



HUMAN RIGHTS COMMISSION

2012 ANNUAL REPORT





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HUMAN RIGHTS COMMISSION
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.....Then they came for me, and there was no one left to speak for me

- Martin Niemöller

First they came for the communists,
and I didn't speak out because I wasn't a communist.

Then they came for the socialists,
and I didn't speak out because I wasn't a socialist.

Then they came for the trade unionists,
and I didn't speak out because I wasn't a trade unionist.

Then they came for me,
and there was no one left to speak for me.

The Human Rights Commission believes in the importance of advocacy and the lesson reinforced by Niemöller that no one should be complicit through their silence or by turning a blind eye to the repression or exclusion of another. The Commission is dedicated to promoting and protecting human rights for all in Bermuda. We encourage you to be a human rights advocate in your own life. Your voice, your choices and your actions in support of justice will make Bermuda, indeed the world, a better place.



VISION

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

MISSION

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

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Letter of Transmittal

30 April 2013

The Hon. Wayne Scott, JP, MP
Minister of Community and Cultural Development
Dame Lois Browne-Evans Building, 4th Floor
58 Court Street
Hamilton HM 12
Bermuda

Dear Minister,

On behalf of the staff and Commissioners of the Human Rights Commission, I am pleased to provide you the Commission's Annual Report for 2012.

We submit this report to you for presentation to the Legislature, in accordance with Section 30A of the Human Rights Act 1981.

Sincerely,

A handwritten signature in black ink, appearing to read 'MSO', with a stylized flourish at the end.

Michelle Scott-Outerbridge
Chairperson

MESSAGE FROM THE CHAIR

From Strength to Strength — Reflections on 2012

The Human Rights Act 1981 (the Act) prohibits discrimination based on specified grounds, in certain areas. The Human Rights Commission believes that equality, dignity and equal opportunity are essential to the foundation of a healthy community. While strides have been taken towards the elimination of discrimination; discrimination and its resulting inequality is not yet a thing of the past and continues to impact people on a daily basis in Bermuda.

The Human Rights Commission was established to carry out functions under the Act, fulfilling its mandate to settle complaints of discrimination, to adjudicate complaints through Boards of Inquiry and to create awareness through education.

Bermuda has a long history of advocacy, and amendments to the Human Rights Act reflect strides towards ensuring protection for all. However, the human rights legislation in Bermuda must change at a more rapid pace to demonstrate Bermuda's commitment to what is right and just.

We are extremely pleased that the Human Rights Amendment Act 2012 has provided for a modernized human rights system in Bermuda. These changes included the appointment of a Selection and Appointment Committee to select Human Rights Commissioners, changes to the complaint screening function and changes in how Tribunals (formerly Boards of Inquiries) will be appointed. These important developments are crucial steps in our commitment to modernizing and strengthening the work of the Commission. It is our hope that other necessary changes will quickly follow suit to ensure protection for all.

In 2012 there were 274 new intakes (complaints) received, a slight increase from the previous year.

During 2012, investigations undertaken by the Commission were as follows:

- 25 formal investigations of discrimination, 11 of these approved in 2012;
- 2 investigations were deemed abandoned by the Commission;
- 4 were withdrawn by the Complainants;
- 6 investigations were carried over into 2013;
- 4 cases were referred to a Human Rights Tribunal after 26 October 2012; and
- 3 cases, prior to 25 October 2012, were referred to a Board of Inquiry.

The Commission has embarked on a new strategic plan. We are setting priorities to create a culture of human rights in Bermuda. There remains much work to be done including seeing the Commission's call for expanded legislative protection to include age, sexual orientation and mental disability as protected grounds in the Human Rights Act.

The Commission will certainly continue its commitment to community engagement and to providing a fair and transparent complaint resolution process thereby increasing access to justice in human rights in Bermuda. It is our vision that sees a community that honours and protects human rights for all.

I extend my sincere gratitude to all Commission staff and members for their excellent accomplishments in 2012.

Yours faithfully,



Michelle Scott Outerbridge, Chair



Michelle Scott-Outerbridge, Chairperson
and Lisa Lister Reed, Executive Officer

*The Commission has embarked on a new strategic focus;
setting priorities to create a new positive approach to
human rights in Bermuda*

THE 2012 COMMISSIONERS



Name: Michelle A. Scott Outerbridge, Chairperson
Length of Service: 2011–2012

Most significant issue facing the HRC in 2012: The increase in the number of situations involving discrimination in the workplace and that the Human Rights Commission, on its own, cannot stop discrimination.

Vision for the future direction of the HRC: To see the Human Rights Act amended to include discrimination based on age, mental health and sexual orientation and to see more emphasis on educating the public with special attention directed at organizations.



Name: Marc Daniels, Deputy Chairperson
Length of Service: 2011–2012

Most significant issue facing the HRC in 2012: Regrettably, I only had the privilege to serve for one year prior to being appointed to the Senate. However, the biggest challenge I saw was the lack of legislative powers to enforce what would otherwise be meritorious under claims for sexual harassment. The Government has done well to start to make amendments to ensure greater protection, but I fear more work is to be done legislatively.

Vision for the future direction of the HRC: The HRC needs to improve its publicity campaign so that human rights matters are at the forefront of our collective society's mind. Not everyone appreciates what may constitute human rights violations and therefore more public education is required to reduce the number of cases. Furthermore, we need to consider stiffer penalties for breaches and violations under the Human Rights Act such that there are greater deterrents in place.



Name: Kenneth Burns, Commissioner
Length of Service: 2010–2012

Most significant issue facing the HRC in 2012: The need to amend the Human Rights Act 1981 to include sexual orientation as a protected ground.

Vision for the future direction of the HRC: I believe the Human Rights Commission needs to be separate from Government.

THE 2012 COMMISSIONERS



Name: Rachel C.K. Bailey, *Commissioner*

Length of Service: 2011–2012

Most significant issue facing the HRC in 2012:

The fact that the Act should be amended to include sexual orientation. Further, there is no current policy or clause in the Act that would allow the Commission to financially support Complainants throughout their appeals process after a Board of Inquiry if their claim was originally deemed meritorious.

Vision for the future direction of the HRC:

To include the above mentioned.



Name: Carlton C. Crockwell, Sr., JP, *Commissioner*

Length of Service: 2010–2012

Most significant issue facing the HRC in 2012:

Equality for all mankind regardless of their sexuality.

Vision for the future direction of the HRC:

To continue to deal with people fairly and to educate the public on the Human Rights Commission and their role in Bermuda.



Name: Gwyneth V. A. Rawlins, JP, PCS, ALMI, ACS, *Commissioner*

Length of Service: 2010–2012

Most significant issue facing the HRC in 2012:

The call for the Human Rights Act to be amended to include discrimination against sexual orientation.

Vision for the future direction of the HRC: That the HRC will be the ultimate body in ensuring that all human rights are protected and that all people can rely on fair and objective deliberation without hesitation.



Name: Megan Pitman, *Commissioner*
Length of Service: 2009–2012

Most significant issue facing the HRC in 2012:

It was twofold—inability to push further changes to the Act (to be inclusive of protection for sexual orientation and age) and limitations in non-partisan appointment of Commissioners—both hindered by the lack of independence from Government.

Vision for the future direction of the HRC: To perform effectively as a non-governmental independent organization, promoting an up-to-date Human Rights Act, in accordance with human rights as proclaimed in the Universal Declaration of Human Rights and other such internationally recognized tools and bodies. And to gain wider recognition/awareness of human rights from the Bermudian public so as to impact better understanding and improvement in the ever-persistent problem areas like racial inequality.



Name: Nicholas Fagundo, *Commissioner*
Length of Service: 2011–2012

Most significant issue facing the HRC in 2012:

In terms of the caseload, we seemed to deal with a number of cases of perceived discrimination in terms of race and country of origin.

Vision for the future direction of the HRC:

Going forward, there needs to be both a clarification of the local legislation so that all human rights are protected, and education of the public as to what their rights are.



Name: Mindell Goater, *Commissioner*
Length of Service: 2010–2012

Most significant issue facing the HRC in 2012:

The most significant issue faced by the HRC in 2012 was advocating to have age discrimination added to the Human Rights Act.

Vision for the future direction of the HRC:

My vision for the future of the HRC is to become an independent body separate from Government.



Name: David A. Northcott, *Commissioner*
Length of Service: 2011–2012

Most significant issue facing the HRC in 2012:
 I believe there are two significant issues facing the HRC: The first is the lack of independence from Government. The structure of the HRC as essentially a governmental department and not an independent body compromises its integrity, and disallows it from being considered a proper National Human Rights Institute (NHRI) as defined by the United Nations Paris Principles.

The second significant issue is the amendment of the HRA to expand the grounds of unlawful discrimination to include sexual orientation (including transgender issues) and age.

Vision for the future direction of the HRC:
 My vision for the future of the HRC is that of a truly independent body, recognized and affiliated to the UN (through the UK) as a NHRI, and working with the Office of the Ombudsman to more effectively promote human rights in Bermuda.



Name: Michael DeCouto, *Commissioner*
Length of Service: 2010–2012

Commissioner DeCouto's comments were not available at time of printing.



OFFICERS OF THE COMMISSION

Lisa Lister Reed	Executive Officer
Robert Anthony	Legal Counsel
Sara Clifford	Education Officer
Donna Mapp	Temporary Administrative Intake Officer
Graham Robinson	Investigations Officer
Darnell Harvey	Investigations Officer
Treadwell Tucker	Investigations Officer (from February 2012)
Kim Williams	Project Officer

MANDATE

The Commission's mandate is both to educate and promote the concept of equality of all members of the community, as well as to investigate and endeavour to settle allegations of discrimination.

To meet this mandate, the Commission:

- promotes understanding of the Human Rights Act, 1981
- conducts human rights programmes, activities and education
- advocates for the protection and promotion of human rights
- receives and logs complaints
- conciliates and mediates disputes
- investigates complaints of discrimination
- refers meritorious complaints of discrimination to Boards of Inquiry

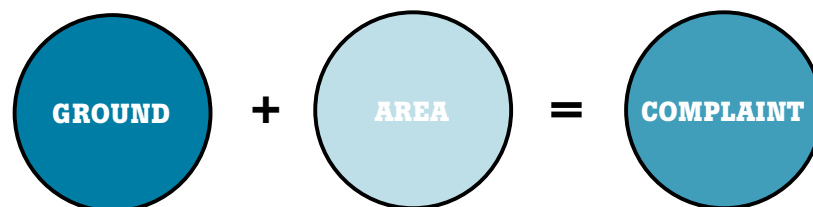
The Human Rights Commission offers free and confidential services to members of the public who have human rights inquiries and complaints of unlawful discrimination. The Commission also works with organizations, schools, businesses and individuals to aid in efforts to uphold the promotion and protection of human rights for all. The Commission is charged with the enforcement of equality legislation, with consideration given to grounds and areas. In order for the Act to take jurisdiction, a ground and area of discrimination should be identified.

The grounds include:

race, place of origin, colour, ethnic or national origins, sex, religion, beliefs or political opinion, marital status, disability, criminal record, or having a child whether born in lawful wedlock or not.

The areas include:

employment, housing, goods, facilities and services, contracts, public notices, membership in associations and trade unions.



EDUCATION AND ADVOCACY



The Human Rights Act 1981 outlines protections that are afforded to all persons residing in Bermuda, and the Human Rights Commission has a responsibility to make known these rights, while working towards expanding legislative protection to progress our community towards equality for all.

The mandate for educating the public about the rights afforded under the Act is broad, and the work of the Awareness and Advocacy team is necessarily varied. Building capacity through strategic collaboration has proven to be effective in maximising resources, broadening outreach, identifying diverse stakeholder concerns, and helping to contextualize the discussion on rights in Bermuda. It has also been a valuable means of fostering relationships with similar agencies in the hope of modelling the spirit of cooperation and consideration we seek to encourage in our community. In addition to ongoing outreach initiatives, the team provided support by drafting policies to put into effect the legislative amendments and conducting cross-jurisdictional research to inform proposals to evolve the Act.

A few highlights over the past year include:

- Continuing to develop the educational unit with new resources.
- Outreach and lobbying efforts in support of amending the Human Rights Act 1981 to include sexual orientation as a protected ground.
- Cross-jurisdictional research to inform recommendations in order to expand protections under the Human Rights Act, 1981 including protection for age and mental health.
- Providing our, 'Know Your Rights; Understand Your Responsibilities' presentation to non-governmental organisations, religious groups, businesses and government

departments.

- Engaging with businesses, employee and employer groups on the 2011 Unreasonable Hardship Reasonable Accommodation Amendment, in addition to providing a comprehensive review of the responsibilities under the Human Rights Act, 1981 to assist bringing rights to life in the workplace.
- Providing film viewings to schools in support of human rights concepts and practices.
- Continuing to improve and develop our referral process by liaising with government agencies and service providers to expand understanding of our respective mandates in order to aid the public in finding the most appropriate assistance.
- Supporting our partner agencies e.g. Fairmont Southampton Wellness Fair with the National Office for Seniors and Physically Challenged (NOSPC), CURB Racial Justice Conference, Women's Council International Day Celebrations, Bermuda National Gallery educational exhibit, Rainbow Alliance public gathering, Centre for Justice's public forums.
- Implementing and developing the Non-Bermudian Workers Support Taskforce a collaborative body dedicated to providing support for the protection and promotion of non-Bermudian rights, particularly migrant worker rights, in Bermuda.
- Providing policy and programme assistance to government agencies, businesses and schools in support of their commitment to ensuring rights in the workplace and building inclusive environments. The Commission also assisted organizations to establish anti-bullying policies and complaint handling mechanisms.

The Commission looks forward to expanding our engagement with teachers, students, businesses, government departments, artists, service agencies and interested individuals both locally and overseas as we seek to provide effective support and innovative programming in the promotion and protection of human rights, for all, in Bermuda.

Public Consultation on Age Discrimination

In September 2012, the Human Rights Commission and the Department of Human Affairs hosted a Public Consultation on the topic of Age Discrimination. The consultation was designed to include cross-Ministry representation and bring together key Government agencies including the Departments of Health, Social Insurance, the Pensions Commission, and the National Office for Seniors and the Physically Challenged. These agencies joined the public in sharing their expertise and exploring the impact and importance of age protection.

The public shared their views on the addition of age as a protected ground and discussed the various means in which the age provisions could be provided. The following are some of the real life examples shared by members of the public during the public meeting:

Envision reaching the age of 65 years old and being told by your employer that you must retire despite the absence of a formal retirement policy. This decision could result in the loss of your health benefits and the sidelining of your experience and career. Perhaps you can envision being unable to rent an apartment because the landlord perceives you to be “too old” to live on your own.

Consider being told that you are too young to be hired for a job or that, although you hold the necessary requirements for a job, you are too young to assume such substantial responsibility.

All feedback was captured to help inform ongoing research being conducted by the Department of Human Affairs to provide age protection. The consensus from the public forum was that the omission of age, as a protected ground in the Human Rights Act of 1981, is a grievous oversight, and its inclusion is essential to the framework of protections in Bermuda.

Public Awareness for the International Day for the Elimination of Racial Discrimination

The United Nations International Day for the Elimination of Racial Discrimination is observed worldwide on 21 March, each year. The day aims to remind people of the negative impact of racial discrimination. The observation serves to encourage everyone to remember their obligation and determination to combat racial discrimination. The Commission published and disseminated the adjacent flyer to invite support for our own local observation.



SPECIAL VISITORS TO THE HRC



His Excellency, Governor George Fergusson, made a special visit to the Commission and shared his commitment to the protection and promotion of Human Rights in Bermuda. During his visit, the Governor and staff of the Commission engaged in a discussion on the work of the Commission, including some of the challenges facing human rights and equality in Bermuda as well as the positive steps taken towards evolving the Act. Governor Fergusson was accompanied by his Executive Officer, Allison Chick.



The Bermuda Ombudsman invited the team to meet with her guest, the Head Investigator for the Ombudsman office in St. Maarten, Ms. Patricia Phillipps. Ms. Phillipps visited our office and shared some key information on the St. Maarten Ombudsman mandate, as well as challenges and lessons learned.



In turn, Officers shared their complaint handling processes and typical complaint observations. Training Facilitators Geanine Sibblies and John Dorion, provided Officers with an investigations training program to expand the Commission's capacity to investigate alleged human rights complaints and in accordance with best practice.

INTAKES AND INVESTIGATION

Other activities of the Human Rights Commission include fulfilling its duties related to the enforcement of the Act. An intake is any form of contact made by a member of the public, whose intent is to bring to the attention of the Human Rights Commission a complaint or concern. An intake may be lodged by telephone, mail, email or by walk-in. The substance of an intake may or may not fall under the Act, however every intake is documented and carefully reviewed to determine the Commission's jurisdiction.

Total Intakes

Total intakes brought to the Commission's attention in 2012 were 274. Table 1 and Figure 1 following, display total intakes for 2009 to 2012.

Table 1 – Total Intakes, 2009 – 2012

Year	Intakes
2009	210
2010	237
2011	270
2012	274

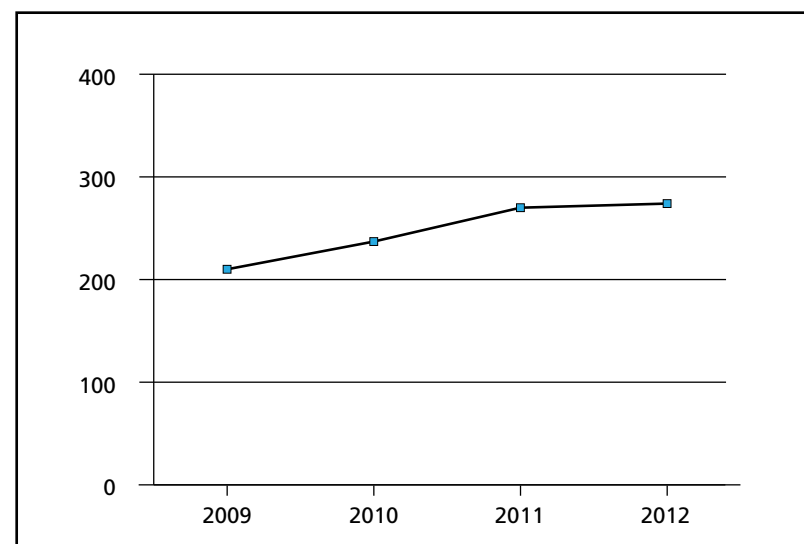
Table 2 adjacent illustrates the total number of intakes heard by the office of the Commission in 2012 by the type of intake. Intakes are classified into two types: Complaints and Queries. Note that data comparisons for previous years have not been provided as a result of a re-categorization of the Commission's data collection statistics. Subsequent years should see increased comparison data tables.

A complaint is any concern brought to the Commission by a Complainant who believes their rights have been infringed under the Human Rights Act 1981.

Table 2 – Total Intakes Received by Type of Intake, 2012

Year	Total Intakes	Type of Intake	
		Complaints	Queries
2012	274	225	49

Figure 1 – Total Intakes, 2009 - 2012



A query is a request for information regarding a specific area of the Act or a general question.

There were 274 intakes brought to the attention of the Commission in 2012. Complaints comprised the majority of intakes at 225 or 82% while the remainder represented queries at 18% or 49.

Table 3 – Intakes by Month, 2012

Month	Number	Per cent
January	25	9
February	23	8
March	32	12
April	24	9
May	15	5
June	19	7
July	22	8
August	23	8
September	21	8
October	29	11
November	27	10
December	14	5
Total	274	100

The mean average of intakes received by the Commission per month in 2012 was approximately 23 intakes. The month of March recorded the largest number of intakes received, 32 intakes and 12% of the total. The months of May and December recorded the least number of intakes in 2012, at 5% each.

Table 4– Intakes by Gender of Complainant, 2012

Gender	Number	Per cent
Male	106	39
Female	167	61
Total	274*	100

*One Complainant's gender was not identified. The intake was lodged anonymously via an e-mail message.

Table 4 above demonstrates that in 2012, females approached the Commission more often than males, noting a higher percentage of intakes of 61% in comparison to males at 39%.

Table 5 – Approved Investigations by Outcome, 2012

Year	Complaints Approved for Investigation for the Year	Investigations Successfully Resolved via Conciliation/ Mediation	Investigations Ongoing for the Year	Investigations Dismissed under Section 15(8)	Complaints Approved for Investigation but later deemed abandoned	Complaints Approved for Investigation but later withdrawn by the Complainant	Investigations Referred to Boards of Inquiry or Tribunal
2012	11	1	6	0	1	3	0

In 2012, the Human Rights Commission approved 11 complaints for further investigation. Of this total, one complaint was resolved via mediation efforts, while six were ongoing during the year and therefore, continued into 2013. One complaint was classified as

abandoned, because the Complainant did not contact the Commission to pursue the complaint and three Complainants withdrew their complaints after they had been approved for investigation.

Table 6 – Ongoing Investigations by Outcome, 2012

Year	Ongoing Investigations	Investigations Successfully Resolved via Conciliation/ Mediation	Investigations Dismissed under Section 15(8)	Complaints Approved for Investigation but later deemed abandoned	Complaints Approved for Investigation but later withdrawn by the Complainant	Investigations Referred to Boards of Inquiry or Tribunal
2012	14	0	5	1	1	7

Ongoing investigations are investigations that were approved prior to 2012 but remained opened without resolution into 2012.

In total, there were 25 investigations being managed by Investigation Officers in 2012. As Table 5 reflects, 11 complaints were approved for investigation in 2012. Table 6 displays that 14 investigations were approved for investigation preceding 2012 and carried over into 2012. Of the 14 cases, five were dismissed under Section 15(8) of the Act, one was abandoned by the Complainant and another was withdrawn. Seven investigations were referred either to the Minister responsible for Human Rights to convene a Board of Inquiry, or, as specified by the 2012 HRC Legislative Amendment, a Human Rights Tribunal.

Table 7 – Total Investigations (Approved and Ongoing) by Ground of Discrimination Identified, 2012

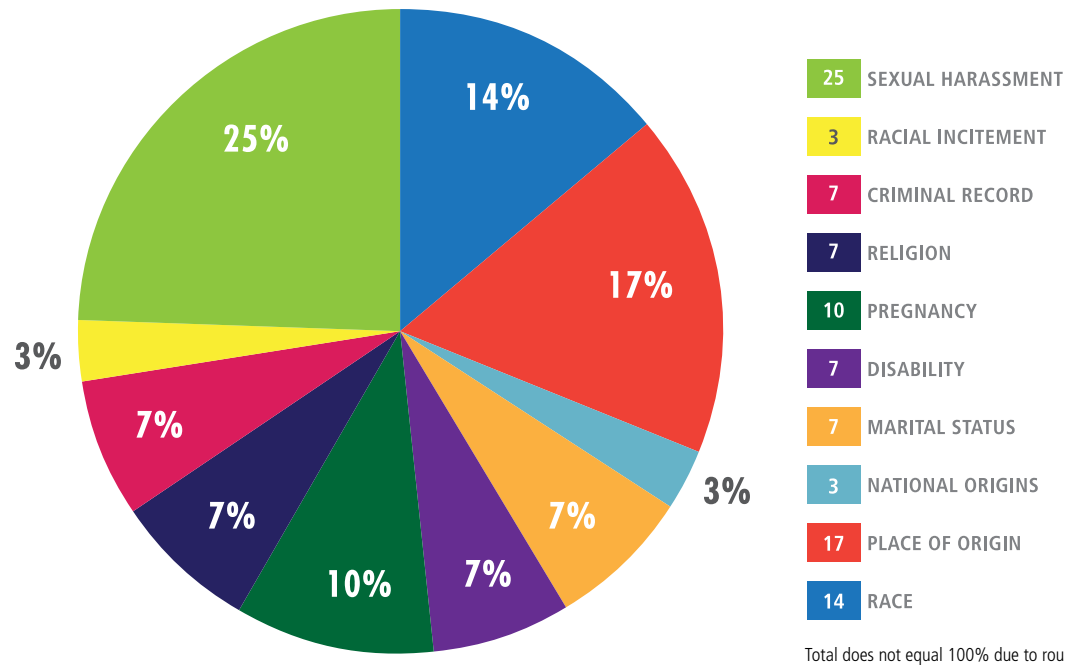
Ground of Discrimination	Number (#)	Percent (%)
Race	4	14
Place of Origin	5	17
Colour	-	-
Ethnic Origins	-	-
National Origins	1	3
Sex	-	-
Marital Status	2	7
Disability	2	7
Not born in lawful wedlock	-	-
Pregnancy	3	10
Religion	2	7
Beliefs	-	-
Political Opinions	-	-
Criminal Record	2	7
Racial Incitement*	1	3
Sexual Harassment*	7	24
Total	29	100

In 2012, sexual harassment complaints outnumbered all other grounds of discrimination identified by Complainants, constituting 24%, or 7 investigations of the total 29. Place of Origin and Race followed closely at 17% and 14%, respectively. At 10%, complaints of discrimination based on the ground of pregnancy were the next highest ground identified. All other remaining grounds, as displayed in Table 7 and Figure 2, accounted for less than 10% of those identified.

Total investigations in **Table 7** do not equal approved and ongoing investigations as displayed in **Tables 5 & 6** because **Table 7** is displaying that in a few cases, investigations were approved under more than one ground. Percentage total may not equal 100 due to rounding.

* Racial Incitement and Sexual Harassment are covered under sections 8A and 9, respectively while the remaining grounds are covered under Section 2 (2) (a).

Figure 2 - Investigations by Ground of Discrimination

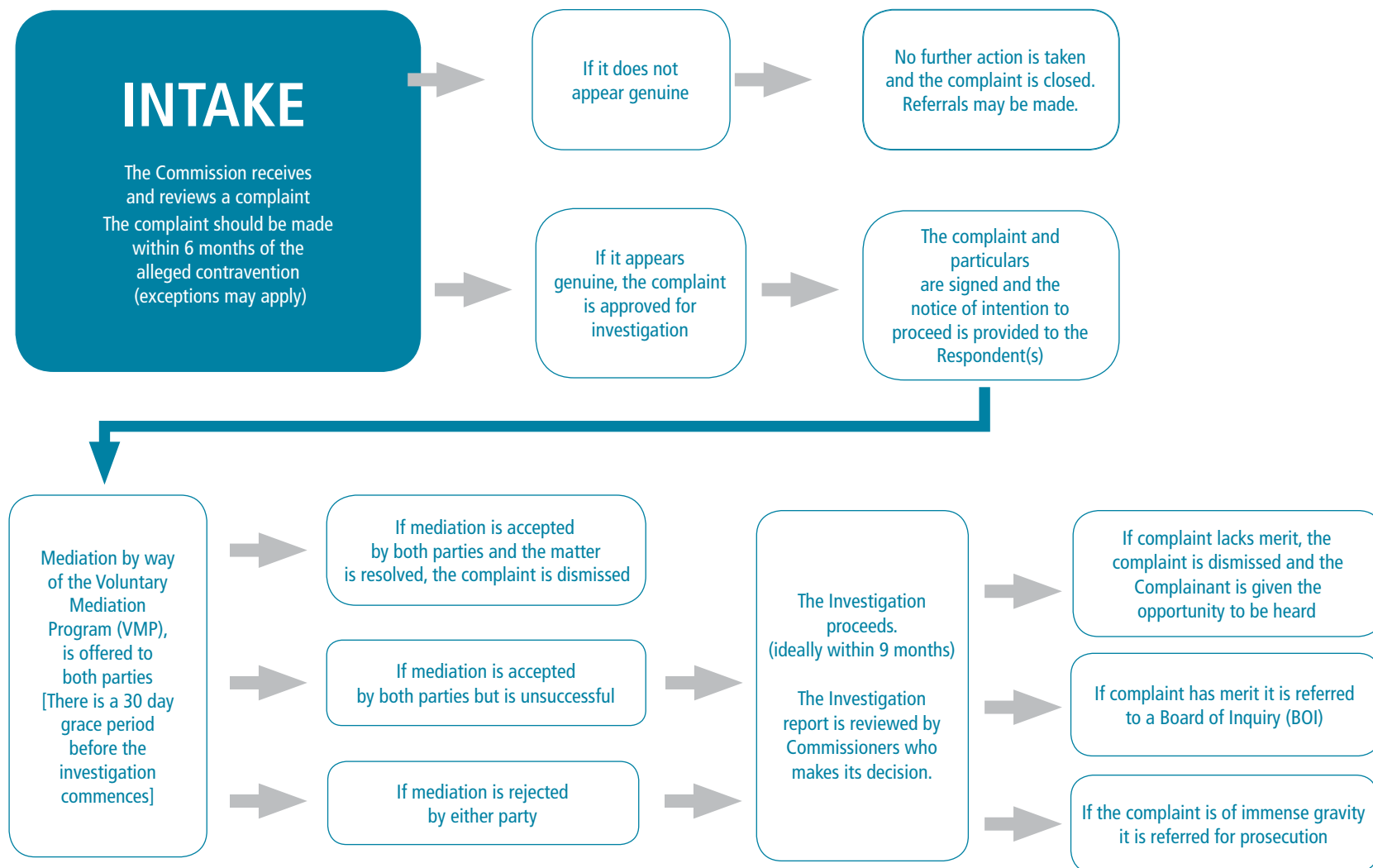


The Human Rights Commission has been developing a robust referral service to ensure that members of the public receive maximum assistance with their concern, even if it does not involve a violation of the Human Rights Act 1981. At the point of contact, Complainants who approach the Commission may be given a provisional referral, where appropriate, while being reviewed by the Commission. Referrals can be either to Government Departments or to non-governmental agencies whose services could potentially be beneficial or better suited to resolving a Complainant's concern. The majority of provisional referrals made by the Commission are to the Government Department of Labour, as the complaints are often related to alleged infractions of the Employment Act 2000.

There are a number of agencies which may serve as a suitable referral depending on the complaint, including, but not limited to, the Centre on Angle Street (where access to free limited legal advice is provided for the public every Thursday evening, a service provided by the Legal Aid office), the Ombudsman of Bermuda, the Department of Immigration, the Department of Social Insurance and the Office of the Pension Commission. The aim of this referral process is to assist in resolving matters in an expeditious and effective manner.

THE COMPLAINT PROCESS —

Investigation of Complaints under section 15 (1) (a) of the Act up until 26 October 2012



SAMPLE COMPLAINTS and HRC Action

The following are examples of complaints lodged and dealt with by the Commission during 2012.

Race, Colour, Place of Origin, Ethnic or National Origin

(Section 6(1)(b) as read
with section 2(2) (a) (i)
of the Human Rights Act, 1981)

A Complainant alleged that her employer was paying the white staff a significantly higher wage for the same work than the black staff was getting paid.

The Commission approved this complaint for a formal investigation. The Complainant was able to resolve the complaint through mediation with the employer and, as the matter was settled, the complaint was formally closed.

Sexual Harassment

(Section 9(1), 9(3) and 9(4)
of the Human Rights Act, 1981)

A Complainant alleged that his boss, the Respondent, discriminated against him by sexually harassing him in the workplace over a period of months. The Complainant further claimed that the Respondent touched him inappropriately and made unwanted sexual comments.

The complaint was approved for investigation but was later closed as a result of the Complainant withdrawing his complaint due to the matter being investigated by the Bermuda Police Service.

Disability

(Section 6B as read with
Section 2(2)(a)(iiiA)
of the Human Rights Act, 1981)

A Complainant alleged that his employer, the Respondent, discriminated against him by harassing, humiliating and embarrassing him in the workplace and in front of co-workers because of his disability.

The complaint was approved for investigation. However, before the investigation could be completed, the matter was closed as a result of the Complainant withdrawing his complaint.

The Human Rights Commission and The Bermuda Regiment

In December 2009, the Human Rights Commission launched a public inquiry into allegations of sexual harassment within the Bermuda Regiment. The Commission was not the direct recipient of any of these complaints, but given the nature and number of allegations of discrimination, the Commission invoked Section 15(1)(b) of the Human Rights Act 1981 ('the Act') and began an investigation into the allegations. The investigation was launched based on review of a series of articles published in the fall of 2009, in which *The Royal Gazette* reported that it had uncovered 14 claims relating to sexual harassment in the Bermuda Regiment during or prior to 2002. Having concluded its investigation in 2012, the Human Rights Commission released its findings.

The Chairperson of the Commission put forth a request to the public to encourage persons to come forward with any information related to acts of sexual misconduct that they believed had occurred at the Bermuda Regiment. Assurances came from the Chairperson, the then Acting Minister of Public Safety and the Deputy Governor, stating that any sexual harassment allegation would be investigated. Each of these officials also urged persons, who had either been sexually harassed, or had such knowledge of offences, to visit the Commission, the Police or the Commanding Officer in the Bermuda Regiment. Despite the appeals to the public for any additional information, the Commission received no complaints relating to allegations of sexual harassment at the Bermuda Regiment.

In the absence of any information to the Commission, in September 2010 the Commission requested that the Bermuda Regiment provide copies of all sexual harassment and sexual assault cases received by the Bermuda Regiment in the past five years, including the reporting and results of those complaints. The Commanding Officer of the Bermuda Regiment reported that there was only one incident of sexual harassment on record within the Bermuda Regiment, which occurred in 2005. The Commanding Officer also reported that this complaint

was thoroughly investigated and addressed, and further advised that there were no other sexual harassment or sexual abuse complaints within the Bermuda Regiment up to 2010. The Commission noted that all of the alleged incidents referred to in the press were alleged to have occurred in 2002 or prior to 2002 which meant that the Commission were unable to investigate. The Act does not give the Commission the power to investigate complaints that are more than two years old from the date of the alleged contravention of the Act.

In addition, the Commission requested that the Regiment provide evidence of any policies and procedures relating to handling sexual harassment or abuse complaints. The Commanding Officer submitted documents, which indicated that the Bermuda Regiment has a very cogent sexual harassment policy with an adequate complaints procedure in place. The evidence also revealed that the Bermuda Regiment ensures its recruits, soldiers and Commanding Officers are aware of its zero-tolerance toward sexual harassment, and the procedures for reporting these incidents. Further, since 2009, the Bermuda Regiment provides workshops on sexual harassment annually to inform all members of the Bermuda Regiment's position on sexual harassment in general and to reinforce that conduct such as sexual assault or harassment would not be tolerated.

Satisfied that there was a proper sexual harassment policy and procedural guide in place and after examining all the information provided by the Bermuda Regiment, the Commission concluded that there was no evidence to support any further investigation and on 1 March 2012 closed the inquiry. In its final report, the Human Rights Commission recommended to the Bermuda Regiment that it should amend its existing sexual harassment policy to include a reminder that the Human Rights Commission is a statutory body where claims can be investigated, along with the Bermuda Police Service. It was also recommended that it should be made clear in the policy that all Bermuda Regiment personnel have additional options for reporting complaints of discrimination, harassment or sexual harassment outside of the Regiment's complaint handling process.

BOARDS OF INQUIRES

Board of Inquiry Process

Under the Board of Inquiry process, which was in effect until 25 October 2012, if causes of a complaint could not be settled or if the Commission had been trying for a period of nine months to settle the causes of a complaint and was unsuccessful, the matter was referred to the Minister responsible for human rights with a recommendation that it be heard by a Board of Inquiry. Boards of Inquiry were separate and independent from the Commission and the process was administered by the Department of Human Affairs.

Once the Minister had referred the case to a Board of Inquiry, a three person Board was established, consisting of a legally-trained chairperson and two lay persons to adjudicate the matter. The Board would consider all submissions, hold a hearing and render a decision.

Report on Board of Inquiry Hearings

In 2012 three cases were sent by the Commission to the Minister with a recommendation that a Board of Inquiry be established. All three cases were approved by the Minister for referral to a Board of Inquiry. Five Board of Inquiry cases were carried over from 2011. One Board of Inquiry hearing was heard and an appropriate remedy ordered. A Supreme Court ruling ordering that a matter be held by a Board of Inquiry was held in 2011. Two cases were still in progress at the end of 2012, and three cases were closed due to withdrawal by the Complainants.

	2010	2011	2012
Outstanding Cases	2	3	5
Referrals during the year	2	3	3
BOI's Approved	4	3	3
BOI's not approved	2	0	0
BOI's Heard	0	0	1
Complaint's withdrawn	1	0	3
BOI Quashed	0	0	0
Unable to Process	0	0	0
In/Agreed to Mediation	3	0	0
Settled through Mediation	0	1	0
In Progress	0	1	2
Decision signed	0	0	2
In Supreme Court	0	0	0

It is important to note that investigations of complaints of discrimination are confidentially conducted in accordance with the Human Rights Act, 1981. Following an investigation, under the direction of the Executive Officer, any complaints

that are potentially meritorious are referred to the Chair of the Human Rights Commission who empanels a Human Rights Tribunal to hold a Hearing. All Tribunal Hearings are public unless a party makes an application for a private hearing.

LEGISLATIVE DEVELOPMENTS

HUMAN RIGHTS AMENDMENT ACT 2012

In February 2012, the Legislature passed the Human Rights Amendment Act 2012. These amendments were brought into force on Friday, October 26, 2012. The Human Rights Amendment Act 2012 modernizes the organizational structure and streamlines the administrative processes and practices to ensure a more efficient and effective Human Rights Commission.

Part of the rationale for the amendment was as a result of an extensive internal review of the Commission with the purpose of identifying opportunities for process improvements and greater effectiveness. The review revealed that the Commission's 30 year old administrative processes and practices were out of date and that there was need for change to the Human Rights Act 1981 in order for it to measure up to other human rights instruments and institutions around the world.

The main changes to the Act are the following:

1. The Selection and Appointment of Commissioners

- Old Process

Previously, the Minister would appoint Commissioners based on recommendations received via his/her Office.

- New Process

A change in the process for appointing Commissioners provides for an independent Selection and Appointment Committee to undertake the recruitment and appointment of Human Rights

Commissioners. The Minister selects the head of the Committee, based on criteria provided by the Commission, while the head of the Selection Committee selects two other members from the community to serve. The Premier and the Leader of the Opposition are both invited to nominate one to serve.

The five person Committee is tasked with inviting applications from the public to serve as Commissioners, reviewing all applications, interviewing applicants, and appointing up to 12 Commissioners.

The Selection and Appointment Committee was appointed after 26 October 2012. They moved quickly to invite the public to submit application forms with the deadline of 27 December 2012. The Committee received over 120 applications for the 12 seats on the Commission and interviews were subsequently scheduled for January 2013.

2. Complaint screening function

- Old Process

Prior to these amendments, the former process was such that the Commissioners screened complaints and determined whether a complaint warranted further inquiry. If the complaint fell under the jurisdiction of the Act, the Commissioners approved it for investigation. The staff of the Commission conducted investigations and presented their findings to the Commissioners at monthly meetings. The Commissioners looked to settle complaints of

unlawful discrimination through the offer of mediation and other methods. In cases where they were unable to settle the matter, the complaints were sent to the Minister for referral to a Board of Inquiry.

- New Process

The Officers of Commission, now have the function of screening each complaint that comes into the Commission.

The new process under the Human Rights Amendment Act 2012:

- The complaint of discrimination is made to the officers of the Commission. The Executive Officer, in consultation with the officers, then determines if it falls within the scope of the provisions of the Act.
- Conciliation and mediation are offered throughout the investigation process.
- Following an investigation, all meritorious complaints, which have not been settled, are forwarded to the Chairperson for a Tribunal.

3. The Boards of Inquiry process moved to a Human Rights Tribunal.

- Old Process

The former Board of Inquiry process required that complaints that were either unlikely to be settled or settlements that had been tried for a period of nine months but were unsuccessful, be referred to the Minister with a recommendation that it be heard by a Board of Inquiry. Boards of Inquiry were separate and independent from the Commission and administered by the Department of Human Affairs

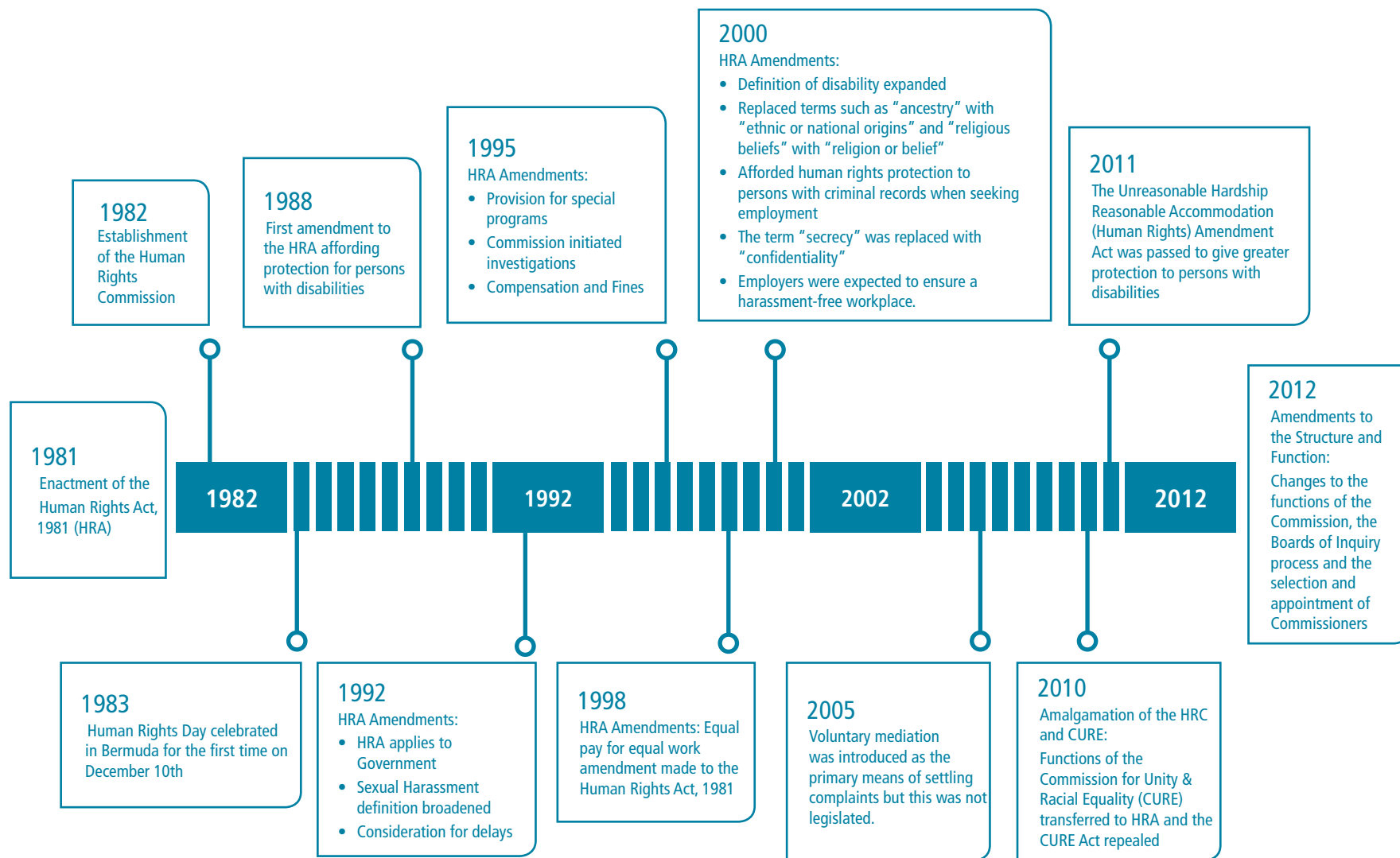
- New Process

The Tribunal process requires Commissioners to adjudicate complaints of discrimination with quasi-judicial authority and responsibilities.

Tribunal hearings resemble traditional court proceedings. They involve parties presenting their cases; the hearing of evidence from witnesses; and cross examination. Tribunal decisions are filed with the Supreme Court to ensure enforcement of an Order made by a Tribunal.

The process and decisions of the Human Rights Commission Tribunals are public information.

EXPANDING PROTECTION: THE FIRST 30 YEARS OF BERMUDA'S HUMAN RIGHTS SYSTEM



AGE DISCRIMINATION

A significant issue examined for legislative changes in 2012 is the addition of age as a protected ground in the Human Rights Act, 1981.

The Government of Bermuda, in recognizing Bermuda's ageing population and the need for protection for the older employees in particular, stated in its 2011 Throne Speech that "Amendments to the Human Rights Act will be tabled to eliminate age discrimination."

To ensure that legislation was broadly informed, the Department of Human Affairs engaged in consultations with numerous stakeholders, in addition to the public forum, to hear firsthand their experiences and perspectives to help frame the amendment.

At the close of the year, the Department was continuing with its research and consultations. Legislative changes to include protection against age discrimination are hoped for 2013, following considerations of all research conducted to inform the Government of the best way the provisions can be implemented.

SEXUAL ORIENTATION DISCRIMINATION

In 2012 the Human Rights Commission continued to call for the long overdue amendment to the Human Rights Act, 1981 to provide protection against discrimination based on sexual orientation.

Organizations such as Two Words and a Comma, Amnesty International, the Centre for Justice and the recently established Rainbow Alliance, in addition to members of the public, also raised concerns regarding the apparent lack of progress and will, on the part of the Government, to outlaw discrimination based on sexual orientation. On 13 July the Hon. Glenn Blakeney, JP, MP, the Minister responsible for human rights, led the debate with a Take Note Motion to introduce an Equality Act, which would establish measures protecting persons from age discrimination, and discrimination based on sexual orientation, particularly in circumstances relating to employment, accommodation and the procurement of goods and services. Extensive lobbying to encourage support for the proposed amendment was ongoing at the end of 2012.

2012 Public Perception Study Results

In June 2012, the Commission participated in a public perception study, coordinated by the Department of e-Government. This was in an effort to direct the development of a public relations strategy, and enhance educational campaigns. The Department of e-Government facilitated participation in the HRC's survey, to obtain baseline data for measuring aspects of performance of the Commission.

The following provides a snapshot of some of the comments that were offered by those surveyed.

General Comments

I have only heard good things and hopefully many more good to come.

They are the watchdog for people's rights and they are doing a wonderful job!

Think it's the "last resort" for people that have been treated unfairly.

A necessary department for sure...

What they try to do is excellent and very important in the community.

They give the "little people" a voice.

They fight for equal opportunities for everyone.

They are very transparent and show empathy to the community.

I had to call on their help once and they were effective and expedient.

They do try to protect Human Rights. Perhaps to make service better, people should be encouraged to report any injustice.

Quality and Staff

People I know that have been to the Human Rights Commission told me that they were helped by the organization. If I had a problem I would call them.

A friend who used the Commission was impressed with the fairness, professionalism, confidentiality and swiftness.

I know people that have had the Commission solve issues for them.

Making important steps for Human Rights on the Island.

I found them to be helpful in providing information and support channels.

Good people to talk to.

I don't know much about the Human Rights Commission but I have heard that they are good with their services.

Good to have an independent Government body, knowledgeable staff serving the people ... make sure that everyone is treated equally.

Active organization who deals with situations in a timely fashion.

Awareness

Doing much more educational programmes for the public, more on the rights of the public.

Last year they have increased their visibility. Doing the Road Show, informing persons of changed legislation.

Heard pretty good things and have seen a few articles in the paper.

I hear people saying good things about them and that they are working on good stuff.

There needs to be more events/activities highlighting all of Bermuda's residents/cultures which could lead to less discrimination in the community.

They should definitely take the time to educate younger people, because the only people who really know/who are involved are people that have to be directly in contact with them.

Need to leave pamphlets and get their mandate out possibly door-to-door.

2012 AND BEYOND

STRATEGIC PLANNING

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

The Commission's strategic priorities are:

1. Maximization of the protection of Human Rights

By advising on gaps in legislation and policies in Bermuda generally and on issues of compliance and with international human rights best practice.

2. Impactful Awareness and Education

By increasing public awareness through the media, developing curricula and fostering understanding and respect for the rights of others.

3. Operational Excellence

By implementing thorough, evidence-based decision-making processes to improve operational effectiveness and efficiency.

4. Increased Knowledge and Capacity

By establishing a learning culture through greater access to knowledge, and building in-house expertise on local and international issues and best practices to support service delivery.

HRC Encourages Civil Engagement and Work in Field of Human Rights

Summer Students and Cabinet Interns

In 2012, the Human Rights Commission continued with its ongoing commitment to encouraging civic engagement amongst students. The Commission was able to benefit from the perspective of these engaged young people. These interns were willing to question, challenge and embrace the current climate of Human Rights in Bermuda, and to assist the Commission with its fight to end discrimination.

Pictured with Executive Officer Lisa Lister



*Reed, left, are Cabinet Interns Dane Simmons and Kara Simmons and Legal Interns Arion Mapp and Erin Vickers. Photo by Simon Jones, **Bermuda Sun***



Erin Vickers

“Whilst working at the Human Rights Commission I was able to get involved in some very hands-on projects ranging from developing the Resource Room to drafting a referrals handbook and guidelines for businesses on sexual harassment in the workplace. As a law student, it was also great to be able to participate in some thought provoking legal research into controversial rights issues. The experience was completely invaluable and I continue to volunteer with a local human rights group in London, England.”



Arion Mapp

“I am currently completing the BPTC (Bar Professional Training Course) at the College of Law in London. I graduated from York University obtaining a degree in Public Policy and Management as well as completing my law degree at the University of Kent. I am eagerly anticipating my return home after my studies to assist my community as a barrister as well as ensuring I stay committed to the ongoing development of Human Rights within Bermuda.”



Matthew Johnson

“I am a Bermudian law student in England, preparing to enter the world of corporate law with a British firm. My work at the HRC included drafting documents, undertaking research in human rights law and helping to deal with complaints as they came in. I am an avid debater, musician and fluent in four languages. My experiences with the HRC proved to be both positive and enlightening.”



Keivon Simons

“Since returning to Bermuda I have had the pleasure of working with the Department of Human Affairs and the Human Rights Commission on a number of projects including the internal adjustments required due to extensive amendments to the Human Rights Act 1981 which governs the functioning of the Human Rights Commission. My time here has been a valuable learning experience and very enriching”.



Melique Cox

“I have been returning to Bermuda for the past two summers. While here in Bermuda, I’ve had the pleasure of working for the Human Rights Commission. I have learned so much and I’ve had great experiences throughout my journey while working with the team.”



Amber Wilson

“I first became interested in Human Rights after having attended a conference at the United Nations which was based on human exploitation. Next year I plan to study anthropology at University in the UK and eventually, after having attained my degree, work at the Human Rights Commission.”



Dane Simmons

As a Cabinet Intern, Dane joined the HRC for three months and used his opportunity to increase his understanding of current issues in both the community and at the international level. Dane was keenly interested in the expansion of rights for seniors and persons with disabilities. The Commission was pleased to facilitate Dane’s secondment to the National Office of Seniors and Physically Challenged.



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GOVERNMENT OF BERMUDA

Ministry of Community, Culture and Sports

Department of Human Affairs

Accessible Formats

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

1 World Health Organisation - http://www.who.int/whr/2001/media_centre/press_release/en/

2 Employment Act 2000 www.bermulaws.bm

3 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

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