



Cayman Islands Human Rights Commission

promoting, protecting and preserving human rights

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VIA E-MAIL: brent@cfp.ky

Dear Mr. Fuller,

As you may be aware the Human Rights Commission has been reviewing the issue of Freedom of Expression vs Parliamentary Privilege as a result of the article published by the Caymanian Compass on 8 December, 2011 titled "Closed-Door FOI Review".

Attached is a copy of the report of the Commission on the matter which we are forwarding to your attention for factual accuracy no later than 23 November, 2011. It should be noted that both parties are being provided with an opportunity to provide feedback on the factual accuracy of the report.

It is the Commission's intention after that time to release the report onto our website.

Yours sincerely,

Richard Coles
Chairman, Human Rights Commission

att: Report on Freedom of Expression vs Parliamentary Privilege

Cayman Islands Human Rights Commission

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Report on Freedom of expression vs. Parliamentary Privilege

Background

The Caymanian Compass published in its 8 December, 2010 paper, an article titled "Closed-Door FOI Review" and editorial suggesting that the Select Committee was "Secret" – because of its exclusion of the FOI Commissioner Jennifer Dilbert. The editorial also suggested that since the alarming situation regarding *WikiLeaks* in the international headlines, the Committee was most likely to use it as an example of the dangers in having FOI. The author assumes it would influence restrictions to the FOI Law in the Cayman Islands. The editorial while predicting the Committee's ill favored response, immediately attempts to "head off with this foolishness". It holds that the *WikiLeaks* case should not be compared to FOI which is a legal protocol for obtaining information. The article leaves the reader with the impression that there will be a possible restriction to FOI as a result of public office offense and embarrassment regarding previous FOI requests. He then makes a statement of caution discrediting embarrassment as a reason to "begin whittling away at democracy and the free press".

The article in the Caymanian Compass stemmed from the establishment of a Select Committee on 15 September, 2010 under the LA Standing Orders 70-74 to review the Freedom of Information Law as mandated within s. 58 of the FOI Law. Appointments to the Select Committee were made under order 70 of LA Standing Orders which states that only Members of the House may be appointed.

It should also be noted that under Order 74 of the LA Standing Orders, proceedings and evidence taken before a select committee cannot be published until after the committee makes a report to the House.

The Speaker of the house believes that the editorial impugned and maligned the Honourable Members of the subcommittee. As recorded in the 2010 Official Hansard Report p. 608, she responded in part by saying:

"When the free press, however, begins whittling away at the root of democracy defaming the integrity of the country's Legislative Assembly and the integrity of its honourable Members by deliberately planting in the minds of the public the idea that the persons they have chosen to represent them are not worth of their trust and respect, and imbuing the carrying out of their legislative duties with sinister proportions, it is time for this Chair to act."

Under the Legislative Assembly Immunities, Powers and Privileges Law [1999 Revision] the privilege for the press to attend and report on the Legislative Assembly was revocable. As such, she ordered the revocation of privilege to report on 9-10 December, 2010 proceedings of the Legislative Assembly from Editorial Author. She further requested an apology from the Cayman Free Press and Editorial Author to the Legislative Assembly.

A motion was also later tabled by the Independent member to prosecute the Editorial Author. This motion although passed by the Legislative Assembly was not acceded to by the Attorney General.

Parliamentary Privilege

Erskine May describes Parliamentary Privilege as the sum of the peculiar rights enjoyed by each House collectively and by Members of each House individually, without which they could not discharge their