2021

Annual Report

Human Rights Commission
Bermuda

Table of Contents

02 EXECUTIVE OFFICER MESSAGE

04 VISION AND MISSION

05 STATUTORY MANDATE

06 HUMAN RIGHTS IN THE AGE OF COVID-19

07 COMPLAINT MANAGEMENT STATISTICS

27 VOLUNTARY MEDIATION PROGRAMME AND REFERRAL PROCESS

28 EDUCATION AND ENGAGEMENT

32 LEGAL MATTERS

33 ACCOUNTABILITY

31 IN REMEMBRANCE

34 TIMELINE

36 TRANSMITTAL

Executive Officer Message

"My humanity is bound up in yours, for we can only be human together."

DESMOND TUTU
7 October 1931 – 26 December 2021

Discrimination may occur where policies and practices do not account for individual circumstances, differences, and characteristics, which may result in persons being unfairly disadvantaged. The example of the pandemic reminds us that while our humanity is shared, our experiences and identities are distinct.

There was heightened focus and consideration on the policies and practices by both employers and the Government of Bermuda, and stakeholders were encouraged to examine why certain procedures are in place in addition to assessing the distinct impacts that they have on individuals.

Today's challenges demand urgent and collaborative action to ensure no one in Bermuda gets left behind any longer.

Access, exclusion and participation were significant themes emerging throughout the year. As the impacts of the pandemic continue to highlight the disparities within our community, we must ask ourselves, who is missing? Who is excluded from decision-making opportunities and why?

As UN Secretary-General António Guterres emphasised in his call to action for centering human rights in the wake of the pandemic:

'The key to reinvigorated and reimagined future lies with truly meaningful participation of people and civil society in the decisions that affect their lives. Participation in public affairs is a fundamental human right and an underutilised tool for better policymaking. Discontent reflects not only impatience or despair with the status quo but also a desire to play a part in bringing about positive change.'

The complexities of the COVID-19 crisis affirm the urgency of adopting a human rights-based approach (HRBA) to inform governance and associated policy and programming. Upholding these considerations is not only the responsibility of the State. Each of us has a role in understanding our collective and individual rights and obligations in building an equitable and inclusive society.

The Human Rights Amendment Act 2021 marked an essential step in ensuring that Bermuda has an independent Human Rights Tribunal that can efficiently and expertly adjudicate human rights cases. An independent tribunal represents the establishment of another crucial pillar in Bermuda's human rights framework. Legislative amendments to strengthen Bermuda's human rights framework remain a priority in the year ahead.

The Commission progressed efforts to improve access to information with our first integrated digital report for 2021. The Annual Report is a valuable accountability mechanism, and its digitisation allows the public access to a streamlined account of the Commission's activities and observations. This development supports the Commission's educational mandate, enabling the public to focus on specific issue areas or cross-reference related information on the Commission's website. In addition, printed materials and in-person discussions are available to those without digital access. The Commission will grow our website as a public education resource to feature the Commission's work and related human rights data.

The Commission will continue to develop strategic partnerships to support the rights and responsibilities under the Human Rights Act, 1981, and expand its public education using multimedia platforms to promote inclusive and intersectional rights considerations as a fundamental expectation of life in Bermuda.

In reflecting on the challenges and opportunities before us, I wish to acknowledge the considerable courage of individuals and organisations who stand up for and champion human rights within their own life and sphere of influence. It is an honour to steward the mission and mandate of the Commission, and I am grateful for the commitment each member of my team gives to our duties and daily responsibilities. The Commission will continue to sharpen its practices, learning from our community, and rights advocates within and beyond our shores.

As Bermuda's National Human Rights Institution and a Non-Ministry Office, the Commission's autonomy and strengthened capacity are essential to effectively fulfilling its mandate and safeguarding the rights of all. The Commission is determined to play a role in creating a community where the dignity and respect of all members of Bermuda's society are upheld and honoured.

174 COMPLAINTS RECEIVED

The Commission received one hundred and seventy-four (174) complaints with members of the public primarily identifying discriminatory treatment based on section 2(2)(a)(i) – race, place of origin, colour, ethnic or national origins, which comprised thirty-five percent (35%) of identified grounds. This was followed by the protected ground of disability at twenty percent (20%) and sex, which accounted for twelve percent (12%) of the identified grounds.

59% INTAKES RELATED TO EMPLOYMENT

Regarding the areas of discrimination identified by members of the public, fifty-nine percent (59%) of the intakes related to employment, which combines matters under section 6(1) of the Act in addition to those identified as employment related. Among the remaining areas of discrimination, the highest was sexual harassment at nine percent (9%) and a split between housing and harassment within the workplace at eight percent (8%), respectively.

Vision and Mission

VISION

The Human Rights Commission envisions a community that honours and protects human rights for all.

MISSION

As the National Human Rights Institution in Bermuda, our mission is to eliminate discrimination through collaborative advocacy, education and enforcement.

Statutory Duties

As Bermuda's National Human Rights Institution, the Commission takes a leading role in the modern interpretation of its statutory mandate and the promotion of the indivisibility and interdependence of all human rights.

The Commission has a statutory remit to protect and promote human rights under the Human Rights Act, 1981. The Commission's mandate is to both educate and promote the principles of non-discrimination and equality and 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 Human Rights Act, 1981;
- Conduct research and develop initiatives designed to eliminate discriminatory practices;
- 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.

Human Rights in the Age of COVID-19

BALANCING RIGHTS AND RESPONSIBILITIES

The COVID-19 crisis has been fueled by deepening poverty, rising inequalities, structural and entrenched discrimination and other gaps in human rights protection. Only measures to close these gaps and advance human rights can ensure we fully recover and build back a world that is better, more resilient, just, and sustainable.

End discrimination of any kind:

Structural discrimination and racism have fuelled the COVID-19 crisis. Equality and non-discrimination are core requirements for a post-COVID world.

Address inequalities:

To recover from the crisis, we must also address the inequality pandemic. For that, we need to promote and protect economic, social, and cultural rights. We need a new social contract for a new era.

Encourage participation and solidarity:

We are all in this together. From individuals to governments, from civil society and grass-roots communities to the private sector, everyone has a role in building a post-COVID world that is better for present and future generations. We need to ensure the voices of the most affected and vulnerable inform the recovery efforts.

Promote sustainable development:

We need sustainable development for people and planet. Human rights, the 2030 Agenda and the Paris Agreement are the cornerstone of a recovery that leaves no one behind.

Complaint Management Statistics

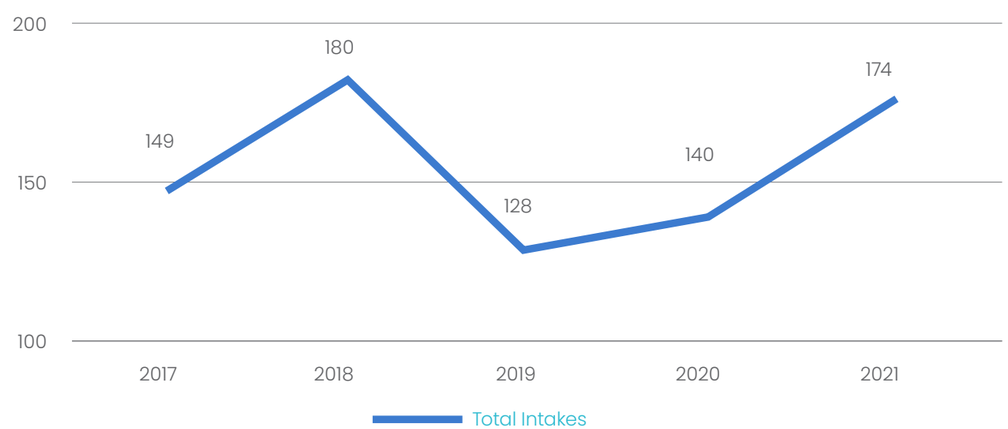
Members of the public can submit queries to the Commission and pursue complaints of discrimination, harassment or reprisal by filing complaints in accordance with section 14H of the Human Rights Act, 1981.

Statistical Analysis
Intakes and Preliminary Inquiries

When an intake is filed, the Executive Officer determines whether the intake is a complaint or a query. When are complaints are filed, the Executive Officer screens the intake to determine whether it appears to disclose a prima facie case of discrimination. Please see the Intake Screening Process for more information.

- Intakes are comprised of complaints and queries.
- A complaint is classified by the Office as any concern brought to the attention of the Commission by a member of the public who believes their rights have been contravened under the Human Rights Act.
- A query is classified by the Office as a request for guidance, information, or any questions regarding the Act.

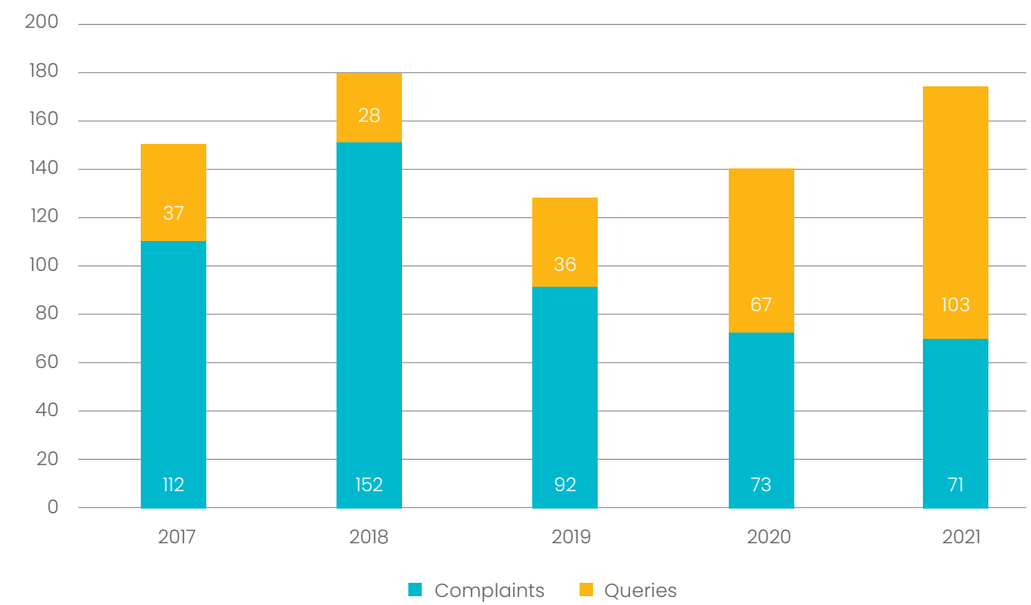
Figure 1 – Total Intakes for the Period, 2017 – 2021



In 2021, a total of one hundred seventy-four (174) intakes were reported to the Office of the Human Rights Commission by members of the public.

Statistical Analysis
Intakes and Preliminary Inquiries

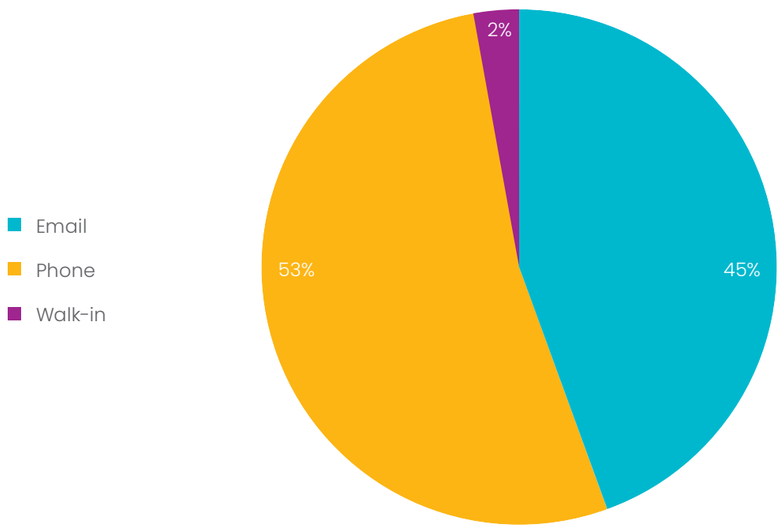
Figure 2 – Intakes by Type for the Period, 2017 – 2021



When considering queries and complaints in 2021, queries comprised the largest portion of intakes received by the Office. Of the total one hundred seventy-four (174) intakes received, one hundred and three (103) were classified as queries, while the remainder were classified as complaints (71) as illustrated in Figure 2. In the five years of data provided in Figure 2, this is the only occurrence where queries outnumbered complaints out of the total intakes brought to the attention of the Commission.

Statistical Analysis
Intakes and Preliminary Inquiries

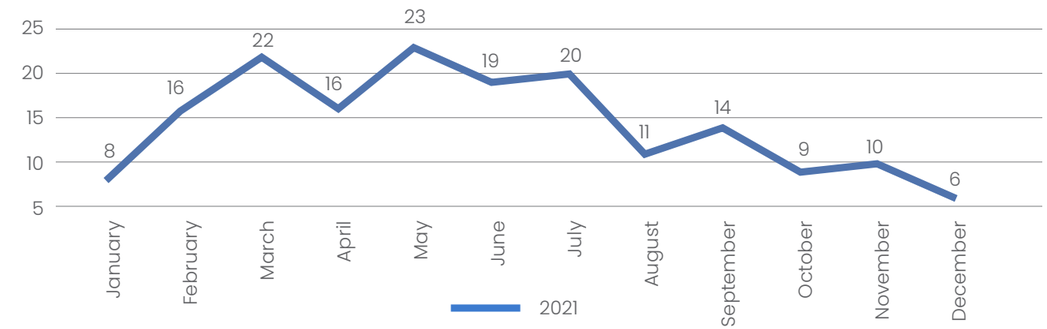
Figure 3 – Percentage Distribution of Intakes Received by Method of Contact, 2021



Intakes received by Method of Contact, 2021. Members of the public may contact the Office of the Commission to log a complaint, query, or request for information by telephone, mail, email, or walk-in. In 2021, the methods of contact with the Office were as follows, fifty-three percent (53%) via email, forty-five percent (45%) via phone and a small proportion of persons visited the Office to log their intakes, two percent (2%).

Statistical Analysis
Intakes and Preliminary Inquiries

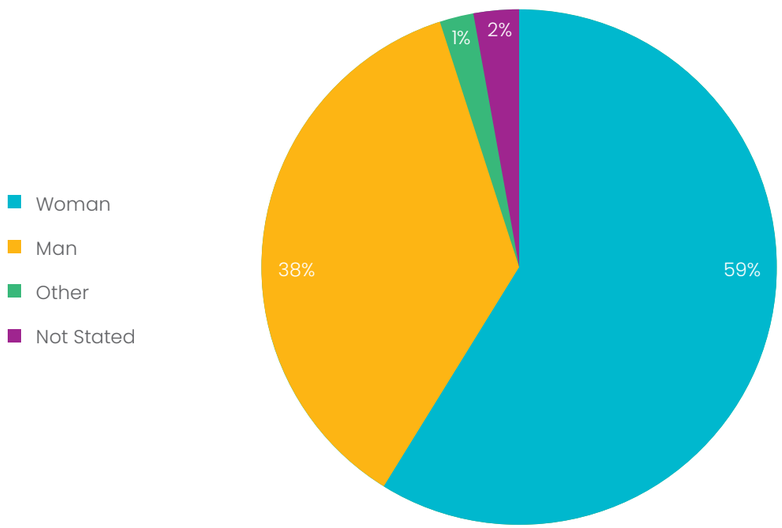
Figure 4 – Annual Intakes by Month, 2021



As shown in Figure 4, of the total monthly intakes received in 2021, the highest number recorded was in May 2021, twenty-three (23) intakes representing thirteen percent (13%). The mean average intakes were fourteen and a half (14.5) intakes per month.

Statistical Analysis
Intakes and Preliminary Inquiries

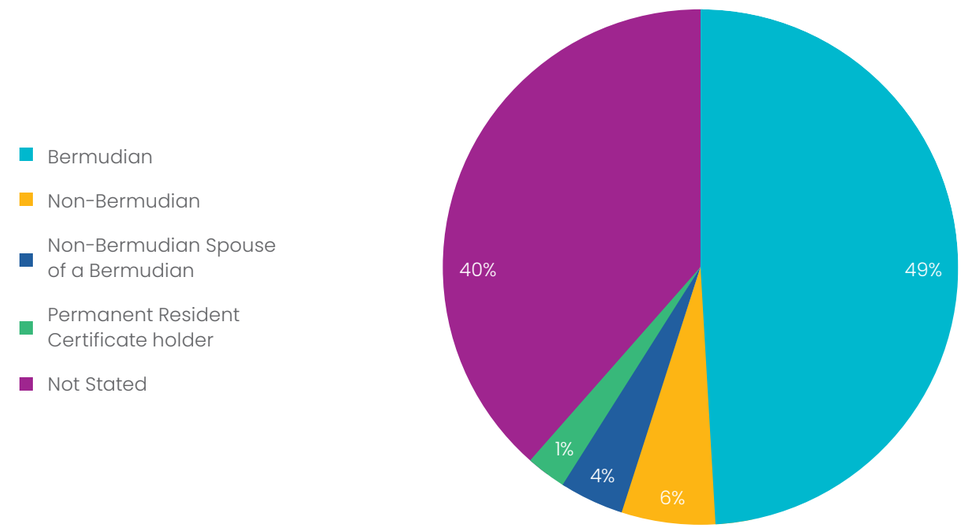
Figure 5 – Percentage Distribution of Intakes by the Gender of the Complainant, 2021



In 2021, women approached the Office of the Commission more frequently than men. Women represented fifty-nine percent (59%) of all Complainants, while men represented thirty-eight percent (38%) of intakes. There were a small number of Complainants that identified their gender as other, at one percent (1%). Two percent (2%) of intakes did not provide details on their gender and were therefore recorded as not stated.

Statistical Analysis
Intakes and Preliminary Inquiries

Figure 6 – Percentage Distribution of Intakes by the Bermuda Immigration Status of the Complainant, 2021



Note – the "not stated" category is larger than previous reporting years due to a combination of the Office implementing a new case management system in 2021 and members of the public not providing demographic statistics for their "status". Demographic statistics are collected on a voluntary basis from members of the public when an intake is received.

Figure 6 illustrates the Bermuda Immigration Status of Complainants for intakes received by the Office in 2021. Bermudians represented forty-nine percent (49%) of the total number of Complainants. Complainants that indicated they were of non-Bermudian status represented six percent (6%), while the number of non-Bermudian, Spouses of Bermudians who contacted the Commission represented four percent (4%) of intakes. In 2021, one percent (1%) of Complainants were recorded as Permanent Resident Certificate holders. Forty percent (40%) of Complainants did not have a status identified on their intake record.

Statistical Analysis
Intakes and Preliminary Inquiries

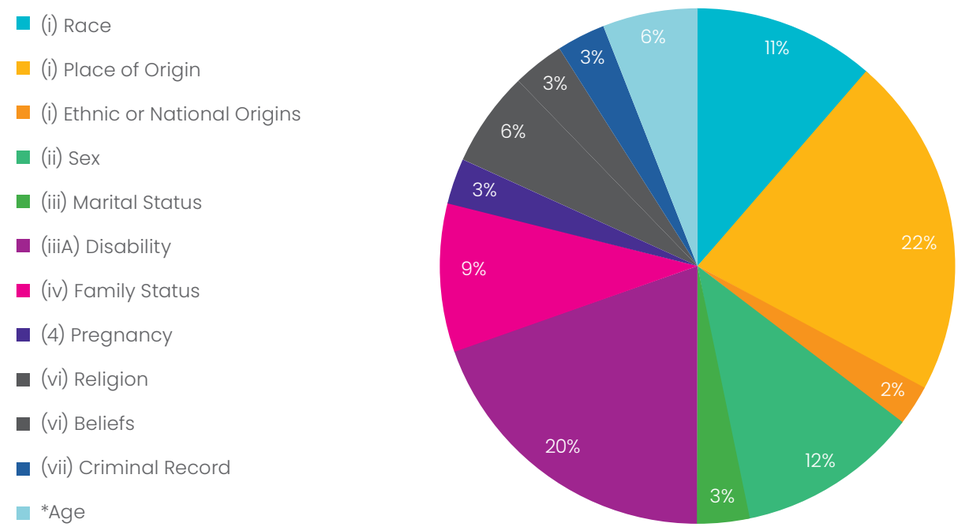
Table 7 – Intakes by Ground of Discrimination Cited – Section 2 (2)(a), 2021

Intakes by Ground		
Grounds	Number	%
(i) Race	7	11
(i) Place of Origin	14	22
(i) Ethnic or National Origins	1	2
(ii) Sex	8	12
(iii) Marital Status	2	3
(iiiA) Disability	13	20
(iv) Family Status	6	9
(4) Pregnancy	2	3
(vi) Religion	4	6
(vi) Beliefs	2	3
(vii) Criminal Record	2	3
*Age	4	6
Total	**65**	**100**

Note 1 – *Protection afforded in section 4 and section 5.
Note 2 – Not all grounds as identified in the Human Rights Act, 1981, have been listed in the table above as that data was not received in 2021
Note 3 – Not included within the statistics for intakes are those where the Complainant did not state or identify a ground. The numbers provided merely reflect statistics for grounds as self-identified.

Statistical Analysis
Intakes and Preliminary Inquiries

Figure 7 – Percentage Distribution of Intakes by Ground of Discrimination Cited, 2021



Note 1 – *Protection afforded in section 4 and section 5.
Note 2 – Not all grounds as identified in the Human Rights Act, 1981, have been listed in the table above as that data was not received in 2021
Note 3 – Not included within the statistics for intakes are those where the complainant did not state or identify a ground. The numbers provided merely reflect statistics for grounds as self-identified.

Table 7 and Figure 7 display that many complaints logged in 2021 cited claims of discrimination based on the protected grounds of place of origin, twenty-two percent (22%), Disability, twenty percent (20%), sex, twelve percent (12%), race, eleven percent (11%) and Family Status, nine percent (9%). The remaining grounds of discrimination represented a combined total of twenty-six percent (26%).

In 2021, thirty-five percent (35%) of the identified protected grounds, related to section 2(2)(a)(i) (race, place of origin, colour, ethnic or national origins) of the Human Rights Act, 1981. This was followed by the protected ground of disability at twenty percent (20%) and sex, which accounted for twelve percent (12%) of the identified protected grounds. Looking back to the reported statistics since 2018, this is now the fourth year in a row where the protected grounds of race, place of origin, colour, ethnic or national origins [2(2)(a)(i)], disability [2(2)(a)(iiiA)], and sex [2(2)(a)(ii)] have ranked amongst the top three in identified protected grounds.

A further analysis featuring cross tabulations, was carried out regarding the protected grounds of sex and disability. The data revealed through these cross tabulations that in 2021, for the protected ground of sex, eighty percent (80%) of those intakes were filed by persons who identified their gender as "woman" in comparison to the other gender categories. With respect to disability, sixty-two percent (62%) were filed by individuals who identified their gender as "woman" versus any other identified gender categories.

Statistical Analysis
Intakes and Preliminary Inquiries

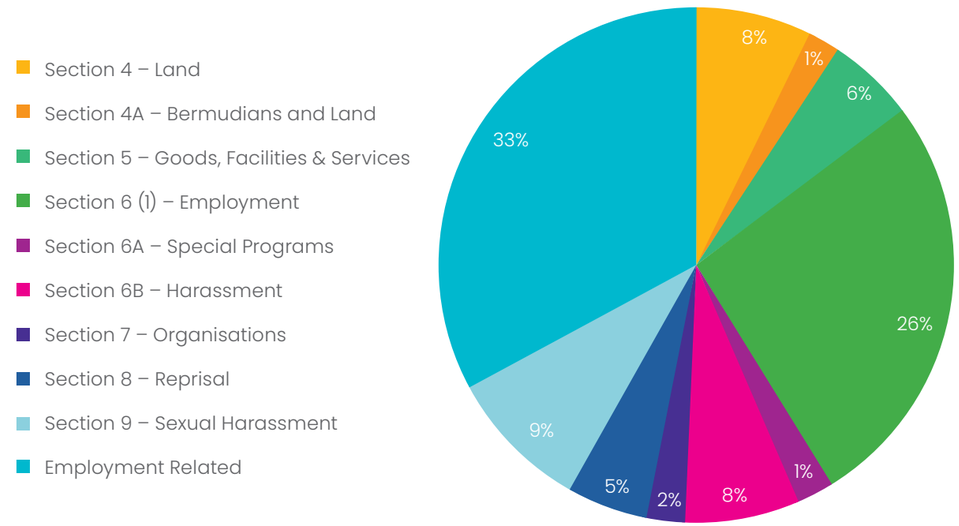
Table 8 – Intakes by Area of Discrimination Cited, 2021

Intakes Received by Area		
Area	No. of Areas	%
Section 4 – Land	9	8
Section 4A – Bermudians and Land	1	1
Section 5 – Goods, Facilities & Services	7	6
Section 6 (1) – Employment	28	26
Section 6A – Special Programs	1	1
Section 6B – Harassment	9	8
Section 7 – Organisations	2	2
Section 8 – Reprisal	5	5
Section 9 – Sexual Harassment	10	9
Employment Related	36	33
Total	**108**	**100**

Note 1 – Percentage totals may not equal 100% due to rounding.
Note 2 – Not all areas as identified in the Human Rights Act, 1981, have been listed in the table above, as data had not been received in 2021.
Note 3 – Not included within the statistics for intakes are those where the complainant did not state or identify an area of discrimination. The numbers provided merely reflect statistics for declared areas of discrimination.

Statistical Analysis
Intakes and Preliminary Inquiries

Figure 8 – Percentage Distribution of Intakes by Area of Discrimination Cited, 2021



Note 1 – Percentage totals may not equal 100% due to rounding.
Note 2 – Not all areas as identified in the Human Rights Act, 1981, have been listed in the table above as that data was not received in 2021.
Note 3 – Not included within the statistics for intakes are those where the complainant did not state or identify an area of discrimination. The numbers provided merely reflect statistics for declared areas of discrimination.

Table 8 and Figure 8 illustrates that most Complainants cited either complaints of discrimination in employment or had questions regarding their employment status in the protected area of employment, in 2021. It is worth noting that the Office of the Human Rights Commission received several complaints and queries, which broadly alleged unfair practices in employment. In 2021, of the one hundred and seventy-four (174) intakes received, there were thirty-six (36) matters logged as being "employment-related." This would often entail individuals alleging that they were being treated unfairly in the workplace, however, they did not attribute this to discriminatory practices. This number had in the year preceding been merged with the data under Section 6(1) of the Act, which prohibits discrimination by employers. It should be noted that intake data is comprised of allegations from the perspective of a Complainant.

In 2021, fifty-nine percent (59%) of the intakes received related to employment, this figure combines complaints that fall under section 6(1) of the Human Rights Act, 1981, twenty-six percent (26%) in addition to those that were employment related (33%). Of the areas comprising the remaining forty-one (41%), sexual harassment was cited by complainants representing nine percent (9%) of that total, while housing (sec. 4) and harassment within the workplace (sec. 6B) accounted for eight percent (8%), respectively. Looking back to the reported statistics in 2019 and 2020, this is now the third year in a row where employment featured as the number one area identified by members of the public when approaching the Commission with complaints and/or seeking assistance with enquiries. Having the benefit of closely examining the demographic data obtained throughout 2021, it was revealed that two-thirds of the intakes, which concerned employment were filed by persons who identified their gender as "woman".

COVID-19 Statistics

In 2021, of the one hundred and seventy-four (174) intakes received, approximately forty-five (45) related to the Covid-19 global pandemic. While the intakes were filed by different members of the public, they often covered similar areas of concern.

Examples of the intakes received (both complaints and queries), were as follows:

- Members of the public enquiring into the legality of the Bermuda Government's policy with respect to children being tested to participate in sports.
- Members of the public who were expatriate workers and reported being terminated throughout the pandemic, sought assistance relating to employers failing to cover costs associated with their repatriation and payment related issues.
- Members of the public enquired into the Bermuda Government's testing policies.
- Members of the public reported concerns with regards to losing their employment for failing to be vaccinated.
- Members of the public highlighted their concerns regarding the Bermuda Government's position on laws, policies, and mandates, which included mandatory face coverings, vaccination requirements and a general concern of differential treatment between individuals who are vaccinated and those who are not.
- Members of the public sought assistance with understanding the Bermuda Government's regulations and mandates relating to vaccinations and mask wearing and whether it violated their individual human rights.
- Various employers sought assistance with managing their employees return to work after testing positive, drafting Covid-19 policies, face coverings, appropriate exemptions, and accommodations.

A global challenge throughout the pandemic has been balancing and upholding individual rights while trying to collectively protect the public. Throughout the screening process of Covid-related intakes, the Commission reiterated that with any mandatory practice or policy applied to the public, the potential for discriminatory impacts exists and must be carefully assessed to ensure that violations do not occur. There is a risk of unlawful discrimination taking place where practices and policies fail to account for individual circumstances and characteristics, as this failure may result in a person or groups of people being unfairly disadvantaged, excluded and further marginalised.

The Commission continues to encourage those developing and implementing policies and procedures to adopt a human rights-based approach when doing so, specifically those built around the ever-changing landscape of the global pandemic. An example of this need may include factoring in accommodations for those individuals that may be unable to receive a vaccination due to a disability. Another example of the need for exemptions and accommodation can be found with those who face the potential for exclusion as a result of being unable to wear a face covering due to a disability.

COVID-19 Statistics

The Commission's position regarding the decision as to whether an individual chooses to receive a COVID-19 vaccine is that it is a voluntary decision. During 2021, an individual filed a complaint with the Commission alleging that they experienced discriminatory behaviour when they were terminated from their employment for not being vaccinated. The Human Rights Act, 1981 was discussed and specific probing went into whether the decision to not receive the Covid-19 vaccination was connected to a protected ground. The individual, being satisfied that their decision was not connected to a protected ground listed within section 2(2) of the Act, withdrew their complaint.

Also, during 2021, multiple complainants alleged that employers discriminated against them by insisting that they undergo more frequent COVID-19 testing due to their unvaccinated status, thus applying differential treatment between individuals who were vaccinated and those who were not. Those individuals did not identify a protected ground under the Act but believed that the differential treatment was against their "human rights" or their "personal beliefs" generally speaking. Personal preferences and singular beliefs may not be protected under the Act. Where an individual who has elected not to be vaccinated, adhere to COVID-19 testing policies, or to protective measures put in place by the Government, employers, etc., based on a personal preference, such a decision may not be afforded protection under the Act. In the circumstances, such individuals may not have the right to modifications to the circumstances of their employment or within the area of goods, facilities, and services. In such instances, the Commission would request that the individual provide a clear description of the specific religion(s) or belief(s) or political opinion(s) that were held by them and offer guidelines for criteria to receive protection under the Act.

Investigations

In 2021, nineteen (19) investigations were being managed by the Office of the Human Rights Commission in various stages of the investigations process.

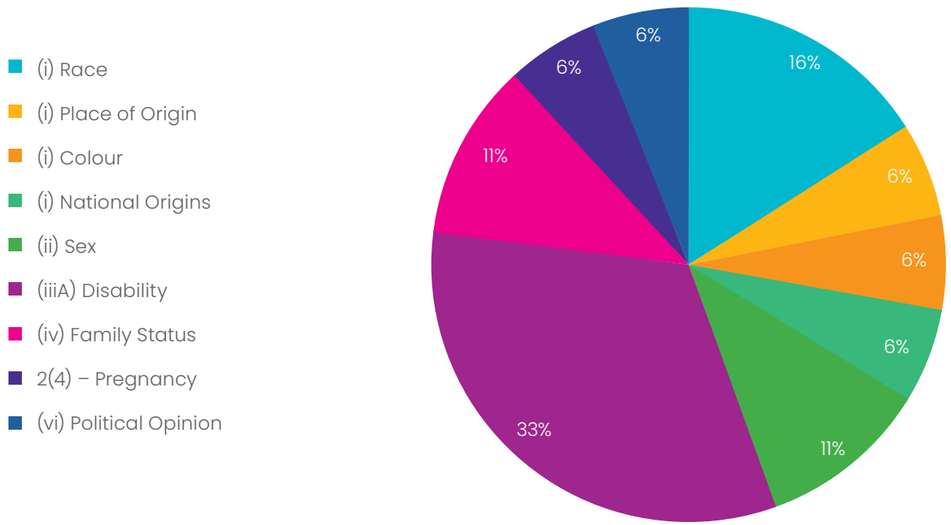
Table 9 – Active Investigations by Ground of Discrimination – Section 2 (2)(a), 2021

Active Investigations by Grounds		
Grounds	No. of Grounds	%
(i) Race	3	16
(i) Place of Origin	1	6
(i) Colour	1	6
(i) National Origins	1	6
(ii) Sex	2	11
(iiiA) Disability	6	33
(iv) Family Status	2	11
2(4) – Pregnancy	1	6
(vi) Political Opinion	1	6
Total	**18**	**100**

Note 1 – Percentage totals may not equal 100% due to rounding.
Note 2 – Complainants may identify multiple grounds of discrimination or no grounds and thus, the total may be greater or less than the total number of investigations.

Investigations

Figure 9 – Percentage Distribution of Active Investigations by Ground of Discrimination – Section 2 (2)(a), 2021



Note 1 – Percentage totals may not equal 100% due to rounding.
Note 2 – Complainants may identify multiple grounds of discrimination or no grounds and thus, the investigation total, if computed for figure 9, may be greater or less than the total number of investigations.

Table 9 and Figure 9 illustrate that disability and race were identified as the ground of discrimination in nine (9) matters representing thirty-three percent (33%) and sixteen percent (16%), respectively. Eleven percent (11%) or two (2) investigations identified discrimination based on the protected ground of family status and additionally, two (2) other matters were investigated under the protected ground of sex at eleven percent (11%). Place of Origin, Colour, National Origins, Pregnancy and Political Opinion were identified in separate investigations, representing six percent (6%) respectively.

Investigations

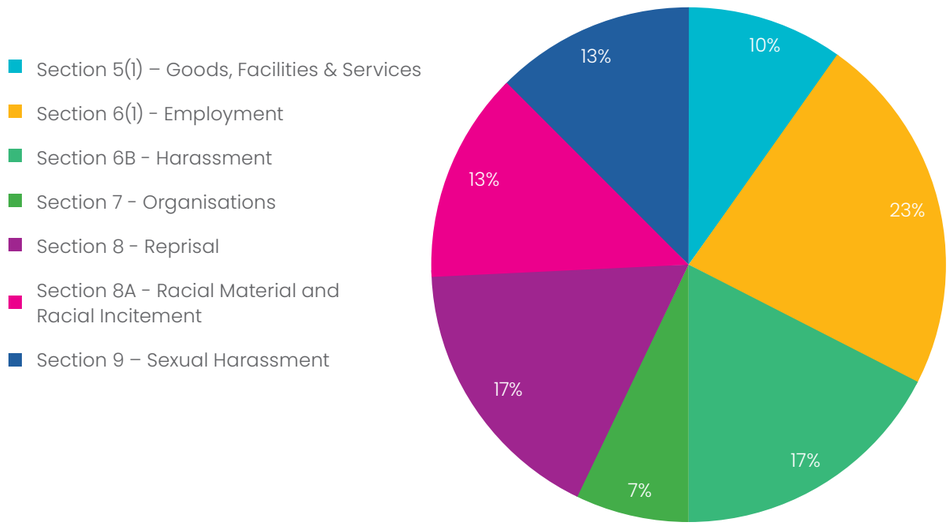
Table 10 – Active Investigations by Area of Discrimination, 2021

Active Investigations by Areas		
Area	No. of Areas	%
Section 5(1) – Goods, Facilities & Services	3	10
Section 6(1) – Employment	7	23
Section 6B – Harassment	5	17
Section 7 – Organisations	2	7
Section 8 – Reprisal	5	17
Section 8A – Racial Material and Racial Incitement	4	13
Section 9 – Sexual Harassment	4	13
Total	**30**	**100**

Note – Complainants may identify multiple areas of discrimination and thus, the total may be greater than the total number of investigations.

Investigations

Figure 10 – Percentage Distribution of Active Investigations by Area of Discrimination, 2021



Note – Complainants may identify multiple areas of discrimination and thus, the investigation total, if computed for Figure 10, may be greater than the total number of investigations.

Table 10 and Figure 10 display that most allegations of discrimination were identified as occurring in the area of employment. At twenty-three percent (23%), allegations of unfair employment practices such as dismissal dominated the complaints at the investigations stage of the complaints handling process. At seventeen percent (17%) each, allegations of harassment in the workplace and reprisal comprised the next largest share of complaints under the areas of protection afforded by the Human Rights Act, 1981. The publication of discriminatory racial material and allegations of racial incitement, thirteen percent (13%); sexual harassment, thirteen percent (13%); goods, facilities, and services, ten percent (10%); and Organisations, seven percent (7%) completed the list of areas.

Investigations

Where the Executive Officer is satisfied that a complaint appears to be genuine or that there appears to be reasonable grounds to believe that a contravention has occurred, in accordance with section 15(1) of the Act, the Executive Officer will investigate the complaint. When a matter is referred for investigation, the Executive Officer notifies all parties of the decision and sets out the terms of reference for the investigation. In accordance with section 14J of the Act, the Executive Officer offers all parties to the complaint an opportunity to participate in the Commission's Voluntary Mediation Program. Where parties to a complaint are unable to reach a resolution through the Commission's Voluntary Mediation Program, or decline to participate, the investigation into the complaint commences. The Executive Officer assigns the matter to an Investigations Officer, who conducts the investigation, which involves exploring the issues identified by all parties, interviewing witnesses identified by the parties and reviewing any relevant details or documentation provided.

All parties to the complaint are provided with an opportunity to supply any relevant documents, witnesses and set forth their respective perspectives related to the complaint. Once the investigation concludes, the Investigations Officer provides the details obtained throughout the investigation to the Executive Officer for a decision to either refer the matter to the Human Rights Tribunal or dismiss the complaint.

Disposition of Investigations

In 2021, there were nineteen (19) investigations assigned to Investigations Officers, of which, two (2) were approved for investigation in 2021 and seventeen (17) were approved previously and remained ongoing into 2021. One (1) matter was resolved via mediation. Two (2) matters were dismissed by the Executive Officer and determined to be without merit, while two (2) other matters were deemed meritorious and progressed to the Tribunal hearing stage of the complaints handling process.

Complaints Summaries

Harassment based on Age

An individual attended the Commission to file a complaint of age discrimination. They indicated that they were harassed on numerous occasions by their colleagues at work. They provided examples of incidents that they described as harassing behavior and asserted that this was occurring because they were the oldest member on the team, (many years older than their colleagues). The Human Rights Act, 1981 was discussed and section 6B was highlighted for their review. We communicated to the individual that age discrimination is only protected by way of the Human Rights Act, 1981 within the following areas – section 4 (the disposal of premises) and section 5 (goods, facilities and services). They were provided with a referral to raise their complaint with a manager and to seek guidance from the Labour Relations Office. The Commission is of the view that the protection from discrimination and harassment due to age ought to be afforded to members of our Community in the same manner as the grounds set out within section 2(2) of the Act. Policy recommendations will be put forth built around expanding protection in the area of "age" to the appropriate areas of discrimination set out within Part II of the Act.

Age Discrimination – Forced Retirement

Several individuals approached the Commission in 2021, alleging discrimination in their respective workplaces when they were forced to retire after attaining the age of sixty-five. The Human Rights Act, 1981 was discussed with the individuals and it was noted that age discrimination is protected within the following areas – section 4 (the disposal of premises) and section 5 (goods, facilities and services). They were provided with a referral to raise their complaint with a manager and to the Labour Relations Office. The Commission is of the view that protection from discrimination and harassment due to age ought to be afforded to members of our Community in the same manner as the grounds set out within section 2(2) of the Act. Policy recommendations will be put forth built around expanding protection in the area of "age" to the appropriate areas of discrimination set out within Part II of the Act.

Criminal Record – Discrimination

A member of the public alleged that they were discriminated against when they were terminated from their employment due to 'criminal charges' filed against them in the Magistrates' Court of Bermuda. The Human Rights Act, 1981 was discussed with them and it was noted that section 2(2)(a)(vii) – criminal record, protects members of the public from being treated less favourably than others due to their criminal record, except where there are valid reasons relevant to the nature of the particular offence for which they were convicted that would justify the difference in treatment. The individual that filed the complaint did not have a criminal record, as they were acquitted, and their complaint was structured around allegations of discriminatory conduct due to them being charged with a criminal offence. The complaint was dismissed, however, this is an area currently under review by the Commission with a view to submitting policy recommendations. The purpose of this is to ensure that individuals are protected in circumstances where criminal charges are filed against them, similarly to how protections exist where an individual has a criminal record

Criminal Record – Consultation

The Commission was contacted by an organisation seeking guidance with respect to whether it would violate the Human Rights Act, 1981, if they withheld the supply of goods, facilities and services to individuals convicted of a criminal offence. The Human Rights Act, 1981 was discussed with the organisation to assist in their understanding of the Act, which included a review of section 5 (goods, facilities and services) and section 7 (organisations not to discriminate) of the Act alongside section 2(2)(a)(vii) – criminal record. The organisation was informed that section 2(2)(a)(vii) protects individuals with a criminal record from being treated less favourably than others due to their criminal record. The organisation was also informed of an exception applied to section 2(2)(a)(vii), which states – "except where there are valid reasons relevant to the nature of the particular offence for which they are convicted that would justify the difference in treatment." A recommendation was also made for the organisation to obtain independent legal advice with respect to their decision making and the intake was closed.

Referral to Labour Relations Office

Each year individuals approach the Commission with employment related issues and in need of guidance on the Employment Act, 2000. Some of the queries this past year concerned vacation leave entitlement, pay discrepancies and repatriation rights of employees on work permits. The Human Rights Act, 1981 was discussed with the individuals and once it was understood that they were not alleging a contravention under the Act (noting that an allegation could involve a contravention of both the Human Rights Act, 1981 and the Employment Act, 2000), a referral was made to the Labour Relations Office and a recommendation was provided for them to obtain independent legal advice.

Social and Economic Status

An individual approached the Commission seeking assistance after they believed that they were unfairly questioned throughout the recruitment process for a job about their credit history. The Human Rights Act, 1981 was discussed with them, however, it was noted that the Act does not currently protect individuals from discrimination based on their social and economic status. This is an area that is currently under review by the Commission with a view to submitting policy recommendations seeking for the inclusion of social and economic status in addition to source of income, as protected grounds, where appropriate, into the Human Rights Act, 1981.

Asylum Seeker

An individual contacted the Commission shortly following the ongoing crisis in the Tigray Region[1] seeking to obtain asylum. Using the contact details provided, the Commission sought to assist the individual by way of connecting them to a more appropriate body to facilitate their request, however, we were unable to contact the individual using the contact details provided.

COVID-19 Related Matters

Members of the public approached the Commission seeking guidance on several matters, which related to the COVID-19 global pandemic. The Commission received intakes around (i.) whether mandatory mask wearing violated human rights, (ii.) whether an individual's rights were violated by vaccination mandates and (iii.) an individual that asserted they were terminated for not being vaccinated. Throughout our engagements with members of the public around the global pandemic, we were reminded of the need for the Government of Bermuda, employers, organisations and individuals to adopt a human rights based approach when handling the ongoing global pandemic. The Commission addressed the individual needs of the members of the public, discussed the Human Rights Act, 1981 with a view to determining whether any grounds and areas of discrimination could be identified and provided appropriate referrals. Furthermore, the Commission used the engagements to reinforce that where mandatory practices or policies are applied in a general manner, the potential for discriminatory impacts exist and must be carefully assessed to ensure that violations do not occur. There is a risk of unlawful discrimination occurring where practices and policies fail to account for individual circumstances and characteristics, which may result in persons being unfairly disadvantaged.

[1] The northernmost regional state in Ethiopia.

Human Rights Tribunal

The Executive Officer reviews the material obtained throughout the course of the investigation and provides all parties with a decision with respect to whether the complaint will be referred to the Human Rights Tribunal in accordance with section 18(1) of the Act. When deciding to either refer or dismiss a complaint following an investigation, the Executive Officer considers whether the complaint appears to have merit. Where a complaint is deemed to appear to have merit, it is referred to the Human Rights Tribunal for adjudication, however, where a complaint is dismissed, the Executive Officer provides the complainant with their decision and invites the complainant to make further representations prior to dismissing the complaint.

The Human Rights Tribunal is established by section 17A of the Act, and this body is comprised of individuals independent of the Human Rights Commission and is responsible for hearing matters referred by the Executive Officer.

Voluntary Mediation Programme

Mediation is a method of resolving complaints by bringing the parties together and helping them to move from a conflict situation to one of a resolution. It is a practical process through which the Mediator helps the parties to work towards a mutually agreeable resolution. The parties are provided with three options to choose from to appoint a Mediator, following a conflict check, where the parties are unable to agree, the unselected Mediator is appointed to facilitate the mediation process. The mediation process is always voluntary, and delivered at no cost to either party, to aide in resolving any grievances. In 2021, mediation efforts were carried out for four (4) matters, one (1) was successful and resulted in the parties mutually resolving the complaint. Two (2) matters were unsuccessful and proceeded to an investigation and by the end of 2021, one (1) matter remained ongoing with the parties continuing to engage in the Voluntary Mediation Program.

Referral Process

The Commission provides a robust triage and referral process to assist the public in finding a resolution to their query or complaint in the event their matter does not appear to fall under the authority of the Human Rights Act, or where another organization may be of assistance. In 2021, the majority of referrals were made to the Department of Workforce Development.

Education & Engagement

All residents of Bermuda have rights and responsibilities which are enshrined under the Bermuda Constitution Order 1968 and which are extended through the Human Rights Act, 1981.

Amongst other protections these fundamental rights forbid discrimination based on certain personal characteristics and areas of daily life. Human rights education and engagement is designed to enhance legislated protections, beyond enforcement, to support a culture with shared responsibility to consider, balance, evolve, and uphold rights. Educational delivery is diverse and includes awareness-raising, research and analysis, consultations, policy guidance, training, and strategic stakeholder partnerships.

Rights in the Community

2021 saw Bermuda and the world still gripped by the pandemic and its impacts. Considerations around individual and collective human rights continued to influence all spheres of life in Bermuda.

The experience of the previous year emphasised the value of joining forces with essential services and rights-advocates to uphold Bermuda's rights commitments and foster greater understanding of the distinct lived experiences in our community.

Bullying and Sexual Harassment in the Workplace

The Executive Officer joined the Ministry of Labour in a Forum to discuss the expanded protection against bullying and sexual harassment under the Employment Act, 2000. Under the Trade Union and Labour Relations (Consolidation) Act 2021 and the Employment Amendment (No2) Act 2020, all employers must have a policy against bullying and sexual harassment in the workplace. The commitment to fostering a zero-tolerance culture must be fundamental to an organisation's operation. The amendment to the Employment Act 2000 required all employers to have a Bullying and Sexual Harassment Policy in place by 1 June 2021.

The Forum sought to raise awareness of obligations, and address the effects of bullying and sexual harassment in the workplace and how best to protect against it. The Commission reinforced the existing protection from sexual harassment under the Human Rights Act, 1981, the absence of protection from indiscriminate bullying and the significance of embedding these protections within our national employment legislation to create healthy, safe and productive workplace environments.

Human Rights Day

The Commission participated in a collaborative commemoration at City Hall organised by social justice advocate and founder of Imagine Bermuda, Glenn Fubler. This year's theme focused on 'Equality' and Article 1 of the Universal Declaration of Human Rights emphasizing that 'all human beings are born free and equal in dignity and rights.' The Commission reinforced that the principles of equality and non-discrimination must be at the heart of human rights practices and protections. The commemoration was an opportunity to emphasise the shared responsibility we hold to reimagine and fortify efforts to tackle systemic inequalities, exclusion and discrimination in all areas of life in Bermuda.

Pride 2021

The annual celebrations, modified due to the pandemic, included a panel discussion addressing LGBTQ+ pride and allyship in Bermuda. A Beach Day was also held to provide a safe space to commune and celebrate the anniversary of Bermuda's first PRIDE march. This year the Bermuda Pride organisers focused on celebrating togetherness, visibility, and education with the theme "A Deeper Love". As a spokesperson shared, "While our fight for equality on multiple fronts continue, society has become increasingly understanding and accepting of our right to be who we are, love who we want and live as we deserve."

Human Rights Guidance

The Commission is both a complaints-handling authority and a public resource to promote understanding of human rights obligations and compliance with the Human Rights Act, 1981. Over the past year, individuals and groups across the public and private sectors sought guidance on various issues related to the Human Rights Act 1981 and associated responsibilities.

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A few examples of guidance over the past year include:

Application of the Human Rights Act, 1981:

Sec. 6A Special Programs: The Commission may approve in writing any special plan or program where the program is designed to relieve hardship, economic disadvantage or assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity (sec. 6A(1)(a). The same applies where the program is designed to increase the employment of members of a group or class of persons because of their race, colour, ethnic or national origins or place of origin of the members of the group or class (sec. 6A(1)(b). During the application process, the Commission engages with the applicant to explore the rationale for the program, review the data obtained by the applicant to support the rationale for the program, identifying the program's eligibility criteria and considering how the applicant intends to assess and measure the success and effectiveness of the program.

International Conventions and Compliance:

The Government of Bermuda is responsible for the adherence to international human rights standards and obligations, as enshrined in the conventions and other legal instruments extended to the island. As Bermuda's National Human Rights Institution, the Commission participates in stakeholder consultations to monitor compliance. This past year included an evaluation of the UN Convention on the Rights of Persons with Disabilities and its extension to Bermuda, and a review of Bermuda's compliance with Agenda 30 and the United Nations Sustainable Development Goals.

Inclusive and Accessible Workplace Practices:

Creating a healthy, productive and inclusive workplace requires consistent consideration and intention. An organisation approached the Commission to discuss measures to assist visually impaired employees during mandatory training sessions held by the company. The organisation proposed accommodating employees in a specific manner and were encouraged to engage directly with the employees in need of accommodation to ascertain what they required to effectively participate in the training. The Commission explained the duties under the Human Rights Act, 1981 and highlighted that adopting a "one-size fits all approach" is not sufficient to ensure that all employees are able to access the training. The Commission provided further recommendations and resources to assist.

In Remembrance

LAVERNE FURBERT, J.P.
(September 1, 1946 – January 31, 2021)

The Human Rights Commission wishes to express our condolences to the family of LaVerne Furbert. The countless tributes in her honour recognised Sis. Furbert for her dedication to family, public service, and steadfast advocacy to protect and advance labour rights. Sis. Furbert also served as a Human Rights Commissioner.

Laverne's Bermuda Industrial Union colleagues shared,

'Sis. LaVerne, in the words of Martin Luther King Jr., was truly a Drum Major for Justice; she was fearless and a woman of principle, and she stood on her beliefs no matter who disagreed with her. Sis. LaVerne spoke on issues that many were afraid to speak on. She was a true Trade Unionist and would go out of her way to help our members when needed and would defend the principles of the union to anyone who dare speak ill of the BIU.'

And from the Progressive Labour Party,

'Sister Laverne's counsel and candour could always be counted on as the Party toiled in Opposition or served in Government. LaVerne was fearless, had a sharp tongue and strong opinions, but a huge heart and a giving soul. She would help anyone in need, political persuasions cast aside.'

DESMOND TUTU
7 October 1931 – 26 December 2021

'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!'

"My humanity is bound up in yours, for we can only be human together."

Legal Matters

The Human Rights Act, 1981, was amended in 2021, which brought forth structural changes to how matters referred to a tribunal are adjudicated with the establishment of the Human Rights Tribunal under section 17A of the Act. The Human Rights Amendment Act 2021, passed in both the House of Assembly and the Senate, and received the assent of the Governor on September 27, 2021.

The amendments expanded the functions of the independent Selection and Appointment Committee to include conducting the recruitment, selection and appointment of a panel of members to the Human Rights Tribunal. Panel members of the Human Rights Tribunal are not subject to the direction or control of any other person or authority and are appointed for terms of one to three years with the panel Chairperson and Deputy Chairperson being appointed for a term of three-year years.

The amendments established Schedule 3, which provides for the appointment of panel members to the Human Rights Tribunal, the constitution of the Tribunal and proceedings before the Tribunal.

The amendments established further statutory powers of the Human Rights Tribunal, which included the power to obtain information, require a person to appear before the Tribunal and give evidence or produce documents, exclude the public or any representative of the press, if necessary or desirable to protect the privacy of the parties to the hearing and to determine any matter before the Tribunal. In each calendar year, the panel Chairperson is statutorily responsible for submitting reports to the Executive Officer to set out decisions and awards made by the Human Rights Tribunal.

Accountability

Each year the Human Rights Commission prepares an Annual Report featuring examples of the Commission's engagement over the year, inclusive of key metrics related to intakes and investigations together with educational activities. See our latest Annual Report here. The Annual Report also references all Human Rights Tribunal decisions. Please note the decisions are available to the public and can be sourced on our website or via a request to the Office.

Financial Management

The Executive Officer is the Head of the Department under the Public Access to Information Act, 2010 (PATI) and the Accounting Officer under the Financial Instructions issued by the Minister of Finance.

The Executive Officer serves as the Accounting Officer for the Non-Ministry Office of the Human Rights Commission. In delivering this role, the Executive Officer is supported by the Accountant General, the Non-Ministry Comptroller, the Director of Project Management and Procurement, and the Director of Internal Audit who operate independently of the Commission.

The Department of the Accountant General has responsibility for the administration of the Consolidated Fund which is audited annually by the Office of the Auditor General. The Commission receives a budget allocation from the Legislature out of the Consolidated Fund on an annual basis. The Non-Ministry Comptroller provides advice on strategic planning, budget processes, financial and managerial accounting as well as internal controls for the office.

The Office of Project Management and Procurement provides guidance to public authorities regarding project management and procurement activities to ensure that contracts are awarded to providers of goods and services based on the principles of transparency, competition and the use of objective criteria in decision making. The Department of Internal Audit is classified as a Non-Ministry Office and provides, amongst other things, reasonable assurance that persons entrusted with public funds carry out their functions effectively, efficiently, economically, ethically, equitably and in accordance with international standards for the professional practice of internal audit.

Statement of Accounting Officer's responsibilities

The Accounting Officer has responsibility for maintaining a sound system of internal control that supports the delivery of policies, aims and objectives, whilst safeguarding the public funds and assets. The responsibilities of the Accounting Officer of the Commission including keeping proper records of expenditure of the budget funding allocation received by the Commission from the Legislature. On 31 March of each fiscal year, our Accounting Officer is required to certify that balances on the accounts in our office are correct and provide a reconciliation of those balances to supporting documentation.

Timeline of the Human Rights Act

est. 1981

1981

Enactment of the Human Rights Act 1981 "HRA"

1982

Establishment of the office of the Human Rights Commission

1983

Human Rights Day celebrated in Bermuda for the first time on December 10th

1988

First amendment to the HRA affording protection for persons with disabilities Sec 2(iiiA)

1992

HRA Amendments:

- The Act also applies to Government
- Definition of Sexual Harassment broadened Sec 9(1)
- Complaint may be heard up to 2 years (if there is good reason for delay) and that no one would be prejudiced Sec. 14H(1)(c)

1995

HRA Amendments:

- Provision for special programmes Sec 6A
- Provision for Commission to initiate its own investigations
- Compensation and fines for adjudicated claims of discrimination

1998

HRA Amendment:

- Provision for Equal Pay for Equal Work added to Act Sec 6(1)(bb)

2000

HRA Amendments:

- Definition of physical disability expanded Sec 2(1)(a)
- Terms such as "ancestry" replaced with "ethnic or national origins" and "religious beliefs" replaced with "religion or belief" Sec 2(2)(vi)
- Provision for protection in the area of employment for persons who have criminal records Sec 2(2)(a)(vii)
- The term "secrecy" was replaced with "confidentiality"
- Expanded protection for employees with employers expected to ensure a workplace free from harassment and discrimination

Human Rights Commission
Bermuda

2005

Voluntary mediation introduced as the primary means of settling complaints

2010

Amalgamation:

- The functions of the Commission for Unity & Racial Equality (CURE) were transferred to the Human Rights Commission and the CURE Act repealed

2011

HRA Amendment:

- Expanded protection for persons with disabilities in the area of employment with the provision for employers' duty to accommodate up to the point of unreasonable hardship (Schedule 1)

2012

Amendment to the structure and function of the Commission:

- Replacement of the Boards of Inquiry process with Human Rights Tribunals and independent appointment of Commissioners

2013

HRA Amendments:

- Protection from discrimination afforded to persons on the basis of sexual orientation Sec 2(2)(a)(ii)
- Protection afforded to persons on the basis of age in the areas of goods, facilities and services and accommodations (except in the area of employment) Sec 4(1) & Sec 5(1)
- Terms 'not born in lawful wedlock' and 'has or is likely to have a child whether born in wedlock or not' replaced with the term 'family status' to cover a range of family forms Sec 2(2)(a)(iv)
- Expansion of communication formats e.g. use of social media, as a form of publication Sec 8A
- Expanded description of available dispute resolution methods added Sec (14J)
- Human Rights Tribunals adjudicate complaints of discrimination, with judgements enforceable through the Supreme Court

2016

HRA Amendments:

- Expanded protection for persons who have or have had a mental impairment Sec 2(1)(b)
- Further protection to prohibit the publication of racist material and racial incitement to include all protected grounds of discrimination Sec 8A(1)(a)
- Expansion of the definition of a public place to include any other premises or place to which the public has access, whether on payment or otherwise Sec 8A(3)(aa)

2021

Human Rights Tribunal:

- Expanded Selection and Appointment Committee functions, Sec 13B
- Established Schedule 3, Human Rights Tribunal
- Expanded Tribunal powers, Sec 19A-19C

Letter of Transmittal

The Office of the Human Rights Commission was established under the Human Rights Act, 1981, and our statutory powers and duties are described in the Human Rights Act, 1981 and Commissions of Inquiry Act, 1935. As a non-Ministry office, we receive a budget allocation from the Legislature and are subject to the standards enshrined in the Public Treasury (Administration and Payments) Act, 1969.

This is the Annual Report for the year 1 January 2021 to 31 December 2021 which reflects the story of the work we carried out during this period for the fulfilment of our statutory mandate.

"It is the duty of every citizen to protect the rights of others"

MARTIN LUTHER KING JR.

Human Rights Commission
32 Victoria Street
P.O. Box HM 734
Hamilton HM CX
Bermuda

Phone: : 441.295.5859

Email: humanrights@gov.bm

Human Rights Commission
Bermuda