order of unloading were also recommended. Since the investigation, the Port has a new board of directors and has substantially complied with the recommendations.

Case 15: Responsibility over dangerous animals clarified – Investigation completed 8 September 2006

As a result of two separate complaints about dangerous animals, the OCC was able to facilitate a Memorandum of Understanding between the RCIP and the Department of Agriculture to clarify the responsibilities of the two parties under the Animal Law (Revision 2003) and relevant regulations. Two different complainants encountered similar experiences when they reported incidents involving animals to the RCIP and DOA. In short, the RCIP were referring animal reports to the DOA and vice-versa, and neither department was actually investigating the problems. However, meetings between the two with the OCC were successful, and an agreement was reached to create an MOU which would define their working relationship when it came to animal investigations.

11 Matters Arising from Written Complaints

11.1 SPECIAL REPORTS

Three Special Reports to the Legislative Assembly were completed and tabled in the Legislative Assembly.

11.1.1: Special Report: Immigration Department and customer service complaints. Submitted 7 November 2006, tabled 4 December 2006

Numerous complaints, lost documents, and a failure to address problems led to a Special Report to the Legislative Assembly by the OCC about the Department of Immigration – Customer Service. Many complaints made to the OCC were well founded, and even though numerous recommendations were made by this office, the department failed to take adequate action. Lost files, inaccurate information, long delays, and unanswered phones contributed to difficulties for both employers and employees. Although the OCC made lengthy recommendations to address the fundamental problems in October 2005, similar complaints were still being received in the summer of 2006. Under the provisions of the CCL, a decision was made to submit a Special Report. Throughout the process, however, the Chief Immigration Officer acknowledged the problems and offered evidence that the department was working on improvements including the opening of the new customer service centre and a number of other initiatives.

11.1.2: Special Report: Immigration Department and Computer Alerts. Submitted 12 December 2006, tabled 20 December 2006

Following a report that a computer enforcement alert was activated against a complainant's immigration record when he tried to leave the country, the OCC found that the alert was "stale" and should have been removed. In the wake of the discovery, the Chief Immigration Officer agreed with the OCC to draft and then implement new procedures within six months that would properly administer alerts. The target date for implementing the system was 21 September 2006. However, by 3 November, after numerous attempts to follow up by the OCC, confirmation of compliance still had not been received. As a result, the Commissioner concluded that inadequate action had been taken and submitted a Special Report to the Legislative Assembly.

11.1.3: Special Report: Immigration Department and Asylum Rights. Submitted 12 December 2006, tabled 20 December 2006

A continued failure to act on findings of the Immigration Appeals Tribunal (IAT) and inappropriate political pressure contributed to the OCC's decision to submit a Special Report to the Legislative Assembly concerning the plight of an Afghan refugee living in Cayman. When the refugee complained to the Commissioner that the Chief Immigration Officer (CIO) had failed to uphold the findings of the IAT, the OCC decided the refugee's complaint was well founded. The investigation revealed that the IAT's decision was binding but that the ruling had not been carried out by the CIO, who was under political pressure to ensure the refugee's departure. In concurrence with the UNHCR's Refugee Convention, the OCC recommended that the refugee should not be forcibly removed from Cayman; he should be granted leave to remain and the right to work, assured that no other action would be taken against him, and his passport endorsed with unconditional rights of re-entry. As the recommendations of the OCC were not implemented or the findings of the IAT upheld, the OCC submitted the report in November 2006. The Chief Secretary responded in the LA stating that the CIO had decided to grant complainant "exceptional leave to remain in the Islands".

11.2 RCIP COMPLAINTS AND DISCIPLINE DEPARTMENT

Protocol on operations between OCC and RCIP

During the autumn of 2005 the OCC and the RCIP commissioner met to consider the establishment of a protocol to guide interactions between offices. A protocol was established wherein complainants who had not first registered their complaint with the RCIP would be referred from the OCC to the Complaints and Discipline Department. In other situations, wherein the RCIP had allegedly failed to properly respond to a complaint made, the OCC would send notice of its investigation to Chief Superintendent Gooding with a copy to Deputy Commissioner Rudi Dixon. The RCIP would respond within five working days. Protocol was formally confirmed 20 February 2006.

Concern with Complaints and Discipline Department

Last year it was reported that:

"After a series of constructive meetings in autumn 2005 with RCIP commissioner Mr Stuart Kernohan, concerning the apparent maladministration of the RCIP Complaints and Discipline Department, it was agreed that he would take action to improve the performance of the department.

The RCIP commissioner made public his commitment to improve the Complaints and Discipline Department in the press (*Cayman Observer*, “Commissioner outlines RCIP’s priorities for 2006”). He stated, “A proper system needs to be put in place where police listen to a complaint, log it properly, allocate someone to deal with the problem and make contact with the complainant. We need to treat people in a professional and consistent manner.”

In support of his pledge, a press release was issued advising members of the public of the commitment and the manners in which a complaint could be registered (*Caymanian Compass*, 31 January 2006, “RCIP advise how to make a complaint”). This included reporting the complaint (in person or by telephone) to the officer in charge of the district station or to the Complaints and Discipline Department in Elizabethan Square Tower or by letter to the deputy commissioner.

Concern about the operation of the department resurfaced in spring 2006. The OCC pressed for better management of the department so that the commitment made to the public would be realised. Methods by which significant improvement could be realised were discussed, and the OCC now is optimistic that meaningful steps will be taken by the RCIP.”

In the case summaries above, two cases relate to complaints against the RCIP. One highlights the proper work of the Complaints and Discipline Unit, while the other raises the topic of the jurisdiction of the OCC.

A meeting was held in October 2006 between His Excellency the Governor, the RCIP Commissioner, the Attorney General, and the Complaints Commissioner wherein the provisions of the Constitution were reviewed. It was determined by the Attorney General, in his role as the officer responsible for the interpretation of the Constitution, that the civilian oversight of police administrative matters was within the remit of the OCC. It was not a matter of not trusting the RCIP Commissioner, but one of principle – accountability to at least one institution of the Legislative Assembly. The participants agreed that legislation to better clarify and support civilian oversight was worthy of discussion in Cabinet.

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 2006–07 fiscal year five own motion investigations were undertaken or continued. A synopsis of the reports tabled in the Legislative Assembly are presented below. The other investigation which remained open as at the end of the fiscal year is summarised subsequently.

12.1 COMPLETED REPORTS

12.1.2 Investigation of the Privileges and Opportunities Available to the Inmates of Fairbanks and Northward Prisons – Own Motion Report 4 – tabled 28 July 2006

The OCC commenced an investigation into the alleged differences in privileges and programmes afforded to the inmates of Fairbanks (the women’s prison) and Northward (the men’s prison). The investigation considered the Community Work-Release and

Rehabilitation (CWR) Programme, the Educational Programme, telephone access, and the privileges afforded Category D prisoners at Northward and Fairbanks.

There were some differences between the privileges and programmes extended in the two prisons. Of note was the lack of opportunity for female inmates to participate in the CWR Programme.

It is recommended that Her Majesty's Prisons follow the provisions set out in the CWR Programme document. It is also recommended that the guidelines be amended to allow female inmates equal access to the CWR Programme. This will involve addressing concerns about female inmates becoming pregnant while participating in the CWR Programme and will require closer supervision of inmates.

The second noted difference is in the privileges extended to the inmates of Northward and Fairbanks. It is recommended that as far as possible – bearing in mind the structural differences between the two prisons – the privileges afforded to all inmates be consistent. Where there are unavoidable differences, every effort should be made to extend comparable privileges to the inmates of both prisons.

It is our conclusion that the opportunities and privileges extended to the inmates of Northward and Fairbanks are reasonably equal, with one major difference – opportunity to participate in the CWR Programme – and minor differences in the privileges extended to certain categories of inmates. Adherence to the recommendations will end the unsatisfactory situation.

Note: Although our report was presented to the Clerk of the Legislative Assembly on 30 June 2006, according to the 2005–06 performance target formulation, an investigation is not considered complete until it is tabled in the Legislative Assembly (which was done on 28 July 2006).

12.1.2 Small Commercial Vessel Safety Regulations – Own Motion Report 5 – tabled 6 November 2006

This own motion investigation considered the extent to which waterborne commercial passenger vessels in use in Cayman waters are regulated by government authorities. Such vessels include cruise ship tenders, passenger ferries, chartered sport-fishing boats, submersibles, and power boats chartered or for hire. The investigation also considered the extent to which the crews operating small commercial vessels are regulated. Captain Jack Gallagher and Dr Ron Pelot completed a comprehensive risk assessment. The investigation benefited from the comments and experience of local experts. These included the Land & Sea Cooperative, Port Director Mr Paul Hurlston, and members of the Maritime Authority of the Cayman Islands including the Director of Shipping, Joel Walton, and Captain Barrie Rial, a consultant in maritime policy and legislation. It was determined that additional regulation may be necessary, and the OCC recommended the steps to be taken by the relevant ministry.

12.1.3 Discipline for Inmates in Her Majesty's Prisons: A Review of Regulations and Practice – Own Motion Report 6 – tabled 4 December 2006

This office has completed a review of regulations and practices in HMP for the internal discipline of prisoners. Discipline for prisoners is set out in the *Prison Rules*, a set of regulations made under the Prisons Law. They set out generally the expectations and obligations for the day-to-day management of the Cayman Islands' prison population. In rules 37 to 41, the *Prison Rules* set out the process for prisoner discipline. When an inmate is believed to have committed one of a list of specified offences against discipline,

an internal charge is laid. A member of the prison staff is designated to preside at a hearing respecting the matter, generally by the day following the incident. An oral hearing is held at which the prisoner learns the allegation against him. He/she may present his/her own case, including calling witnesses. If the offence is proven, one or more penalties may be imposed, ranging from a caution through forfeiture of privileges or earnings, to loss of remission. The prisoner may appeal to the director.

A review of those provisions relating to discipline against the rules of natural justice discloses certain issues that require attention now and some that I will monitor in the course of investigating prisoner complaints. (The process of monitoring of this case is described below in part 14.3.)

12.1.4 Historic Public Service Pension Entitlement Concerns: An investigation concerning Caymanians retired or soon to be retired from the Public Service alleging inequitable operation of law in respect of pension entitlement or benefits – Own Motion Report 7 – tabled 5 March 2007

A report was prepared to look at the position of civil servants who had joined the service before there was a legal obligation to be part of a pension scheme. The OCC was concerned that certain former civil servants, some of whom had served for many years, were receiving little or no pension. One hundred cases were examined, and it became clear that the problem will continue as more civil servants reach retirement, having paid into schemes for only a few years, with negligible returns. With the agreement of the Portfolio of Civil Service, the OCC compiled a comprehensive report detailing how the situation arose and the resulting hardships. A lack of information meant the OCC could not make a definitive finding of inequitable or unreasonable law, but the evidence collated made it apparent that a review of the situation was needed, and thus a submission was made to the LA for members to consider and perhaps initiate a solution. Cabinet is now studying the problem including the cost implications, with the assistance of the Director of Finance of the PSPB.

12.2 PENDING REPORTS

12.2.1 Public Service Pension Board – Own Motion Report 12

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 PSBL 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 CI 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 CI 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 has failed to occur. The results of this investigation will be tabled in the spring session of the Legislative Assembly.

Note: The OCC's Annual Report 2005–06 was delivered to the Legislative Assembly in 2007–08 and was tabled in 2008–09.

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. During this year the OCC 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 18 comments were monitored, of which 17 arose in the following 10 cases and one is the subject of an extraordinary report tabled in the next fiscal year.

14.1.1 Channel Markers and the Port Authority – decision 7 April 2005

It was determined that the Port Authority was not guilty of bad administration at the time the investigation was made into a complaint against them for not replacing channel markers. They had many repairs to complete after hurricane Ivan, and they had contracted to have a local company replace the channel markers. A comment was made requiring timely supervision of the installation. Approximately bi-monthly a report on the progress being made on installation was obtained.

14.1.2 Intake Records and Department of Employment Relations – decision 16 December 2005

The OCC monitored the performance of the department with a view to encouraging DER to continue to develop systems which result in timely service to residents.

14.1.3 Records Management and Courts Administrator – decision 30 June 2005

The OCC suggested that the administrative office of the Courts consider changes to their file tracking system, which would facilitate more effective movement of files.

14.1.4 Delay and Ministry of District Administration, Planning, Agriculture, and Housing – decision 16 December 2005

A boundary record error revealed extremely cumbersome procedures for rectification and the need to consider amending the law.

14.1.5 Delay and Immigration Department – decision 31 January 2006

The OCC commented that the chairman of the Immigration Appeals Tribunal should communicate formally to the Immigration Department his displeasure in the delay in addressing a complainant's appeal.

14.1.6 Notification and Preparation for Labour Tribunal Hearing – decision 31 October 2006

The OCC commented that considerable effort must be made by the Department of Employment Relations and the Labour Tribunal to verify that all parties scheduled for hearings have been duly notified, especially after significant time has elapsed since the commencement of the proceedings. DER should provide a statement of procedure to the tribunal and the parties, and should address the question of costs associated with obtaining visas for returning parties.

14.1.7 Own Motion 7: Historic Public Service Pension Entitlement Concerns: An investigation concerning Caymanians retired or soon to be retired from the Public Service alleging inequitable operation of law in respect of pension entitlement or benefits – Own Motion Report 7 – tabled 5 March 2007 – decision 12 January 2007

The OCC commented that the head of the Civil Service should review the results and gather further information as needed, and then take steps to formulate a plan which would remedy unfairness that is finally determined by the Legislative Assembly to exist.

14.1.8 Compliance Enforcement and Planning Department – decision 5 April 2007

By way of reminder (comment), the OCC noted to the department that as a result of a previous investigation it had recommended that the department bring to the attention of the ministry the inadequacies in its enforcement powers. In this case an additional comment was made that consideration must be given to expanding the compliance unit in proportion to the demand for services, and attention needed to be given to the delay caused by the need to refer matters to the CPA.

14.1.9 Enforcement and the National Pensions Office – decision 3 April 2007

The NPO and the ministry should take steps to establish a wider range of enforcement regulations to reduce the delay in the process of prosecution of offending employers. Also, steps should be taken to modify the law to increase enforcement powers.

14.1.10 Payments and Department of Children and Family Services – decision 28 June 2007

Payments made by the DCFS were not authorised by law, and the guidelines under which the department operated lacked sufficient detail to adequately address the programme in question. Regulations must be put in place.

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 2006–07: 33

14.2.1 Own Motion Report #3 – Department of Immigration – English Skills Test

In my report I made the following recommendations.

1. A written and comprehensive policy in relation to the English Skills Test should be adopted. For example, there should be a determined set of questions which are able to be objectively corrected by the examiner. This would allow the test to be administered and graded in a fair and objective manner.
2. The Chief Immigration Officer, in determining the criteria of the English Skills Test, should take into account a person's facility in the English language.
3. The work-permit application form should be amended to clearly state that people coming from a non-English-speaking country will have to take an English Skills Test.

This would put the onus on the employer to notify potential employees and avoid the arrival in the Cayman Islands of applicants without the requisite English skills.

4. The same required standard of English should be accepted and adopted by the Work Permit Board and the Staffing Plan Board.

Compliance: The OCC was provided with an electronic copy of the Test Guidance Notes, which provide detailed information regarding the test and sample questions. The Test Guidance Notes show that the English Skills Test is designed to test the basic verbal (oral and written) skills of persons from non-English-speaking countries. We have received an electronic copy of the modified Temporary Work Permit Application, which states that persons arriving in Cayman will be required to take the English Skills Test. The CIO brought to the attention of the relevant boards the need to use a uniform standard.

In November, the department confirmed that the English test was being administered to new arrivals at the airport and that the departmental website had been updated to include the necessary information and forms for applicants. In December an Analyst met with department officials at the airport to observe the test being administered and concluded that the test is well written and administered in an appropriate manner. The questions are of a level appropriate for the goal of the test and determine basic comprehension and written skills in the English language. Based on the evidence provided, above I was of the opinion that the department had substantially complied with our recommendations.

14.2.2 Public Service Pension Board – illegal withholding of pension monies

We investigated a complaint that the Public Service Pension Board (PSPB) was illegally withholding pension monies out of the complainant's pension account. Our investigation found the complaint to be well founded, and I made the following recommendations:

1. The PSPB should review all payments made from individual's pension accounts to government entities in full or part satisfaction of alleged debts to ascertain whether or not such payments were made in accordance with the law. This review will be for payments made during the last two years, beginning March 2004. Note that this review does **not** apply in instances where the PSPB received written authorisation from the individual directing the PSPB to pay monies to a government entity from the individual's pension account.
2. In the event that monies have been deducted from an individual's account in a manner which was not in accordance with the law or by consent, steps should be immediately taken to refund the monies owed.
3. Once the review is complete, a report is made to this office detailing the findings of the report.

Compliance: Ms Evans-Lindsay reported to the OCC that the PSPB had completed a thorough review of all cash-out retirement applications to determine if any unauthorised deductions had been made from individual accounts to government entities in full or part satisfaction of alleged or confirmed debts. The review revealed one cash-out application for which a deduction was withheld pending authorization, and they had obtained said authorisation. The review also revealed one case in which the PSPB had continued to make deductions and pay monthly overseas medical bills without the account holder's authorisation, and had ceased to do so and asked that the matter be addressed with the

relevant department. Based on the evidence provided, I was of the opinion that the board had substantially complied with our recommendations.

14.2.3 Department of Employee Relations – lack of notification

In July an individual registered a complaint with this office against the Department of Employment Relations for not responding in a timely fashion. After our investigation we made the following recommendations:

1. That the complainant be assisted in bringing his complaint in regard to unfair dismissal and severance pay before the Labour Tribunal.
2. That the department notify the complainant of his hearing date.

Compliance: An e-mail received from Ms Denise Archer in November confirmed that the complainant had been notified of his hearing date by registered post in September and that he had appeared before the Labour Tribunal in November. It is my opinion that the department has substantially complied with our recommendations.

14.2.4 Department of Children and Family Services – assistance with school lunch money

In September, the complainant registered a complaint with this office against the Department of Children and Family Services (DCFS). Her complaint was that she was being denied assistance in the form of school lunch money for her children. After our investigation we found the complaint to be well founded, and I made recommendations including the following:

1. The DCFS must make the ministry aware of the lack of formal regulations in the current legislated framework and impress upon them the urgency of establishing regulations to provide the required guidance for the department.

Compliance: In March an Analyst from this OCC attended DCFS and was provided with documented proof of the department's correspondence with the ministry, including a copy of the letter that the DCFS director had sent to the ministry's Chief Officer seeking advice and guidance on the concerns we raised. It is my opinion that the department has substantially complied with our recommendations.

14.2.5 Department of Environmental Health – collection of waste

In June 2006 a company filed a complaint against the Department of Environmental Health (DEH) alleging that the DEH had stopped collecting part of the company's waste, namely dog faecal waste, even though it had always collected it in the past. After our investigation we found the complaint to be well founded, and I made recommendations including the following:

1. That the DEH immediately recommence collecting all of the company's garbage, including the faecal matter that had accumulated since 1 July 2006.

Compliance: We followed up with the company, and they confirmed that they had prepared all the faecal waste in accordance with the methods the DEH suggested and that the waste had been collected. Based on the evidence provided above, I was of the opinion that the DEH had substantially complied with our recommendations.

14.3 RECOMMENDATIONS MONITORED

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

Discipline for Inmates in Her Majesty's Prisons: A Review of Regulations and Practice – Own Motion investigation – tabled 4 December 2006

My recommendations included the following.

1. that the Commissioner of Corrections and Rehabilitation seek the amendment of the *Prison Rules* to delete subrule 37(1)(n) which renders it an offence to “repeatedly make groundless complaints” and subrule 37(1)(q) which renders it an offence to “in any way offend against good order and discipline”.
2. that the Commissioner of Corrections and Rehabilitation seek the amendment of the *Prison Rules* to include provisions indicating when confinement and segregation pending a discipline hearing might be appropriate.
3. that the Commissioner of Corrections and Rehabilitation seek the amendment of the *Prison Rules* to specify that the enquirer be independent, and if this is not acted on, to specify those positions within the Service that are eligible to preside at discipline hearings.
4. that the Commissioner of Corrections and Rehabilitation seek the amendment of the *Prison Rules* to specify that the hearing may be adjourned, the purposes for which adjournments will be given, and the maximum length of adjournment available.
5. that the Commissioner of Corrections and Rehabilitation seek the amendment of the *Prison Rules* to specify that the prisoner is entitled to have sufficient detail of the incident alleged, including all evidence that will be brought forward at the hearing, to enable him to prepare a defence.
6. that the Commissioner of Corrections and Rehabilitation seek the amendment of the *Prison Rules* to clarify that the discretion of the hearing officer to arrange attendance of defense witnesses does not relate to the right itself but only to its administration in particular cases, and, further, to provide guidance regarding considerations relevant to the use of this discretion.
7. that the Commissioner of Corrections and Rehabilitation seek the amendment of subrule 40(1) of the *Prison Rules* to include specific minimum and maximum awards for specific offences or categories of offences.
8. that the Commissioner of Corrections and Rehabilitation suspend the use of lost remission as a penalty for disciplinary offences until the regulations are improved and the question of the independence of the enquirer is resolved.
9. that the Commissioner of Corrections and Rehabilitation seek the amendment of subrule 40(2) of the *Prison Rules* as it relates to seeking the views of other persons before making a disciplinary award.
10. that Commissioner of Corrections and Rehabilitation clarify the *Guide to Placing an Inmate on Report* by the addition of sample situations and sample actions.
11. that Commissioner of Corrections and Rehabilitation rewrite and expand the Guide for Prison Discipline Hearing Officers to provide clear guidance on each of the subject areas identified in this report.
12. that Commissioner of Corrections and Rehabilitation rewrite the Tariff of Awards in the Guide for Prison Discipline Hearing Officers to better align them to rule 40 (possible awards) of the *Prison Rules*.

The Complaints Commissioner met with Commissioner Rattray and HMP Director Scott on 1 March 2007. On 20 March, the OCC sent an e-mail to Dr Rattray, encouraging him to comply with three specific recommendations in our report. He had drafted new Prison Rules, but they did not address all our recommendations. It was suggested that he write guidance notes for use in the prison.

On 3 April 2007 the Commissioner of Corrections sent a draft of the rewritten rules to the OCC, requesting comments to assist him in complying with the recommendations. Following further correspondence and a meeting with Commissioner Rattray in early May, the Complaints Commissioner wrote to the Chief Secretary indicating that action was needed on the progress made by Commissioner Rattray. The Chief Secretary responded that the relevant new legislation would be completed by the end of June 2007 with full implementation by the end of June 2008.

At meetings with the Complaints Commissioner in October and November 2007, Commissioner Rattray indicated that he was continuing to press for implementation by the end of June 2008 but was concerned that the deadline would not be met. An OCC Analyst met with Commissioner Rattray at the end of March 2008, and found that the law was still with the Legislative Drafting Department and that with one exception, all of our recommendations are included in the new legislation.

On 23 May 2008 the Attorney General issued a press release announcing the establishment of a committee to implement criminal justice reforms, including a new Prison Law.

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. Two studies were done to document the progress in this area.

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 have claimed to have an internal complaints process. Seventeen entities do not have an internal complaints process 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 have an internal complaints process.

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 per cent) were identified as claiming to have an ICP. This represents a major improvement since last year, when only 34 entities were known to have an ICP.

While 18 of the entities studied do not currently have an ICP, many have recognised the importance of having such a procedure and have started the process of developing an ICP. 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.

Continued encouragement and assistance are warranted in promoting the development of effective ICPs throughout government. The OCC will continue to work with entities throughout 2007 and 2008 to assist and encourage further development.

In early 2008 the OCC will repeat this survey.

15.2 BRIEF ON CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

The OCC was invited to make contributions to the formulation of the proposed amendments to the Police Law concerning extending civilian oversight in law enforcement. The Commissioner provided written materials and met with a member of the legislative drafting team.

15.3 PUBLICATIONS

This year Analyst Petula Twinn completed a second 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 which fall outside the jurisdiction of this office. It has been used, for example, to make claims against a private car vendor and a landlord. A third edition is planned. Hundreds of copies are now in circulation.

The team completed a booklet entitled *Good Administration and Your Rights*, which highlights the principles of fair and effective processes and the rules of natural justice. It was circulated widely in the civil service and, through the public library, to the public.

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.

Outputs Delivered

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	2006–07 Budget	2006– 07 Actual	Variance
<i>Quantity</i>			
No. of enquiries	200–400	501	+101
No. of complaints investigated	40–80	44	0
No. of public-interest investigations	2–5	4	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%	91%	0%
Decision to investigate complaint and, if accepted, commencement of investigation of complaints within 1 month	90–100%	100%	0%
All complaints to be investigated within 4 months of complaint being lodged	80–100%	77%	-3%
All reports/public-interest investigations to be completed within 5 months of request	80–100%	0%	-80%
<i>Location</i>			
Cayman Islands	100%	100%	0%

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	2006-07 Budget	2006-07 Actual	Variance
<i>Quantity</i>			
Number of recommendations monitored	20-50	96	+46
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%	99%	0%
Special Reports submitted to the Clerk of the Legislative Assembly Committee within 1 month of Complaints Commissioner's determining that no adequate action has been undertaken or evidence found of breach of duty or criminal offence	100%	100%	0%
	95-100%	100%	0%
<i>Location</i>			
Cayman Islands			

16.1.1 Targets and results

Our 2006–07 target for answers to enquiries made in the OCC, which was 200 to 400, was again far exceeded, as we answered 501 enquiries during the period in question. However, the investigations of residents' complaints settled into a manageable number this year: our target was 40 to 80 investigations, and 44 were carried out. Some factors which led to the number of complaint investigations not being as high as last year included tightening of the intake processes, the existence of internal complaints processes in government entities, and improvement in government departments (for example, Planning) after the Zucker report (see Alan Markoff, 'Planning getting better', *Caymanian Compass* 25 June 2007, p 1). We had anticipated that 2 to 5 public-interest investigations would be completed and tabled, and in the event 4 were done.

16.1.2 Output 2

This year the Office monitored 96 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: 33, to be exact. It is not correct to say that the number complied with (33) is low as against the number of recommendations being monitored (96) for at least two 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; and some recommendations required changes to legislation, which, in spite of the best efforts of the entity, was beyond its full control. One example, discussed above, is the changes to the Prison Law.

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. Again this year, the OCC determined that many files were not progressing within a reasonable time. The most prevalent cause of the delay continues to be untimely responses by some – though not all – civil servants. The process of educating the members of the civil service in the role and function of the OCC continues to be very important. Not only does this increase the level of cooperation and positive interaction, it enables civil servants to understand that requests made by the OCC have to be answered in a timely manner.

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. Again, delays for those two reasons are understandable given the short history of the OCC.

Additionally the passing of hurricanes affected timeliness. Finally, delays are 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 include those retained by the government entity under investigation and those retained by the OCC.

With the guidance of the Budget Management Unit we accepted the following performance measures for the 2006–07 fiscal year.

The following targets were contained in our Annual Budget Statement.

- All enquiries to be answered within five working days (in 90 per cent of cases);
- All complaints to be investigated within four months (in 80 per cent of cases) of complaint 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 per cent of cases) of the request.

16.1.4 Enquiries answered 2006–07 – Timeliness

No. of Enquiries	481
Cases reclassified as Enquiries	20
Total Enquiries	501
Percent completed within 5 working days	91

16.1.5 Including cases reclassified as Enquiries 2006–07

Duration in days	No. of cases	Percent of all Enquiries
1	427	85
2	12	2
3	11	2
4	4	1
5	3	1
6	3	1
7	1	0
8	5	1
9	2	0
10	1	0
11	2	0
12	4	1
13	4	1
14	2	0
15	0	0
Over 14 days	20	4
Total	501	100

Closed/Resolved	Percent of Enquiries
Within 5 days	91
Within 10 days	94
Within 15 days	96

16.1.6 Timeliness – Case investigations

Duration in months	Number of cases	Percent of all cases
1	11	25
2	10	23
3	6	14
4	6	14
5	1	2
6	2	5
7	2	5
8	1	2
9	0	0
10	2	5
11	1	2
12	0	0
Over 12 mo.	2	5
Total	44	100
Completed within 5 mo. (1 mo. to consider, 4 mo. to complete)		77
Completed within 6 mo.		82

We did not meet our targets for timely completion of own motion investigations. Own motion investigations are more complex and tend to experience all of the hurdles found intermittently in investigations arising from written complaints.

One major change to note is in the definition of “completed”: in previous years, own motion investigations and Special Reports were not considered completed until they were tabled in the Legislative Assembly. From this year we are able to state that such work is complete when the report is submitted to the Clerk of the Legislative Assembly.

16.2 OUTPUT 2: MONITORING RECOMMENDATIONS

With the guidance of the Budget Management Unit we accepted the following performance measures for the 2006–07 fiscal year:

The following targets were contained in our Annual Budget Statement.

- 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 per cent of cases);
- Reports submitted as required by the Speaker (in 90 per cent of cases);
- Special Reports submitted to the Clerk of the Legislative Assembly within 1 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 per cent 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 2005–06 was delivered to the Legislative Assembly in 2007–08 and was tabled in 2008–09. We completed and submitted three Special Reports.

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. The goals, which have all been complied with, are 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 bimonthly 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.

17 Budgets 2006–07 and 2007–08

17.1 AMOUNT

The Budget Management Unit's Annual Plan Estimate 2005–06 proposed that the amount budgeted for operational expenses in the OCC in the fiscal year July 2005–June 2006 be \$670,000. This was approved by the Legislative Assembly.

Notice was given by the OCC that an additional staff member was required for 2006–07 and that an increase in the budget would be needed. A budget of \$876,000 was approved.

Our budget for fiscal year 2006–07 was satisfactory (\$876,000). 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 2007–08. The budget requested in spring 2007 for the 2007–08 fiscal year was approximately \$980,000. The budget increase can be attributed largely to increased fixed costs.

17.2 SERVICE LEVEL AGREEMENTS

As part of the Public Finance and Management Initiative, government departments providing support services to any other entity are required to enter into Service Level Agreements. Given our budget, we carefully considered each proposal for service. For those services for which government is the only supplier, we monitor the cost of the service and adjust our usages accordingly. While we accepted a service contract with Treasury for the operation of our cheque-generating mechanism, we strongly objected to the fees charged. It was made clear by all concerned that our fee for the 2006–07 fiscal year would be reduced by more than 50 per cent. On that basis we accepted the current terms.

Appendix A Hansard – Second Reading of the CC Bill

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

District	Number	Female	Male	Company
West Bay	12	3	8	1
Seven Mile Beach	3	0	2	1
George Town	17	5	7	5
Airport PO	4	1	1	2
Savannah	0	0	0	0
Bodden Town	5	1	4	0
North Side	1	0	0	1
East End	0	0	0	0
Cayman Brac	1	1	0	0
Little Cayman	1	0	1	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
Total	44	11	23	10

Nationality	Number	Female	Male	Company
British	1	1	0	0
Canadian	2	0	2	0
Caymanian	36	9	17	10
Dutch	1	0	1	0
Jamaican	3	1	2	0
United States	1	0	1	0
Total	44			

Age	Female	Male	Total
20–30	0	0	0
31–40	4	4	8
41–50	4	1	5
51–60	1	5	6
61–70	0	3	3
71–80	1	0	1
81+	0	0	0
n/a	1	10	11
Total individuals	11	23	34
Companies			10
Total cases			44

Closed cases: 44

Complainants: male, 23; female, 11; local companies, 10

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

Informal review determines if evidence is

sufficient for informal resolution or investigation. No → Complaint closed by letter

Yes

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 HOD

Yes → Resolution and/or Report

RESOLUTION AND/OR REPORT

May include recommendations or comment.

Appendix D Statistics Summary to 30 June 2007

IN-OFFICE SERVICES COMPLETED 1 JULY 2006–30 JUNE 2007

1. Number of enquiries	501
2. Number of media enquiries	87
3. Number of written complaints closed	44
4. Number of own motion investigations commenced but not completed	0
5. Number of own motion reports filed with Clerk and tabled in Legislative Assembly	4
6. Number of recommendations monitored (including own motion)	92
7. Number of recommendations made in any year but complied with in 06–07	33
8. Number of recommendations being monitored	92
9. Number of recommendations made	56

APPENDIX E Report of the Auditor General

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1. Overview of Performance for the Year

Introduction

This annual report details the performance of the Office of the Complaints Commissioner for the fiscal year ending 30 June 2007.

It includes information about outputs actually delivered during the year as compared to the planned performance documented in the Annual Budget Statement for the Office of the Complaints Commissioner for 2006/7, or as amended through the supplementary appropriation process.

It also reports those aspects of ownership performance that were contained in the Annual Budget Statement for 2006/7 or as amended through the supplementary appropriation process.

Summary of Performance

Output Performance

Sub-output no.	Details of Sub-output	Target 2006–07	Result 2006–07
1	Answers to enquiries made in Office	200-400	501
2	Investigations of residents' complaints	40-80	44
3	Public-interest investigations	2-5	4

Sub-output no.	Details of Sub-output	Target 2006–07	Result 2006–07
1	Monitoring of recommendations made	20-50	96
2	Reports to Legislative Assembly re: failure to comply with recommendations made or reporting misconduct	2-4	3



Cayman Islands

Office of the Complaints Commissioner

CERTIFICATE OF THE AUDITOR GENERAL

To the Members of the Legislative Assembly of the Cayman Islands

Report on the Financial Statements:

I have audited the accompanying financial statements of the Office of the Complaints Commissioner ("The Office"), which comprise the balance sheet as at 30 June 2007, and the operating statement, statement of changes in net worth and cash flow statement, statement of commitments and contingent liabilities for the year then ended and a summary of significant accounting policies and other explanatory notes as set out on pages 17 to 28 in accordance with the provisions of Section 44(3) of the Public Management and Finance Law (2005 Revision).

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility for the Financial Statements

My responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend upon the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Opinion for the Financial Statements

In my opinion, the financial statements present fairly, in all material respects, the financial position of the Office of the Complaints Commissioner as of 30 June 2007, and of its financial performance and its cash flows for the year then ended in accordance with International Public Sector Accounting Standards.

Report on Statement of Outputs Delivered

I have audited the accompanying Statement of Outputs Delivered of the Office of the Complaints Commissioner ("The Office") for the year ended 30 June 2007 as set out on pages 8 to 9 in accordance with the provisions of Section 44(3) of the *Public Management and Finance Law (2005 Revision)*.

The Statements consist of the following outputs:

- OCC 1 –Investigations and monitoring of compliance
- OCC 2 – Monitor Compliance with the Commissioner's Recommendations

Management's Responsibility for the Statement of Outputs Delivered

Management is responsible for the preparation and fair presentation of the Statement of Outputs Delivered in accordance with section 44(2) of the *Public Management and Finance Law (2005 Revision)*. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of the Statement of Outputs Delivered that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate criteria and measures to the outputs delivered. Management is required to present the following performance indicators for the Office of the Complaints Commissioner:

- 1) Description of outputs delivered for the year ended 30 June 2007.
- 2) Quantitative measures of the outputs delivered during the year ended 30 June 2007.
- 3) Qualitative measures of the outputs delivered during the year ended 30 June 2007.
- 4) Timeliness measure of the outputs delivered during the year ended 30 June 2007.
- 5) Location of delivery of outputs during the year ended 30 June 2007.
- 6) Financial measures of the actual costs incurred in respect of each output for the year ended 30 June 2007 compared to Budgeted Costs for each output as duly approved in the "Budget 2006/7".

Auditor's Responsibility for the Statement of Outputs Delivered

My responsibility is to express an opinion on the Statement of Outputs Delivered based on our audit. We conducted our audit in accordance with International Standards on Assurance Engagements 3000: Assurance Engagements Other Than Audits of Historical Financial Information. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the Statement of Outputs Delivered are free from material misstatement.

Our audit of the Statement of Outputs Delivered was planned and performed to obtain all information and explanations we considered necessary to form an opinion based on a reasonable level of assurance. Our audit procedures included examining, on a test basis, evidence supporting the amounts and other disclosures included in the Statements and making enquiries of key members of management and the staff of the Office.

I believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Overall Scope Limitations

The parameters included for each of the output measures included in these statements have been provided to me by the Complaints Commissioner's management and are solely their responsibility. I do not accept responsibility for the determination of these parameters as the basis of measure for each of the outputs, or for their appropriateness or relevance.

Nor do I accept responsibility for the accuracy of the information contained in the "Description" field of each statement. The information as documented included there in has been determined by the Complaints Commissioner's management in their best judgment and as such its accuracy and relevance are solely their responsibility.

Qualified Opinion for the Statement of Outputs Delivered

OCC 1– Investigations and monitoring of compliance

Cost – The Office did not have a system in place to allocate their cost between the output groups based on the quantities reported; therefore we are unable to determine whether costs were fairly allocated to this output.

In my opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had we been able to satisfy ourselves as to the accuracy of the cost allocation, the OCC 1 Statement of Outputs Delivered presents fairly, in all material respects, the outputs delivered for the Office of the Complaints Commissioners as of 30 June 2007.

OCC 2 – Monitor Compliance with the Commissioner's Recommendations

Cost – The Office did not have a system in place to allocate their cost between the output groups based on the quantities reported; therefore we are unable to determine whether costs were fairly allocated to this output.

In my opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had we been able to satisfy ourselves as to the accuracy of the cost allocation the OCC 2 Statement of Outputs Delivered presents fairly, in all material respects, the outputs delivered for the Office of the Complaints Commissioners as of 30 June 2007.

Garnet Harrison

for Dan Duguay, MBA, FCGA
Auditor General

Cayman Islands
8 April 2009

Part A
Outputs Delivered During the Year



2. Statement of Outputs Delivered

OCC 1	Investigation and monitoring of compliance		
Description			
- Deal with telephone 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	2006/7 Actual	2006/7 Budget	Annual Variance
Quantity			
o No of enquiries	501	200-400	+101 ¹
o No of Complaints investigated	44	40-80	0
o No of Public Interest Investigations/Reports	4	2-5	0
Quality			
o All complaints, enquiries and public interest investigations are to be investigated by suitably qualified and trained staff	100%	100%	0
o All reports to be signed off by Complaints Commissioner or in his absence the Acting Commissioner	100%	100%	0
o All complaints investigated in accordance with the parameters established by the Complaints Commissioner Law, 2003	100%	100%	0
Timeliness			
o All enquiries to be answered within 5 working days	91%	90-100%	0
o Decision to investigate complaint and if accepted, commencement of Investigation of complaints within 1 month	100%	95-100%	0
o All investigations to be completed within 4 months of the investigation being commenced	77%	80-100%	-3 ²
o All reports/public interest investigation to be completed within 5 months of the request	0%	80-100%	-80 ³
Location	100%	100%	0
Cayman Islands			
Cost (of producing the output)	\$523,000	\$657,000	(\$134,000) ⁴
Price (paid by Cabinet for the output)	\$657,000	\$657,000	0
Related Broad Outcome: Open, Transparent, Honest and Efficient Public Administration			

¹ A greater number of inquiries were received from the general public than we had budgeted for.

² During the course of an investigation this Office's timelines are often circumvented as Chief Officers have a number of legislated priorities that supersede their ability to render immediate assistance to this Office. Whilst we understand and allow for these deferrals, they ultimately affect our ability to meet our prescribed timeliness outputs.

³ During the course of an investigation this Office's timelines are often circumvented as Chief Officers have a number of legislated priorities that supersede their ability to render immediate assistance to this Office. Whilst we understand and allow for these deferrals, they ultimately affect our ability to meet our prescribed timeliness outputs.

⁴ See explanatory note under Section 5 Ownership Performance Targets

OCC 2	Monitor compliance with the Commissioner's recommendations			
Description • Monitor compliance with the recommendations of 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 made to remedy the injustice or evidence found of breach of duty, or criminal offence				
Measures		2006/7 Actual	2006/7 Budget	Annual Variance
Quantity - o Number of recommendations monitored - o Number of Special Reports delivered to the Clerk of the Legislative Assembly Committee		96 3	20-50 2-4	+46 ⁵ 0
Quality - o All monitoring carried out by suitably qualified and trained staff - o All reports to be signed off by Commissioner or in his absence the acting commissioner - o All recommendations monitored in accordance with the parameters established by the Complaints Commissioner Law, 2003		100% 100% 100%	100% 100% 100%	0 0 0
Timeliness - o Monitoring carried out on an on-going basis until recommendations are substantially implemented, or withdrawn or until they are included in a Special Report to the Legislative Assembly - o Special Reports submitted to the Clerk of the Legislative Assembly Committee within 1 month of the Complaints Commissioner determining that no adequate action has been undertaken or evidence found of breach of duty, or criminal offence		100% 100%	90-100% 90-100%	0 0
Location		100%	100%	0
Cost (of producing the output)		\$219,000	\$219,000	0
Price (paid by Cabinet for the output)		\$219,000	\$219,000	0
Related Broad Outcome: Open, Transparent, Honest and Efficient Public Administration				

⁵ During the course of some of our investigations, more than one matter of maladministration was discovered and therefore greater numbers of recommendations were made to rectify these matters. This in turn meant that a greater number of recommendations were monitored.

Part B

Ownership Performance Achieved During the Year

3 Nature and Scope of Activities

General Nature of Activities

The Office of the Complaints Commissioner is responsible for undertaking the investigatory functions prescribed by The Complaints Commissioner Law (2006 Revision).

Scope of Activities

- Receiving written complaints from the public and deciding whether they should be investigated;
- Appointing mediators to resolve complaints involving only minor maladministration;
- Investigating written complaints from the public and reporting to the complainant and government entity on the results of the investigation;
- Undertaking public interest investigations and reporting to the Legislative Assembly on the results of the investigation;
- Making recommendations for actions to be taken where injustice has occurred as a result of maladministration, monitoring compliance with those recommendations and, where no adequate action is taken, preparing a special report to the Legislative Assembly;
- Referring to the relevant person or body for their action any evidence of breach of duty, misconduct or criminal offence;
- Reporting annually to the Legislative Assembly on the performance of his/her functions.

Customers and Location of Activities

The OCC Oversight Committee of the Legislative Assembly is the customer.

The recipients of the services are the general public of the Cayman Islands.

Explanatory note: As a result of the work undertaken throughout the course of this year, the Office of the Complaints Commissioner believes that it has substantially complied with the nature and scope of its activities as outlined in our budget document.

4 Strategic Ownership Goals

The key strategic ownership goals for The Complaints Commissioner's Office in 2006/7 and the subsequent two years are as follows:-

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

Achievement during Year

1. Completed the establishment of a presence on the internet for informational purposes and to register complaints on line.
2. Completed the implementation of a case management software system, Modified Case Tracker.
3. Implemented a performance appraisal system.
4. Provided bi-monthly reports to media on the work of OCC and received good coverage in print and radio/tv media from the reports.
5. Increased public awareness through media interviews and advertising and designed a new radio campaign for 2007-08.
6. Completed phase one of in-house training on human rights with in-house course by local expert and attendance by Mr. Epp and Ms. Webb at Costa Rica conference.

Explanatory note: As a result of the work undertaken throughout the course of this year, the Office of the Complaints Commissioner believes that it has substantially complied with the nature and scope of its activities as outlined in our budget document.

5 Ownership Performance Targets

5.1 Financial Performance

Financial Performance Measures	2006/7 Actual \$	2006/7 Budget \$	Annual Variance \$
Revenue from Cabinet	876,000	876,000	0
Revenue from ministries, portfolios, statutory authorities, government companies	0	0	0
Revenue from others	7,000	0	7,000
Surplus/deficit from outputs	0	0	0
Ownership expenses	742,000	876,000	(134,000)
Operating Surplus/Deficit	141,000	0	(141,000)
Net Worth	143,000	107,000	36,000
Cash flows from operating activities	90,000	(3,000)	87,000
Cash flows from investing activities	(30,000)	(15,000)	15,000
Cash flows from financing activities	15,000	15,000	0
Change in cash balances	75,000	(3,000)	72,000

Explanation of variances: Expenses were \$134,000 less than budgeted due to reduced expenditures for goods and services.

Financial Performance Ratios	2006/7 Actual %	2006/7 Budget %	Annual Variance
Current Assets: Current Liabilities (Working Capital)	131	229	(98%)
Total Assets: Total Liabilities	142	247	(105%)

Explanation of variances: Performance ratios were less than expected due to an increase in current assets compared to budgeted amounts.

5.2 Maintenance of Capability

Human Capital Measures	2006/7 Actual	2006/7 Budget	Annual Variance
Total full time equivalent staff employed	6	6	0
Staff turnover (%)			
Managers	0	0	0
Professional and technical staff	0	0	0
Clerical and labourer staff	20%	50%	(30%)
Average length of service (number of years in current position)			
Managers	2	2	0
Professional and technical staff	2	2	0
Clerical and labourer staff	2	2	0
Changes to personnel management system: None			

Explanation of variances: We had budgeted for a staff turnover of 2 at the clerical and labourer level as it is not unusual after having gained two years experience, staff at this level seek advancement. Given the small size of our office, staff advancement is not always possible and therefore staff seek promotion outside the OCC. However, we only had one staff member leave during the fiscal year.

Physical Capital Measures	2006/7 Actual \$	2006/7 Budget \$	Annual Variance \$
Value of total assets	484,000	180,000	304,000
Asset replacements: total assets	6.3%	8%	(1.7)%
Book value of assets: initial cost of those assets	63%	63%	(0%)
Depreciation: cash flow on asset purchases	70%	100%	(30%)
Changes to asset management policies			

Explanation of variances: An increase in total assets is primarily due to an increase in cash compared to expected ratios.

Major <u>New</u> Entity Capital Expenditures for the Year	2006/7 Actual \$	2006/7 Budget \$	Annual Variance \$
Office equipment, furniture, build out	29,500	15,000	14,500
Computer Hardware	850	0	850
Total	30,350	15,000	15,350

Explanation of variances: Additional equipment was purchased and accommodations were expanded to meet the needs of this Office during its growth period.

Major Entity Capital Expenditures continuing from previous years	2006/7 Actual \$	2006/7 Budget \$	Annual Variance \$
	0	0	0

5.3 Risk Management

Risk	Status of Risk	Action Taken During 2006/7 to Manage Risk	Financial Value of Risk
Loss of Key Personnel	Ongoing	Identify back up resources	
Loss of Documents	Ongoing	Back up storage	
Security of Staff	Ongoing	Secure buildings arrangements	

6 Equity Investments and Withdrawals

Equity Movement	2006/7 Actual \$	2006/7 Budget \$	Annual Variance \$
Equity Investment from Cabinet into the Office of the Complaints Commissioner	15,000	15,000	0
Capital (Equity) Withdrawal by Cabinet from the Office of the Complaints Commissioner			

Appendix: Financial Statements for the Year

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Office of the Complaints Commissioner

STATEMENT OF RESPONSIBILITY FOR FINANCIAL STATEMENTS

These financial statements have been prepared by Office of the Complaints Commissioner in accordance with the provisions of the Public Management and Finance Law (2005 Revision).

I accept responsibility for the accuracy and integrity of the financial information in these financial statements and their compliance with the Public Management and Finance Law (2005 Revision).

To the best of my knowledge the financial statements are:

- (a) complete and reliable;
- (b) fairly reflect the financial position as at 30 June 2007 and the financial performance for the year ended 30 June 2007; and
- (c) comply with generally accepted accounting practice.



Dr. John Epp
Commissioner
Office of the Complaints Commissioner
April 8, 2009



Susan K. Duguay
Administrative and Investigative Officer
Office of the Complaints Commissioner
April 8, 2009

OFFICE OF THE COMPLAINTS COMMISSIONER
 OPERATING STATEMENT
 FOR THE YEAR ENDED 30 JUNE 2007

	Note	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Revenue				
Outputs to Cabinet		876	876	670
Interest Revenue		7	0	3
Total Operating Revenue		883	876	673
Operating Expenses				
Personnel	1	420	434	308
Supplies and consumables	2	295	427	254
Depreciation	3	21	15	12
Capital charge		6	0	12
Total Operating Expenses		742	876	586
Net Surplus		141	0	87

OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF CHANGES IN NET WORTH
FOR THE YEAR ENDED 30 JUNE 2007

	2006/7 Actual	2006/7 Budget	2005/6 Actual
Opening balance net worth	125	92	77
Net surplus	141	0	87
Investment revaluations	3	0	0
Adjustments to opening net worth	0	0	3
Equity investment from Cabinet	15	15	45
Repayment of surplus to Cabinet	(141)	0	(87)
Closing balance net worth	143	107	125

OFFICE OF THE COMPLAINTS COMMISSIONER
BALANCE SHEET
AS AT 30 JUNE 2007

	Note	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Current Assets				
Cash and cash equivalents	4	201	46	126
Accounts receivable	5	222	78	126
Total Current Assets		423	124	252
Non-Current Assets				
Property, plant and equipment	6	61	56	52
Total Non-Current Assets		61	56	52
Total Assets		484	180	304
Current Liabilities				
Accounts payable	7	54	50	33
Other current liabilities	8	262	0	114
Employee entitlements	9	6	4	13
Total Current Liabilities		322	54	160
Non-Current Liabilities				
Employee entitlements	10	19	19	19
Total Non-Current Liabilities		19	19	19
Total Liabilities		341	73	179
TOTAL ASSETS LESS TOTAL LIABILITIES		143	107	125
NET WORTH				
Contributed capital		136	107	125
Accumulated surplus/(deficits)		7	0	0
Total Net Worth		143	107	125

OFFICE OF THE COMPLAINTS COMMISSIONER
CASH FLOW STATEMENT
FOR THE YEAR ENDED 30 JUNE 2007

	Note	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
CASH FLOWS FROM OPERATING ACTIVITIES				
Receipts				
Outputs to Cabinet		786	858	674
Interest received		4	0	2
Other Receivable		(3)	0	0
Payments				
Personnel costs		(427)	(434)	(299)
Suppliers		(270)	(427)	(302)
Net cash flows from operating activities	11	90	(3)	75
CASH FLOWS FROM INVESTING ACTIVITIES				
Purchase of non-current assets		(30)	(15)	(7)
Net cash flows from investing activities		(30)	(15)	(7)
CASH FLOWS FROM FINANCING ACTIVITIES				
Equity investment		15	15	45
Net cash flows from financing activities		15	15	45
Net increase/(decrease) in cash and cash equivalents		75	(3)	113
Cash and cash equivalents at beginning of period		126	49	13
Cash and cash equivalents at end of period	4	201	46	126

OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF COMMITMENTS
AS AT 30 JUNE 2007

Type	One year or less	One to five years	Over five years	Total
	\$000	\$000	\$000	\$000
Capital Commitments				
Land and buildings	0	0	0	0
Other fixed assets	0	0	0	0
Other commitments [list separately if material]	0	0	0	0
Total Capital Commitments	0	0	0	0
Operating Commitments				
Non-cancellable accommodation leases	0	0	0	0
Other non-cancellable leases	0	0	0	0
Non-cancellable contracts for the supply of goods and services	0	0	0	0
Other operating commitments	0	0	0	0
Total Operating Commitments	0	0	0	0
Total Commitments	0	0	0	0

OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF CONTINGENT LIABILITIES
AS AT 30 JUNE 2007

Summary of Quantifiable Contingent Liabilities

	\$000
Legal Proceedings and Disputes	
None	0
Total Legal Proceedings and Disputes	<u>0</u>
Other Contingent Liabilities	
None	0
Total Other Contingent Liabilities	<u>0</u>
Summary of Non-Quantifiable Contingent Liabilities	
None	

**OFFICE OF THE COMPLAINTS COMMISSIONER
STATEMENT OF ACCOUNTING POLICIES
FOR THE YEAR ENDED 30 JUNE 2007**

General Accounting Policies

Reporting entity

These financial statements are for the Office of the Complaints Commissioner. The Office was established in July 2004 under the Complaints Commissioner Law (2003). The Complaints Commissioner Office is located at 202 Piccadilly Centre 28 Elgin Avenue.

Basis of preparation

The financial statements have been prepared in accordance with International Public Sector Accounting Standards (IPSASs) using the accrual basis of accounting. Where there is currently no IPSAS, other authoritative pronouncements such as International Accounting Standards and United Kingdom reporting standards applicable to the public sector have been used. The measurement base applied is historical cost adjusted for revaluations of certain assets.

The financial statements have been prepared on a going concern basis and the accounting policies have been applied consistently.

Reporting Period

The annual reporting period is for the twelve months ended 30 June 2007. The 2006/07 budget figures presented in the financial statements are the amounts included in the annual budget statements for the financial year ended 30 June 2007.

Specific Accounting Policies

Revenue

Output revenue

Revenue is derived from outputs provided to Cabinet. Revenue is recognised when it is earned.

Interest revenue

Interest revenue is recognised in the period in which it is earned.

Expenses

General

Expenses are recognised when incurred.

Depreciation

Depreciation of non-financial physical assets is provided on a straight-line basis at rates based on the expected useful lives of those assets.

Capital Charge

Capital charges on the net assets due to the Cayman Islands Government are recognised as an expense in the period in which they are incurred.

Assets

Cash and cash equivalents

Cash and cash equivalents include cash held in the Office of the Complaints Commissioner bank account and any money held on deposit with the Portfolio of Finance and Economics (Treasury).

Account Receivables and advances

Receivables and advances are recorded at the amounts expected to be ultimately collected in cash.

Furniture and Fittings/Office Equipment

Office equipment is recorded at cost (or fair value if acquired prior to 2006) less accumulated depreciation.

Computer Hardware and Software

Computer hardware and software are recorded at cost, and depreciated in accordance with the policy on depreciation.

Depreciation of office equipment and computer hardware and software is calculated using the straight-line method at the following rate, to allocate the cost of the assets over their estimated useful life.

Computer equipment	3-6 years
Furniture and Fittings/Office equipment	3-10 years

Liabilities

Accounts Payable

Accounts payable are recorded at the amount owing after allowing for credit notes and other adjustments.

Provisions

Provisions are recognised in accordance with IPSAS 19 Provisions, Contingent Liabilities and Contingent Assets.

Employee entitlements

Amounts incurred but not paid at the end of the reporting period are accrued. Annual leave due, but not taken, is recognised as a liability.

Long service leave liabilities are measured as the present value of estimated leave service entitlements.

Pension obligation

Pension contributions for employees of the Office of the Complaints Commissioner are paid to the Public Service Pension Fund ("The Fund"). The Fund is administered by the Public Service Pension Board and is operated as a multi-employer non-contributory fund, whereby the employer pays both the employer and employee contributions. Prior to 1 January 2000 the scheme underlying the Fund was a defined benefit scheme. With effect from 1 January 2000 the Fund had both a defined benefit and a defined contribution element. Participants joining after that date became members of the defined contribution element. Pension scheme contributions are included in personnel cost in the operating statement.

The Public Service Pension Liability for all civil servants (both current and past) is an executive liability managed by the Honourable Financial Secretary. This liability is reported on the Honourable Financial Secretary executive financial statements.

OFFICE OF THE COMPLAINTS COMMISSIONER
NOTES TO THE FINANCIAL STATEMENTS

NOTE 1: PERSONNEL COSTS

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Salaries and wages (including employee pension contributions)	380	414	294
Employer pension expense	20	20	14
Other personnel costs	20	0	0
Total Personnel Costs	420	434	308

NOTE 2: SUPPLIES AND CONSUMABLES

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Supply of goods and services	242	354	217
Operating lease rentals	53	73	37
Other	0	0	0
Total Supplies and Consumables	295	427	254

NOTE 3: DEPRECIATION

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Furniture and fittings / office equipment	11	15	5
Computer hardware and software	10	0	7
Total Depreciation	21	15	12

Assets are depreciated on a straight-line basis as follows:

	Years
Furniture and fittings and office equipment	3-10
Computer hardware and software	3-6

NOTE 4: CASH AND CASH EQUIVALENTS

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Bank accounts	201	46	126
Deposits with Portfolio Finance and Economic (Treasury)	0	0	0
Total Cash and Cash Equivalents	201	46	126

NOTE 5: ACCOUNTS RECEIVABLE

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Outputs to Cabinet	194	78	104
Outputs to other government agencies	19	0	19
Outputs to others	0	0	0
Insurance advance	5	0	2
Interest receivable	4	0	1
Total Gross Accounts Receivable	222	78	126
Less provision for doubtful debts	0	0	0
Total Net Accounts Receivable	222	78	126

NOTE 6: PROPERTY, PLANT AND EQUIPMENT

	COMPUTER HARDWARE \$000	COMPUTER SOFTWARE \$000	OFFICE EQUIPMENT, FURNITURE & FITTINGS \$000	TOTAL \$000
Cost				
At beginning of year	6	27	34	67
Additions	0	0	30	31
Cost at 30 June 2007	6	27	64	97
Depreciation				
At beginning of year	2	6	7	15
Depreciation charge for the year	4	6	11	21
Accumulated Depreciation at 30 June 2007	6	12	18	36
Net Book Value at 30 June 2007	0	15	46	61
Net Book Value at 30 June 2006	4	21	27	52

NOTE 7: ACCOUNTS PAYABLE

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Trade Creditors	1	50	2
Accruals	53	0	31
Total	54	50	33

NOTE 8: OTHER CURRENT LIABILITIES

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Creditor due to Cabinet/ other ministries	262	0	114
Total	262	0	114

NOTE 9: EMPLOYEE ENTITLEMENTS (CURRENT)

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Long service leave and other leave entitlements	6	4	13
Other salary related entitlements	0	0	0
Total Employee Entitlements	6	4	13

NOTE 10. EMPLOYEE ENTITLEMENTS (NON-CURRENT)

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Long service leave and other leave entitlements	19	19	19
Other salary related entitlements	0	0	0
Total	19	19	19

NOTE 11: RECONCILIATION OF OPERATING SURPLUS TO CASH FLOWS FROM OPERATING ACTIVITIES

	2006/7 Actual \$000	2006/7 Budget \$000	2005/6 Actual \$000
Operating surplus/(deficit)	141	0	87
Non-cash movements			
Depreciation	21	15	12
Increase /(Decrease) in Payables/Accruals	24	0	(30)
(Decrease)/ Increase in Receivables	(96)	(18)	6
Net cash flows from operating activities	90	(3)	75

NOTE 12: RELATED PARTY TRANSACTIONS

Key Management Personnel

There is 1 full-time equivalent personnel considered at the senior management level. The total remuneration includes: regular salary, pension contributions, health insurance contributions and COLA back pay. Total remuneration for senior management in 2006-07 was \$122K. There have been no loans made to key management personnel or close family members in 2006-07.

End

Annual Report 2006–07

Third Annual Report of the Office of the Complaints
Commissioner of the Cayman Islands addressing the Fiscal
Year July 2006–June 2007



Office of the Complaints Commissioner



Office of the Complaints Commissioner

PO Box 2252

202 Piccadilly Centre

28 Elgin Avenue

Grand Cayman

KY1-1107

Telephone (345) 943-2220

Facsimile (345) 943-2221

Sister Islands Office

Brac House

Cotton Tree Bay

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.



202 Piccadilly Centre, 28 Elgin Avenue, PO Box 2252, Grand Cayman KY1-1107

Phone: (345) 943-2220 Fax: (345) 943-2221

21 May 2009

Speaker of the Legislative Assembly
Legislative Assembly
Grand Cayman

By Hand

Dear Speaker:

Re: Annual Report 06-07

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

Additional copies have been delivered to the Clerk for distribution.

It is hoped that the Chairman of the Legislative Committee on Oversight of this office will agree to introduce the Annual Report in the Legislative Assembly.

Sincerely,

John A. Epp
Commissioner

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