

CAYMAN ISLANDS  
Human Rights Commission

Annual Report 2012



*Promoting, Protecting and Preserving Human Rights*

## Contents

---

Statement from HRC Chairman

---

### **Chapter 1: The Cayman Islands Human Rights Commission (“the Commission”)**

- 1.1 Vision
  - 1.2 Mission
  - 1.3 Constitutional Guidelines
  - 1.4 Members
- 

### **Chapter 2: Monitoring Human Rights in Legislation, Policy, and Practice**

- 2.1 Royal Cayman Islands Police Service- Telecommunication Interception Policy
  - 2.2 Royal Cayman Islands Police Service – Various Policies: Visual recorded interviews; Audio recorded interviews; Stop and Search; Standard of Appearance; Interview; Custody of Prisoner; and Detention, Treatment and Questioning of Persons by Police Officers
  - 2.3 Government Policy on Signing of Petitions by Civil Servants
  - 2.4 Legal Aid Bill
  - 2.5 Ministry of Education, Training, and Employment - Report of the Legal Sub-Committee for Persons with Disabilities
  - 2.6 Portfolio of Internal and External Affairs – Prison Service’s Indoor Smoking Policy
  - 2.7 Constitutional Implementation Advisory Group – Specialist Human Rights Training Workbook
  - 2.8 Department of Environment - Cayman Islands Marine Parks Video Presentation – We Need You
  - 2.9 Prison Rehabilitation Committee
  - 2.10 Data Protection Bill
  - 2.11 Human Rights Education in the Education Curriculum
- 

### **Chapter 3: Engagement with the Media and Members of the Public**

- 3.1 Enquiry Re: Disability Legislation in the Cayman Islands
  - 3.2 Enquiry Re: Existing Courthouse Facilities
  - 3.3 Enquiry Re: Electoral Register
  - 3.4 Monthly Radio Cayman Talk Today Radio Show
  - 3.5 HRC Website and Facebook Page
  - 3.6 Cayman 27 Series: Implementation of the Bill of Rights
  - 3.7 GIS Spotlight on Implementation Day
- 

### **Chapter 4: Alleged Breaches or Infringements of Human Rights**

---

### **Chapter 5: Human Rights Education, Events and Presentations**

- 5.1 Revised HRC Informational Brochure
  - 5.2 Invitation to the Transnational Crimes and Forensic Sciences Workshop
  - 5.3 Data Protection Working Group – Presentation on the Data Protection Bill
  - 5.4 “Past, Present, and Future”- Bill of Rights Commemorative Book
  - 5.5 Call for Mediators
  - 5.6 International Human Rights Day
-

---

**Chapter 6: Moving Forward**

---

**Appendices:**

- Appendix 1: Cayman Islands Bill of Rights
- Appendix 2: International Human Rights Treaties Extended to the Cayman Islands
- Appendix 3: “Job Description” for Human Rights Commission Mediators

# Statement from the Chairman

---

The rights within the Bill of Rights, Freedoms and Responsibilities are fundamental to the lifestyle we are all so blessed to enjoy in the Cayman Islands. The people of these islands have fought for these rights and it is our duty to continue to work to ensure our future generations receive the same or better rights than we do today. As another year closes, the Human Rights Commission reflects proudly on the steps it has taken in an effort to promote, protect and preserve human rights in the Cayman Islands. During this reporting period (1 January to 31 December, 2012) the Bill of Rights, Freedoms and Responsibilities become enforceable on a local level. 6 November, 2012 was a monumental day; one which marked a new beginning for the people of the Cayman Islands.

Human rights are the essential rights and freedoms which all individuals are entitled to regardless of their nationality and citizenship. These rights are fundamental to maintaining a fair and just society. Ensuring they are upheld becomes a responsibility for public officials: they have a duty under the Constitution to ensure that all acts they carry out and decisions they make are carried out or made in a lawful, rational, proportionate and procedurally fair manner in accordance with the Bill of Rights, Freedoms and Responsibilities.

The 2009 Constitution gives you yet greater protection for your rights and freedoms and greater authority to defend them. Adherence to the Bill of Rights, Freedoms and Responsibilities will help us to become a stronger society where all human beings are equally valued, can participate fully and are treated with fairness, dignity and respect.

The Commission will continue seeking to promote, protect, and preserve human rights for the people of the Cayman Islands and we hope you will join us to embrace the journey and the challenges which lie ahead. We encourage you to visit [www.humanrightscommission.ky](http://www.humanrightscommission.ky) to ensure you understand your rights, learn how to protect them and learn how the Constitution provides for your rights to be respected.

**Richard Coles,  
Chairman, Human Rights Commission**

# Chapter 1

## The Cayman Islands Human Rights Commission (“the Commission”)

---

### 1.1 Vision

This vision of the HRC is: *promoting, protecting and preserving human rights.*

### 1.2 Mission

Leaders in promoting, protecting and preserving human rights in the Cayman Islands by:

- promoting the integration of human rights values into everyday life;
- encouraging government accountability to national and international human rights standards;
- embracing the Cayman Islands Bill of Rights, Freedoms and Responsibilities and the principles of democracy; and
- empowering all persons to understand and exercise their rights.

### 1.3 Constitutional Guidelines

The Constitutional guidelines for the Commission are found in Section 116 of the Cayman Islands Constitution Order 2009 (the Constitution) which reads as follows:

**116.**-(1) There shall be in and for the Cayman Islands a Human Rights Commission (referred to in this section as “the Commission”).

(2) The Commission’s primary responsibility shall be promoting understanding and observance of human rights in the Cayman Islands.

(3) The Commission shall consist of a Chairman and four other members appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition, at least two of whom shall be experienced lawyers.

(4) In the exercise of their functions, the Commission and its members shall not be subject to the direction or control of any other person or authority.

(5) The Commission shall replace the Human Rights Committee.

(6) The Commission shall have power to –

- a) receive and investigate complaints of breaches or infringements of any right or freedom contained in the Bill of Rights or international human rights treaties that have been extended to the Cayman Islands, and investigate such possible breaches or infringements on its own

- initiative;
- b) provide advice to persons who consider that their rights or freedoms have been infringed;
  - c) provide a forum for dealing with complaints by mediation or conciliation or by making recommendations;
  - d) issue guidance on procedures for dealing with any complaints of breaches or infringements of rights and freedoms;
  - e) contribute to public education about human rights;
  - f) issue reports relating to human rights issues on its own initiative; and
  - g) undertake such other functions, for the purpose of fulfilling its primary responsibility under subsection (2), as may be conferred on it by a law enacted by the Legislature.
- (7) The Commission shall have no power to –
- a) represent or provide representation to parties to litigation;
  - b) act in a judicial capacity or make binding determinations as to whether any right or freedom contained in the Bill of Rights or any international human rights treaty or instrument has been breached; or
  - c) compel any person to do anything against his or her will;
- but any public official to which the Commission addresses a recommendation must respond in writing within a reasonable time, and such responses shall be published by the Commission unless there is a good reason to withhold publication.
- (8) The Commission shall make an annual report to the Legislative Assembly about its activities.
- (9) Further provision relating to the establishment and operation of the Commission may be made by the Legislature, but such legislation shall not derogate from any provision of this section.
- (10) Nothing contained in or done pursuant to this section or any law made under subsection (9) shall –
- a) oblige a person to refer any complaint of a breach or infringement of any right or freedom referred to in the Bill of Rights to the Commission; or
  - b) prevent a person from seeking redress directly from the Grand Court in relation to any breach or infringement of a right or freedom referred to in the Bill of Rights, and the fact that such person had previously sought the assistance of the Commission with respect to such breach or infringement shall not prejudice any legal action.

## 1.4 HRC Members

### ❖ Mr Richard Coles – Chairman



Mr Coles is an experienced lawyer both in England and in the Cayman Islands, Solicitor admitted in England and Wales, a Cayman Islands Attorney-at-law and former Attorney General for the Cayman Islands. He is a member of the Law Society of England, the Caymanian Bar Association, the Commonwealth Lawyers Association, the Commonwealth Parliamentary Association, a Fellow of the Caribbean Law Institute and the Institute of Advanced Legal Studies in London. He also has the distinction of being a Freeman of the City of London, and is the current Chairman for Cayman Finance.

### ❖ Miss Sara Collins



Miss Sara Collins is a retired partner of Conyers Dill & Pearman in the Cayman Islands. As a graduate of the London School of Economics she was admitted as a barrister of England & Wales (not currently practicing) as well as an attorney at law in the Cayman Islands.

### ❖ Mrs Catherine Frazier



A Caymanian of long lineage, Mrs Frazier is a successful business owner, having started a property management company with her husband Jerry Frazier in 1994. She is actively involved in the community and is a member of the Steering Committee for Planning the Future for Persons with Disabilities in the Cayman Islands; Member of ICCI Board of Trustees and Member of the Cayman Islands Baptist Church.

### ❖ Mr Alistair Walters



Alistair Walters is an attorney at law and has been practicing for over 20 years. He is the managing partner of Campbell's Attorney at Law and has been with the firm for 13 years, prior to working in London, England. Alistair is a member of The Rotary Club of Grand Cayman, Chairman of the Association of Cayman Mediators and Arbitrators (certified by the London School of Mediation), and former member of the Board of Governors of Saint Ignatius Catholic School.

### ❖ Bishop Nicholas JG Sykes, B Sc., Dip Ed., MTS



Bishop Sykes has taught science, mathematics and religious education for over 20 years in public schools and a teachers' college throughout Jamaica, the Cayman Islands and the United Kingdom. In 1979 he became Chairman of the

Association of Science Teachers of Jamaica. Ordained as a priest since 1976, Bishop Sykes is currently the Rector of St. Alban's Anglican Church in George Town and Treasurer of the Cayman Ministers' Association. He has authored the book "The Dependency Question" and numerous other articles.



# Chapter 2

## Monitoring Human Rights in Legislation, Policy, and Practice

---

Over the past year the Commission had numerous requests to review various pieces of legislation and policies for human rights compliance. The Commission readily accepted these opportunities which are viewed as a willingness within the public service to ensure that policies comply with the Bill of Rights, Freedoms, and Responsibilities. The Bill of Rights aims to positively shape the actions and decisions of the public service and, overall, be a positive influence on the provision of services by public authorities. Applying human rights principles, such as necessity, justification, and proportionality, can be a powerful tool for elaborating and implementing regulatory principles and resolving complex issues which call for the balancing of competing rights and interests.

The following section details the Commission's contributions to legislative and policy development during the reporting period. Many of these submissions sought to identify areas of concern at the drafting or consultation stage as a means by which to review the documents for potential breaches of human rights. While the Commission undertakes this role from the perspective of providing support for the Cayman Islands Government, it has been noted that the documents and the policy on which they are based must be reviewed by the Attorney General's Chambers as the Commission does not provide legal advice.

In all instances, the Commission expects that the principles and substance of the Government policy and legislation, in its final version, will reflect the Government's commitment to protecting individuals' rights, freedoms, and responsibilities embedded within Part I of the Cayman Islands Constitution Order 2009 in addition to fundamental human rights under the European Convention on Human Rights.

### **2.1 Royal Cayman Islands Police Service- Telecommunication Interception Policy**

Representatives of the Commission met with the Deputy Commissioner of Police in March 2012 to discuss the Royal Cayman Islands Police Services (RCIPS) policies on interception of telecommunications. Following extensive discussions the Commission contended that the said telecommunication interception policy was impressively comprehensive and generally in compliance with human rights standards.

While the Commission was pleased to note that the RCIPS policy acknowledges the creation of an Audit Committee to conduct audits of interceptions carried out under the ICTA Regulations an area of concern was the lack of the establishment of and appointment of members to that Audit Committee. The ICTA Law (Interception of Telecommunication Messages) Regulations, 2011 legislates for the Audit Committee as follows:

#### **PART 4: AUDIT**

17. (1) The Governor in Cabinet shall appoint a committee to be known as the Interception of Communication Audit Committee, whose function shall be to conduct audits of interceptions carried out under these Regulations.
- (2) The ICAC shall consist of the following five persons -
  - a. a Justice of the Peace, who shall be Chairperson;
  - b. a retired -
    - i. Judge;
    - ii. Magistrate; or
    - iii. Lawyer;
  - c. the Chief Officer in the Portfolio of Internal and External Affairs;
  - d. an information and technology specialist employed by the Cayman Islands Government; and
  - e. a technical expert (from a law enforcement agency outside the Islands) with experience in the interception of telecommunications.
- (3) Members of the ICAC shall serve at the pleasure of the Governor in Cabinet.
- (4) The ICAC shall adopt its own rules of procedure.

As telecommunication message interception carries the potential for human rights infringements, the Commission urged the Governor to establish the Audit Committee as a matter of urgency as a means to providing a necessary layer of oversight to the process of telecommunication interception by the police service, particularly prior to the implementation of the Bill of Rights, Freedoms, and Responsibilities.

## **2.2 Royal Cayman Islands Police Service – Various Policies: Visual recorded interviews; Audio recorded interviews; Stop and Search; Standard of Appearance; Interviews; Custody of Prisoner; and Detention, Treatment and Questioning of Persons by Police Officers**

At the request of Senior RCIPS officials, the Commission provided feedback on the various internal policies as named above. The Commission’s review of the mentioned internal Police policies was based on a thorough examination of the individual policies in relation to the Cayman Islands Bill of Rights, Freedoms, and Responsibilities. Some of the feedback provided included:

- The right to privacy and respect for personal property are fundamentals of the Bill of Rights. Powers of entry, search, and seizure should be fully and clearly justified before use as they may significantly interfere with an individual’s privacy. Officers should consider if the necessary objectives can be met by less intrusive means.
- The power to stop and search constitutes a deprivation of liberty and as such should be compatible with Section 5 of the Bill of Rights. The use of the power must also be compatible with Section 9 (private and family life) and Section 16 (non-discrimination). Therefore, officers’ use of the power must be legal, proportionate, and non-discriminatory.
- In regards to subsection 4.5: “...wear a distinctive item of clothing”... it should be noted that this provision will likely lead to group suspicion, which may, although inadvertently, extend beyond specific gang members where the identifying item is in fact more widely adopted as part of a sub-culture not associated with illegal activity.
- The challenge for the Police Service is to learn from complaints and incidents to ensure they maintain best practices, human rights compliant policies, and to continue to deliver services that fulfill the community’s expectation. These expectations will not remain static; rather, they will be constantly evolving.

## **2.3 Government Policy on Signing of Petitions by Civil Servants**

The Commission was pleased to see that the Government policy guiding the signing of petitions by civil servants was released in March, 2012 after having been reviewed to incorporate changes suggested by the Commission and other relevant entities.

## **2.4 Legal Aid Bill**

Overall the Commission indicated to the Attorney General in a short letter seeking to ensure that the offices of the Attorney General are aware that in regards to the Legal Aid Bill, the Human Rights Commission concerns remain that any legal aid service should provide adequate legal advice and representation by properly qualified and experienced attorneys.

Prior to doing so, however, the Commission wrote to the Caymanian Bar Association (CBA) and the Cayman Islands Law Society in anticipation that any commentary provided by the Cayman Islands Law Society and the CBA would go beyond the Commission's immediate interests. As such both entities provided the HRC with copies of the responses in which they addressed to the Attorney General on the matter; indeed, those letters covered a broader perspective, which was information welcomed as part of the commission's monitoring process. The Commission is grateful to these entities for their thorough reviews.

## **2.5 Ministry of Education, Training, and Employment - Report of the Legal Sub-Committee for Persons with Disabilities**

The Commission noted that the Report of the Legal Sub-Committee for Persons with Disabilities was laid in the Legislative Assembly in May 2009. This report provided a potential legal framework for the generation of a Bill. The Commission was particularly interested to understand the stage at which the Government is at in terms of developing comprehensive legislation aimed at improving the lives of persons with disabilities and securing the rights of those person as it had commented on the draft Bill in 2010.

Through previous Government press releases, the Commission ascertained that the Future for Persons with Disabilities Steering Committee anticipated preparing drafting instructions for new legislation, and examining the feasibility of implementing policies prior to legislation in an effort to enhance the lives of persons with disabilities. However, as the Commission was unclear as to accomplishments in relation to this matter, the commission wrote to the Chief Officer of the Ministry of Education, Training and Employment in an effort to gain up-to-date insight, including when the public can expect a draft Bill for review.

The HRC believes that the aforementioned report was a vital step forward in developing critically important legislation for a vulnerable, yet important, segment of the Cayman Islands population and we are disappointed that no draft Bill has yet been published by Government.

## **2.6 Portfolio of Internal and External Affairs – Prison Service’s Indoor Smoking Policy**

The Commission was invited by officials of the Portfolio of Internal and External Affairs to participate in discussions facilitated by the Prison Service in regards to the implementation of the smoking policy within the Prison. As a result, the Commission requested a copy of the written smoking policy in order to review it from a human rights perspective.

In relation to the policy, the Commission is aimed to gain an understanding of how the Prison Service will be implementing this policy, what was the impetus for the introduction of the policy at this time, and whether the Prison Service has cleared any legal issues with the Attorney General’s Chambers.

## **2.7 Constitutional Implementation Advisory Group – Specialist Human Rights Training Workbook**

The Commission engaged in a review of a workbook developed to aid in specialist human rights training for persons with the powers of arrest. The workbook covered various topics and sub-topics in relation to the field of law enforcement. Following a process of research, discussions, and presentation to the group of our recommendations, the Commission was able to indicate that it supported the efforts of the Advisory Group and the use of the workbook as a tool for human rights education with Uniformed Officers in the Cayman Islands. The Commission congratulates the Advisory Group on their having sensitised over 5200 public officials on the Bill of Rights, Freedoms and Responsibilities prior to Implementation Day.

## **2.8 Department of Environment - Cayman Islands Marine Parks Video Presentation – *We Need You***

The Human Rights Commission received and reviewed a copy of the Department of Environment’s (DoE) video presentation on the Cayman Islands Marine Parks review entitled *We Need You*. The Human Rights Commission provided feedback in the form of questions through the online tool surrounding, in particular:

- a. What will be done regarding the threat identified in the video from development and dredging?
- b. How does DOE intend to be pro-active in upholding the Protection of the Environment (Section 18) of the Bill of Rights Freedoms and Responsibilities when it comes into effect?; and
- c. Has information been provided to the DoE as to when the proposed Conservation Bill will be implemented and does the Department feel that the Bill satisfies the requirements of Section 18 in or BoRFR?

## **2.9 Prison Rehabilitation Committee**

At the request of the Portfolio of Internal and External Affairs the Institute of Public Administration of Canada reviewed Her Majesty's Prison Service in the Cayman Islands. Upon completing their review they published a report entitled *A Review of the Assessment and Treatment of Criminal Offenders*. The report contained a significant number of recommendations, including the creation of a Rehabilitation Committee, chaired by the Deputy Director of Prison Rehabilitation and made up of representatives from various community organisations and other relevant government departments which play a role to in the rehabilitation of offenders. In this regard, the Commission was asked to nominate a member to serve on this Committee however as of December 2012, the Committee had not formally convened a meeting.

## **2.10 Data Protection Bill**

In completing the review of this legislation the Commission recognised that the various branches of Government as well as private corporations hold a vast amount of information about individuals for the benefit of whom safeguards should be in place. It further recognised that the development of a Data Protection Bill is necessary with the growth of technology and globalization which have direct impact on privacy rights, property rights, freedom of expression, and other rights ingrained in the Bill of Rights, Freedoms and Responsibilities for all persons in our society.

Amongst the concerns of the Commission were:

- a. the current draft of the Data Protection Law is written in extensive 'legalese' and not in easily to understand 'plain English'. This concern arose because although the aim of a Data Protection Law is to protect individuals' rights with regard to data specific to them; persons cannot grasp, defend, nor exercise such rights without the requisite understanding of the law itself. The extent to which persons, especially small business owners, will receive assistance in adhering to this new piece of legislation was also very concerning;
- b. the Commission pondered whether or not the certificate of exemption for national security reasons should be a matter for the Governor acting together with or on the advice of National Security Council (NSC) rather than the Governor in his discretion alone (as is currently envisaged). The starting point must be that, so far as possible, the NSC should have input on national security matters, especially where privacy rights are being suspended on national security grounds;

- c. the Data Protection Bill was that it has been modelled on similar legislation in other more experienced jurisdictions and the Commission would like to think there must be a case for building up the intent of a data protection regime from a new template (a “Cayman template”) rather than from a Jersey adaptation of a UK adaptation of an EU directive; and
- d. the choice of FOI Commissioner seems a strange one. In many respects the principles behind FOI and Data Protection are diametrically opposed. One promotes dissemination of information and the other promotes privacy.

The Commission suggested that until the Grand Court develops local case law on these matters, the Data Protection Working Group and/or relevant legal advisors should collectively develop a guide of best practices to assist the public service, private organisations, and individuals to understand the rights and responsibilities that ground this legislation.

### **2.11 Human Rights Education in the Education Curriculum**

The Commission continues to be interested in ascertaining information related to how human rights education can be incorporated into the education curriculum. The Commission wrote to the Ministry of Education in this regard noting our previous conversations with the Ministry in 2010.

# Chapter 3

## Engagement with the Media and Members of the Public

---

The Commission recognises that not all members of the community have reasons to lodge formal complaints of alleged human rights infringements; however, all members of the community should understand the virtue of learning more about their human rights, how to defend those rights, and how to responsibly exercise such rights. The Commission believes that the media plays an important role in the on-going process of this education through their ability to offer various arenas in which the Commission's voice can be heard.

Subsequently, during the reporting period, the HRC responded to enquiries from the media and conducted several interviews on topics of interest which included:

### **3.1 Enquiry Re: Disability Legislation in the Cayman Islands**

An e-mail was received requesting answers to questions related to disabilities legislation in the Cayman Islands. There is currently no specific law in the Cayman Islands which addresses all types of disabilities. The only related legislation is the Mental Health Law (2007 Revision). This legislation primarily deals with severe mental impairments that require observation, the treatment of prisoners with mental disabilities and guardianship. At the time of the review there would seem to be no distinct definition operating in domestic law within the Cayman Islands to define "disability" with the exception of what is contained in the Mental Health Law.

There was a bill drafted in 1995 titled The Disabilities Bill. It was reviewed by the legal sub-committee under the Committee for Persons with Disabilities. It focused mainly on employment but was described as "inadequate" since it excluded housing, advocates for criminal acts, inheritance and assisted care. They adopted the definition from the U N Convention on the Rights of Persons with Disabilities as "long and short term physical, mental, intellectual or sensory impairments where interaction with various barriers may hinder full and effective participation in society on an equal basis with others". The Committee for Persons with Disabilities under the Ministry of Education, Training and Employment was the primary point of contact regarding the progress on the current initiative to draft legislation on this subject. Their legal sub-committee released a report in February 2009 and references are made to this topic in Chapter 2 above.



Section 16 of the Bill of Rights provides for non-discriminatory application of the Bill of Rights. Our Bill of Rights defines discriminatory as affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status. The Bill of Rights which forms Section one of the Cayman Islands Constitution Order 2009, applies vertically therefore it only governs the relationship between the individual and government. Unlike Article 14 European Convention on Human Rights, our Bill of Rights specifically includes mental or physical disability in the definition of discriminatory.

### **3.2 Enquiry Re: Existing Courthouse Facilities**

An e-mail was received requesting an answer to the question “when the Bill of Rights takes effect, is there any concern that the existing courthouse facilities will be inadequate under the Constitution in terms of providing a disabled person a right to a fair trial (Section 7); or more generally, under the non-discrimination section (Section 16)?” Further it was enquired whether “if the facilities are indeed inadequate, is that problem mitigated or fixed by new technology (i.e. video links that enable a person to ‘appear’ in court without actually being there in person)?”

While Part I of the Cayman Islands Constitution, the Bill of Rights, Freedoms and Responsibilities (BoRFR) contains a Right to Non-Discrimination clause (Section 16) this clause may not be applicable to the courts as is it could be exempted under Section 1(3). Therefore a citizen of the Cayman Islands may not be able to make a complaint against the courts for an alleged breach of their human rights under this section.

That said Section 7 of the BoRFR sets out the Right to a Fair Trial. More specifically Section 7(2)(e) allows for any person charged with a criminal offence “to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.” Further Section 19(1), which also applies to the courts, prescribes that “all decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.”

The Commission also referred the enquirer to a letter dated 14 July, 2010 addressed to the Honourable Attorney General from the Commission on the then proposed amendments to the Evidence (Amendment) Law, 2007 which would further assist in answering this enquiry.

### **3.3 Enquiry Re: Electoral Register**

An e-mail was received requesting an answer to the question “if I have the ability to put myself on the electoral register, surely it is reasonable that I have the right to remove myself?”

Generally, Part IV, Section 90(1) of the Cayman Islands Constitution Order (2009) defines a qualified elector as someone who: is Caymanian, 18 years of age or older, resident in Cayman on the day of registration and has been resident in Cayman for two of the immediately preceding four years. Section 91(1-2) defines disqualified electors as those who are: serving a prison sentence exceeding twelve months, certified as insane, or judged as committing an election-related offence.

The Elections Law (2009 Revision) Part II, Section 11 describes the registration to vote in the Cayman Islands but voting is not mandatory. Any qualified person may (not must) apply to be added to the register. There is no procedure outlined in the law for voluntarily removing one’s name from the electoral register once entered, yet there is no explicit statement that a person cannot remove their name from the electoral register once it has been entered.

After carefully researching, reviewing and discussing this matter, the Commission informed the enquirer that the inability to voluntarily remove your name from the voter’s registration list is not an infringement of your human rights in the Cayman Islands.

### **3.4 Monthly Radio Cayman Talk Today Radio Show**

The Commission continued its partnership with Radio Cayman to provide the public with a monthly radio call-in / talk show initiative. The aim of the radio appearances was to present the public with specific information about to the Bill of Rights as well as to field questions and concerns from the public through call-ins. The initiative ran for approximately twelve months was successfully completed in November 2012.

### **3.5 HRC Website and Facebook Page**

The engagement with the media and members of the public are of utmost importance to the Commission and while the Commission members try to avail themselves to each request, it is often difficult to do on short notice. As such the Commission continues to ensure that information is readily available in an electronic format for persons to easily access. The Commission maintains a website ([www.humanrightscommission.ky](http://www.humanrightscommission.ky)) and a Facebook page ([www.facebook.com/cihrc](http://www.facebook.com/cihrc)) which provides links

to external websites, the Cayman Islands Constitution, videos, pictures, international human rights treaties extended to Cayman, teacher/student resources, answers to frequently asked questions, and information on filing a complaint and accessing the Human Rights Commission.

### **3.6 Cayman 27 Series: Implementation of the Bill of Rights**

The Commission participated in four of five-episode series in relation to basic education about human rights, the Commission’s mandates and powers, and the implementation of the Bill of Rights, Freedoms and Responsibilities.

### **3.7 GIS Spotlight on Implementation Day**

The Commission was featured in a Government Information Services “Spotlight” segment; a televised fifteen-minute programme airing twice weekly that focuses on various community and government related issues. The segment focused on the implementation of the Bill of Rights, Freedoms and Responsibilities.

# Chapter 4

## Alleged Breaches or Infringements of Human Rights

---

The Cayman Islands have been subject to the European Convention on Human Rights since the 1950's and as such individuals have been able to obtain a remedy for breach of the provisions of this international treaty by lodging a complaint in the European Court of Human Rights. In addition, the law of the Cayman Islands previously recognised a number of human rights and fundamental freedoms under the common law and statute law.

6 November, 2012 marked Implementation Day, the day on which our own Bill of Rights, Freedoms and Responsibilities now allows an individual to remedy a breach in our local courts. Individuals may also still directly petition the European Court of Human Rights, after exhausting domestic remedies, to seek a remedy for the decision of a public official or legislation which infringes or breaches the obligations under the European Convention on Human Rights.

The Commission can now receive and investigate complaints that decisions or actions of a public official have breached or infringed the Bill of Rights, Freedoms or Responsibilities or that local legislation violates human rights and freedoms. As such, the Commission will receive 1) all complaints of breaches of infringements of any section of the Bill of Rights, Freedoms and Responsibilities committed by a public official; 2) all complaints of breaches or infringements of common law and statutory human rights and freedoms committed by public officials; and 3) all complaints that any international human rights treaty extended to the Cayman Island has been breached or infringed by the actions of public officials or by legislation to which the treaty applies.

It is important to note that the Commission will only accept complaints of alleged breaches of the Bill of Rights, Freedoms and Responsibilities which have occurred after 6 November, 2012. This may be a one off event that has occurred after 6 November 2012 or may be a continuing infringement of a right. In all cases, unless there is clear evidence that the alleged infringement is continuing, the Commission will not accept a complaint in relation to an alleged infringement that has taken place more than one (1) year prior to the date of the complaint.

During the reporting year, the Commission received twenty-three (23) complaints from members of the public alleging breaches by public officials of their human rights. Of those cases four (4) remain open at the end of this reporting year. *N.B.: In maintaining the confidentiality of the complainants, detailed information pertaining to complaints is not published by the Human Rights Commission.*

# Chapter 5

## Human Rights Education, Events and Presentations

---

Representatives of the Commission are committed to furthering the concept of human rights education as well as increasing their knowledge of human rights issues through attending community forums, conferences, and training programmes as appropriate. The Commission welcomes opportunities to reach out to the community by participating in educational initiatives.

### **5.1 Revised HRC Informational Brochure**

The Commission re-issued its informational brochure following the implementation of the Bill of Rights, Freedoms, and Responsibilities as a means in which to keep its public information campaign accurate. The brochure is available in hard copy from the office or electronically on the website and Facebook page.

### **5.2 Invitation to the Transnational Crimes and Forensic Sciences Workshop**

The Human Rights Chairman accepted the invitation to attend and speak at the Transnational Crimes and Forensic Sciences Workshop held in June 2012 of which the theme was "Enhancing the Effectiveness of Prosecutors in a Challenging Environment". In keeping with the objectives of the Constitution for the Caribbean Association of Prosecutors the Office of the Director of Public prosecutions, Cayman Islands hosted the first training workshop and an inaugural meeting of the Association. The aim was to further the Association with an election of Officers, reception of members and agreement on the way forward while increasing the capacity of Caribbean Prosecutors by providing training in important areas.

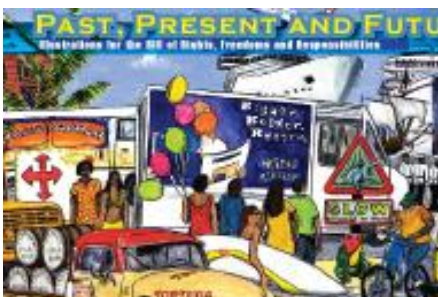
The workshop provided a source of continuing professional development through the delivery of a programme of lectures by a team of UK and international experts on core topics of transnational crimes, victims and the forensic sciences. It set out to achieve a number of objectives, including but not limited to, acquiring an enhanced understanding of the care of victims in serious organized crime, effective approaches to transnational crime and the main forensic pathology issues that can arise in expert evidence given in DNA profiling, sexual assault, blood spatter pattern analysis and ballistics; and to have a better understanding of the role of the defence expert witness and the principles of evidence based cross-

examination. Ultimately achieving these objectives will serve to maximise the effectiveness of prosecutors across the region.

### 5.3 Data Protection Working Group – Presentation on the Data Protection Bill

Members of the Data Protection Working Group provided the Commission with a general presentation which included an overview of the law including jurisdictions that influenced the Bill, how it was adapted to a Cayman context, and the intention behind the law. The Group also engaged the Commission in a discussion on human rights concerns. Following the presentation, the Commission embarked on a thorough review of the Bill and provided a formal response to the Working Group as part of the public consultation phase (see Chapter 2 for further details on the response provided by the Commission).

### 5.4 “Past, Present, and Future”- Bill of Rights Commemorative Book



In commemoration of Implementation Day and as part of the Commission’s mandate to provide education on human rights, the Commission produced a book titled *Past, Present and Future: Illustrations for the Bill of Rights, Freedoms and Responsibilities* for primary school aged children. The book depicts the first twenty rights in the Bill and is beautifully illustrated by local artists and accompanied by simplified

text explaining each of the rights in ways that are applicable to children’s lives.

Collaborating with the Government Information Services Graphics Team and the National Gallery, an official launch was held at the National Galley on 6 November, 2012, which encompassed a private presentation by the Commission to a representative of the Governor’s Office and other special guests including the artists, followed by a public reception in which the book was displayed alongside the original pieces of artwork.

Funded by the Foreign and Commonwealth Office, the Commission was able to supply each child attending school in years 1-6 across the Cayman Islands to receive a copy. The Commission urges parents to utilise this opportunity to educate our children on the Bill of Rights, Freedoms and Responsibilities as a unique and important document in the heritage of the Cayman Islands. The book can also be viewed online by visiting the Commission’s website.

## 5.5 Call for Mediators

In a continued effort to ensure compliance with its constitutional mandate to *provide a forum for dealing with complaints by mediation or conciliation* (Section 116(6)(b)) the Commission agreed that persons who were qualified mediators should be sourced. As detailed in the Commission's 2011 Annual Report, members have previously had the opportunity to participate in a training opportunity to enhance members' understanding and practicality of offering mediation facilitated by the London School of Mediation.

The Commission created a "job description" (found in Appendix 3 of this document) and has been actively seeking persons from outside the Commission who are interested and suitably qualified to sit on a panel of mediators. Complainants, whose complaint has been accepted by the Commission, may choose to utilise one of these qualified mediators in order to resolve their complaint if the necessary agreement of all parties concerned is obtained.

## 5.6 International Human Rights Day



2012 year marks the 64<sup>th</sup> anniversary of the ratification of the United Nations Universal Declaration of Human Rights. The theme for 2012 was My Voice Counts expressing the core of basic human rights; everyone has a voice that deserves to be heard. The United Nations' General Assembly voted to adopt the Universal Declaration of Human Rights on 10 December, 1948. In an effort to mark observance of International Human Rights day, the members of the HRC engaged in a community initiative whereby members distributed copies of the informational brochure and Constitution; and engaged in various media appearances.



# Chapter 6

## Moving Forward

---



Throughout the next year the Commission will continue to fulfil its constitutional mandates by protecting, promoting and preserving human rights in the Cayman Islands.

As an institution supporting democracy, the Commission believes in the principle that human rights are inherent to all people, without discrimination of nationality, ethnic origin, sex, religion or any other status; and supports the notion that there are universal rights and fundamental freedoms which governments are obligated to secure for all persons in the country.

The Commission encourages you to visit our website ([www.humanrightscommission.ky](http://www.humanrightscommission.ky)), join us on Facebook, call us at 244-3685, or email us at [info@humanrightscommission.ky](mailto:info@humanrightscommission.ky) to get involved in promoting human rights in the Cayman Islands. The Commission is committed to working hard to preserve your human rights and we hope that you take the time to explore this meaningful cause and join us in our work.

Dated this 9<sup>th</sup> day of January, 2013

Miss Sara Collins

Richard Coles (Chairman)

Mrs Cathy Frazier

Bishop Nicholas Sykes

Mr Alistair Walters

# Appendices

---

## **Appendix 1: Cayman Islands Bill of Rights, Freedoms, and Responsibilities**

1. Guarantee of Rights, Freedoms and Responsibilities
2. Life
3. Torture and inhuman treatment
4. Slavery or forced or compulsory labour
5. Personal liberty
6. Treatment of prisoners
7. Fair trial
8. No punishment without law
9. Private and family life
10. Conscience and religion
11. Expression
12. Assembly and association
13. Movement
14. Marriage
15. Property
16. Non-discrimination
17. Protection of children
18. Protection of the environment
19. Lawful administrative action
20. Education
21. Public emergencies
22. Protection of persons detained under emergency laws
23. Declaration of incompatibility
24. Duty of public officials
25. Interpretive obligation
26. Enforcement of rights and freedoms
27. Remedies
28. Interpretation of the Bill of Rights

## **Appendix 2: International Human Rights Treaties Extended to the Cayman Islands**

(as at 1 May, 2010 based on information provided to the HRC by outside sources)

- ❖ European Convention on Human Rights
- ❖ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- ❖ Convention on Consent to Marriage, Minimum Age and Registration
- ❖ Convention on the Abolition of Slavery
- ❖ International Convention on the Elimination of All Forms of Racial Discrimination
- ❖ Convention on the Rights of the Child
- ❖ Convention relating to the Status of Stateless Persons
- ❖ Convention on the Political Rights of Women
- ❖ Registry of the European Court of Human Rights September 2003
- ❖ International Labour Organisation Convention 29
- ❖ International Labour Organisation Convention 87
- ❖ International Labour Organisation Convention 98
- ❖ International Labour Organisation Convention No. 105
- ❖ International Covenant on Civil and Political Rights
- ❖ International Covenant on Economic, Social and Cultural Rights
- ❖ United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education

### **Appendix 3: “Job Description” for Human Rights Commission Mediators**

The Cayman Islands Human Rights Commission (the HRC) is tasked with a number of responsibilities which include providing a forum for dealing with complaints by way of mediation or conciliation or by making recommendations.

#### ***What is mediation?***

Mediation is a form of alternative dispute resolution. “Alternative Dispute Resolution” (ADR) refers to a wide range of processes designed to help parties discuss and resolve their problems. ADR includes informal and formal processes, such as mediation and conciliation. Increasingly, courts, tribunals and other organizations use these processes to help resolve a variety of disputes.

Mediation is a voluntary, confidential ADR process led by a trained, impartial mediator. Parties can make use of it if after accepting a complaint and when the Commission recommends mediation as a potential way of resolving the complaint. .

#### ***What are the advantages of mediation?***

Mediation helps parties better understand each other’s point of view. It can improve communication and future relations between the parties. Because it is flexible, mediation allows parties to deal with both the immediate problem and its possible causes. It also allows them to craft creative solutions together. Mediating a dispute as soon as possible can help parties solve the problem quickly and keep it from getting worse.

#### ***How does mediation work?***

- First, the mediator speaks to the parties individually about the situation and possible solutions. The mediator also explains how he or she will run the mediation session.
- Then the parties decide whether to meet in person or make other arrangements, such as participating in a telephone conference.
- Finally, the parties participate in the mediation session with the mediator. They are expected to negotiate quickly and in good faith, to treat each other with respect, and to keep discussions confidential.

Discussions in mediation are “without prejudice.” This means that the parties do not give up their right to launch further legal proceedings or to take other steps. It also means that anything discussed during mediation cannot be used in a later court case. Further, participating in mediation does not mean that one party accepts the other party’s version of events.

#### ***Who are the mediators and what do they do?***

Mediators assisting the HRC have training and experience in mediation and human rights. They create a safe environment, encourage discussion and help the parties find solutions. They cannot make decisions about the dispute.

- The mediators discuss the ground rules for mediation, the location of the mediation session and similar matters with the parties.
- They guide discussions impartially and give the parties feedback on their ideas.
- They encourage parties to look at the pros and cons of the different options for resolving the dispute.
- They tell the parties about the “public interest”—that is, they point out what is appropriate from a human rights perspective. For example, if one party claims that a discriminatory practice or policy affects other people, mediators will ensure that any settlement also raises with the Human Rights Commission the practice or policy.
- If the parties reach a settlement, mediators help them prepare an agreement to sign.

### ***What might a settlement include?***

The purpose of the Cayman Islands Constitution and Bill of Rights is to resolve human rights disputes and prevent them from happening again. If parties reach a settlement, they can agree to whatever solutions seem appropriate to them, as long as the public interest is considered. Solutions might include apologies, training, replacement of lost wages, reinstatement in a position, or financial compensation. If the case involves a discriminatory policy, the terms of the settlement could include changing the policy or putting new procedures in place.

### ***What happens when the parties reach a settlement?***

If the parties reach a settlement, the mediator helps them prepare a written agreement. This document outlines what each party has agreed to do to resolve the matter. The commissioners may review the agreement to ensure it is fair and in the public interest. If required, the terms may have to be enforced through the courts privately by the parties.

In some cases, the parties may settle the dispute between themselves, without asking the Commission to approve the agreement.

### ***What happens if there is no settlement?***

If there is no settlement, the mediation process ends. The person who has filed the complaint may then seek further redress from the Commission or may, if so advised, seek relief from the Grand Court.

### ***What are the minimum requirements for mediators?***

- Four years’ experience and thorough knowledge of ADR or a comparable process requiring dispute resolution;
- Membership of the Cayman Islands Association of Mediators and Arbitrators or similar association;
- Completion of an approved 40-hour mediation training course and Mediation certification required;
- Thorough knowledge of fact-finding, analysis, interviewing, problem solving, conducting conferences and negotiating settlements.
- Thorough knowledge of the Cayman Islands laws, regulations, procedures and policies governing human rights and equal opportunity in all areas;

- Ability to interpret and apply the Cayman Islands Bill of Rights;
- A bachelor's degree and preferably legal experience.

***How do I become involved in mediation with the HRC?***

If you are a member of the public who is interested in mediation services you must file a complaint with the HRC who will determine whether your case meets the requirements for mediation. Please visit [www.humanrightscommission.ky](http://www.humanrightscommission.ky) for more information on filing a complaint.

If you are a qualified mediator and wish to be considered to act as a mediator for the HRC, you should submit a cover letter along with your resume to [info@humanrightscommission.ky](mailto:info@humanrightscommission.ky).