

# The Role of the Complaints Commissioner and Issues of Concern to Human Resource Professionals

Office of the Complaints Commissioner  
PO Box 2252 GT  
202 Piccadilly Centre  
28 Elgin Avenue  
Grand Cayman  
Tel: 943-2220  
Fax: 943-2221

Aim of the Office: To investigate in a fair and independent manner written complaints to ascertain whether injustice has been caused by improper, unreasonable or inadequate government administrative conduct.

Presenter: Commissioner John Epp

\*Please consider allowing the Commissioner to place an information brochure in the waiting area of your office. Contact the office on [caymancomplaints@yahoo.com](mailto:caymancomplaints@yahoo.com).

## A. Complaints Commissioner: Role, Duties and Powers

The Complaints Commissioner's Office was established pursuant to the Complaints Commissioner Law 2003 ('Law'). The CCO is an independent officer answerable directly to the Legislative Assembly through its Speaker.

The CCO does not represent the complainant or the government administration. He conducts an independent review and his reports are objective. He can address complaints arising after July 13, 2004 if the subject of the complaint is a government entity and if it is not excluded by schedule 2 of the Law.

The value of an independent review of complaints made by residents against government administration goes beyond the result in an individual case. It encourages better administration in all matters. Also it provides an independent means to acknowledge the good service provided by many government employees.

The CCO 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 Law 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; an action based on *practices or procedures* which are unreasonable, unjust, oppressive or improperly discriminatory.

1. The primary functions of the CCO are to investigate, to recommend and to report.

### 1.1. Investigate:

The CCO will investigate complaints made in writing that fall within the scope of the Complaints Commissioner Law. The CCO will investigate matters directed to him for investigation by resolution of the Legislative Assembly. Also, the CCO may investigate matters on his own initiative which, in his opinion, the public interest commands investigation.

The purpose of the investigation is to ascertain whether 'injustice' occurred as a result of improper, unreasonable or inadequate administration.

The powers of investigation are stated to be the same as 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 complaint investigation.

### 1.2 Recommend:

The CCO may recommend action to be taken by an administrator when maladministration is found. The recommendation may address a specific action causing an injustice or it may address laws, regulations, rules that lead to an unjust result. The CCO may recommend payment of compensation for the complaint who was wronged.

### 1.3 Inform the government entity:

The CCO must inform the government entity of the result of an investigation if injustice is sustained due to the actions taken by the government entity's officer.

### 1.4 Report to Legislative Assembly:

If no action is taken by an administrator on a recommendation made by the CCO, the CCO must report this failure to the Legislative Assembly. Also, if the CCO conducts investigations on his own initiative, he must report his findings to the Legislative Assembly.

## 2.0 Additional functions of the CCO include:

2.1 Organize the mediation of a complaint that is minor in nature in a situation where the parties are willing to sit down together to attempt to resolve the problem. This can be an effective route where, for example, the member of the public often must interact with the same government officer time and time again. Mediation can help diffuse tense feelings or frustration, and serve to begin a dialogue and open lines of communication.

2.2 Report to the head of department any misconduct discovered in his department that may amount to criminal activity.

2.3 Monitor compliance with recommendations made by the Commissioner.

## 3.0 Areas outside of the CCO's jurisdiction (Schedule 2) include:

1. International affairs – matters certified by the Governor to affect relations between the Government and another country's government (or its international organizations);
2. Matters of national defence, external affairs or internal security (e.g. Emergency Powers Law);
3. Investigation of crime, or protecting the security of the Islands, by Police, Customs or Immigration;
4. Governor's power of pardon;
5. Court proceedings, whether civil or criminal in nature;
6. Issues concerning the employment (e.g. hiring 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 (e.g. the correctness of a tribunal decision; but can look at the process of the tribunal in following the rules of natural justice).

#### 4. Basis 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. Referred to appeal process.

Yes



Sufficient Information? → No. Informed on 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. Close file by letter.

Not successful



Investigation



Error 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

## B. Issues of Concern to Human Resource Professionals

The issues that appear to be of the most concern to Human Resource professionals in the first year of the operation of the CCO arise from the operation of Department of Immigration and the Caymanian Status and Permanent Residency Board and the Department of Employment Relations.

### 1.0 Immigration

1.1 Emergency Temporary Work Permit post Ivan

1.2 English Test for Employees from non-English Speaking Countries

1.3 Deportation

1.4 Customer Service and CIO Manderson

1.5 Work Permit Processing and Board Chairman David Ritch

### 2.0 Caymanian Status and Permanent Residency Board

2.1 Status Grants and Improper Procedure

### 3.0 Employment Services

3.1 Cayman Brac Labour Tribunal and Hon. Alden McLaughlin

3.2 Delays at Employment Services and Director Whittaker

3.3 Internal Complaints Process and Tanya Golaub