



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

functions, and which exceed those possessed by other bodies and individuals. Therefore it is a necessary privilege that they have a penal jurisdiction to enable them to "defend the dignity of Parliament against disrespect and affronts which could not be brought, or could be brought only by implication, under the head of any of the specific privileges." Within the ambit of Parliamentary Privilege is the ability to punish for contempt. Erskine May explains contempt as being "Any act or omission which obstructs or impedes Parliament in the performance of its functions, or which obstructs or impedes a Member or officer of the House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence." The publication also notes that the privileges afforded to parliament are "rights absolutely necessary for the due execution of its powers and on the other hand the privilege of Parliament granted in regard on public service must not be used for the danger of the commonwealth."

Responsibility of the Media

Section 18(2) of the Immunities, Powers, and Privileges Law (1999) indicates that it is an offence to "publish any writing contain a gross, willful or scandalous misrepresentation of the proceedings of the Assembly or a committee or of the speech of any member in the proceedings of the Assembly." The purpose of s.18(2)(b) is not only to protect the formalities and propriety of Parliament but also the electorate's access to factual information. Along with Parliament, the media shares a responsibility to contribute to political, economical and social development in ways consistent with democratic principles by pursuing fact-based, fully substantiated reporting.

While parliamentarians must accept criticism and a degree of cynicism as part of the media's duty to the public it is also important that the media provide balanced coverage without trivialising or denigrating the parliamentary and governmental process so as to not hamper the development of an informed society. If media opinions, articles and statements are too sensationalised and not factual this could interfere with the electorate's "right to know" by tainting and misrepresenting parliamentary procedures.

Conclusion

This scenario shows potential conflict between two areas of the Constitution (Parliamentary Sovereignty and Human Right freedom of expression). The solution to this scenario is to find a balance between the two areas whilst at all times affirming the sovereign right of Parliament and the Legislative Assembly to govern its own proceedings.

The HRC would certainly welcome the publication by the Legislative Assembly of a pamphlet which would inform the public of their duties and privileges regarding interaction with Parliament as proposed by an Honorable Member of the House and recorded in the 9 December, 2010 Hansard Report.

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