

IN THE MATTER OF THE HUMAN RIGHTS ACT 1981

IN THE MATTER OF THE BERMUDA HUMAN RIGHTS TRIBUNAL

BETWEEN:

Mark Anderson

Complainant

-v-

Desai Jones

Respondent

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## J U D G M E N T

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Mr. Darrell Clarke, for the Complainant

Mr. Desai Jones, Self-Represented

### **Background**

1. On the evening of Tuesday 11<sup>th</sup> March 2014, the Complainant, who has been employed as a bus operator by the Department of Public Transportation for seven years, was driving a bus travelling westerly to Somerset, which stopped at the Manse Road bus stop, where the Respondent entered the bus. The parties were known to each other prior to this date, having worked together briefly several years ago at a local restaurant.
2. The Respondent entered the bus and informed the Complainant that he was only in possession of a fifty dollar bill [and not the exact change required for the bus fare]; the

Complainant nevertheless allowed him to have a seat on the bus and continued driving the bus along the bus route. During the course of the journey, the Complainant realised that the Respondent had previously ridden on a bus that he operated on two earlier occasions; and both times the Respondent stated that he did not have the correct fare, and the Complainant allowed him to ride on the bus without paying the correct fare.

3. After coming to this realisation, just before the Respondent exited the bus, the Complainant spoke with him about not having the correct amount of money to pay the bus fare and informed him that he would not be allowed to ride on a bus driven by the Complainant in the future without paying the correct fare. The Respondent asked the Complainant if he was attempting to embarrass him, then acknowledged that going forward, he understood that he could not ride a bus driven by the Complainant without paying the correct fare.
4. A couple of days after this interaction the Complainant was alerted by a message from a friend that at some time following the conversation on the bus operated by the Complainant, the Respondent posted comments to his own Facebook page, on the social media website 'Facebook'. These comments were in reference to the incident on the bus, and contained derogatory comments and references about the Complainant, the incident on the bus and the Complainant's sexual orientation.
5. The Complainant's complaint against the Respondent is set out in an Amended Particulars of Complaint dated 3rd April 2014 (the "**Complaint**") and in essence alleges that:
  - a. On 12<sup>th</sup> March 2014, the Respondent discriminated against him by publishing or displaying a notice, sign, symbol, emblem or representation before the public indicating discrimination against him or with an intent to discriminate against him because of his sexual orientation in contravention of section 3 (1) of the Human Rights Act 1981 (the "Act"), as read with section 2(2)(a)(ii) of the Act; and
  - b. On 28<sup>th</sup> March 2014 the Respondent discriminated against him by trying to intimidate or coerce him by trying to prevent him from making a complaint to the

Human Rights Commission (the “Commission”) or to try to prevent him to continue to participate in proceedings under the Act in contravention of the section 8(d).

6. On 23<sup>rd</sup> March 2015, both parties attended a Hearing at the Human Rights Commission. The Complainant was represented by Mr. Darrell Clark and the Respondent represented himself. Both parties gave evidence, and the Complainant also produced in evidence copies of the comments that the Respondent posted on the Facebook website which were the basis of the two complaints.
7. Following the Hearing, the Tribunal’s judgment was reserved and the parties were invited to make further written submissions on Section 9 of the Bermuda Constitution by 17<sup>th</sup> April 2015, the Complainant’s Counsel forwarded submissions on 20<sup>th</sup> April 2015 and the Respondent did not forward any submissions. Additionally both parties were invited to make further submissions on *Apex Construction Management Ltd v Pernell Grant SC App (Bda) 24 [2015]*; *The Canadian Human Rights Act Section 12 The Bermuda Human Rights Act 1981*; *Dreaver, Fairbairn, Gingell, Irvine, Melenchuk, Ross, Watkinson, Weidenhammer and Willett v. Jim Pankiw, 2009 CHRT 8 (CanLII)*; *Saskatchewan (Human Rights Commission) v. Engineering Students’ Society (1989), 1989 CanLII 286 (SK CA), 56 D.L.R. (4th) 604 (Sask. C.A.)*; *Smith-v-Minister of Culture and Social Rehabilitation; Ombudsman for Bermuda Intervening [2011] BDA LR7*; *Marshall and Others v Deputy Governor of Bermuda [2008] Bda LR 72*. The Complainant’s Counsel forwarded submissions to the Tribunal on 26 May 2015, the Respondent did not forward any submissions.
8. The entirety of the Complainant’s evidence in relation to the conversation exchanged between the parties on 11<sup>th</sup> March 2014 and the Respondent’s authorship of the Facebook comments which are the subject matter of the complaints were accepted by the Respondent.

## First Complaint

9. The Tribunal heard from the Complainant that on 13<sup>th</sup> March 2014 he received a message from a friend who indicated that he was “sorry for the incident on the bus and that a man named Desai Jones was blasting him on Facebook”. The Complainant told the Tribunal that he was surprised to receive the message because to him “nothing happened [on the bus with the Respondent].” The Complainant mentioned that after receiving the initial message, several people informed him that they read the messages posted on Facebook. The Complainant stated that later that day using a computer, he went onto the Respondent’s Facebook page and read the comments posted in relation to the conversation on the bus. Later that same evening he asked a friend, Ms. Shari-Lynn Pringle, to print out the Facebook pages that contained the writings that referred to the Complainant.
10. Ms. Shari-Lynn Pringle gave evidence to the Tribunal that on the evening of 13<sup>th</sup> March 2014, the Complainant approached her and asked that she print off pages of comments written and posted on the Facebook page used by the Respondent. It was those pages that were produced in evidence at the hearing.
11. A Facebook comment written by the Respondent on or about the 12<sup>th</sup> March 2014 was shown to the tribunal which read:

*“A Cybil Bloodclaat Bwoy Barrington: You’re so fortunate Shim I didn’t rip you of your bra and panties on the bus yesterday (it slipped my mind...GreenCrack)...heshe!! You know for a fact that I hate your kind with a passion. While I was getting off your bus...I was wondering why you hadn’t opened the dam door as of yet. Then I remember the Mitch look he gave me...after I showed his F\_g azz I only had a \$50...I felt like kicking the F\_gout of you then...but I allowed him to slide... but let the biatch say anything else!! After I touch it on the shoulder and told it, “Ya mon give thanks for that.” He wants to talk bout, “Hey mate (I’m not ya \*uckign mate F\_g!!!!) This is the 3<sup>rd</sup> time you’ve done this...and it won’t be happening again.” I counted backwards from 100 to 1...dam felt like 1.2 sec...I was like, “Oh ya trying to embarrass me with*

*ya idle F\_g azz threats...but put on...I'd drape you out of your ya bouncy chair. All you f\_g Azz \*ick sucking ma\*uckerz know ya place...#MoreFireForDemMa\*uckerz"*

12. This post was followed by an exchange of written conversations between the Respondent and his Facebook friends, on the Respondent's Facebook page. In his evidence the Respondent accepted that he had written the comments attributed to him on 12<sup>th</sup> March 2015, he also told the Tribunal that his Facebook page could be accessed by any member of the public who had access to the website as it was his express intention that his Facebook account have a public privacy setting, thereby allowing not only his Facebook friends to access it, but also members of the public with access to Facebook.
13. The Complainant informed the Tribunal that after reading the comments made by the Respondent he went to the Bermuda Police Service to make a complaint against the Respondent and on 14<sup>th</sup> March 2014 made a complaint to the Human Rights Commission because he felt that he was being discriminated against by the Respondent because of his sexual orientation.
14. The law applicable to the first complaint is set out in Section 3(1) of the Human Rights Act 1981 as read with Section 2(2)(a)(i).

*3(1) No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons in any of the ways set out in section 2(2).*

*(2) For the purposes of this Act a person shall be deemed to discriminate against another person-*

*(a) if he treats him less favourably than he treats or would treat other persons generally or refuses or deliberately omits to enter into any contract or arrangement with him on the like terms and the like circumstances as in the case of other persons generally or deliberately treats him differently to other persons because—*

*(ii) of his sex or sexual orientation;*

15. The Tribunal heard from the Complainant that the Respondent wrote on his Facebook page derogatory and inflammatory comments regarding his sexual orientation, additionally copies of the Facebook comments were produced to the Tribunal. The Respondent accepted that he wrote those comments and that access to his Facebook page is open to any member of the public with access to Facebook who wishes to read it. In fact, the Respondent indicated that notwithstanding the fact that he has three thousand Facebook friends who can view his Facebook page, he has it set up so that anyone can access it so that he is able to network with more people.
16. To be unlawful under the Act, discrimination must fall within one of the Act's operative sections and the relevant provision in respect of sexual orientation is contained in section 2(2)(a)(ii).
17. Profanity laced comments, derogatory name calling, expressions of violence thoughts and professed hatred directed to the Complainant and his 'kind' written on the Respondent's Facebook page were clearly based on the Respondent's view of the Complainant's sexual orientation. The Respondent told the Tribunal that when he stated 'I don't like your kind' or "I hate your kind" it was an expression of his view on homosexuality and that it should not exist.
18. The Tribunal does not accept the Respondent's evidence that the comments written on his Facebook page were not directed to the Complainant, but to the Complainant's alter ego 'Sybil Barrington'. When questioned by the Tribunal the Respondent accepted that the comments in question addressed the incident that he had on the bus operated by the Complainant on the 11<sup>th</sup> March 2014, and that the Complainant was the bus operator, whom the Respondent knew by the stage name of 'Sybil Barrington'.
19. After reviewing the comments written on the Respondent's Facebook page, some of which are outlined above and contain repeated use of derogatory terms and expressions regarding the Complainant's sexual orientation; the Tribunal finds that under section 2(2)(a)(ii) the Respondent treated the Complainant less favourably than

he treats or would treat other persons generally and deliberately treated him differently to other persons because of his sexual orientation.

20. The next issue in relation to the first complaint for the Tribunal's consideration is whether the discrimination of the Complainant, by the Respondent, was conducted in a manner set out in section 3(1) of the Act. Specifically, whether the Respondent published or displayed before the public a notice, sign, symbol, emblem or other representation discriminating or intending to discriminate against the Complainant.
21. The Tribunal heard from the Respondent that in addition to having approximately three thousand Facebook friends, his Facebook page is open for any member of the public to access and read comments written by the Respondent on his Facebook page. The Respondent informed the Tribunal that he has arranged his Facebook security settings specifically so that his comments can be visible to the public at large. This can be contrasted with the description of the Facebook page in *Richardson v Raynor [2011] SC (Bda) 39 Civ (12 August 2011)*; which was described by Kawaley C.J. as a "private (or-semi private) correspondence between Facebook friends which was not published to the world at large". The Applicant in *Richardson v Raynor [2011]* published statements on his Facebook which had security settings which allowed **only** his Facebook friends to read his comments, and it was only through one of the Applicant's Facebook friends accessing the comments for the Bermuda Police Service that they were made known to the Bermuda Police Service. This can be directly contrasted with the settings of the Respondent's Facebook page which is open to not only his three thousand Facebook friends but to any member of the public who can access Facebook. Therefore the Tribunal is satisfied that the comments on the Respondent's Facebook page can be construed as being published or displayed before the public.
22. The Tribunal must then consider whether the Respondent has published or displayed before the public 'any notice, sign, symbol, emblem or other representation' as listed

under section 3(1) of the Act. There is no definition of ‘notice, sign, symbol, emblem’ or other representation’ under section 3(1) of the Act. Without a definition in the Act of ‘notice, sign, symbol, emblem or other representation’ the Tribunal turns to the Canadian interpretation of a similar statute, section 12 of the Canadian Human Rights Act 1985 which is very similar to section 3(1) of the Bermuda Human Rights Act 1981.

23. Section 12 of the Canadian Human Rights Act 1985 (CHRA) is as follows:-

*It is a discriminatory practice to publish or display before the public any notice, sign, symbol, emblem or other representation that (a) expresses or implies discrimination or an intention to discriminate, or (b) incites or is calculated to incite others to discriminate if the discrimination expressed or implied would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.*

24. The issue of interpreting the meaning of the words ‘notice, sign, symbol, emblem or other representation’ was addressed by the Canadian Human Rights Tribunal (“Canadian Tribunal”) in *Dreaver, Fairbairn, Gingell, Irvine, Melenchuk, Ross, Watkinson, Weidenhammer and Willett v. Jim Pankiw, 2009 CHRT 8 (CanLII)*. In addition to other issues, the Tribunal in that instance was asked to consider if a parliamentary brochure mailed to constituents by a member of Parliament, known as a ‘householder’ fell under the category of a ‘representation’ under section 12 of the *CHRA*.

25. To make a determination the Canadian Tribunal considered the meaning and definition of the words in the phrase ‘notice, sign, symbol, emblem or other representation’ and eventually held that written content material, such as articles and written statements were not encompassed by the section. Writing at paragraph (45) their examination of the meaning of the words is laid out below in full:

*“Section 12 of the CHRA states that it is a discriminatory practice to publish or*



*display before the public any notice, sign, symbol, emblem or other representation that (a) expresses or implies discrimination or an intention to discriminate, or (b) incites or is calculated to incite others to discriminate if the discrimination expressed or implied would otherwise, if engaged in, be a discriminatory practice described in any of sections 5 to 11 or in section 14.*

*[46] The Commission, contrary to its Statement of Particulars, argued at the hearing that s. 12 of the CHRA did not apply to the present case. The Complainants, however, maintained that s. 12 applies. They argued that the Householders were representations within the meaning of s. 12 of the CHRA.*

*[48] There is good authority for the view that the term representation in human rights legislation such as s. 12 of the CHRA does not apply to the content of written material such as newspaper articles, and by extension, the content of publications such as the Householders. In Re Warren and Chapman, (1984), 11 D.L.R. (4<sup>th</sup>) 474 (Man. Q.B.), the Manitoba Court of Queen's Bench was required to decide whether a newspaper article came within the meaning of notice, sign, symbol, emblem or other representation as used in s. 2(1) of the Manitoba Human Rights Act. The Court held that newspaper articles did not constitute a representation. In coming to this interpretation the Court relied on the ejusdem generis rule, i.e., the meaning of words is drawn from those with which they are associated.*

*[49] The word representation is associated with the words notice, sign, symbol, emblem, in the former Manitoba Human Rights Act and in the present CHRA. The Court in Re Warren and Chapman stated that these words mean an image, likeness, or reproduction. The term representation takes its meaning from its association with these similar words. Therefore, the Court held that the word representation could not include articles or written statements since they were not akin to images, likenesses or reproductions.*

*[50] The same interpretation was given to a similar provision in Saskatchewan (Human Rights Commission) v. Engineering Students' Society (1989), 1989 CanLII 286 (SK CA), 56 D.L.R. (4<sup>th</sup>) 604 (Sask. C.A.), leave to appeal refused: [1989] 1 S.C.R. xiv. The issue in that case was whether certain articles in the Engineering Student newspaper offended s. 14(1) of the Saskatchewan Human Rights Code. That*

*provision prohibited the publication or display of any notice, sign, symbol, emblem or other representation which exposed, or tended to expose to hatred, ridiculed, belittled, or otherwise affronted the dignity of any person on the basis of a prohibited ground.*

*[51] The Court held that articles or statements were not representations within the meaning of the Code and hence, written or oral statements that resulted in discrimination were not prohibited by the Code. The Court stated that the provision simply did not have the kind of sweep to include statements or articles. If it had, the term representation would gather in statements in newspapers, magazines, books, movies, songs, plays, performances, dissertations, and the like. That, according to the Court, was not what was ordinarily comprehended by the briefly written and graphic forms of statement found in notice, sign, symbol, emblem or other representation.*

*[52] Like the Manitoba and Saskatchewan human rights legislation at the time, s. 12 of the CHRA speaks of the publication or display of any notice, sign, symbol, emblem or other representation. As in *Forward and Forward v. Citizenship and Immigration Canada* 2008 CHRT 5 (CanLII) where this Tribunal applied the associated words rule to the term services in s. 5, the Tribunal in the present case finds that the application of that rule to s. 12 renders it impossible to interpret representation as covering the written content of the Householder.*

*[53] It is worth noting that section 14(1) of the Saskatchewan Human Rights Code was subsequently amended to include the words article and statement so that written content such as newspapers are now subject to that provision. A number of other provinces have also included terms such as this in their statutes. [54] In contrast, s. 12 of the CHRA has not been amended to include words such as statement, article or publications. If Parliament had intended s. 12 of the CHRA to encompass written statements of the kind that are in issue in this case it could have, like the Saskatchewan and Manitoba legislatures, added a term that would make it clear that articles or statements were included in s. 12. It has not done so.*

26. Counsel for the Complainant when asked for a submission on the relevance of *Dreaver, Fairbairn, Gingell, Irvine, Melenchuk, Ross, Watkinson, Weidenhammer and Willett v. Jim Pankiw*, 2009 CHRT 8 (CanLII); and *Saskatchewan (Human Rights Commission)*

*v. Engineering Students' Society (1989), 1989 CanLII 286 (SK CA), 56 D.L.R. (4th) 604 (Sask. C.A.),* in the current instance submitted that it would seem that the proper approach to determine whether the words used by the Respondent could be captured by section 3(1) of the Bermuda Human Rights Act, would be to use the approach outlined in the dissenting decision of Vancise J. A., who in *Saskatchewan (Human Rights Commission) v. Engineering Students' Society (1989), 1989 CanLII 286 (SK CA), 56 D.L.R. (4th) 604 (Sask. C.A.)* at page 51 cited the words of Chief Justice Dickson in *Skinner V Shrew [1893] 1 Ch. 413* " I recognize that in the construction of such legislation [human rights] the words of the Act must be given their plain meaning, but it is equally important that the rights enunciated be given their full recognition and effect. We should not search for way and means to minimize those rights and to enfeeble their proper impact." Vancise J. A., then went on to find that given this interpretation newspaper articles and other printed material could be encapsulated by the phrase 'notice, sign, symbol, emblem or other representation.'

27. The Tribunal notes that it was not the finding of the court on majority that the definition of 'notice, sign, symbol, emblem or other representation' could be construed as widely as suggested by Vancise J. A, and that the court held as outlined above in paragraph 24, that 'notice, sign, symbol, emblem or other representation' was not intended to refer to written articles or editorials, and that this decision ultimately led to the amendment of the relevant section of the Saskatchewan Human Rights Act in an effort to remedy this lacuna in the Act.

28. The Tribunal has considered the approach toward interpretation outlined by Vancise J. A., as put forth by Counsel for the Complainant, and is also cognizant of the precedent set in *Smith-v- Minister of Culture and Social Rehabilitation; Ombudsman for Bermuda Intervening [2011] BDA LR7*, in which Kawaley J at paragraphs 22 and 23 outlined the principals which should govern the interpretation of the Bermuda Human Rights Act 1981:-

*"...As McIntyre J., speaking for this Court, recently explained in Ontario Human Rights Commission and O'Malley v Simpsons-Sears Ltd. , [1985] 2 SCR 536, the Act must be so interpreted as to advance the broad policy considerations underlying it. That task should not be approached in a niggardly fashion but in a manner befitting the special nature of the legislation, which he described as "not quite constitutional"; see also Insurance Corporation of British Columbia v Heerspink , [1982] 2 SCR 145, per Lamer J., at pp. 157-58. By this expression, it is not suggested, of course, that the Act is somehow entrenched but rather that it incorporates certain basic goals of our society. More recently still, Dickson C.J. in Canadian National Railway Co. v Canada (Canadian Human Rights Commission) (the Action Travail des Femmes case) , [1987] 1 SCR 1114, emphasized that the rights enunciated in the Act must be given full recognition and effect consistent with the dictates of the Interpretation Act that statutes must be given such fair, large and liberal interpretation as will best ensure the attainment of their objects."*

*"23. I find that the same principles ought to be followed in construing the provisions of the Bermudian Human Rights Act 1981."*

29. The Tribunal has considered the principal above and is careful to adhere to the caution reiterated (in an examination of the interpretation of section 4 (3) of the Bermuda Constitution) in *Marshall and Others v Deputy Governor of Bermuda* [2008] Bda LR 72 by Ward JA at paragraph 6:-

*"We are reminded of the caveat of Peter Gibson L.J. in Chief Constable of Bedfordshire Police v Liversidge [2003] ICR 88 that in adopting a purposive approach to construction it is impermissible to rely on the general purpose of the Act to construe the Act in a way that eliminates the limitations and qualifications."*

In doing so, The Tribunal does not find that on a fair, large and liberal interpretation of section 3(1), that the provision can be construed to allow the comments and conversations on Facebook to be described as a 'notice, sign, symbol, emblem or other representation', as intended under the Act.

30. Therefore the Tribunal must regretfully dismiss the First Complaint against the Respondent.

31. The Tribunal notes that Section 3 (1) of the Act stands in stark contrast to section 8A of the Act which clearly states:-

***Publication of racial material and racial incitement prohibited***

*8A (1) No person shall, with intent to incite or promote ill will or hostility against any section of the public distinguished by colour, race or ethnic or national origins—*

*(a) publish or display before the public, or cause to be published or displayed before the public, written matter which is threatening, abusive or insulting;  
or*

*(b) use in any public place or at any public meeting words which are threatening, abusive or insulting,*

*being matter or words likely to incite or promote ill will or hostility against that section on grounds of colour, race or ethnic or national origins.*

*(2) No person shall, with intent to incite another to commit a breach of the peace,*

*or having reason to believe that a breach of the peace is likely to ensue, do any act calculated to incite or promote ill will or hostility against any section of the public distinguished by colour, race or ethnic or national origins.*

*(3) In this section—*

*(c) the expressions “public meeting” and “public place” respectively have the same meaning as in the Public Order Act 1963 ;*

*(d) the expression “written matter” includes any writing, sign or visible representation; and*

*(e) the expression “publish or display” includes publishing or displaying by way of recorded telephone discussions, internet, e-mails recorded in print or recorded on the internet, radio, television or any other electronic medium or communication device.*

32. Section 8A seems to clearly envisage capturing a set of circumstances similar to those of the First Complaint, unlike section 3(1). Unfortunately sexual orientation is not a ground under which Section 8A allows a complaint to be brought. The Tribunal

recommends that section 8A be amended to include sexual orientation.

### **Second Complaint**

33. The law applicable to the Second Complaint is set out in Section 8 (d) of the Human Rights Act and is as follows:-

*No person shall-*

*(d) intimidate or coerce or impose any pecuniary or other penalty upon any person,*

*in order to prevent any other person from making a complaint or disclosure or from testifying or participating in any other way in a proceeding under this Act, or with a view to penalizing any person for having made such a complaint or disclosure or for having testified or participated as aforesaid.*

34. The Tribunal heard from the Complainant that on 28<sup>th</sup> March 2014, after viewing the Respondent's Facebook page, he noticed that the Respondent posted a picture which showed a document received by the Respondent from the Human Rights Commission in respect of the complaint made by the Complainant. The Complainant produced a copy of the Respondent's Facebook page which showed a screenshot of the post and comments by the Respondent on his Facebook page in which he detailed receiving correspondence from the Human Rights Commission and his readiness to address any complaint made against him.

35. The Complainant told the Tribunal that he felt that the Respondent was trying to intimidate him or prevent him from continuing with his matter before the Human Rights Commission, because he was informed by other people about the manner in which the person alleged that the Respondent treated 'other gay' individuals.

36. The Complainant told the Tribunal that he continued to watch the Respondent's Facebook page after the 28<sup>th</sup> March 2014 and observed one other comment that pertained to him. The Complainant recounted an incident on 9<sup>th</sup> April 2014 in which both he and the Respondent were present at an event at The City Hall. He then read on

the Respondent's Facebook page that he wrote a comment indicating that he saw the Complainant at City Hall and that the Complainant acted like he did not see the Respondent.

37. The Respondent upon questioning, informed the Tribunal that he did post a picture of a piece of correspondence received from the Human Rights Commission on the 28<sup>th</sup> March 2014, in relation to the First Complaint as outlined above, and that he did make comments and engage in conversation about the complaint on his Facebook page, and after seeing the Complainant at the City Hall on 9<sup>th</sup> April 2014.
38. In relation to the copy and commentary of the correspondence received from the Human Rights Commission, the Respondent stated that he posted it because he received it and essentially that it was correspondence, it was mail with his name on it and that he could do with it what he wished; but that he did not post it with the intention to 'get even' or intimidate the Complainant.
39. The Tribunal noted that the Complainant contacted the Human Rights Commission prior to the Respondent's Facebook posts dated 28<sup>th</sup> March 2014, so the point for consideration was not whether any action by the Respondent was intended to prevent the Complainant from making a complaint before the Human Rights Commission, but whether the Respondent's actions were intended to intimidate the Complainant so that he would not continue proceeding with the complaint brought before the Human Rights Commission.
40. The Complainant told the Tribunal that he was instructed by a member of the Bermuda Police Service to monitor the Respondent's Facebook page and it was in the course of doing so that he read the comments posted by the Respondent in reference to the complaint received from the Human Rights Commission. The Complainant informed the Tribunal that his sense of intimidation stemmed from information given to him from other people about the Respondent's treatment of other people with the same sexual orientation as the Complainant. The Tribunal heard no evidence from the Complainant that he felt intimidated by the Respondent's comments posted in relation to receiving correspondence from the Human Rights Commission. Further, on the

occasion of 9<sup>th</sup> April 2014, when The Respondent saw the Complainant after receiving the documentation from the Human Rights Commission, the Complainant did not indicate that he felt intimidated by the Respondent.

41. The only question put to the Respondent by counsel for the Complainant was in reference to a comment posted by the Respondent on 28<sup>th</sup> March 2014. Counsel asked about a comment made on the Respondent's Facebook page which read *"I know they're people too...lol...animals don't act as such...All this back and forth about what should and shouldn't be isn't my concern. I know what's what...and will take it to my grave...cause I know what's left on Earth...will be just that. I don't care about or for them...they can do whatever...just don't try stand toe to toe with me...cause I'd go out of my way to hurt you real bad. People can say a Christians not suppose to think or talk like that. I'm a believer that states my case...instead of the believers who gossip with their partners in their car on the drive to and from church...I'm not the believer who will smile in your face and chat behind ya back. No that's never been me. I'm the in ya face conversation. I prick ones conscience. I would run into a 12 ft thick wall knowing that faith would move it"*

42. Counsel for the Complainant asked the Respondent what he meant by the portion of the comment which read *"just don't try to stand toe to toe with me because I would go out of my way to hurt you real bad"*; and additionally why he posted it on Facebook. The Respondent stated that it was posted in a Facebook conversation that he was having with his friends and that it was a boxing reference, and that he often spoke hypothetically.

43. The Tribunal does not find that the Respondent posted a picture and comments about correspondence received from the Human Rights Commission to intimidate the Complainant so that he would not proceed with his complaint under Human Rights Act. The Respondent knew that his Facebook page was open to members of the public who chose to access it; however he could not have known that the Complainant would be monitoring his page on 28<sup>th</sup> March 2014 when he posted comments and held



conversations with Facebook friends about receiving correspondence from the Human Rights Commission.

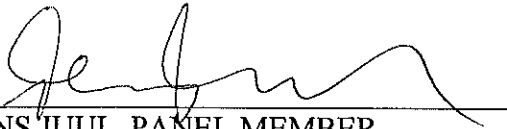
44. The Respondent's comments and subsequent conversations, as distasteful, derogatory and vitriolic as they are, do not indicate that his intention was to intimidate the Complainant from proceeding with his complaint. The Complainant's sole evidence to the Tribunal in relation to being intimidated by the Respondent came from things told to him from a third party, in respect of the Respondent and other people. No further information regarding intimidation of the Complainant by the Respondent has been given in evidence. Mr. Clarke, Counsel for the Respondent did not make any submissions regarding whether the Complainant was intimidated or that the Respondent was trying to intimidate the Complainant.
45. The Tribunal therefore dismisses the Second Complaint against the Respondent.
46. The Tribunal has heard the facts of this matter and were greatly disturbed by the inflammatory comments, language and opinions expressed on Facebook by the Respondent in this case. The Complainant had twice before, in addition to this instance, acted as a Good Samaritan by allowing the Respondent to ride the bus when he had no other means of transportation. Unfortunately, his good deed did not go unpunished.
47. We regret that the law, as it stands in relation to the First Complaint, renders this Tribunal powerless to return a just verdict in this case, since the Bermuda Human Rights Act has not been amended to include the written word under Section 3(1). Similarly, we regret that the Human Rights Act has yet to be updated to encompass sexual orientation and all prohibited grounds of discrimination under Section 8(1)(a).
48. As Human Rights Commissioners it is our duty to propose and petition for amendments to the Bermuda Human Rights Act until the residents of Bermuda have a document which truly protects the rights of all people living and working in Bermuda. We therefore recommend that Bermuda Human Rights Act, Section 3(1) be amended

encompass the written word such as articles and statements, and that Section 8(1)(a) be amended to offer protection for all prohibited grounds of discrimination.

DATED this 24<sup>th</sup> day of June, 2015



TAWANA TANNOCK, CHAIRPERSON



JENS JUUL, PANEL MEMBER



PAMELA FOWKES, PANEL MEMBER