



Cayman Islands

Human Rights Commission

promoting, protecting and preserving human rights

Annual Report 2015

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Statement from the Chairman

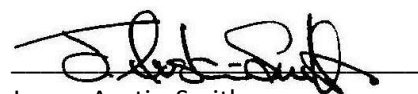
During the 2015 Reporting Period the Human Rights Commission (“the Commission”) sought to continue to uphold its constitutional mandate of promoting understanding and observance of human rights in the Cayman Islands through the acceptance and consideration of complaints of allegations of breaches of human rights and the research of issues that dominated the public agenda.

The Commission continued to focus on numerous human rights but 2015 saw the reinforcement of the protection of private and family life, fair trial, non-discrimination, protection of children, environment and prisoners.

The Commission also continued to review numerous policies, procedures and legislation developed by the Cayman Islands Government (“the Government”) to ensure each was compliant with the Bill of Rights.

During the Reporting Period the Commission considered numerous complaints which identified a potential breach of s.19 – Lawful Administrative Action. The Commission noted these in its correspondence with the various Government officials and continues to encourage the Government to develop sound policies to manage the decision making processes public officials engage in daily in order to properly uphold this most important right for all individuals.

I encourage the public to visit our website (www.humanrightscommission.ky), join us on Facebook (www.facebook.com/cihrc), call us at 244-3685, or email us at info@humanrightscommission.ky to get involved in promoting human rights in the Cayman Islands.



James Austin-Smith

Chairman, Human Rights Commission

Chapter 1: The Cayman Islands Human Rights Commission

1.1 Goals

The goals of the Commission are *promoting, protecting and preserving human rights*.

1.2 Mission

To lead 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:

- 1) There shall be in and for the Cayman Islands a Human Rights Commission (referred to 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.

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

2.1 Deportation and Prohibited Immigrants

As previously reported the Commission has received numerous complaints from persons who have been deported and/or declared prohibited immigrants under varying circumstances. Most though not all, generally have close Caymanian connections to persons who remain resident in the Cayman Islands and have thus alleged a breach of their right to private and family life by the Government. The Commission continues to liaise with representatives of various Government offices on the progression of the Immigration (Amendment) Bill 2011 which creates a framework for prohibited immigrants potentially to return to the island after deportation. The Bill provides much needed structure by creating a schedule ascribing to various crimes a prescribed time period during which the offender is required to remain outside of the islands before readmission can be requested. It also establishes a Cabinet Advisory Committee on Prohibited Immigrants (“the Committee”) which will accept applications for readmission from prohibited immigrants. It is noted that this Bill would need to be updated in certain areas, i.e. the Deputy Governor no longer has responsibility for Immigration and the Cabinet is no longer simply an advisory body. The Commission continues to encourage the Government to bring forward this legislation in order to remedy the current situation. In the interim the Commission has drafted a report detailing its findings but hopes that the draft Bill will be updated in order that it may be reviewed and the report finalised.

2.2 CI Fire Service Grooming, Hygiene and Personal Appearance Policy

The Cayman Islands Fire Service (“the CIFS”) requested the Commission review their Draft Grooming, Hygiene and Personal Appearance Policy to ensure compliance with the Bill of Rights. Following a review of the policy document the Commission suggested that the document should express that the policy has been created in line with health and safety regulations and/or best practices, whether local or international) as they relate to the CIFS (wearing of uniforms, attending fires/accidents/etc.). Policies included provisions for the wearing of religious articles, whether underneath a uniform or not. The CIFS was encouraged to ensure that each of the standards listed in the document were proportionate responses to identified concerns and that consideration was given to whether different policies need to be established for different sexes. The Commission commends the CIFS for their proactive stance in ensuring human rights compliance with this policy.

2.3 Cancer Registry Bill 2015

The Commission completed a review of The Cancer Registry Bill, 2015 (“the Bill”) and set out its concerns and observations regarding the Draft Bill to the Ministry of Health. The Commission’s concerns were centred on the protection of private and family life (s.9 of the Constitution and article 8 of the European Convention on Human Rights (“the Convention”). Over the years courts have reiterated that the protection of personal data is of fundamental importance to a person’s enjoyment of the right to respect for his or her private life. Self-evidently, this is particularly so in the case of medical data. The right to respect for private life contains both positive and negative obligations. Not only should the state should refrain from

interfering with an individual's rights, but it is also obliged actively to provide protection for individuals' private lives. Respecting the confidentiality of personal medical data is a clear principle in the jurisprudence of the Convention and at common law.

The Commission reiterated that when the Government is considering an interference with the Bill of Rights, or any international instrument extended to the Cayman Islands, it must assess whether the interference is in accordance with the law, and "reasonably justifiable" in a democratic society (in the Convention the test is whether it is "necessary" in a democratic society). It further noted that s.19 of the Constitution (lawful administrative action) speaks to these needs in more detail and provided an explanation of the tests necessary to determine the appropriateness of any interference.

The Commission found that while the objective pursued by the Bill would be founded in law, and *apparently* the Draft Bill sought to pursue a legitimate objective, it was unclear how the objective would be achieved; and, whether the objective was being pursued in a proportionate fashion. Concerns were expressed relating to the apparent lack of proportionality in the data which was required to be submitted and the protection, or lack thereof, of confidentiality. In addition the Commission was concerned that the Draft Bill raised many of the issues surrounding privacy and data protection that it had commented on before. The Government was encouraged to reconsider these provisions and urged to ensure appropriate and comprehensive data protection legislation is enacted as a matter of priority – ideally in conjunction with (or prior to) the enactment of the Cancer Registry Law.

2.4 Legal Aid Bill 2015

The Commission completed a review of The Legal Aid Bill 2015 ("the Bill") and set out the concerns and observations regarding the Draft Bill to the Law Reform Commission. The Commission was concerned that the scope of legal aid in the Bill was not adequate. The Commission recommended that the Bill should be amended to ensure fair trial principles throughout the criminal process from pre-charge to the conclusion of appeals. The Commission suggested that legal aid in family law proceedings should (at the least) also be available in cases where domestic violence was suspected and provide for the discretion to award aid in other appropriate cases. In addition the Commission drew attention to a provision which prevented a person who has not been resident for more than a year receiving legal aid in civil proceedings. The Commission regarded this period as arbitrary, discriminatory and likely to constitute a breach of the Bill of Rights.

The Commission recommended that the Bill should provide for a Magistrate to inform any person who appears before the court that he or she has the right to apply for legal aid, not just those charged with a Category A Criminal Offence. It further cautioned that any regulations will need to be carefully considered and drafted to ensure that the minimal threshold set does not result in a denial of legal aid followed by a subsequent inability to obtain representation by a private lawyer for individuals who just fail to qualify for legal aid.

Concerns were expressed that the level of payment for an attorney-at-law in a standard legal aid case has not been reviewed or raised since 2002. With the rate suggested, the Commission was concerned

that the number of attorneys willing to take on legal aid cases would continue to dwindle and may create further subsequent breaches of right to fair trial based on 1. lack of representation; 2. lack of suitably competent lawyers prepared to do the work; and, 3. lack of equality of arms with the Director of Public Prosecutions who is not so limited when she instructs outside counsel.

The Commission also queried how the provision for persons who are questioned or detained at a police station, correctional institution or similar place, to receive legal aid will be implemented as the Bill required all persons to apply in writing to the Director for legal aid. Further, it requested clarification on other technical aspects of the Bill including definitions, the alleviation of possible conflicts of interest, the ability of lawyers on record to withdraw their services, and the inability of applicants to appeal a decision of the Courts Administrator regarding legal aid.

Finally the Commission questioned the Bill giving the Director the authority to take away ancillary relief payments from litigation (including, potentially, child support payments) in order to re-pay the costs of legal aid. It recommended that serious consideration be given to redrafting this provision or alternatively that firm, clear guidance be established in this regard.

2.5 Revised Legal Aid Bill, 2015

The Commission undertook a review of the Revised Legal Aid Bill, 2015. Having previously reviewed and commented on the initial Bill the Commission reviewed only the changes made to this version. The Commission had no further comments and the Bill was subsequently passed into law however it is understood that a commencement date will be assigned once the Regulations have been finalised.

2.6 Non-Profit Organisation Bill 2015

The Commission completed a review of the Non-Profit Organisation Bill 2015 and found there were no apparent human rights concerns.

2.7 Report on the Adolescent Health and Sexuality (2013) Survey

The Human Rights Commission noted the release of a report conducted in Cayman two years ago by the Pan American Health Organisation. The Ministry of Health (“the Ministry”), in its guidance notes identified the purposes of the study as being “to strengthen existing services for young people and to gain data to inform interventions.” The Commission was concerned about the figures detailed in the report regarding the levels of violence, sexual abuse and mental health problems faced by teenagers in Cayman and across the region. The Commission released a statement noting that the report provided the community with a glimpse into the health behaviour and experiences of 955 young people in the Cayman Islands, 900 of whom were between the ages of 15-19.

The behaviour examined was, evidentially, “directly associated with health outcomes such as HIV, other sexually transmitted infections, adolescent pregnancy, infectious diseases and chronic non-communicable diseases.” These general concerns were broken down into more specific areas highlighting risk factors:

- for sexually transmitted infections and adolescent pregnancy, these include age of first sexual activity, number of partners, condom use and sexual violence;
- for infectious diseases they include dental hygiene and hand washing, those mentioned for sexually transmitted infection, and other aspects of behavior that affect immunity; and
- for chronic non-communicable diseases they include smoking, lack of exercise, under-consumption of fruit and vegetables and over-consumption of high calorie, high fat food.

Whilst concerned with a number of the local statistics presented in the Report, the Commission was extremely concerned with the high level of mental health issues and incidence of sexual abuse amongst the adolescents who participated in the survey.

The Commission urged the Government, and our community as a whole, to work towards ensuring that our young people have every opportunity to succeed in society. This includes providing the emotional support required to handle feelings of loneliness, anxiety, depression and suicidal thoughts. Without such support the danger of young people turning to drugs, alcohol and violence will remain. The Commission was pleased to see the Ministry has implemented several initiatives in order to combat these issues and looks forward to seeing these initiatives, and others, develop.

2.8 Justice Protection Bill

The Commission began initial discussions surrounding a possible review of the Justice Protection Bill, 2008 regarding concerns stemming from the fact that the witness protection programme in the Cayman Islands is not engrained in statute. The Commission agreed that it would review this as a topic of interest in due course.

2.9 Report on Mental Health Inadequacies

The Commission noted the release of a report undertaken by the World Health Organisation, in collaboration with the Ministry of Health (“the Ministry”), entitled World Health Organisation Assessment Instrument for Mental Health Systems (WHO-AIMS) (“the Report”). The Commission commended the undertaking of the report and found that it was presented in a clear and concise manner setting out information as it related to current mental health practices, policies, legislation, financing, services and facilities.

The Commission further applauded the Ministry, and other stakeholders, for the work that has been undertaken in the area of mental health to date, especially the passage of updated mental health legislation, the creation of the Mental Health Commission, and the development of added protection for vulnerable persons. However, it noted its continued concerns about the lack of services and facilities needed to care for young people, and those who suffer from mental health issues. The Report pointed out that the Cayman Islands have collected “a lot of research and evidence to support the development of a mental health residential facility” and the Commission fully supports this endeavour and urged the Government to make it a priority project.

A press release issued by the Ministry indicated that both the Ministry and the Mental Health Commission had undertaken to seek to work with the Human Rights Commission to develop appropriate human rights training for stakeholders in the mental health field and recognised the need for a stand-alone Mental Health Policy for the Cayman Islands.

Having liaised with the Chairman of the Mental Health Commission, it was agreed that the Commission will create an educational pamphlet which will detail those rights most relevant to healthcare professionals dealing with these cases, and information on best practices whilst treating these vulnerable people.

2.10 Education Bill (2015)

The Commission undertook to research the Education Bill (2015) regarding its compliance with the Bill of Rights. A considered response is expected to be submitted to the Ministry of Education early in the New Year.

2.11 Conditional Release Law

The Commission noted that whilst the Conditional Release Law was passed by the Legislative Assembly the Governor has yet to give it a commencement date due to the lack of resources allocated to the Department of Community Rehabilitation. The lack of its commencement date has considerable human rights implications. The Commission therefore corresponded with the Government in an attempt to ascertain exactly what resources were needed as well as an indication of how the drafting of the associated regulations was progressing. The Commission understands that the selection process for a new Conditional Release Board has been completed and the training of its members began in the New Year. The Commission is hopeful that the legislation will be given a formal commencement date shortly, and continues to monitor the situation.

2.12 Labour Relations Bill, 2015

The Commission undertook a review of the Draft Labour Relations Law, 2015 to assess its compliance with the Bill of Rights. A considered response is expected to be submitted to the Ministry of Employment early in the New Year.

2.13 Data Protection Bill, 2015

Having previously reviewed and commented on the initial Bill the Commission was asked to consider the changes made to this version. The Commission corresponded with the Honourable Attorney General recommending that consideration of the Bill should be deferred until the reform of the data protection rules in the European Union is completed. This policy reform was to be completed by the end of 2015. It will seek to simplify legislation and make provisions for technological advancements as they relate to securing electronic personal data. It was thought that Cayman's own legislation could greatly benefit from the subsequent re-drafting of that of the European Union and the Commission was concerned that to draft it before the European Union reforms were completed could result in Cayman's new legislation being obsolete upon their completion.

2.14 Development of a National Mental Health Policy

Following the Commission's expression of interest in the issue of mental health in the Cayman Islands a Member of the Commission was invited to attend a one day workshop on 17 November 2015 hosted by the Ministry of Health in collaboration with the Pan American Health Organisation (PAHO), designed to develop a National Mental Health Policy for the Cayman Islands. The workshop was facilitated by Dr Wendel Abel, Consultant with PAHO, who was tasked with preparing the draft policy. The Manager of the Secretariat attended the workshop on the Commission's behalf, at the Chairman's request, and reported that the Government was progressing in a timely manner with the development of the much needed policy.

2.15 Disability Legislation

On 8 November 2015 the United Kingdom celebrated 20 years since the enactment of its Disability Discrimination Act (1995), that legislation was introduced to improve persons with disabilities' access to employment, as well as access to goods, facilities and services, both public and private. The Commission drafted a short press release joining the world in congratulating the United Kingdom on advancing equal rights and accessibilities for Persons with Disabilities over the past two decades. The statement also set out the history of disability legislation across the world including the passage of legislation, a few years before the UK by the US and Australia of the Americans with Disabilities Act (1990) and Disability Discrimination Act (1992) respectively. Since the early 1990s, other countries have also made it unlawful to discriminate against disabled people. Notably Turks and Caicos in 1998 (with a 2009 revision), South Africa in 2000, Pakistan in 2002, and the Bahamas and Jamaica in 2014.

On 7 October 2014, the Government approved the country's first Disability Policy referred to as *The Cayman Islands Disability Policy 2014 – 2033: Ensuring persons with disabilities live with dignity, are respected, and have the opportunity to participate fully in society*. The Premier of the Cayman Islands, the Honourable Alden McLaughlin, MBE, JP noted that "the Cayman Islands Disability Policy aims to advance the rights and obligations of Persons with Disabilities through policies, supporting legislation and practices". Premier McLaughlin further reiterated the Government's commitment to implementing legislation that will allow people with disabilities to have equal access to quality education, employment opportunities, and the highest standard of health care to ensure their independence and full inclusion in society.

The Commission indicated that the Cayman Islands should be proud of our first national disability policy and supported the Honourable Premier's commendable commitment to enacting legislation to protect people with disabilities. However, the Commission cautioned that this legislation has been promised by successive Governments for many years and as yet a bill had still not been laid before the Legislative Assembly. The Commission noted that whilst this legislation remains outstanding people with disabilities continue to face unnecessary challenges on a daily basis. Nothing prevents a private business from inadvertently discriminating against someone simply because they have a disability, indeed, even to do so deliberately is not currently illegal in Cayman. The Commission emphasised its continued support for the Government's commitment to secure the equal treatment for persons with disabilities throughout our islands and urged it to implement legislation to achieve this as a matter of priority.

Chapter 3: Engagement with Public Officials, Civil Society and the Media

3.1 Meeting with HM Prisons Inspectorate Team

The Chairman and Manager met with the HM Prisons Inspectorate team, on 12 January 2015. The discussion focused on issues of concern to both parties. Following the meeting the Commission wrote to and met with various senior Government officials to query plans regarding the treatment of prisoners in Cayman (specifically the use of the current police cells and the development of new modular ones) and the Government's possible signing of the Optional Protocol to the Convention against Torture ("OPCAT"). During the course of the reporting period final works were undertaken to complete the new police cells. It is estimated that these will be opened in February 2016. The Ministry of Home Affairs were collecting data in order to report to the Honourable Premier so he could make a policy decision about extending OPCAT to the Cayman Islands.

3.2 Request for Interview Re: Student Association of the Law School Lecture Series

The Chairman was interviewed in relation to lecture series on LGBT rights organised by the Student Association of the Law School. The Commission confirmed that it agreed with Professor Wintemute that some of Cayman's laws are in breach of our obligations under the European Convention. The Commission also agreed with Professor Wintemute's comments about the potential consequences of not remedying these breaches. Essentially, Cayman faces a choice between adapting its laws to remove the discrimination faced by LGBT people and having such laws imposed on it by the UK when the current statutory regime is inevitably declared unlawful by the European Court of Human Rights.

The Commission reiterated that it would be a great shame if Cayman, which is, in many ways, a leader in Human Rights in the region, were left behind on this important issue. The Commission identified achieving full LGBT rights as one of the last great civil rights struggles and pointed out that many of the same arguments that are now levelled against those seeking LGBT rights were also deployed by people who objected to the civil rights movement in the United States 60 years ago.

The Commission indicated that it had identified a list of laws that needed to be changed to remove unlawful discrimination in Cayman. The Commission continues to encourage the introduction of new legislation but also notes the importance of tackling negative cultural attitudes towards LGBT people through education.

3.3 Same-Sex Unions

Following the landmark decision of the European Court of Human Rights ("the ECHR") in *Oliari and others v Italy* the Commission issued a press release highlighting the significance of the judgment, noting that it had very important civil rights implications for same-sex couples within the jurisdiction of the Court - which includes Cayman. The Commission also noted that Cayman's own Constitution mirrors the protections referred to in the ECHR ruling in Article 9 of our Bill of Rights.

Whilst Cayman's Constitution explicitly defines marriage as a union between persons of different sexes this does not prevent the enactment of legislation to recognise same-sex unions and to provide same-sex couples in stable relationships with the opportunity to access the same rights and obligations which married couples enjoy. The Commission called upon the government to enact such legislation and noted that, in the event that it fails to, it is likely Cayman will be in breach of its obligations under the European Convention on Human Rights and vulnerable to a successful challenge to its laws in the ECHR.

Following that press release the Commission was disappointed to read reports and listen to the recording of a debate in the Legislative Assembly discussing a motion to retain the definition of marriage as articulated in s.2 of the Marriage Law (2010 Revision). During the debate various statements were made which included:

Equating homosexuality with bestiality

Equating homosexuality with paedophilia

Claiming that homosexuality was "deviant behaviour", "wicked and immoral" and a "social and moral evil"

Making personal threats of violence towards homosexuals

These statements went unchallenged by any Member present.

As a result the Commission wrote to the Honourable Premier expressing, in strong terms, concerns not only about the sentiments expressed, but also about the tone of the debate and the language used. During the following exchange of letters the Honourable Premier indicated the government's intention to amend the current immigration framework to allow for same sex partners to be considered as dependants on the work permits of their spouses. The Commission welcomed this small but significant step, which it understands is in the process of being implemented.

Nevertheless, the Commission's wider concerns about the unavailability of a proper legal framework to recognise the rights of same-sex couples, and regarding discrimination against LGBT members of our society generally remained. The Commission reiterated its recommendation to the government that it should introduce legislation to recognise same-sex unions and to outlaw discrimination on the basis of sexual orientation. It also repeated its request to the Honourable Premier to condemn statements made in the Legislative Assembly; likening LGBT people to paedophiles and those who practice bestiality; describing them as "deviants", "wicked", "immoral" and "evil"; and threatening violence against them.

3.4 Request for Interview Re: Minimum Wage Report

The Commission received an email request from a reporter requesting an interview with the Chairman regarding the Minimum Wage Report and "allegations of domestic worker exploitation" contained therein. In response the Commission released a statement indicating that it was extremely concerned by many of the serious allegations contained within the report and strongly encouraged any victims of exploitation or abuse to file complaints with the Commission or other responsible public authorities,

including, where appropriate, with the police. The Commission pointed out that whilst it has limited powers it does have the ability, in appropriate cases, to address complaints whilst preserving victims' anonymity and will do so in cases of domestic worker abuse and exploitation if necessary.

The Commission agreed that effective remedies are not always straightforward to provide but that the Government must take steps to safeguard the rights of those identified as vulnerable. Further, it advised that the Government should devote resources to educating employers about their responsibilities under the law and suggested that the investigating and prosecuting agencies take a robust approach to the enforcement of current laws as only by effective enforcement action can victims of exploitation have confidence in the law such that they feel able to make complaints to the authorities.

The Commission commended the Government for addressing these very important issues and the members of the Minimum Wage Advisory Committee for their time and effort in compiling such a detailed and comprehensive report.

Nevertheless, whilst the Commission understood the extent of analysis the Advisory Committee undertook during its work it regarded it as regrettable that the Advisory Committee chose to "err on the side of caution by starting at a conservative rate" for the minimum wage. The Commission indicated that it hoped that in any future reviews the Committee would take a more generous (or at least neutral) approach to assessing the minimum wage. The Commission also encouraged the Government to keep under review the appropriate level of the minimum wage, including prior to its incorporation into law.

3.5 Meeting with Representative of UNHCR

The Chairman met with the Regional Representative of the UNHCR during his visit to the Cayman Islands. They discussed issues related to migration and the need to find a regional solution. The Chairman undertook to obtain more information on treaties governing migration in Cayman through both research and enquiries with the Government. The Commission subsequently ascertained that the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children ("the Protocol") (which supplements the United Nations Convention against Transnational Organized Crime ("the Convention")) has not yet been extended to the Cayman Islands, though 166 states (including the United Kingdom) are signatory to the Convention.

At the Commission's request the Ministry of Home Affairs has undertaken to explore this issue and work with the various agencies responsible for the processing of migrants to ensure policies and training is in place to mitigate concerns regarding human trafficking.

The Department of Immigration subsequently provided the Commission with a copy of their policy and the details of development of training which is being undertaken to address these concerns. However, following the processing of a boat of Cuban migrants on 5 October 2015, the Commission continued to have concerns about the policies related to migrants. The Chairman indicated to the Deputy Governor the Commission's view that the current Memorandum of Understanding with the Cuban Government is in breach of the Cayman Islands international human rights obligations.

As a result the Commission again corresponded with the Department of Immigration to ascertain whether the policy previously forwarded to it was in effect and, if so, why it wasn't followed on 5 October 2015. The Department of Immigration acknowledged that the policy was in effect but that as they are often not the first responders (due to lack of resources) the policy needed to be extended to other agencies such as the Royal Cayman Islands Police Service. The Department of Immigration has undertaken to collaborate with these other agencies in this regard and report back to the Commission.

3.6 Marine Parks Proposals

The Commission noted that a second round of public consultations on a new marine parks proposal was to take place during the reporting period. Whilst the Commission previously reviewed the proposals during the 2012 public consultation period it continued to be of the view that the Department of Environment and the National Conservation Council was taking the necessary positive steps to bring the National Conservation Law into effect. The Commission drafted a statement on the importance of the protection of environment and set out its views on the positive steps being taken. The Commission's statement indicated that the desire to protect the exceptional environment of the Cayman Islands for present and future generations was explicitly enshrined in section 18 of the Bill of Rights in our Constitution and subsequently in the National Conservation Law 2013. The Commission encouraged all members of the public to engage in the public consultation process on the enhanced marine parks.

3.7 Talk Today Appearance

The Chairman attended Radio Cayman's Talk Today Programme on 6 October 2015 in order to discuss the work of the Commission. A broad range of topics were covered including questions raised by members of the public.

3.8 Request for Comment Re: Use of Drones

The Chairman was asked for comment on the use of drones by the Government. The Commission has undertaken to research and consider the issue. This matter has similar implications as to those raised by the use of CCTV by the Government in other areas (i.e. public streets, schools, etc.). The Commission will correspond with the Government in the New Year regarding continued concerns related to these issues.

Chapter 4: Human Rights Education, Events and Presentations

4.1 HR Seminar

The Commission was asked to provide input into the topics to be discussed at a human resources seminar facilitated by Mark Summers, QC and others at Matrix Chambers however the seminar was ultimately postponed.

4.2 Issues at the Lighthouse School

The Commission noted an article in the Cayman Compass which indicated that parents of students at the Lighthouse School had expressed concern regarding the behaviour of staff during a school event in which staff sought to impersonate students. The Commission agreed it would contact the parent whose name was referred to in the paper to determine whether he, or other parents, would wish to speak to the Commission about the matter. The Commission agreed that, not having had a response from the parent whose name was referred to in the newspaper; it would contact the Ministry of Education to enquire what steps it has taken to address the situation.

The Commission was encouraged by the level of detail and thoroughness contained in a Support Plan submitted as a response received from the Chief Education Officer and also by the work that had already been progressed. The Commission sought clarification on a number of issues and also reiterated its willingness to review the national policy currently being drafted with regard to the use of video surveillance in the classrooms.

Subsequently a copy of their finalised Support Plan for the Lighthouse School as well as a copy of their Video Surveillance and Recording policy for all schools was submitted to the Commission for consideration. The Commission expressed approval of the Support Plan, but again indicated its concerns regarding the lack of legislation governing the use of CCTV's in schools, and by the Government as a whole. The Commission has previously identified concerns about this and in the New Year will again bring this matter to the attention of the Government as one in which legislation must be enacted to prevent against breaches of human rights.

4.3 Blue Spot Handicapped Spots

The Commission was concerned about the misuse of spaces which are clearly marked as being reserved for the disabled. A picture was circulated of a police car parked in a reserved space outside a coffee store. The Commission corresponded with the Acting Commissioner of Police asking what was being done to educate Officers about the use of reserved spaces. The Acting Commissioner of Police responded immediately with a statement which indicated that the leadership of the RCIPS took this matter seriously and has ensured all Officers were aware of their responsibilities under the law. He did note that several of the pictures that had been circulated were a few years old. The Commission was grateful for the response but will continue to monitor this situation.

4.4 International Human Rights Day

International Human Rights Day was again recognised on 10 December with the theme being *Our rights our freedoms always*. It was devoted to the launch of a year-long campaign for the 50th anniversary of the two International Covenants on Human Rights: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The campaign revolved around the theme of rights and freedoms – freedom from fear, freedom of speech, freedom of worship and freedom from want. The Commission conducted media appearances on that day as part of its education mandate. Commission members attended segments on Cayman 27's Day Break Programme and Radio Cayman's Talk Today Programme.

4.5 Improvement of Website

The Secretariat completed a procurement process for the re-building of websites for all of the Commissions in an effort to increase the availability of education regarding the role of Commissions and their mandates. It is hoped that the re-development of the websites will be completed in the New Year.

Chapter 5: Alleged Breaches or Infringements of Human Rights

6 November 2013 marked the implementation of the final clauses of the Bill of Rights allowing any individual to bring allegations of breaches or infringements of the Bill of Rights in our local courts. (As was previously the case, individuals may still directly petition the European Court of Human Rights alleging breaches of the obligations under the European Convention on Human Rights.)

The Commission continues to receive and investigate complaints that decisions or actions of public officials have breached or infringed the Bill of Rights, Freedoms or Responsibilities or that local legislation violates their human rights and freedoms. As such, the Commission receives 1) complaints of breaches or infringements of any section of the Bill of Rights, Freedoms and Responsibilities; 2) complaints of breaches or infringements of common law and statutory human rights and freedoms; and 3) complaints that any international human rights treaty extended to the Cayman Island has been breached or infringed.

In the Cayman Islands human rights only have a vertical application. ‘Vertical application’ of human rights means rights will apply vertically so that they can be enforced by a citizen against the Government only – but not against other private individuals or companies. The Constitution details these types of rights only.

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 HRC 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 thirty-one complaints from members of the public alleging breaches by public officials of their human rights. Of those cases, fifteen remain open at the end of this reporting year and sixteen were closed¹. The Commission acknowledged a breach existed with regard to one of the open complaints and has written the relevant authorities to discuss remedies. There is also one case remaining open from the 2013 reporting year and two cases remaining open from the 2014 reporting year.

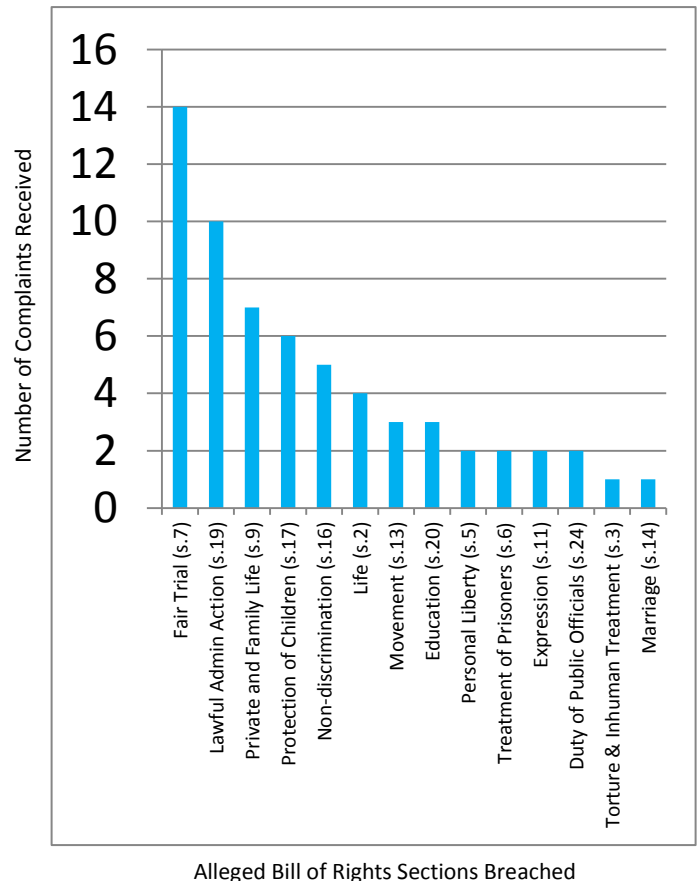
Additional statistical information relating to the complaints processed by the Human Rights Commission within this reporting year is as follows:

¹ Four of the sixteen cases that were closed in 2015 were noted as closed in the minutes from the 22 December 2015 Commission meeting, but notifications were not distributed to these complainants until 12 January 2016.

Number of Complaints Received by Alleged Rights Breached in 2015

The chart and graph below illustrate the complaints received categorised by sections of the Bill of Rights where breaches are alleged by complainants to have taken place. Note that s.1 – Guarantee of Rights, Freedoms and Responsibilities has not been included as any possible breach would automatically engage this section. The chart and graph below only represent the views of complainants on which rights may have been breached in their particular situation; they do not represent actual breaches (NB: complainants may allege breaches of multiple rights).

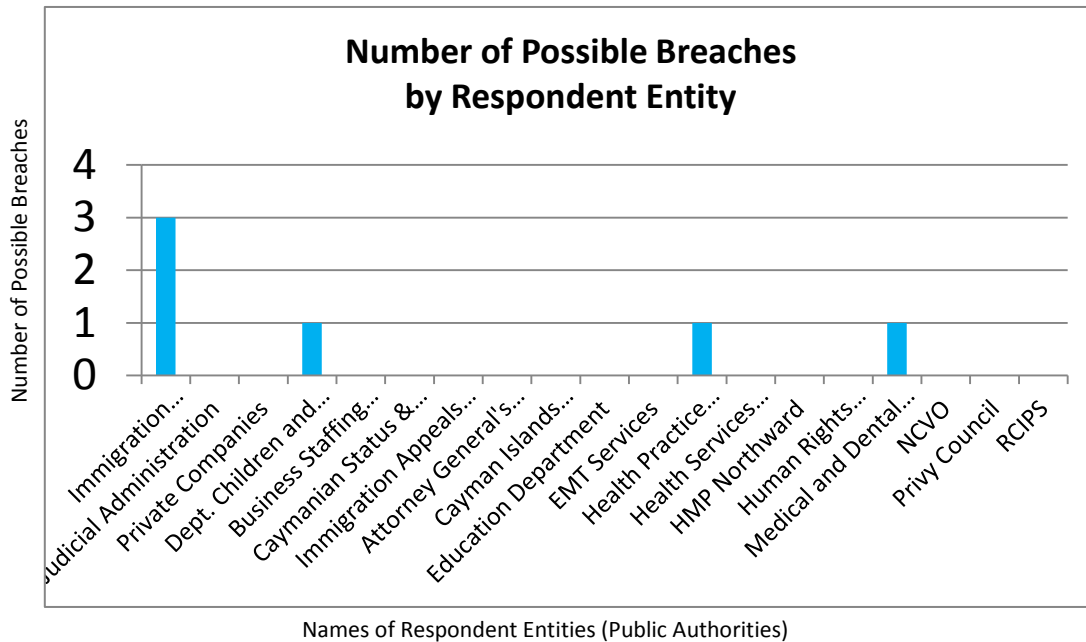
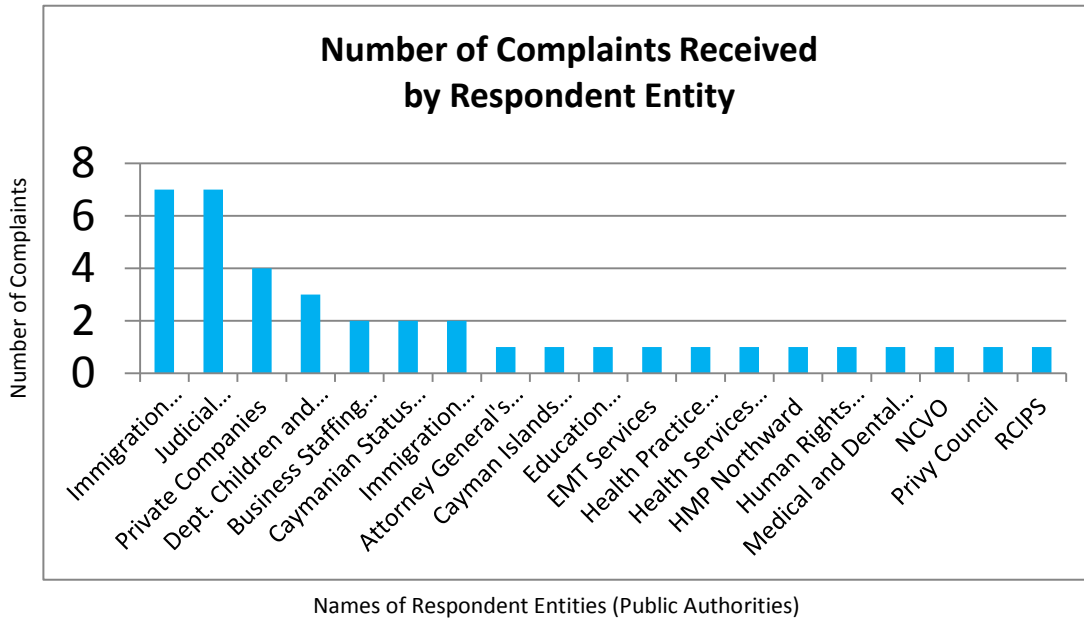
Bill of Rights Section	Total	Percentage
s.7 – Fair Trial	14	19%
s.19 – Lawful Admin Action	10	13%
s.9 – Private and Family Life	7	9%
s.17 – Protection of Children	6	8%
s.16 – Non-discrimination	5	7%
s.2 – Life	4	5%
s.13 – Movement	3	4%
s.20 – Education	3	4%
s.5 – Personal Liberty	2	3%
s.6 – Treatment of Prisoners	2	3%
s.11 – Expression	2	3%
s.24 – Duty of Public Officials	2	3%
s.3 – Torture & Inhuman Treatment	1	1%
s.14 – Marriage	1	1%
TOTAL	62	



Number of Complaints by Respondent Entity

The chart and graphs below illustrate the public authorities against which formal complaints have been made to the Human Rights Commission in the 2015 year. They also summarise instances where possible breaches have been deemed to have taken place by the Commission, within the context of a specific complaint, based on the evidence presented. In some cases investigations into possible breaches are still ongoing.

#	Public Entity	Received	Possible Breach
1	Immigration Department	7	3
2	Judicial Administration	7	
3	Private Companies	4	
4	Dept. Children and Family Services	3	1
5	Business Staffing Plan Board	2	
6	Caymanian Status & Permanent Residency Board	2	
7	Immigration Appeals Tribunal	2	
8	Attorney General's Office	1	
9	Cayman Islands Government	1	
10	Education Department	1	
11	EMT Services	1	
12	Health Practice Commission	1	1
13	Health Services Authority	1	
14	HMP Northward	1	
15	Human Rights Commission Member	1	
16	Medical and Dental Council	1	1
17	NCVO	1	
18	Privy Council	1	
19	RCIPS	1	
	TOTAL	39	6



N.B.: In maintaining the confidentiality of the complainants, detailed information pertaining to complaints is not published by the Human Rights Commission.

Chapter 6: Moving Forward


In 2016, as before, the Commission will continue working to promote, protect and preserve human rights in the Cayman Islands by accepting complaints of allegations of breaches of human rights, reviewing policies and legislation, engaging with the media and public, and conducting research on matters identified by the Commission as important.

Of particular interest to the Commission is the enactment of policies and/or legislation surrounding the topics of mental health, education, conditional release of prisoners, deportation and prohibited immigrants, labour relations, data protection, disability, the use of CCTV, and non-discrimination. The Commission will continue to work to bring these matters (and others) to the attention of the Government and the community.

The Commission also intends to work to increase public awareness and education of human rights during the next reporting year.

The HRC encourages the public to visit our website (www.humanrightscommission.ky), join us on Facebook at www.facebook.com/cihrc, or email us at info@humanrightscommission.ky to learn more or get involved in promoting, protecting, and preserving human rights in the Cayman Islands.

Dated this 29 day of March 2016.



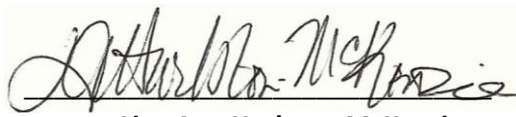
James Austin-Smith (Chairman)



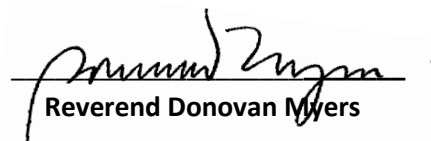
Chelsea Rivers



Ben Tonner



Lisa-Ann Hurlston-McKenzie



Reverend Donovan Myers

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Appendices

Appendix 1: Human Rights Commission Members

Mr. James Austin-Smith (Chairman)

James Austin-Smith graduated with an honours degree in International Politics in 1997. He completed the postgraduate law conversion course and was called to the Bar of England and Wales by Inner Temple in 1999. He practised at the Bar in London until 2004 when he was admitted in Cayman. He specialises in commercial litigation and dispute resolution. He is a former member of the Cayman Islands Human Rights Committee and is well established within the community. Effective 1 April 2014 James was appointed as a member until 1 January 2015 after which time he assumed the role as Chairman for a three year period.

Ms. Chelsea Rivers

Chelsea Rivers is the voice behind The Blue Spot - a campaign to bring awareness to the disabled in Cayman by "calling out" those who take advantage and park in the handicapped "blue spot". She has served as chairperson, member and advisor to several committees and associations in her quest to make a difference in the lives of Cayman's children and those less fortunate. She is the author of "Hurricane Ivan: The Experience", runs a horse riding company in West Bay with her husband and works full-time as a senior marketing manager for an international law firm in Grand Cayman. Effective 1 April 2014 Chelsea was appointed as a member for a period of two years.

Reverend Donovan Myers

Reverend Donovan Myers is the Minister at the Savannah United Church. He has spent over 20 years serving the church and working on education and community development projects, focusing specifically on challenging issues such as drug abuse, HIV/AIDS, violent crimes and homelessness. Donovan has a personal interest in human rights and justice. In addition to his theological studies, Reverend Myers pursued a Master's Degree in Clinical Counselling and post-graduate certification in Education. He has taught ethics classes at Cayman Prep & High School in Grand Cayman and is a former member of the Human Rights Committee and the current Chair of the National Youth Commission. Effective 1 April 2014, Reverend Myers was appointed for a period of three years.

Ms. Lisa-Ann Hurlston-McKenzie

Lisa-Ann Hurlston-McKenzie is an Environmental & Sustainability Consultant in the private sector who previously worked for the Department of Environment. She was among the judging panel for the 2010 Governor's Award for Design & Construction Excellence, and chaired the National Assessment of Living Condition's Institutional Analysis Sub-Committee. Lisa-Ann has presented papers at the UK Overseas Territories Conservation Forum, EU Overseas Countries and Territories Association Workshop and Caribbean Heads of Judiciary Conference on focusing on environmental impact assessments and environmental law. She has also co-authored publications on and facilitated numerous national and

regional meetings related to climate change impacts, vulnerability, adaptation and mitigation in small island states. Effective 1 April 2014 Lisa-Ann was appointed as a member for a period of four years.

Mr. Ben Tonner

Ben Tonner is a Partner at Samson and McGrath whose practice covers all aspects of litigation and dispute resolution with an emphasis on cross-jurisdictional, financial matters. He has extensive experience advising high profile corporate and private individuals. Effective 1 February 2015 Ben was appointed as a member for a period of three years.

Appendix 2: Cayman Islands Bill of Rights, Freedoms and Responsibilities (BoR)

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