



HUMAN RIGHTS COMMISSION

2014 ANNUAL REPORT



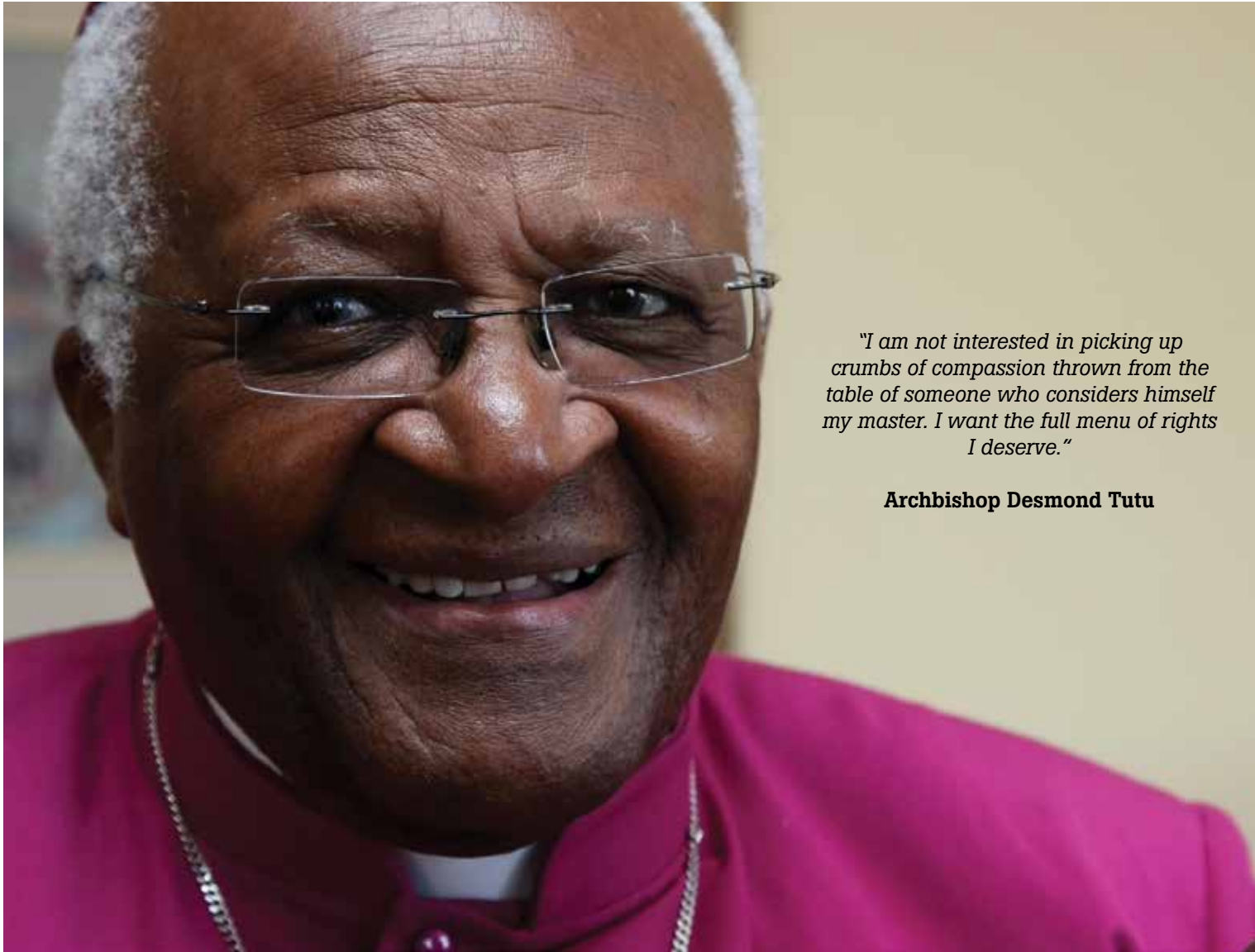


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2014 ANNUAL REPORT

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"I am not interested in picking up crumbs of compassion thrown from the table of someone who considers himself my master. I want the full menu of rights I deserve."

Archbishop Desmond Tutu

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LETTER OF TRANSMITTAL

30 April 2015

The Hon. Patricia J. Gordon-Pamplin, JP, MP
Minister of Community, Culture and Sports
Ministry of Community, Culture and Sports
Dame Lois Browne-Evans Building, 4th Floor
58 Court Street
Hamilton HM 12
Bermuda

Dear Minister,

I am pleased to submit the 2014 Annual Report of the Human Rights Commission as required by Section 30A of the Human Rights Act, 1981.

This document highlights the success of the Commission for the period 1 January 2014 to 31 December 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MH', with a long, sweeping horizontal line extending to the right across the page.

Michael Hanson,
Chairperson

MESSAGE FROM THE CHAIR



Michael Hanson
Human Rights Commission,
Chair

On behalf of my fellow Commissioners, and the staff of the Human Rights Commission, we are pleased to present you with the 2014 Human Rights Commission Annual Report. As you will see in the following pages, the Commission continues to uphold its statutory duty to enforce and promote anti-discrimination laws in Bermuda.

As we have settled into our roles as Commissioners we continue to promote understanding and awareness of human rights and how the Human Rights Act, 1981 (the 'Act') impacts Bermuda, as well as providing timely and fair resolutions of human rights complaints. Perhaps most importantly, however, our role as Commissioners has provided an opportunity – for the first time – for a detailed and consistent assessment of the practical ramifications of the Act and how it compares to international standards. In this regard we have found that our Act falls short on many levels, and reform is needed to bring the Act up to date.

As regards the quasi-judicial aspect of our role, during 2014, 12 complaints were referred from the Commission to a Human Rights Tribunal, a 200% increase over 2013. Further, we anticipate a marked increase from 2014 to 2015. We predict that this increase in the demand for Tribunal adjudication will continue to multiply over the next few years as the public becomes more aware of their rights under the Act and more comfortable with the system of adjudication. Dealing with this increase in demand needs to be addressed on a statutory level as soon as possible to ensure minimal delays to access to justice.

The Commission also engaged in numerous educational and outreach activities throughout the community in the last year. We demonstrated the value of working with key partners, organisations and the Government, to reinforce what can be achieved when we work together to build a culture in which human rights are recognised, respected and protected throughout our community. I wish to acknowledge and thank each of them for their contribution to the work of the Commission.

The Commission's commitment to serving the community would not be possible without the hard work and dedication of the Executive Officer and her team. I would like to take this opportunity to extend my thanks to them for their commitment and ongoing efforts to support the work of the Commission. Additionally, I would like to thank the Commissioners for their hard work and dedication and for rendering rulings and decisions as fairly and expeditiously as possible, especially given the pressures that come with our unpredictable workloads.

I am optimistic that although the coming year will undoubtedly bring new challenges, we will continue to deliver just and timely resolutions for the benefit of all residents of Bermuda.

Sincerely,

A handwritten signature in black ink, appearing to be 'MH', with a long, sweeping horizontal line extending to the right.

Michael Hanson
Chair, Human Rights Commission

MESSAGE FROM THE EXECUTIVE OFFICER



Lisa Reed
Human Rights Commission,
Executive Officer

On behalf of the Officers of the Human Rights Commission, it gives me sincere pleasure to share this message.

The Human Rights Commission has been an important pillar in our community since 1982, safeguarding diversity, inclusion and the promotion of human rights to ensure that all residents in Bermuda can live happy and productive lives, free from discrimination.

As a result of the 2012 amendments, the Officers continued their focus on refining internal procedures and implementing improved standards in line with changing responsibilities. Officers effectively performed, conducting sound investigations, fostering understanding through education activities, and providing effective administrative support for the Tribunals.

We observed a decrease in the number of complaints, a total of 209 which is a decrease from the prior year's 367, and achieved several educational milestones for which we are proud. We expanded our outreach by conducting more presentations and workshops, participating in partnerships and roundtable dialogues and advancing the discussion on issues of social inclusion.

Despite these achievements, challenges still exist; equality is still a distant promise for many and persons, such as those with mental health issues, remain unprotected. Thus, we will continue our efforts in support of an amendment to the Human Rights Act to include mental disability as a protected ground.

Much can be said about the countless tasks carried out by the staff, Commissioners and community partners, all who have contributed to the outcomes illustrated throughout this report. Most significantly, this report acknowledges the individual stories which people have shared of their own experiences of discrimination. We are thankful to the public for their continued trust in our services.

I am thrilled at the prospect of what lies ahead and am confident that much more will be achieved through this significant period of transformation. Discrimination has no place here in Bermuda and we all need to work together to ensure that Bermuda is truly an inclusive society for all of us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa M. Reed', written in a cursive style.

Lisa M. Reed
Executive Officer, Human Rights Commission

The Members of The Human Rights Commission

The Human Rights Commission consists of a Board of Commissioners of up to 12 members and the Officers of the Commission.

The Commissioners

The Commissioners are appointed by members of an independent Selection and Appointment Committee to serve for three-year terms. The Commissioners are responsible for adjudicating complaints of discrimination by serving on tribunals and serving as educators and advocates in the promotion and protection of human rights.

Michael Hanson.....	Chair
Kim Simmons.....	Deputy Chair
Donna Daniels	Commissioner
Pamela Fowkes.....	Commissioner
Darcy Gimas.....	Commissioner
Richard Horseman	Commissioner
Jens Juul.....	Commissioner
Kai Musson.....	Commissioner
Naomi Schroter.....	Commissioner
Louis Somner.....	Commissioner
Tawana Tannock.....	Commissioner
Millard Thompson.....	Commissioner

The Officers

The Officers are responsible for the day-to-day operations and they work to fulfill the goals and objectives of the Commission, including investigating complaints of discrimination, delivering public education to address discriminatory practices, and to administer the Human Rights Tribunals.

Lisa Reed.....	Executive Officer
Robert Anthony.....	Legal Counsel (until May 2014)
Sara Clifford	Education Officer
Graham Robinson	Investigations Officer (until September 2014)
Darnell Harvey	Investigations Officer
Treadwell Tucker.....	Investigations Officer
Kim Williams	Project Officer
Zakiya Lord.....	Temporary Research/ Project Coordinator (until August 2014)
Celia Tuzo	Relief Administrative Intake Officer (until August 2014)
Erlene Postlethwaite	Relief Administrative Intake Officer (from August 2014)

The Human Rights Commission:

Our Vision, Mission and Mandate

Vision

The Human Rights Commission envisions a community that honours human rights for all and is free of discrimination.

Mission

The Human Rights Commission is committed to promoting awareness, eliminating discrimination, and providing protection for all people residing in Bermuda, in keeping with the Human Rights Act, 1981.

Mandate

The statutory functions of the Commission are twofold and are aimed at eliminating any form of discrimination in Bermuda. The Commission's mandate is first to educate and promote the concept of equality of all members of the community and, as well, to investigate and endeavour to settle allegations of discrimination.

Under Section 14 of the Act, the Human Rights Commission is responsible for administration of the Act and shall:

- Encourage an understanding of the fundamental rights and freedoms of the individual guaranteed by the Constitution and the principle that all members of the community are of equal dignity, have equal rights and have an obligation to respect the dignity and rights of each other;
- Promote an understanding of, acceptance of, and compliance with the Act;
- Develop, conduct research and arrange educational programmes designed to eliminate discriminatory practices;
- Encourage organisations within the community and individual persons to carry out activities which will attract all members of the community whomsoever;
- Encourage and coordinate activities which seek to forward the principle that every member of the community is of equal dignity and has equal rights; and
- Promote the conciliation and settlement of any complaints or grievances arising out of acts of unlawful discrimination and, where in its opinion such good offices are inappropriate, institute prosecution for contraventions of the Act.

The Commission is both a watchdog for human rights and also endeavours to promote equality and harmony in the community by working with organisations, schools, businesses and individuals. To that end, the Commission delivers educational programmes and workshops; organises public forums; prepares brochures and guidelines; and reviews legislation and policies to ensure compliance with the Act. Additionally, the Commission makes recommendations to the Government and proposes amendments to ensure consistency with international standards.

The Human Rights Act, 1981

The Human Rights Act, 1981 (the 'Act') was passed in June 1981 by the legislature which resulted in the repeal of the Race Relations Act, 1969 and the Race Council Act, 1970. The Human Rights Act became operational in May 1982 and the Human Rights Commission was established to administer the human rights legislation and policy in Bermuda.

Human Rights complaints should be made within six months of the alleged incident(s) and the complaint must fall within one or more of the areas covered by the Human Rights Act:

Grounds of Protection:

- Race, place of origin, colour, ethnic or national origins,
- Sex or sexual orientation,
- Marital status,
- Disability,
- Family status,
- Religion or beliefs or political opinions,
- Criminal record,
- Age (except in area of employment)

Areas of Protection:

- **Section 3: Notices** – this section provides protection as no one is allowed to display, publish or post any discriminatory sign, symbol or notice against any person or persons based on the protected grounds.
- **Section 4: Disposal of Premises** – this section protects against persons seeking to rent accommodation, acquire land or other premises – whether as a renter or as an owner. Persons cannot discriminate because of your race, place of origin, etc.
- **Section 5: Goods, Services and Facilities** – where a person is seeking to obtain goods, facilities or services, whether on payment or not, persons are protected from discrimination by others that would be a violation of any of the grounds set out in Section 2(2).
- **Section 6: Employment, Special Programmes and Harassment** – this Section provides against discrimination in employment. Employers are barred from discriminating in hiring, training, promoting, dismissing or demoting any person because of his race, etc. Employers and employment agencies are barred from discriminatory advertising.
- **Section 6B: Harassment** – employees are protected against harassment from their employers. Harassment is persistent, vexatious and the employer should know or ought to know that it is not welcome by the employee.
- **Section 7: Organisation** – protection against discrimination in clubs and other organisations, whether a member or not.

Education and Awareness

- **Section 8: Proceedings under the Act** – persons are barred from treating someone differently, who made a complaint under the Act. For example, where an employer fires an employee, or punishes him/her, or intimidates such employee, because she/he made a complaint under the Act.
- **Section 8A: Racial Material & Harassment** – persons are not allowed to publish racial material to incite or promote ill will against any part of the community because of their race or colour. No person should incite a breach of the peace against any part of the community, because of race, etc.
- **Section 9: Sexual Harassment** – this section provides protection from sexual harassment from employers, agents of employers, other employees, and landlords. The employer must protect against sexual harassment in the workplace.
- **Section 10: Discriminatory Covenants** – where there is a legal instrument passing property, such as a deed, if it is drafted in a discriminatory way so as to contravene the grounds as stated in Section 2(2) of the Act, the instrument would be deemed null and void. It would have no legal effect.

Throughout 2014 the Human Rights Commission worked to further its objective of eradicating discrimination by engaging in education and outreach activities throughout the community. In order to fulfill its educational mandate, the Commission conducted presentations, workshops, roundtable dialogues, one-on-one discussions, ongoing learning and development via webinars, film viewings and engagement with partner agencies in the field of human rights and social justice both in Bermuda and abroad.

Highlights for 2014 included:

- Facilitating information sessions and consultations with advocacy groups and various stakeholders on the changes made in the 2013 amendment to the Act to include sexual orientation.
- Partnering with Citizens Uprooting Racism in Bermuda (CURB) to host a three part lecture series entitled 'Where have we been and where do we want to go'. The lectures were designed to foster a greater understanding of historic racial and ethnic injustices and how that legacy plays out in our lives, schools, work and community today and to encourage us all to become effective agents of change in our own life and in looking after our diverse community.
- Conducting presentations on Intersectionality, the consideration of intersections between forms or systems of oppression or discrimination, and the concept of Intersectionality in the context of human rights to Government departments and other organisations.



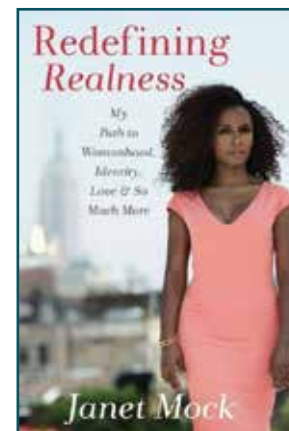
***Creative Expression
Workshop at the Bermuda
National Gallery.***

- Bringing to life and teaching the importance of human rights to primary school students in partnership with the Bermuda National Gallery's Creative Expression Workshops.
- Participating as panelists in a forum held by the Association of Filipinos in Bermuda. This inaugural event was launched to welcome representatives from the Philippines Embassy in Washington D.C. who were hosting a Consular and Labour Outreach Mission to the Filipino Community in Bermuda.
- Joining the Dame Marjorie Bean Hope Academy for their International Day of Persons with Disabilities celebrations. Executive Officer, Lisa Reed, was invited as the guest speaker.



Hope Academy Students present card of thanks to Lisa Reed.

- Partnering with the Bermuda National Library (BNL) and the Friends of the Library during the launch of their new programme, 'Not Just Another Book Club', aimed at promoting discussion of sensitive and challenging topics maturely and respectfully in a safe space. The Human Rights Commission partnered with the Library for their first book entitled, *Redefining Realness* by The New York Times best-selling author Janet Mock which tells an inspiring true story that sheds light on being young, multicultural and transgender in America. Ms. Mock joined the BNL discussion via video chat.
- Being invited as a community partner by the Bermuda National Gallery (BNG), in partnership with The Honorary Consul of France, for a lecture by Pulitzer Prize winning photographer, director, writer and social justice advocate, David Turnley. The lecture was part of the BNG's aim of locating art within the context of social justice. David Turnley's website: <http://www.davidturnley.com/>
- Stakeholder consultation was held with Mr. Robert Lewis, the Director of Policy Coordination Unit in the Cayman Islands, who invited the Commission to provide input into Cayman's draft Policy on Disabilities. A roundtable discussion with members of the Cabinet Office and the National Office of Seniors and Physically Challenged was held at the Human Rights Commission to share Bermuda's own example, the 2006 National Policy on Disabilities. Mr. Lewis was pleased to see colleagues across the Bermuda Government working in the spirit of collaboration and



Renowned Author Janet Mock - *Redefining Realness* book cover.

cooperation to fulfil a commitment to creating an inclusive Bermuda for all, and expressed his gratitude for the example of the Human Rights Commission as an active resource in support of human rights.



In photo: John Payne and Ann Lindroth, National Office for Seniors and the Physically Challenged, Mr. Robert Lewis and Human Rights Commission Officers Sara Clifford, Lisa Reed and Zakiya Lord.

- Human Rights 365 - Upholding Human Rights Every Day



Observance of the United Nations International Human Rights Day on 10 December. This year's theme, Human Rights 365, celebrated the importance of looking after human rights not only on Human Rights Day, but each and every day. To commemorate the day the Commission made use of social media to spread the word to the public by encouraging them to be aware of the protections afforded under Bermuda's Human Rights Act, 1981 and to ask them to reflect on how each of us can fulfill our shared responsibility to promote and protect the rights and dignity of all people.

- Celebrating the 55th Anniversary of the Success of the 1959 Theatre Boycott. More than 25 organisations participated in honouring this transformative racial justice movement on the steps of City Hall. The Executive Officer was invited to deliver the proclamation.
- Partnering with Imagine Bermuda to host a roundtable discussion on the legacy of Nelson Mandela. Bermuda joined some 120 countries to pay tribute to the late Nelson Mandela on his birthday, 18 July. The Executive Officer served as facilitator.



Executive Officer, Lisa Reed delivering the proclamation in commemoration of the Theatre Boycott on the steps of City Hall.

LGBT Inclusion: Progressing Equality, Inclusion and the Principle of Non-Discrimination for all

The Human Rights Commission was invited to partner with the United States Consul General to host a series of programmes on the topic of LGBT (Lesbian, Gay, Bisexual and Transgender) inclusion and the progression of the LGBT rights in Bermuda. The timing was significant as Bermuda approached the anniversary of the amendment being passed to include sexual orientation as a protected ground in the Human Rights Act, 1981. The programmes were held over a three-day period and focused on helping the general public gain a better understanding of the importance of LGBT inclusion, broadening the awareness of how LGBT inclusion is linked to social justice issues and creating a space for intellectual debate around resistance. Guest speakers included Bermudian Colwyn Burchall, and US speakers Timothy Kane and Darnell Moore.



Gavin 'Djata' Smith of Chewstick with guest speakers Timothy Kane, Darnell Moore and Colwyn Burchall.

Day One: Members of the LGBT community were invited to attend a lunchtime roundtable discussion where dialogue revolved around inter-faith initiatives that embrace inclusion of all members. During the evening session, members of the public were invited to attend a free screening of the movie *Pariah*. The Hon. Wayne Scott, JP, MP, US Consul General Bob Settje and each of the guest presenters spoke following the film. Next, the floor was opened up for questions and comments, and many shared personal experiences in which they felt discriminated against based on their sexual orientation in both public and private spaces.

Day Two: The guest speakers hosted a youth roundtable discussion around LGBT inclusion, which took place at the Human Rights Commission. During the evening programme, the community was invited to the Bermuda College for a public forum where the three panelists discussed LGBT inclusion and equality. Ms. Tiffany Paynter served as moderator for this dynamic and interactive session.



Youth roundtable discussions



Speaker, Mr. Burchall and Moderator, Ms. Paynter.



Participants of the Youth Roundtable.

Day Three: Members of the faith community were invited to participate in a lunchtime roundtable discussion around LGBT inclusion and concerns in Bermuda. An evening cocktail reception at Consul General Robert Settje's residence concluded the programming.



Tiffany Paynter, forum moderator; Lisa Reed, Executive Officer; and Laurie Shiell, Executive Director of the Centre Against Abuse, at the US Consul's cocktail reception in honour of the LGBT Awareness Initiative

The feedback received from participants show that these types of events contribute to making a safer and more inclusive environment for LGBT individuals, their families and the public seeking to enable a community free from discrimination.

"I was so excited when we received the news about the series of events that the Human Rights Commission and the US Consulate are putting together for this week. The US Consulate's endorsement is crucial and will give a license to some people to speak openly about these issues."

"...I do wish to thank the Human Rights Commission for the opportunity provided on Tuesday to attend the forum on youth activism and inclusion for LGBT rights. I believe this was an extremely valuable discussion offered by the HRC in conjunction with the US consul, together with the distinguished speakers and will provide all those in attendance with valuable information to enhance our abilities going forward. Kindly extend my thanks to all involved in making this lunchtime discussion group possible."

Community Engagement



Officers of the Commission during the "People's Campaign for Equality, Jobs and Justice" Rally.



Congratulations to Aliyyah Ahad who was selected as the Bermuda Rhodes Scholar for 2014. Aliyyah previously worked at the Commission on a number of projects as part of the Cabinet Office Internship Programme.



Members of the Department of Human Affairs participate in the WindReach Annual Walk and Roll event.



Congratulations to former HRC summer students Arion Mapp and Keivon Simmons who have since been called to the Bermuda Bar.

The Commissioner's media efforts in 2014 addressed myriad issues, press statements, social media postings and interviews. The following are summaries of key statements made during the year.

Online/Social Media Comments

Due to a growing concern over the racially-charged and hostile online comments made on various media sites over PRC Status debates and discriminatory comments directed at politicians, Bermudians and non-Bermudians, the Commissioners issued a press statement to clarify the confusion/misunderstanding in respect to the Human Rights Act, 1981 (the 'Act') and to the employment position of those with PRC status. The Commissioners reminded the public that although it was within their right to express their opinions, it should be in a lawful framework in respect of the protected grounds under the Act.

Clarification of Human Rights Complaint Handling Process

Following a newspaper article, which featured a recently held tribunal hearing, the Commission responded to concerns from members of the community regarding the confidentiality of human rights complaints made to the office, by clarifying its complaint handling process (see Annex 2 Complaint Handling Process). The statement clarified that all investigations of complaints of discrimination are conducted confidentially and in accordance with the Human Rights Act, 1981. Tribunal hearings are public unless a party makes a successful application for a private hearing.

Employment Ranking

The Chair issued a statement to clarify the employment rights of Bermudians and PRC holders, which had been an ongoing and sensitive topic of debate. He noted that the Act does not mandate the preferential hiring of Bermudians over others (e.g. PRC holders or spouses of Bermudians), and that there is no suggestion within the Act that employers should carry out such a practice. Additionally, he noted that if an employer chooses to exercise this exemption and selects a Bermudian for employment over a PRC holder purely on the grounds of a PRC holder's national origin, advice from an attorney should be sought, as other Bermuda laws may have an impact on such a choice and on whether it is lawful, contrary to the Human Rights Act, 1981.

Call for Greater Protection Against Mental Health Discrimination

The Chair and Commissioners hosted members of the media in a roundtable gathering to discuss the Commission's plan for legislative reform to be presented to Government. The Chair revealed that as part of their duties, the Commissioners continue to review the Human Rights Act, 1981 to flag gaps in protection or efficient application, and were compiling a submission to Government with the hope that some of these issues would be addressed to further strengthen the Human Rights Act, 1981.

The submission from the Commission specifically highlighted the lack of protection for people with mental health issues under the Human Rights Act, 1981. The Chair noted that resistance to the idea of including mental health in the list of prohibited grounds of discrimination, particularly as it

relates to the area of employment, was unfounded as there were existing protections already under the Unreasonable Hardship provision in the Act as well as basic human resource policies, just as with physical disability or health matters. He reinforced that human rights legislation in Bermuda has lagged years behind the legal framework of other comparable jurisdictions, inclusive of mental health.

At the time of the roundtable discussion the Commission had received five complaints of mental health discrimination that the office had been unable to investigate. The Chair expressed the Commission's frustration with the lack of protection under the existing legislation with which a complaint of mental health discrimination could be pursued and hoped changes could be enacted before the Commissioner's three year terms were up at the end of 2015.

In addition to the proposal to provide mental health protection, the Commission planned to present other proposed reforms to Government including providing protection when someone has been wrongly perceived to have a particular protected characteristic, or who is associated with someone who has a protected characteristic and to fix an ambiguity in the Act which excludes the interior of a place of business from the definition of a public place.

Poll Reveals Extent Of Sexual Harassment In The Workplace

The Commission responded to a request from The Royal Gazette for comment to a poll, conducted by Mindmaps, in which 22 per cent of the 400 people polled said that they had been sexually harassed in the workplace. The newspaper hoped that an article on the results would help

to raise awareness on the topic and inform people of what rights they have.

The Commission provided a detailed response including providing steps that an organisation can take to develop a sexual harassment policy while recommending organisations to be proactive and to ensure they develop and communicate zero-tolerance towards sexual harassment in the workplace to all employees.

Intakes, Preliminary Inquiries and Investigations

The Commission looks at every complaint of discrimination that it receives through an intake process to determine whether it has jurisdiction to investigate the complaint and whether the complaint contains enough information to support a claim (See Annex 2 Complaint Handling Process). Complaints that do not fall within the Commission's jurisdiction are referred to other agencies for assistance wherever possible. Complaints that do fall within the Commission's jurisdiction must have a ground and area of discrimination that have contravened the provisions of the Act and must have been made within six months after the alleged incident of discrimination (or two years after if there is a good reason for the delay).

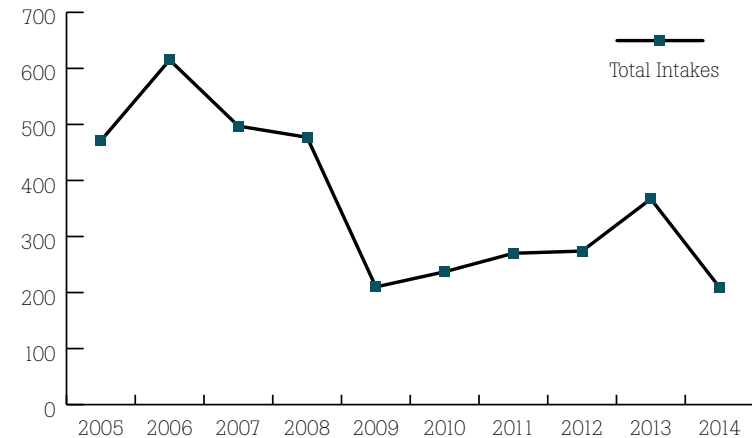
When possible, the Commission encourages the parties to a complaint to try to resolve their disputes informally and at the earliest possible opportunity through either mediation or conciliation – two alternative dispute resolution methods, which the Commission facilitates. In the event that no agreement is reached, the Commission may conduct an investigation. Following an investigation, if meritorious, the Executive Officer may refer the complaint to the Chair of the Commission to empanel a Tribunal.

Complaint Statistics

Table 1 – Total Intakes, 2009 - 2014

Year	Intakes
2009	210
2010	237
2011	270
2012	274
2013	367
2014	209

- 209 new Intakes were lodged
- 185 of these intakes were actual complaints. The remaining Intakes were queries.
- 10 complaints were found to be within the jurisdiction of the Act and referred for Investigation.
- 55 Intakes were withdrawn by Complainants who decided that they did not wish the Commission to continue processing their case any longer.
- 100 Intakes were closed following a determination that the Act had no jurisdiction.
- 18 Intakes were deemed abandoned based on the Complainant’s inaction and lack of response to the office.
- 21 Intakes that did not appear to be genuine under the provisions of the Act were referred to other agencies or organisations for assistance.
- 1 Intake was resolved between the parties.
- 4 Intakes were still in progress at the end of the year.



There was a 43% year over year drop in the number of intakes received between 2013 and 2014. A public perception study, entitled Measures to Improve Survey, conducted by the Department of E-Government on select Government departments in 2014, indicated a general increase in awareness by the public of the remit and powers of the Human Rights Act, 1981 ('the Act') and the Human Rights Commission overall. This increased awareness of the powers and functions of the Act, and the Commission, may partially explain the considerable drop in the total number of intakes received in 2014 by the office. In addition, the Commission’s educational team, who noted a rise in requests for presentations by organisations on the Island, reported conducting a larger number of workshops and advocacy and awareness seminars compared to the previous year. The

overall drop in intakes may therefore be attributed to the Commission fulfilling a very important part of its mandate, educating the public and organisations on their rights and responsibilities under the Act.

Table 2 – Total Intakes by Year and Type of Intake, 2012 - 2014

Year	Total Intakes	Type of Intake	
		Complaints	Queries
2012	274	225	49
2013	367	239	128
2014	209	185	24

Table 2 illustrates the total number of intakes received by the Office of the Commission by the type of intake for 2012 to 2014. Intakes are classified into Complaints and Queries. Note: Requests for Information are noted under queries. In response to these queries, the Commission addresses questions and provides referrals to a variety of other agencies that might be of assistance. Both complaints and queries dropped considerably between 2013 and 2014 as demonstrated in Table 2. As stated earlier, declines are most likely associated with an increase in awareness of the remit of the Human Rights Commission. During the reporting period, there were 23 preliminary inquiries conducted.

Table 3 – Intakes by Month, 2014

2014		
Month	Number (#)	Percent (%)
January	28	13
February	17	8
March	12	6
April	19	9
May	20	10
June	15	7
July	22	11
August	21	10
September	17	8
October	8	4
November	10	5
December	20	10
Total	209	100

The percentage total may not equal 100% due to rounding. The mean average of intakes received by the Commission per month in 2014 was approximately 17 intakes. The month of January, July and August were recorded with the largest number of intakes received at 28, 22 and 21 intakes, respectively. The month of October recorded the least number of intakes at 8 intakes or 4%.

Table 4– Intakes by Gender of Complainant, 2014

Gender	Number (#)	Percent (%)
Male	87	42
Female	122	58
Total	209	100

As in previous years, more females contacted the Commission than males at 58% in comparison to males at 42%.

Table 5 – Approved Investigations by Year and Outcome, 2012 - 2014

Year	Complaints Approved for Investigation for the Year	Investigations Successfully Resolved via Conciliation/Mediation	Investigations Ongoing for the Year	Investigations Dismissed under Section 15(8)	Complaints Approved for Investigation but Later Deemed Abandoned	Complaints Approved for Investigation but Later Withdrawn by the Complainant	Investigations Referred to Boards of Inquiry or Tribunal*
2012	11	1	6	-	1	3	-
2013	19	-	17	-	1	-	1
2014	12	2	4	-	1	-	5

*In 2012, the Board of Inquiry process was replaced with Tribunals to adjudicate matters.

Table 5 illustrates complaints approved for investigation by year and outcome. In 2014, the Human Rights Commission approved 12 complaints for investigation. Of the 12 complaints approved for investigation, 1 complaint was deemed abandoned by the Complainant; 5 investigations

were completed, deemed meritorious and subsequently referred to a Tribunal; 2 investigations were resolved via conciliation/mediation; and the remaining 4 complaints were still in the ongoing investigation stage at the end of 2014.

Table 6 – Ongoing Investigations by Year and Outcome, 2012 - 2014

Year	Ongoing Investigations	Investigations Successfully Resolved via Conciliation/Mediation	Investigations Dismissed under Section 15(8)	Complaints Approved for Investigation but later deemed abandoned	Complaints Approved for Investigation but later withdrawn by the Complainant	Investigations Referred to Boards of Inquiry or Tribunal*	Investigations not resolved and carried over into the next year*
2012	14	-	5	1	1	7	-
2013+	6	-	-	-	-	-	6
2014	23	4	3	1	3	9	3

*In 2012, the Board of Inquiry process was replaced with Tribunals to adjudicate matters.

+It should be noted that the six ongoing investigations opened at the start of 2013 were not resolved at the end of 2013 and were carried over into the next year.

Ongoing investigations are active investigations carried over from previous years without resolution. In 2014, there were 23 ongoing investigations carried over from previous years. Four were resolved via conciliation or mediation, three were dismissed, one was abandoned by the Complainant, three were withdrawn and nine were referred to the Chair for adjudication. It should also be noted that three of these matters were not resolved during 2014 and were therefore carried over as active investigations into 2015.

A tally of approved and ongoing investigations (Table 5 and 6) reveals that the office of the Human Rights Commission was managing 35 active investigations at various stages of the investigations process in 2014.

Table 7 – Total Investigations (Approved and Ongoing) by Ground of Discrimination Identified, 2014

Ground of Discrimination	Number (#)	Percent (%)
Race	6	10
Place of Origin	9	16
Colour	2	3
Ethnic Origins	1	2
National Origins	3	5
Sex	9	16
Sexual Orientation	4	7
Marital Status	-	-
Disability	7	12
Family Status	4	7
Religion	-	-
Beliefs	1	2
Political Opinions	-	-
Criminal Record	4	7
Age	1	2
Sexual Harassment*	4	7
Racial Incitement*	1	2
Reprisal*	1	2
Total	57	100

Table 7: Total investigations in Table 7 do not equal approved and ongoing investigations as displayed in Table 5 and 6 because Table 7 is displaying that in a few cases, investigations were approved under more than one ground. *Sexual Harassment, Racial Incitement and Reprisal are covered under Sections 9, 8A and 8 of the Human Rights Act, 1981, respectively. All other grounds of discrimination are covered under Section 2 (2) (a).

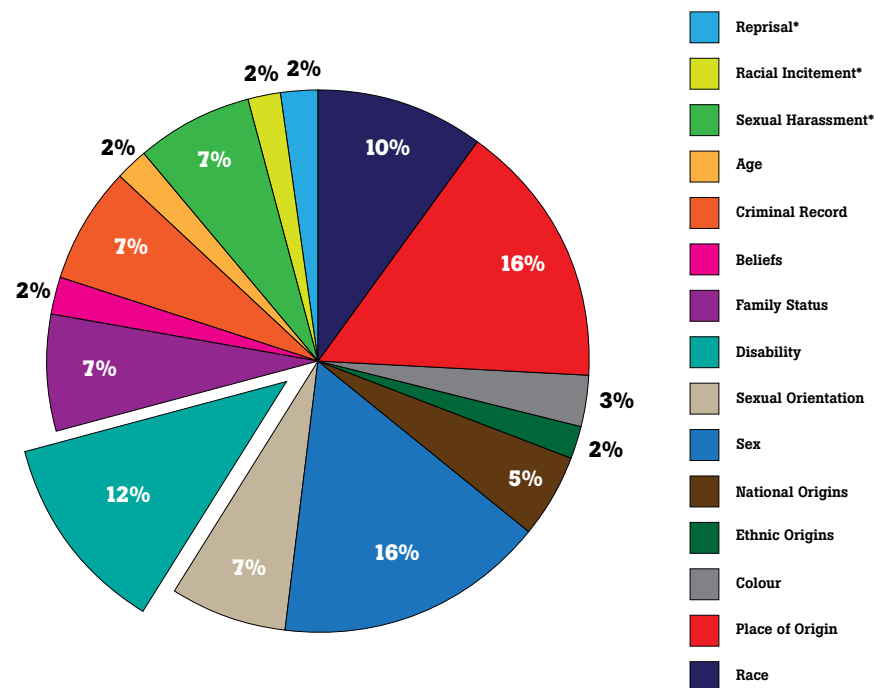
In 2014, place of origin and sex complaints outnumbered all other grounds identified of alleged discrimination by Complainants, constituting 16%, or nine instances of alleged discrimination. Disability was the next highest ground cited at 12% followed by race at 10%. All other remaining grounds accounted for less than 10% each of those identified. 1981.

Table 8 – Total Investigations (Approved and Ongoing) by Area of Protection Identified, 2014

Areas of Protection of the Human Rights Act, 1981	Number (#)	Percent (%)
Public Notices (section 3)	1	3
Disposal of Premises/ Accommodations (section 4 and 4A)	1	3
Goods, Facilities and Services (section 5)	4	12
Employment related (sections 6)	28	82
Organisations/Memberships (section 7)	-	-
Discriminatory Covenants (section 10 and 11)	-	-
Contracts (section 12)	-	-
Total	34*	100

*Table 8: Total investigations in Table 8 do not equal approved and ongoing investigations as displayed in Table 5 and 6 because one investigation was initiated under a complaint of reprisal.

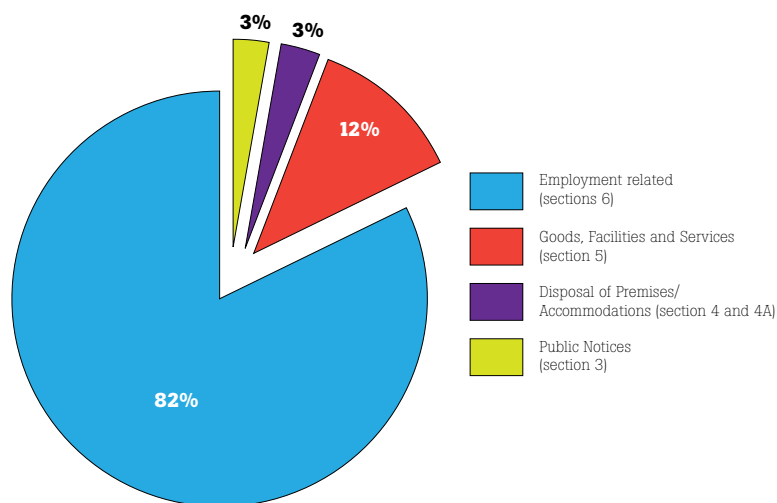
Figure 2 is a pictorial depiction of Table 7.



*Sexual Harassment, Racial Incitement and Reprisal are covered under Sections 9, 8A and 8 of the Human Rights Act 1981, respectively.

All other grounds of discrimination are covered under Section 2(2)(a). Note that 'Family Status' replaced 'has/hasn't a child born in lawful wedlock' as part of the 2013 Amendments to the Human Rights Act,

Employment related complaints outnumbered all other areas of discrimination identified by Complainants. 28 complaints of employment discrimination were investigated. Goods, facilities and services related complaints recorded the second highest number of incidences at four, while public notices and disposal of premises/accommodation recorded one investigation each. The remaining areas did not log any investigations.



Sample Complaints Lodged

Provided below are some of the types of complaints of discrimination that were brought to the attention of the Executive Officer through the year. In order to preserve confidentiality, identifying information was omitted from each complaint. It is important to keep in mind that each case is unique, and the determining factors may vary significantly.

Complaint A

A Complainant made a complaint of discrimination when he was demoted because he refused to partake in activities that were not in keeping with his spiritual beliefs. The Complainant was a Christian, but was not a member of a particular denomination. An investigation was conducted however, the parties agreed to attempt to settle the matter. The issue was successfully resolved in conciliation and a confidential agreement was reached. The complaint was closed as the complaint with withdrawn.

Complaint B

The Complainant, a black male, believed that he was discriminated against by a colleague at his place of employment. The Complainant said that while he was performing his work duties he asked for help from a colleague to which the colleague said that he did not have to listen to him and called him a derogatory racial term. The matter was reported to the Complainant’s manager who dismissed it. The colleague was not disciplined and the Complainant was later sent home from work for an earlier comment that he made to a different colleague regarding his working conditions and was subsequently terminated. An investigation commenced and the parties were offered conciliation. The matter was successfully resolved in conciliation and the Complainant subsequently withdrew the complaint.

Complaint C

A male Complainant stated that he was discriminated against on the ground of sex when he was terminated from his place of employment because he allegedly inappropriately touched a client. The Complainant denied that any inappropriate

behaviour had happened. He stated that he touched the client by accident and feels that they would not have lodged a complaint if the Complainant had been a female. Before it could be determined whether the matter fell within the jurisdiction of the Act, 1981, the Complainant withdrew the complaint as he said the matter was being dealt with through another dispute resolution mechanism.

Complaint D

The Commission received several complaints from members of the public wanting to lodge a complaint against an individual who had publicly displayed what they felt was a discriminatory and offensive statement in the area of mental illness. Each complaint was given an objective review however, in order for a complaint to progress, a ground of protection, must be identified. As such, the complaint was unable to proceed and the complaints were dismissed.

Complaint E

An elderly female Complainant, a resident at a nursing home, alleged age discrimination in the area of services and accommodation when she said that she had been mistreated by the caregiver at the home. The Complainant stated that the caregiver stole from her and complained about poor living conditions. Based on a review of all the information, it was determined that it did not appear that any offence specifically against the Act had occurred. The complaint was closed and the Complainant was referred to the National Office for Seniors and the Physically Challenged (NOSPC) for alleged abuse care and additionally, to Age Concern. Both agencies subsequently conducted their own investigations into the complaint.

Complaint F

The Complainant, a non-Bermudian female complained of discrimination on the ground of place of origin when a subordinate assaulted her and called her an inappropriate name at her place of work. She alleged that the worker had resigned and was hostile towards her upon his departure and called her a derogatory name. The Complainant however, ceased communications with the office before a determination could be made on how to proceed. The Commission attempted to contact the Complainant on numerous occasions however, based on her inaction the complaint was deemed abandoned.

Complaint G

The Complainant alleged that he had been harassed because of his sexual orientation and subsequently terminated following a verbal altercation with a colleague. The Complainant alleged that he had been taunted throughout his employment and although he brought this to the attention of management, they did nothing to address the situation other than telling him that he should simply get along with his colleagues. A preliminary inquiry was conducted into the incidents that led to his termination. The Commission was concluding its findings from the preliminary inquiry and the complaint was still being considered at the end of 2014.

Complaint H

A female Complainant alleged that the majority male board of her housing complex was mistreating her because of her sex. She stated that the board had ignored her requests for repairs to her home that had suffered damages as a result of alterations to a neighbouring home that were approved and undertaken by the board. Before the complaint could be fully reviewed by the Commission, the Complainant reported that the board was working to address her repair issues and as a result she withdrew her complaint and the matter was closed.

Evolving the Human Rights Act, 1981: Reflections and Recommendations for Ensuring an Effective and Efficient Human Rights Commission

The Human Rights Commissioners have been in our current role since January 2013. Having 12e independent Commissioners from myriad backgrounds has allowed for a robust testing of the provisions and protection of the Human Rights Act, 1981 ('the Act') and its administration, as was the expectation following the adoption of the 2012 (Structure and Function) Amendment Act.

This report focuses on two main themes: the first section speaks to urgent areas for attention to widen protection from discrimination under the Act; and the second section provides recommendations to further strengthen the administrative efficiency of the quasi-judicial role of the Commissioners.

1. Proposed Amendments To Increase Protection And Evolve The Act.

Despite incremental and significant amendments in recent years the Act still remains behind many developed jurisdictions around the world in terms of the protection it affords. Urgent attention to these areas is essential to better support Bermuda's commitment to the principles of non-discrimination and justice, as well as to align with international standards.

a.) Mental Health

The World Health Organisation estimates one in four people may experience some kind of mental health disability in their lifetime¹ and this number is increasing; it is simply part of the human condition. The Act however, does not include any protection from discrimination on the grounds of mental health. This is an extraordinary omission, decades behind the rest of the world, which needs to be urgently addressed.

Practically, this omission means that the Commission is unable to investigate allegations of discrimination on the basis of mental health. Further, it impedes efforts by dedicated health and support services seeking to encourage robust dialogue on the reality of mental health as it affects our community. We must create an environment in Bermuda that is conducive to appropriately addressing these issues, but it is impossible to increase awareness and advocate for open and honest dialogue when there remains a fear of being discriminated against for revealing one's mental health status.

The current definition of 'disabled person' in the Act presently only covers certain physical disabilities (which

is at odds with the current protection afforded under the relevant legislation in most, if not all, common law jurisdictions). We propose amending the definition of 'disabled person' under the Act to encompass mental, psychiatric and learning disabilities.

b.) Gender Association

The classification of persons who do not fit physically or psychologically into traditional classifications of male and female genders is a complex and sensitive matter. 'Transgender' covers a range of classifications including transsexual, transvestite, gender/queer, androgyny, bi-gender, pan-gender, non-gendered persons, and more.

These classifications are completely independent of sex or sexual orientation. In furtherance of the protection of persons in Bermuda who identify as any of these or other classifications that are not represented by the strict definition of male or female, an inclusive definition or section should be added to the Act.

The question of whether there is protection under the Act against the discrimination of transsexual, transgender or other persons who generally do not fit the traditional classification of male or female has not, to our knowledge, been tested. In particular, it is unclear as to whether the definition of 'he' and 'she' in Part 1 Section 2 of the Act would cover discrimination against such individuals.

In the UK, transsexual persons are defined under the Equality Act, 2010 (UK) as persons who propose to undergo, are undergoing, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex.

Whilst convention may dictate that Bermuda follows the lead of the UK in adopting the same definition, we

propose that it would be in the spirit of the Act, and human rights in general, to draft broader more inclusive language to protect all persons.

c.) Age and Employment

Discrimination based on age is currently only partially prohibited under the Act as regards the disposal of premises, provision of goods, facilities and services, but not in respect of employment (though there is some narrow protection in the Employment Act, 20002). The majority of complaints received by the Commission are employment related, with a significant number relating to forced retirement, feeling forced out of a job, or being perceived as too old, or too young, for employment.

Retirement in Other Jurisdictions

On 1 October 2011 the UK default retirement age was abolished. Prior to this being passed there were many respected lawyers and politicians who thought such an abolition would be disastrous for the UK economy; they were concerned that if people were not bound to retire at a certain age, and if employers were unable to force them to do so, it would halt the natural turn-over of jobs and leave thousands of young people unemployed. However no such thing happened and these fears proved to be unfounded. It is generally accepted that the abolishment of the retirement age has only helped to eliminate discrimination, not productivity or employment.

The Canadian position is much the same, save that for the majority of Canadian provinces the retirement age was abolished in 2008. Mandatory retirement is also generally unlawful in the United States, except in certain industries and occupations that are regulated by law. Finally, compulsory retirement is also expressly unlawful

(with a few exceptions) throughout the various State and Territory jurisdictions in Australia.

Bermuda has other concerns, for example, the issue of health care/insurance and its cost. The UK has the National Healthcare System (NHS) that is generally free and available for all. Seniors and retirees therefore do not have to worry about covering the cost of these services once they are out of work and their employer is not covering the cost of health insurance. In Bermuda we have no such system and therefore seniors may be more likely to stay employed past 'retirement age' rather than cover the cost of private health insurance themselves. This is something that has to be considered – but the consideration and research required to address the potential financial implications should not be a blocker to ensuring immediate inclusion of this outstanding area of protection under the Act.

d.) Discrimination by Association and Perception

These two forms of discrimination are currently not prohibited under the Act. Discrimination by association is the act of treating someone differently than you treat others because they associate with persons possessing protected characteristics (such as race or sexual orientation). Discrimination by perception is the act of treating someone differently than you treat others because you believe them to possess a protected characteristic when they in fact do not. The key point is that in both of these situations, the discriminated person does not necessarily have to possess the protected characteristic in question.

Discrimination by association is very relevant in Bermuda, especially in respect of political beliefs and race. There

are individuals in Bermuda who openly will not deal or contract with others who they perceive to follow a particular political party or who associate themselves with individuals of a particular nationality or race. This is discrimination and should not be acceptable. Further, there are also many cases where people are discriminated against purely on the mistaken belief that an individual is of a certain racial background or sexual orientation – even when that person is not. Having reviewed other jurisdictions, I have submitted drafting recommendations on behalf of the Commission for proposed amendments and language to address this area.

e.) Definition of Public Place

As was highlighted by the Human Rights Commission Tribunal in the recent case involving a local shopkeeper, the definition of 'public place' in the Act is flawed and does not adequately protect people as intended.

Mr Richard Horseman, in his judgment urged the Attorney General to amend the legislation, suggesting that the definition in the 1907 Criminal Code be used. I am taking this opportunity to repeat this suggestion.

At present, the definition defers to the Public Order Act 1963 which says:

'public place' means any highway, public park or garden, any sea beach, and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not; and includes any open space to which, at the material time, the public have or are permitted to have access, whether on payment or otherwise;

The suggested definition wording is the Criminal Code Act 1907 which includes the reference to premises:

'public place' includes any highway or estate road and any other premises or place to which at the material time

the public has or is permitted to have access, whether on a payment or otherwise;

Amending this would also bring the legislation into closer alignment with the definitions under UK law represented in the Public Order Act, 1986, Anti-Social Behaviour Act, 2003, and Criminal Justice and Police Act, 2001, which all maintain very broad understandings.

f.) Residency rights

Currently we have a situation where immigration and employment practices are (perhaps unknowingly) contravening the Act and compounding an already fraught socio-economic landscape. Given the respective mandates and public duties these agencies hold, it is imperative that the Human Rights Commission, the Department of Immigration and the Department of Workforce Development work together to address these contradictions for the betterment of the community.

Under the Act, employers are not to discriminate against persons who have the legal right to work in Bermuda, on the basis of their place of origin save that preference in employment may be given to a 'Bermudian' when hiring new employees. This does not require that preference shall be given to Bermudians first, then spouses of Bermudians and then Permanent Resident Certificate (PRC) Holders.

'Bermudian' under the Act is defined as being

"a person having a connection with Bermuda recognised by the law relating to Immigration for the time being in force".

The Constitution recognises the rights of people who 'belong to Bermuda' to reside and work in Bermuda while prohibiting laws that discriminate against such people on the basis of their 'place of origin'. Those who "belong to Bermuda' could include spouses of Bermudians, children under the age of 18 years (whose parents 'belong to Bermuda') and naturalised citizens of the UK Overseas Dependent Territories.

So, whilst it is perhaps correct that an employer may discriminate against a PRC holder in favour of a Bermudian when recruiting, it is not correct to say that such discrimination is presently required under the Act. It would also be a breach of the Act (for example) to employ a spouse of a Bermudian over a PRC holder, purely on the basis of their national origin. From our perspective, it appears there is a fundamental misunderstanding of the Act in the wider community.

Avoiding the existing discrepancies in legislation, policy and practice is not sustainable; it contravenes the principles of non-discrimination, and will only lead to greater social unrest and discord. For example, we are currently in a situation where there are PRC holders in Bermuda who have some children who have Bermudian status and others which do not. These children have different rights under the law (the right to vote for example).

Whether it is the Act, the work permit policy, employment practices or the Immigration Act, 1956 which needs to be addressed, the matter needs clarity. Allowing the uncertainty, confusion and contradictory practices to remain is a disservice to all.

I appreciate these issues are complex and require broad consultation and input from the full composition of stakeholders. The Commission has made known its willingness to Government to participate in a full review of the current laws and associated policies, with consideration of Bermuda's unique context.

2. Administration of Claims and the Role of Commissioners

The commitment of the Human Rights Commission to build in greater organisational independence through implementing the public appointment of Commissioners is integral to eliminating the potential bias of political appointments, and helping to increase the public's trust in the Tribunal process. Further, it reflects the United Nations Paris Principles³ outlining expectations for National Human Rights Institutions. This inaugural band of Commissioners is proud to have been appointed under this new model and is committed to testing and improving upon the processes associated with our duties in service to Bermuda.

As evidenced by the 2014 Tribunals, the Commissioners have been steadfastly fulfilling our quasi-judicial role. This success is largely due to our implementation of policies, procedures and processes (which has tightened up the administration of the claims) and hard work from the Commissioners and the Officers of the Human Rights Commission. There is no doubt that the collaborative efforts of the Commissioners and the Commission has allowed all parties better and more efficient access to justice.

During this past year, we believe we have moved the adjudication of human rights complaints in Bermuda into a more robust and sensible system. This being said, it is apparent that more reform is still urgently required. Given the amount of human rights complaints since the changes in the legislation (and the

more efficient systems in place in processing these through to a final Tribunal once referred) the twelve Commissioners will very soon be unable to deal with human rights complaints as efficiently and expeditiously on the current referral rate.

Issues Under Current Model

The current organisation of Human Rights tribunals through the Commission presents a number of difficulties. Tribunals are comprised of three Commissioners, with our current policy being that at least one be legally qualified. There are five Commissioners who are attorneys and, as such, one of us always chairs a Tribunal. Given the geographical size and commercial reality of Bermuda it is often the case that the attorneys are conflicted to act on specific Tribunals due to time constraints or their professional dealings. Further, the sphere of lawyers in Bermuda who have human rights experience is relatively narrow, and once we finish our term and make way for the new Commissioners, this pool will be reduced further.

In addition it is important to remember that much of the work for a Tribunal Chair is outside the actual hearing, i.e. drafting directions, judgments and general administration. As the current model depends on volunteer work, the system may prove to be unsustainable in the future as the efficiency and fairness of the system is dependent on volunteers (who already have full time jobs) giving time up. This model is too subjective; it is based on the particular work ethic of the Commissioners selected and their timetables. Further, these are not typically single day hearings over a single legal point; they can be lengthy and complicated, lasting many days if not weeks.

These issues will inevitably lead to increased delays in tribunal proceedings, reductions in access to justice and increased costs to all involved.

Alternative Models

The tribunal system in the UK consists of professional tribunals at two levels (First-Tier and Upper) and numerous specific tribunals in categories such as education, employment, finance and commerce, health and care, intellectual property, property and land, pensions, etc.

Under the UK system there is no specific tribunal for human rights complaints save that the Employment Tribunals hear cases involving employment related discrimination (by far the most populous area). Other kinds of human rights complaints generally proceed via the courts. UK Employment Tribunals are presided over by professional judges in combination with an appointed person for the employer and the employee. This prevents any conflicts and significantly cuts costs.

To achieve the same ends, one suggestion we are putting forward is that a single tribunal is created in Bermuda combining the Human Rights Tribunal and the Employment Tribunal with jurisdiction to deal with complaints under both acts (and possibly other categories such as immigration, landlord/tenant disputes, education, etc.). Careful consideration would need to be given to retain the integrity and independence of the Commission, however, by not falling under Ministerial authority.

As in the UK this Tribunal would be presided over by a professional judge, or a rotation of judges (subject to the Chief Justice's position/input) saving time and money in all respects, as well as cutting out conflict issues. The appeal or 'Upper' tier would be the Supreme Court. Obviously there are a myriad of factors to consider, but as a concept this is appealing.

The option of simply moving all claims to the Supreme Court has also been considered, however, even assuming there is capacity, given the legal costs present in Bermuda it is very important to allow individuals the remit of making human rights complaint without the fear of oppressive legal costs should they lose. As such, a tribunal system with costs only awarded in vexatious (etc.) complaints is preferred to placing these matters in the Supreme Court, though I submit that this option deserves more consideration and the Commission is eager to address these issues with our Government partners.

Role of Commissioners

If the role of Commissioners as relates to Tribunal were to change, there remains an important need for independent Commissioners within the Act. The remit of the Commissioners currently includes the following duties, which with a shifting responsibility away from Tribunals could be applied with greater focus:

- Promote understanding of the importance of equality and diversity;
- Encourage good practice in relation to equality and diversity;
- Educate on the Act and promote awareness and understanding of rights under it; and,
- Work towards the elimination of unlawful discrimination and harassment.

Promoting the awareness, understanding and protection of human rights is critical to helping bring the Act to life in Bermuda. This role includes encouraging public and private authorities to comply with their duty to act in a way compatible with rights under the Act.

Closing

This report provides a brief overview of the Commissioners' reflections and recommendations from the past year of service, and while it is not exhaustive, it represents significant areas for attention. Again, I wish to thank my fellow Commissioners for their dedication, together with the Officers of the Commission and our partner agencies.

It is worth stating that the majority of issues outlined in this report are relatively simple to resolve if the will and consideration is afforded, and can be done so without expenditure of significant resources or time.

Collaborative commitment and action is essential. The Commission remains committed to working with the government and our partner agencies to ensure these issues are progressed to meet the evolving needs and dynamic socio-cultural realities of Bermuda's diverse community.

Sincerely,

A handwritten signature in black ink, appearing to be 'MH', with a long, sweeping horizontal line extending to the right.

Michael Hanson
Chair

Tribunals operate independently from the Office of the Commission. The Human Rights Tribunal is a quasi-judicial body whose main function is to adjudicate matters referred by the Executive Officer to the Chair of the Commission (see Annex 4: Tribunal Process). Each Tribunal is composed of up to three Commissioners who are empanelled to hear cases. The decisions made by the Tribunal are enforceable and are registered with the Supreme Court.

In 2014 12 complaints were referred to a Tribunal compared to four in 2013; two of these complaints were heard with both decisions rendered in 2014; one of these decisions was appealed to the Supreme Court; the four complaints which were referred to Tribunals in 2013 were carried over to 2014; two complaints were resolved through mediation before the hearing; one complaint was withdrawn by the Complainant before the hearing; two complaints were dismissed by the Tribunal Chair; one complaint was withdrawn by the Complainant before the hearing and formally dismissed by the Tribunal Chair; one complaint was adjourned pending an appeal to the Supreme Court verdict; seven cases remained active at the end of the year;

Tribunals Held and Judgments Rendered in 2014:

1. **CAROLINE BURCHALL (Complainant) v BERMUDA SCHOOL UNIFORMS SHOP (First Respondent, CARMON CYRUS (Second Respondent), AND BELINDA CYRUS (Third Respondent) [2014]**

The Complainant attempted to purchase goods at the Bermuda School Uniforms Shop ('the Shop'), which was the only store authorised to sell uniforms for the school attended by the Complainants children ('the School'), on four different occasions. On the first three occasions the Complainant was not able to make any purchases either because the Shop's credit card machine was not working, the Shop needed to order more sizes, or the Shop was locked despite it being opening hours and having signs saying that the Shop was opened. Frustrated with these experiences, the Complainant sent an email to the School complaining about her experiences. When the Complainant returned to the Store, subsequently **(the Material Visit)**, she was met with a barrage of insults from the Third Respondent, categorising the Complainant as 'you people', which was caught on video-tape.

There were two complaints made:

1. The Respondents discriminated against the Complainant by failing to supply to supply goods, facilities and services of the like quality, in the like manner and on the like terms to her on which the Respondent normally makes them available to other members of the public because of her race, place of origin, colour, or ethnic, or national origins in contravention of Section 5(1) of the Human Rights Act 1981 ('the Act'), as read with Section 2(2)(a)(i) of the Act **(the First Complaint)**.

2. The Respondents, with intent to incite or promote ill will or hostility against any section of the public, used words which were threatening, abusive or insulting and were likely to promote or incite ill will or hostility against a section of the public distinguished by colour, race, ethnic origin, in contravention of Section 8A(1) of the Act **(the Second Complaint)**.

In relation to both Complaints, the case against the First Respondent was dismissed as there was no evidence that the Shop was a legal entity.

In relation to the First Complaint, in viewing the videotape recording of the Material Visit, the Tribunal could infer that the Third Respondent did not provide the goods to the Complainant in the like manner as she normally makes them available to other members of the public. The crucial question is whether the Third Respondent refused to supply the good on like terms because of the Complainant's race, place of origin, or ethnic or national origin. The Tribunal concluded that the references to 'you people' in the context used by the Third Respondent were plainly references to foreign nationals, however that it was clear that the motivation for the verbal barrage was not the Respondent's race or national origin but what the Third Respondent perceived as an attack on her business. The Tribunal therefore dismissed the First Complaint against the Second and Third Respondents.

In relation to the Second Complaint, the Tribunal found that there was clear evidence to support this charge as framed originally in the complaint as against the Third Respondent on the basis that the words used were insulting to a section of the public as distinguished by national origin. The Tribunal felt that the words used were clearly insulting and designed to promote ill will against a section of the public namely foreign nationals.

In considering the Second Complaint, the Tribunal referred to Section 8A(1) of the Act, it was evident that the Act as drafted had omitted to include the words 'in any public place or at any public meeting', the definition of such refers only to outdoor public places. Given that the barrage occurred in the shop, the words were not spoken in a 'public place' as defined in the legislation.

The Tribunal would have found in the Complainant's favour but for the legal requirement that the words have to be used in a public place. The Tribunal recommended amending the Act accordingly to fill this void.

What This Means For Residents Of Bermuda

This decision highlights the significance of the exact wording of the Act and how the law, as it currently stands can result in inadequate rulings. Accordingly one is only in contravention of Section 8A(1) of the Act if the conduct occurs in a public place (i.e. outside), whereas the exact same conduct occurring inside would not be within the scope of the Act.

2. NNEKA POWELL (Complainant) v WE CARE HOME SERVICES (First Respondent) AND PENNY-LYNN PAYNTER (Second Respondent) [2014]

The Complainant was initially hired part-time by the First Respondent, the owner of which being the Second Respondent. The First Respondent does not have limited liability and as such the Second Respondent is personally liable for all liabilities of the First Respondent without limit.

Despite there being no contract of employment, the terms of the Complainants' employment were (i) to provide personal care to elderly clients at their residence and (ii) compensation was at a rate of \$17/hour, paid weekly. Shortly after being

hired the Complainant began to work full-time hours. The Second Respondent did not offer maternity leave to any of her employees.

The Complainant became pregnant twice while employed by the Respondent. During the Complainant's second pregnancy (**Second Pregnancy**), the Respondent reduced the Complainant's working hours, stating that her physical condition and stamina waned dramatically thereby affecting her ability to perform her work duties and attendance at work; which was denied by the Complainant. Subsequently, the Complainant developed an abscess on her lower abdomen. She was seen by KEMH emergency and received a work release form, with no restrictions, for about two days. Subsequently, the Complainant and the Respondent had a discussion about the Complainant's medical condition and it was agreed that the Respondent would prepare a letter to the relevant Government agency to assist the Complainant in obtaining financial assistance. The Respondent drafted a letter, which was given to the Complainant, which stated that the Complainant will cease being an employee of the Respondent, consequent on the advice of her medical doctor (the **Letter**). The Complainant claims that she did not understand the contents of the Letter.

Thereafter, the Complainant saw her ante-natal doctor (the **Doctor**), who advised that she should return to KEMH emergency regarding the abscess. The Doctor called the Respondent advising that the Complainant would not be able to go into work that day (**Material Day**). It was then that the Doctor read the draft letter and explained to the Respondent what it meant. The Doctor wrote a letter to the Respondent, and the Complainant contacted the Respondent, to clarify that the medical advice she received was not that she could not work at all, but would be ineligible to work on the Material Day.

The Tribunal decided that there was some misunderstanding involved however, the question then becomes, why did the Respondent not change her position, once she became aware that the Complainant's medical advice did not support her termination due to being unable to work, both through conversations with the Complainant and the Doctor? By terminating the Complainant, the Respondent was circumventing the Complainant's eligibility for maternity leave and, as such, wrongfully terminated the Complainant due to the fact that she was with child.

The Tribunal found that (i) the Complainant did not request a letter terminating her employment, (ii) the Complainant never informed the Respondent that she was unable to work for the duration of her pregnancy, (iii) the Respondent seized an opportunity to terminate the Complainant's employment because she could not afford to employ a pregnant worker who would be entitled to maternity leave, and (iv) the Respondent wrongfully terminated the Complainant because she was with child.

Taken together, this led to a finding by the Tribunal of discrimination under the Human Rights Act 1981 Section 2(2)(a)(v) and Section 6(1)(b).

What This Means For Residents Of Bermuda

This Decision serves as a valuable reminder to Respondents that treating a person differently due to their family status (i.e. pregnancy) is clearly discrimination and in contravention of the Act.

Note: In the following matter a full hearing did not take place as the matter was resolved in mediation.

MALIK CANN (Complainant) v GLENN BRANGMAN (Respondent) [2014]

In a preliminary hearing, the Tribunal was required to consider the following issues raised by counsel for the Respondent.

- 1 Whether the Tribunal hearing should be public or private;

An application that the hearing should be held in private was made, as a criminal matter had already been heard in open Court and the Respondent did not wish for the matters to be 'rehashed' again in public. Public policy is that hearings are public and transparent and this supports the policy objectives of the Act. The Tribunal were mindful of the fact that whilst it may be public policy it should weigh against whether either party may be prejudiced by a public hearing, and further, where possible the Tribunal should avoid the possibility of public humiliation (of either party). However, this case had already been a public criminal trial where the Respondent was convicted for offences relating to similar conduct alleged, and thus the Tribunal, refusing the application, felt it was difficult to see how there could be any prejudice or further risk to the Respondent if he was named in the hearing.

2. Whether the hearing should be stayed to allow the Respondent time to apply for legal aid;

The complaint was initially made in 2009 at which point the Respondent did not qualify for legal aid. Five years later and the Respondents circumstances had changed and possibly, also his eligibility for legal aid.

The first question was whether the Tribunal had jurisdiction to stay the matter. The Tribunal concluded that according to the Commissions of Inquiry Act 1935, it does not have the power to stay proceedings but it does have the power to *adjourn*; but not indefinitely. Secondly, the Tribunal must also consider whether any adjournment is just and convenient in the circumstances, with the burden to prove such lying on the party seeking the adjournment.

In relation to legal aid, the Act specifically allows for a Complainant to apply for financial assistance, but does not allow the same in respect of a Respondent. The Tribunal interpreted this specific exclusion as persuasion that legal aid is not something that should be considered as a necessity for a Respondent, especially where the application would delay the hearing of the complaint. As to the Respondent's financial difficulties, whilst unfortunate, the Respondent did have the option to represent his position at the Tribunal without counsel, like the Complainant.

As such, the Tribunal could not see on the facts that staying the hearing would be just and convenient.

3. Whether the Respondent should be allowed time to obtain the transcripts of the criminal hearing;

The Tribunal, refusing the application, held that attempting to obtain transcripts with the sole hope that they may discredit the Complainant was somewhat of a fishing exercise, and in any event the Respondent had time to obtain the transcripts previously and had not done **so**.

4. Whether the Respondent should have the right to see the mediation agreement between BHC (who was previously removed as a party to the proceedings following a successful mediation);

The Act specifically prohibits the disclosure of the mediation agreement and further, the Tribunal held that the parties to any dispute are perfectly entitled to mediate on a confidential basis and indeed they are generally encouraged to do so. Further, allowing for its disclosure would be contrary to the whole intention of the process itself.

5. Whether the Respondent should have access to the HRC's Executive Officer's (EO) investigation file and report which is collated prior to referring the matter to the Tribunal;

Within the Act there is a clear separation between the EO's function and the role of any Tribunal. The EO's duty is to investigate and then attempt to settle the matter. A Tribunal's remit is to independently hear the complaint once referred to it and to make a decision as to whether or not any party has contravened the Act. The Tribunal only has access to the complaint made by the Complainant and the response by the Respondent. In fact it is arguable that a Tribunal seeing the EO's investigation report and the potential assistance given by the EO to the Complainant could in fact taint the fairness and independent nature of the Tribunal process. The application was refused.

What This Means For Residents Of Bermuda

In this Decision, the Tribunal provides insightful analysis and interpretation of the Act. For example, that the Tribunal only has the power to adjourn temporarily, not stay, proceedings and that the Tribunal will not use its discretion to do so unless it is just and convenient in the circumstances. Further, this Decision shows that Tribunal hearings should be public unless either party may be prejudiced by a public hearing. This decision additionally highlights the separation between the EO's function and the role of the Tribunal.

Note: All Human Rights Tribunal judgments are available to the public, are enforceable and are registered with the Supreme Court. Copies are available upon request to the Human Rights Commission.

Commissioners' Perspective

The Human Rights Commissioners have an important role to play in protecting and promoting human rights in Bermuda. They were asked to give some insight and context to the work that they do. In particular they were asked to share some of the highlights of their work as a Commissioner during 2014, if there was anything they felt that they would have done differently, and what they look forward to progressing in 2015.

Commissioners' Insights and Highlights:

"I have found that serving as Deputy Chair of the Human Rights Commissioners has been one of the most exciting and rewarding uses of my law degree and one of the most fulfilling ways that I have served my community. I have really enjoyed the camaraderie and energy of my fellow Commissioners and feel we have worked well together to embrace the challenges presented in working through Tribunal matters and lobbying for legislative change. Very impressed with the HRC staff under the leadership of Lisa Reed and they have proven to be a consistent and helpful resource to the Commissioners." – **Kim Simmons**

"Becoming knowledgeable of the Human Rights Act 1981, applying the Act when adjudicating matters, and promoting and participating in educational opportunities that support and advocate for the basic human rights of my community are some of the highlights of my work as a Commissioner during 2014. Another highlight has been having the opportunity to serve with a committed and passionate team of Commissioners who advocate for and ensure the protection of human rights for all is another highlight. With their support I am able to execute my duties and responsibilities to the standard deserved by the local community."

– **Donna Daniels**

"The 2013 Amendment to the 1981 Human Rights Act, now also protecting sexual orientation, shows progress in our human rights legislation. Hopefully, both age discrimination and same-sex marriage will be included shortly."

– **Jens Juul**

"One thing I would have done differently would have been to champion age discrimination a whole lot more, restart the campaign about age discrimination and start a campaign to make mental health and illness a part of the Human Rights Act, 1981." – **Louis Somner**

"I have particularly enjoyed serving as Chairman on Tribunals over the past year and progressing the adjudication of human rights complaints. In 2015, I look forward to the Human Rights Commissions continuing to advocate for the expansion of the scope of the Human Rights Act, 1981." – **Kai Musson**

"Cordell Reilly and Lynn Winfield of CURB presented a very informative workshop on Bermuda Then and Now. This was followed by an animated discussion with the participants which highlighted some of the perceptions of the general public based on their own perspective, which I found very enlightening. Sara Clifford, as the Education Officer, conducted a Learning and Development session on the concept of 'Intersectionality' in the context of human rights, which helped to promote awareness on how many of the injustices within society overlap. I was able to really appreciate this as I attended a public session in support of the LGBT community. The Commissioners' meetings with Lisa Reed, the Executive Officer, were also always informative, as she brought us up to date on the progress of cases brought before her by her Officers. I was always impressed by Lisa's knowledge, wisdom and leadership."

I enjoyed the opportunity to sit on one tribunal in June 2014, which was chaired by Commissioner Richard Horseman. Mr. Millard Thompson also served on this Tribunal. I felt that we worked really well together. Richard kept us focused on the legal issues as related to the Human Rights Act and we were able to reach a unanimous decision in a very timely manner. This was a very exciting learning experience for me. I was sorry that I was not able to attend the LGBT event hosted by the American Consulate and therefore missed hearing the presentations made there.

As far as progressing in 2015, we had discussed in one of our meetings the need to progress the issues of the mentally disabled, which is not set out explicitly under the disability portion of the Act. Also highlighted was the lack of protection for seniors in care facilities which left them vulnerable to abuse. These are two areas that I would like to help to progress during 2015.

I am looking forward to working with my fellow Commissioners on any further tribunals to help reconcile any grievances or where necessary recommend prosecution for contraventions of the Act. I would also be happy to keep working with the Education Team to promote understanding of the Act and to conduct educational programmes aimed at eliminating discriminatory practices.” – **Naomi Schroter**

“I am proud of the involvement of HRC Commissioners in assisting the public in understanding the role of the Human Rights Commission as a change agent in areas where human rights issues may be of concern. For instance, the HRC has advocated for greater protections for individuals who may be ostracised for their stand taken in relation to human rights matters, both directly and indirectly. Going forward, I think the definition of ‘harassment’ under the Human Rights Act needs to be redefined, in that the current definition is

narrowly focused upon harassment that may occur within an employment context. Other forms of sexual harassment appear to be permitted under the Act as currently constituted. In addition, my involvement with one tribunal last year highlighted the need for a refined definition of ‘public place’; with the current definition, defamatory language is permitted under the Human Rights Act depending upon where the defamatory language is actually uttered.”

– **Millard (Dwayne) Thompson**

“The highlight for me in 2014 was to have the privilege to sit on two Tribunals and bring about a resolution to the matters. Although we endeavour to resolve claims in an amicable manner, the hearing of complaints by the Tribunals is an important part of the mission of enforcing Human Rights in Bermuda. I look forward to assisting further in 2015.”

– **Richard Thomas Horseman**

“Educating the public via the print and television media campaign designed to educate the community about expanding the Act to include protection from discrimination based on mental health was a personal highlight. Participating in the ‘Bringing Rights to Life’ event was another highlight. It was a great turnout; all events were well attended and the involvement of the HRC and its Commissioners illustrated our support of the need for education, awareness and advocacy around LGBT issues. I also enjoyed assisting in crafting the HRC Commissioners’ response to the community discussion on the PRC issue; it was a sensitive issue and the response that we released was timely, well drafted and highlighted the importance of treating everyone involved in the debate with dignity and respect.” – **Tawana Tannock**

“During 2014 I have become more aware of the overriding role facing the HRC in Bermuda of educating the public. We first need to provide the public with a better understanding

of the inherent dignity of the human person. We also need to help the people of Bermuda come to a better awareness of the range of the inherent rights of all, thereby instilling in them a strong need to ensure that those rights are enjoyed by and protected for all.

During the past year there have been two issues in particular that have sparked much debate in the community. The first is the issue of PRC holders obtaining Bermuda status and the second is the debate surrounding the hard-won protection from discrimination based on sexual orientation and the implications this raises concerning legalising same sex marriage. Issues such as these highlight the divisions in our community along racial and religious lines.

It is essential that we as Commissioners have a good grasp of the HRA and impart to others the need to examine all areas of concern unselfishly (i.e. being passionate about the rights of all and not just those that affect us directly) with open minds and with a view to closing the gaps in the Act so that the needs of all are addressed.

I have been involved in several Tribunals during this past year, two of which were dismissed due to the failure of one or both the parties to appear or produce the required documentation within the stated deadline. These individuals were unrepresented by legal counsel. The settlement in the other case is still to be concluded. Gathering documentation can be daunting for some and I wonder if there could be some concrete guidelines prepared to assist people who find themselves in this position. I have not been involved directly in formal educational presentations, however, I do take seriously the opportunity to inform others in appropriate individual or group settings when they arise. For 2015 I take Michael Hanson, our Chairman's lead – he points out the plight of those with mental health issues and the need for the HRA to be amended. For example, I applaud his statement

in The Royal Gazette last year in which he explained that while businesses have an obligation to accommodate people with disabilities where possible, the burden placed on the businesses cannot be unreasonable. It is this kind of educative insight that can raise awareness in the community and encourage co-operation. The law considers the needs and limitations of all, and avoids the placement of an abundance of burden on any one entity.” – **Pamela (Penny) Fowkes**

The Role of Commissioners:

“Firstly, in my role as a Human Rights Commissioner I have had to become more cognizant of the Human Rights Act of 1981, related to protecting the fundamental rights and freedoms of all persons living here in Bermuda. With this extended knowledge, I have been in a better position to use the Act as I sit on Tribunals for the conciliation and settlement of complaints or grievances arising out of acts of unlawful discrimination.” – **Naomi Schroter**

Issue or issues that keep(s) you up at night:

“The mental health issue is urgent, particularly in the area of employment. As Commissioner Somner remarked, ‘mental health issues affect at least 25% of the population’”. It has been implied that we may look for assistance to some of the international businesses who have made provisions in this area” – **Pamela (Penny) Fowkes**

Challenges experienced as a Commissioner:

“The key challenge that I have faced as a Commissioner has been directing potential Complainants towards the Human Rights Commission rather than providing them with legal advice relating to any human rights complaints myself.” – **Kai Musson**

Would you say that overall, human rights in Bermuda has improved or worsened in recent years?

“When it comes to where we are as a community on human rights and where I would like for us to be, I guess I am guided by the words of Martin Luther King: ‘injustice anywhere is a threat to justice everywhere’. There have been some significant changes to the human rights landscape in my lifetime and I definitely have more protection than my relatives of previous generations, but I don’t feel Bermuda is where it needs to be. Work still needs to be done to put in place legal protection to prohibit discrimination against those among us with body weight issues, mental health challenges, those who are transgender and those of us who are in same-sex relationships and seek family life.” – **Kim Simmons**

We have been experiencing increasing unemployment in the island. How has this affected human rights in Bermuda?

“In the current economic environment, it is of paramount importance that the issue of unemployment and poverty be seen as an abuse of basic human rights. All Bermudians have a right to a living wage and secured employment. It is my belief that the Government must endeavour to secure jobs for its people and fight against the poverty that exists in our country. Basic human rights of Bermudians must not be sacrificed for the sake of projected stimulus and rapid growth that may benefit a few or a certain segment of the population. Employment legislation and policies must be protective of the rights of all Bermudians.

Youth unemployment must also be recognised as a significant issue for our country and must be addressed to ensure that Bermudian youth become contributing members of society and have access to the economic, social and civic sectors of the community. Bermuda must not risk the consequences of youth unemployment that may result in an increase in the number of youth who feel disengaged, disaffected, and marginalised in their own country.” – **Donna Daniels**

What do you think should be identified as priorities for the Human Rights Commission in the short term? In the long term?

“One of the main areas that I would like to see the HRC focus in both the short and long term is educating the public on Human Rights, discrimination and the role that the HRC can play in investigating possible Human Rights breaches. The HRC does a great job with educating students on the nature of Human Rights and the role of the Commission, but there are entire generations of adults who did not have access to that information and as such there is a knowledge gap. I would like to see us target the business community- and by that I don’t just mean international business- I mean the workplace in general. Let’s start a campaign of lunch and learns and put together a 30 minute presentation specifically aimed at disseminating this information and reinforcing how the respect of Human Rights supports dignity in the workplace.” – **Tawana Tannock**

What key message would you like to send to Bermuda about human rights?

"I would like the public to know that this Human Rights Commission has worked tirelessly to cajole the Government Minister responsible for Community and Cultural Affairs to afford greater protections to individuals such as PRC holders via our education and advocacy arm. Also, this HRC has sought to determine human rights disputes referred to under the Human Rights Act in a timely manner. Finally, while some members of the public may feel the HRC has neither 'teeth' nor influence in realising significant change relative to local human rights, they should know that this Commission does indeed possess authority to decide disputes expeditiously and to determine remedies and/or penalties when the facts warrant the award of such penalties."

– Millard (Dwayne) Thompson

What is one thing/or things you feel we can each do as members of the community to help promote or protect human rights in Bermuda?

"As members of the community, I think it is important for us as individuals to show tolerance and indeed appreciation for our community's diversity. Actions speak louder than words, and by every one of us striving to treat our fellow man as we would like to be treated, no matter how different, we can set an example that will help to promote human rights and motivate others to do the same."

– Richard Thomas Horseman





How to Lodge a Complaint

Anyone who has reasonable grounds for believing that a person has contravened the Human Rights Act may make a complaint to the Commission. The Officers of the Commission are available to assist with preparing a complaint.

Walk-in Human Rights Commission

3rd Floor
The Mechanics Building
Suite 301
12 Church Street
Hamilton HM11

Mail P.O. Box HM 734
Hamilton HM CX

Phone (441) 295-5859

Email humanrights@gov.bm

On the web: www.hrc.bm

A complaint must:

1. Be made orally, electronically or in writing.
2. Be made within six months year after the alleged discrimination occurred (and up to two years if there is sufficient reason for the delay and that no one would be prejudiced due to the delay)
3. Be made by the Complainant, although the Act also allows for someone to make a complaint on behalf of another person, if that person consents and is unable to do so.

If assistance is required, the Officers can help by drafting the particulars of the complaint. Commission staff may further contact the Complainant to clarify any issues raised in the complaint.

If the complaint does not fall under the Human Rights Act, Officers will notify the Complainant and the complaint will be closed however, where appropriate, referrals will be provided to other agencies which may be suited to assist in resolving the matter.

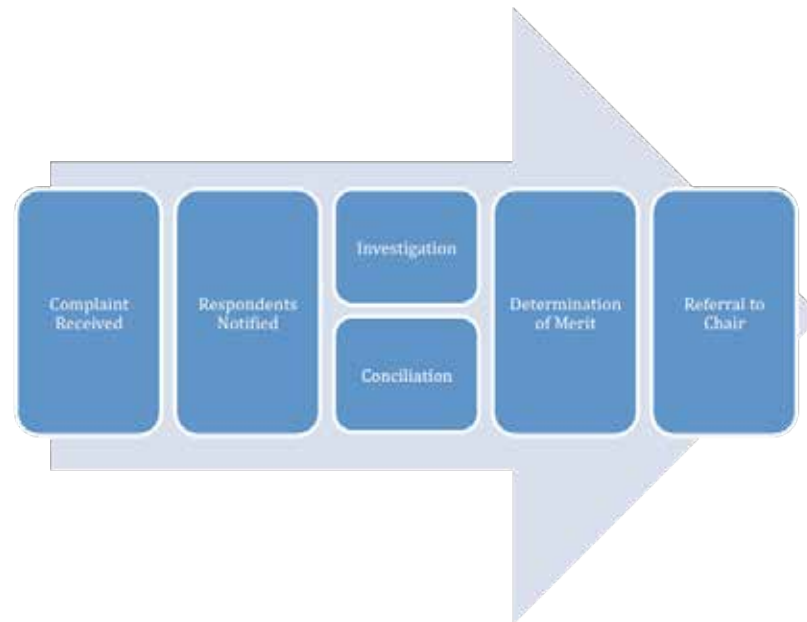
Complaint Handling Process

Complaint Received The complaint is received and an Officer is assigned to obtain as much relevant information as possible to clarify the complaint. The Respondent(s) are notified and, in the first instance, a preliminary inquiry may be conducted. The Executive Officer considers the complaint and, if it is determined to be a prima facie case, the Respondent(s) are notified and requested to respond to the complaint.

Investigation and Conciliation An investigation into the complaint may begin once the parties have provided their initial statements. Efforts will be made throughout the process to try to resolve the dispute.

Determination of Merit Following an investigation, the Executive Officer considers the evidence adduced and makes a decision as to whether or not the complaint appears to have merit. If it is determined that the complaint does not appear to have merit, the Complainant is offered the opportunity to be heard and a final decision is made. If the complaint appears to have merit, mediation may be offered to the parties by the Executive Officer.

Referral to the Chair If the matter remains unresolved, or is unlikely to be settled, the matter is referred to the Chair of the Human Rights Commission.



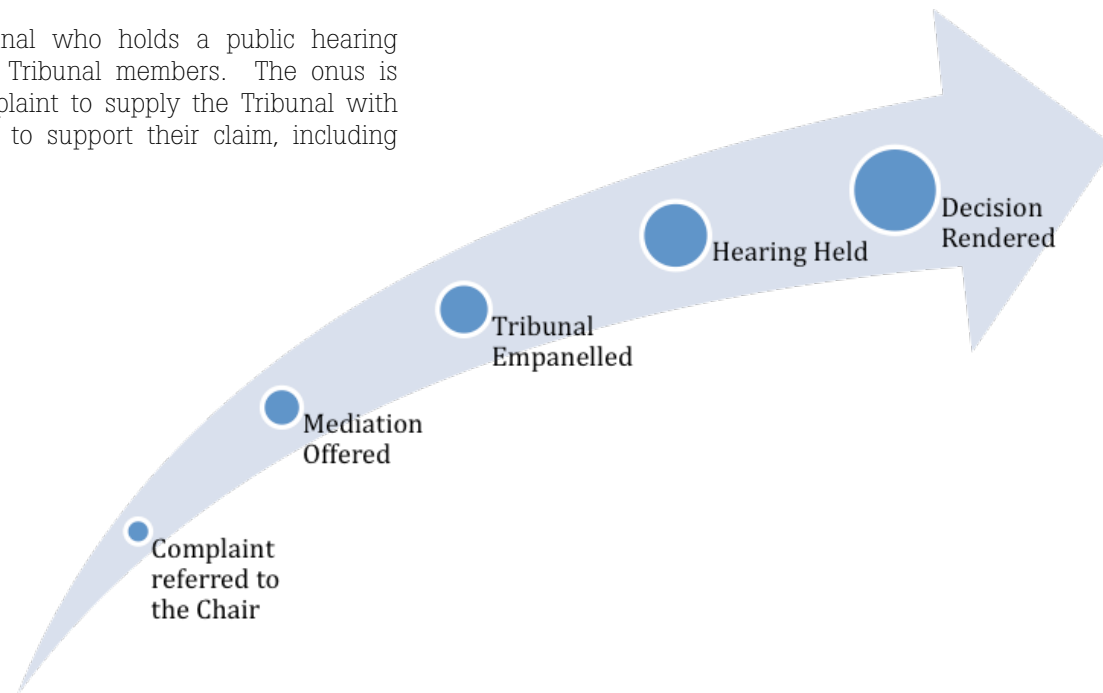
Human Rights Tribunal Process

A Human Rights Tribunal is an independent body empanelled by the Chair to resolve cases of alleged discrimination in a fair, just and timely way. Tribunals have no previous knowledge, involvement or information relating to the investigation process. The Chair of the Commission receives only the Complainant's and Respondent's statements to inform them of the basis of the matter.

Parties are first offered the opportunity to settle the dispute through mediation. If the parties do not agree to mediation, or mediation does not resolve the dispute, the

Chair empanels a Tribunal who holds a public hearing before a panel of three Tribunal members. The onus is on the parties to a complaint to supply the Tribunal with all evidentiary materials to support their claim, including witness statements.

The Tribunal is empowered to determine whether unlawful discrimination has occurred. Upon a finding of discrimination, the Tribunal may award damages and make such orders that are enforceable and may be registered by the Supreme Court. Appeals of Commission decisions may be brought before Supreme Court.



Boards of Inquiry

The 2012 amendments brought forth changes to the processes and procedures of the Human Rights Commission. One significant change was the replacement of the Boards of Inquiry (BOI) with Human Rights Tribunals.

In 2012, the remaining BOI's, which had been empanelled by the Minister and administered by the Department of Human Affairs, advanced their respective matters.

In the Matter of Michael Harkin vs The Commissioner of Police

Mr. Michael Harkin, a British national who worked for the Bermuda Police Service, alleged that the Commissioner of Police contravened sections 6(1)(f) and 6(1)(g) as read with section 2(2)(a)(i) of the Human Rights Act, 1981 when he was denied promotion on the basis of his place of origin. The Complainant also alleged the Respondent contravened section 8(a) of the Act when the Respondent retaliated by refusing to renew his work permit. The liability Hearing was held in February 2013. The Board rendered its Judgment in July 2013, ruling that the Respondent had unlawfully discriminated against the Complainant.

Parties sought an adjournment to see if the issue of damages could be settled. As the issue remained unresolved, the matter was heard by the Board in August 2014.

Note: All Board of Inquiry decisions are available to the public, are enforceable and are registered with the Supreme Court. Copies are available upon request to the Human Rights Commission.

2014 Perception Study Results

The Human Rights Commission again participated in the Department of E-Government's 'Measure to Improve' public perception study. The study aims to improve customer service throughout the Government by obtaining data on customer satisfaction and measuring aspects of a Department's performance in order to make improvements to its service delivery.

1. Areas Doing Well In The Public's Eye

- Public awareness increased to 81%
- Staff compliments have nearly doubled
- Younger people were most satisfied with the Commission and more complimentary
- 63% of people contacting the Commission in the last six months found it helpful

2. Areas For Ongoing Improvement

- Public satisfaction dropped from 52% in 2013 to 44% in 2014
- Service compliments dropped by 14%
- Knowledge of the Act dropped according to age and is at its lowest for low income and low education segments
- Race has returned as the biggest issue for concern.
- The second most common suggestion for improvement was "consistency".
- There is confusion over "Age and Employment" and whether age is already covered under the Human Rights Act, 1981.

3. Suggested Action Points To Raise Satisfaction

- Improve awareness of the Commission and its work so that the public not only has an opinion of the Commission; they have a positive opinion.
- Establish why there has been a rise in race complaints through the use of focus groups, regular public feedback channels, customer journey maps or mystery shoppers.
- Provide more education to the public on areas covered under the Act and areas that are not covered; specifically age in the area of employment.
- Make the Commission independent from the Government in order to consistently illustrate impartiality and have “more teeth in regulations”.

Salaries and Board Fees

Officer’s Salaries

Staff of the Commission are public officers and fixed salaries shall be met out of funds to be appropriated annually by the Legislature as set out below.

Post Title	PS Grade Range	Annual Salary
Executive Officer	PS 34-36	\$113, 480.39
Legal Counsel	PS 34-36	\$113,480.39
Investigations Officer	PS 28-30	\$92,096.28
Education Officer	PS 27-29	\$88, 805.08
Project Officer	PS 26-28	\$79, 727.91
Administrative Intake Officer	PS16-18	\$57, 167.7

Commissioner’s Remuneration

In accordance with fees provided for members of Government Boards and Committees, Board Members of the Human Rights Commission shall be entitled to receive, out of the funds appropriated by the Legislature, a stipend for their service.

Rates for Commissioner Meetings:

Commission Chair	\$100/meeting
Members	\$50/meeting

Rates for Tribunal Hearings:

Tribunal Chair	\$300/half-day \$600/full day
Tribunal Members	\$250/half-day \$500/ full day



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www.hrc.bm



GOVERNMENT OF BERMUDA
Ministry of Community, Culture and Sports

Department of Human Affairs

Accessible Formats

This document is available for download from our website at www.hrc.bm in electronic text formats (Word and pdf). Please contact the Office of the Human Rights Commission at 295-5859 should you wish to request other accessible formats such as audio, large print, etc.

- 1 World Health Organisation - http://www.who.int/whr/2001/media_centre/press_release/en/
- 2 Employment Act 2000 www.bermulaws.bm
- 3 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

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