

ANNUAL



REPORT

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Human
Rights
Commission
Bermuda



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The Hon. Wayne L. Furbert JP, MP
Minister with Responsibility for Human Rights
The Cabinet Building
105 Front Street
Hamilton HM 12
Bermuda

Dear Minister Furbert,

It is my pleasure to submit the Annual Report of the Bermuda Human Rights Commission for the reporting period January 1, 2018 to December 31, 2018.

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

Respectfully,

A handwritten signature in black ink, appearing to read "Lisa Reed". The signature is fluid and cursive, with the first name "Lisa" and the last name "Reed" clearly distinguishable.

Lisa Reed
Human Rights Commission | EXECUTIVE OFFICER

'I cannot afford the luxury of fighting one form of oppression only. I cannot afford to believe that freedom from intolerance is the right of only one particular group.

And I cannot afford to choose between the fronts upon which I must battle these forces of discrimination, wherever they appear to destroy me. And when they appear to destroy me, it will not be long before they appear to destroy you.'

~Audre Lorde



MESSAGE FROM THE EXECUTIVE OFFICER



The experience of the Office of the Human Rights Commission in 2018 demonstrated that Bermuda society continued to be challenged by income inequality, as well as racial and educational disparity. These societal issues have continued to result in an inequality of opportunity, discriminatory practices and general socio-economic insecurity within certain segments of the island.

The Commission has long considered one of its key tasks to be the prevention of human rights violations through the cultivation of a culture of respect for human rights by all sectors of Bermuda society including public authorities, the private business sector, the judiciary, religious organisations, labour unions, charities and individuals. More increasingly, the Commission has also become involved in Court proceedings in order to fulfil its statutory mandate pertaining to both public education and awareness concerning human rights and the legal resolution and enforcement of human rights complaints.

Notwithstanding this, an analysis of the human rights complaints and queries which were received by the Commission in 2018 revealed that residents' experiences of discrimination and harassment continued to occur each day. In particular, human rights complaints in the area of employment were the most frequently filed by individuals, the majority of which were based on place of origin (18%), disability (18%), race (17%), and sex (16%).

The Commission also identified a disturbing trend in the increased reporting of workplace bullying by Bermuda residents. While, in the absence of corresponding to any protected characteristic, bullying does not directly contravene the Human Right Act 1981 (Act), it does undermine the inherent dignity of the human individual, as recognised in the Preamble of the Act and in the Universal Declaration of Human Rights. The 2018 complaints and queries further portrayed an island community in need of increased guidance concerning human rights law from a neutral and politically impartial body and the illustration of inclusive and non-discriminatory practices which could be adopted into organisational frameworks.

Within this context, the Commission interpreted its statutory education and legal resolution mandates as needing to cater to a 20th century modernised empowerment process, a deliberate and consistent exercise which could enable those who were and continued to be marginalised in the economic, social, political and cultural spheres in Bermuda to claim their status and be acknowledged as fully participating members of the community.

Against this objective, however, it was acknowledged that the Commission had remained under-resourced for several years with the posts of Legal Counsel and Project Officer vacant since 2014 and 2017 respectively, despite the Commission having sufficient funding for both positions. On the 20th of July 2018, the Commission submitted a [third] formal request to the Head of the Public Service for permission to fill these posts. The request highlighted the challenges to the protection, promotion and enforcement of human rights by the Commission as a result of these posts remaining vacant.

The request expressly emphasised that democracy is based on the freely expressed will of people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In this vein, democracy is never fully "achieved" by any jurisdiction and is neither linear nor irreversible. Accordingly, it remains the responsibility of both the state and independent national human rights institutions to jointly monitor and maintain oversight of the continued democratisation process.

In the specific context of Bermuda, the Commission articulated that this took the form of both the preservation of democracy as well as the improvement of the quality of democracy through the reinforcement of human rights and the rule of law. Following the submission of the request, approval to fill both posts was approved by the Head of the Public Service on the 9th of August 2018. Recruitment for the Legal Counsel

post was undertaken on a priority basis shortly thereafter with the recruitment of the Project Officer intended to be initiated in 2019. This represented a significant success not simply for the Commission, but for the community as the Commission is bound by statute to serve the interests of the Bermuda public.

The Commission also participated in several successful collaborations in 2018 which resulted in the partnership of local and international stakeholders and the provision of open forums for community learning, dialogue and consultation concerning human rights issues in Bermuda and wider international human rights implications. Most notably was the Race and Resistance Symposium held on Saturday, 3rd November, 2018. This was hosted by the Commission in partnership with the Bermuda College, the Oxford Centre for Global History and The Oxford Research Centre in the Humanities and was attended by approximately 300 individuals. The facilitation of such a momentous event was a significant undertaking for the Commission and aligned with the continued need for the Commission to address racial trauma, as well as increase awareness and foster mutual understanding within the island community concerning racial prejudice and its implications for modern society.

Having worked with a local vendor in the design, development and content creation, the Commission's first independent website was launched

on the 10th of December 2018. The date of the launch coincided with the celebration of Human Rights Day which was created to honour the United Nation's adoption of the Universal Declaration of Human Rights, the first global enunciation of human rights.

Throughout 2018, the Commission continued to consult with the Department of Workforce Development, labour unions and various employment groups to advise on best practice employment practices from a human rights perspective and foster change in the systemic employment customs which violate the Act. In particular, a specific focus was made in underscoring that economic challenges faced by organisations, the adoption of probationary periods and the failure to prevent 'unintentional' indirect discrimination is an insufficient justification for the direct or passive mistreatment of employees in any form.

Reflecting on 2018, I am reminded of the importance of the need for perseverance in the continued protection, education and enforcement of human rights in Bermuda. Of all of the successes achieved by the Commission during 2018, its most significant accomplishments were obtained only after protracted period of investment, cultivation of knowledge and support from multiple stakeholders in the local and international community. I am grateful that the Commission has this opportunity to share its unique perspective and insights. Moving into 2019, the Commission will be

focused on implementing legislative, governance and capacity building strategies to further strengthen its independence as a non-Ministry Department. The appointment of Legal Counsel and initiation of the recruitment process for a Project Officer will result in an increased organisational capacity to serve the public. I also look forward to welcoming the 2019-2021 set of Human Rights Commissioners following their appointment by the statutory Selection and Appointment Committee.

In closing, I extend my sincere appreciation and admiration to the public officers of the Commission and the exiting 2016-2018 set of Human Rights Commissioners for their resolve, focus and vigilance in supporting the statutory mandate of the Commission.



Lisa M. Reed
Human Rights Commission
EXECUTIVE OFFICER



MESSAGE FROM THE CHAIR



I begin my final letter for the Commission's Annual Report by extending a warm and appreciative thanks to the Officers of the Bermuda Human Rights Commission ("the Commission").

As I reflect upon not only this past year but also the previous five years that I served on the Commission, two things immediately spring to mind:

Associated legal actions cast our island into the international spotlight while fueling our national dialogue on rights-based commitments and aspirations. The Officers of the Commission, who have had to do more with less, have been a constant source of support in steering the mandate, and have worked tirelessly to protect and advocate for the advancement of Human Rights in Bermuda.

During the course of the last year, Officers and Commissioners engaged in diverse initiatives serving a broad range of stakeholders across the island. We have seen the continued growth of the International Women's Day Celebration and the International Day of the Girl celebrations, which the Commission has supported and used as platforms to educate the community on the importance of gender issues facing the island. We hope that this, in addition to the Bermuda Government's adoption of the Convention on the Elimination of Discrimination Against Women (CEDAW), will continue to encourage the Government and private sector to address issues of gender inequality. We hope commitment to this international doctrine inspires greater support for the community agencies working hard to address the specific issues facing girls and women, and in so doing support our men and families in Bermuda.

The Commission has often spoken about the importance of 'balancing rights' while ensuring the principle of non-discrimination is upheld. This continues to underpin the work of the Commission, as we strive to cultivate respectful engagement that can make room for, and honour, the wonderfully diverse nature of our community.

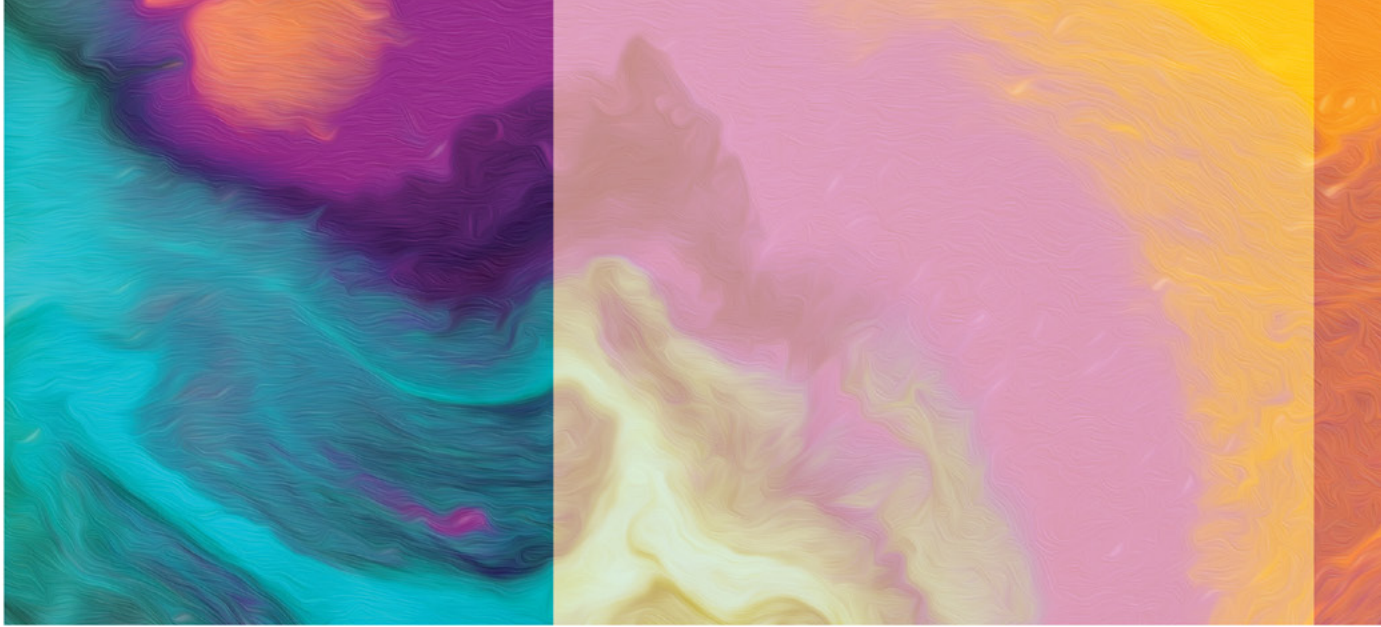
Bermuda's relationship with our Caribbean neighbours continued to be strengthened in support of human rights developments. We were delighted to welcome representatives from the Cayman Human Rights Commission and provide a comprehensive agenda to aid their reconnaissance trip to the island.

Bermuda is often cited as an example amongst small island nations, having one of the oldest established Offices and human rights acts in the region. While Bermuda should be proud to be a standard bearer of human rights protections among small island nations, the work of ensuring rights continues to evolve to meet the need of our diverse community is never ending.

In closing, I would like to extend my best wishes to the incoming Chair and Commissioners as I proudly pass the baton. It is an important and challenging duty. While my formal Commissioner role concludes, I join my predecessors in remaining an Ambassador for human rights and extend my best wishes to the Commission as it continues to move from strength to strength as Bermuda's national human rights institution.

A stylized, handwritten signature in black ink, consisting of a large, fluid loop followed by a horizontal stroke.

Tawana Tannock
Human Rights Commission | CHAIR



THE HUMAN RIGHTS COMMISSION

VISION

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

MISSION

As the national authority for human rights
in Bermuda, our mission is **to eliminate
discrimination through advocacy, education
and enforcement.**



MANDATE

In accordance with the Human Rights Act (the “Act”) the statutory functions of the Commission are twofold and are aimed at eliminating all forms of discrimination in Bermuda. The Commission’s mandate is to educate and promote the concept of equality of all members of the community and, as well, to investigate and endeavour to settle complaints of discrimination.

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

Encourage an understanding of the fundamental rights and freedoms of the individual guaranteed by the Constitution and the principle that all members of the community are of equal dignity, have equal rights and have an obligation to respect the dignity and rights of each other;

Promote an understanding of, acceptance of, and compliance with the Act;

Develop, conduct research and arrange educational programs designed to eliminate discriminatory practices;

Encourage organisations within the community and individual persons to carry out activities which will attract all members of the community whomsoever;

Encourage and coordinate activities which seek to forward the principle that every member of the community is of equal dignity and has equal rights, and;

Promote the conciliation and settlement of any complaints or grievances arising out of acts of unlawful discrimination and, where in its opinion such good offices are inappropriate, institute prosecution for contraventions of the Act.

The Commission is both a watchdog for human rights compliance, and a resource to work with stakeholders in

fulfilling their compliance commitments, works toward the promotion of accessible and just legislation, policy and practices that support the principle of non-discrimination and equal access.

FEEDBACK AND ACCOUNTABILITY

The Commission is committed to ensuring best practice. The Commission recognises the need for public confidence in its processes and welcomes feedback. You can visit the office, schedule to meet with an officer or submit comments or concerns in writing to the office or general email: humanrights@gov.bm.

Complaints about services may be submitted in accordance with the Complaint Handling Procedure (as featured on the website www.humanrights.bm).

CONFIDENTIALITY

Each Officer and Commissioner is bound by a signed oath of confidentiality in keeping with Section 30 of the Act, and all queries and complaints are confidentially logged. Given the sensitive nature of our work, especially in a small jurisdiction, this commitment is fundamental for all Officers and Commissioners, and is reinforced to all those who work with the Commission.

TIMING: Human Rights complaints should be made within six months of any incident of alleged discrimination, harassment or sexual harassment, and the complaint must fall within one or more of the areas covered by the Human Rights Act. Complaints submitted after 6 months limit the jurisdiction of the Executive Officer to entertain and investigate a complaint. The Act allows for the Executive Officer to consider a

complaint up to two years after the event provided there is good reason for the delay and that no one will be prejudiced by the delay (see Section 14(H)).

Queries: Queries are treated confidentially. We encourage the public to contact the Commission with any and all questions. Do not hesitate to reach out, as an Officer may be able to offer assistance and clarity. If the Commis-

sion is unable to assist, efforts will be made to identify the most appropriate referral agencies.

Educational requests: The Commission is a resource for the public and is available to assist with requests for policy review and guidance, training assistance, presentations, or to address questions related to the Human Rights Act.

MEMBERS OF THE HUMAN RIGHTS COMMISSION



The Officers

The Officers are responsible for the administration and operations of the Human Rights Commission. Duties include investigating complaints of discrimination, facilitating conciliation and mediation, researching best practice and legal developments in the field, developing public education, giving guidance on policy development to address discriminatory practices, and administering the Human Rights Tribunals. Above all, the Officers are stewards of the mandate and mission of the Human Rights Commission in service to the Bermuda community, and consider it an honour to engage in this work.

Lisa Reed

Executive Officer

Sonia Astwood

Administrative Officer (*Tribunals*)

Erlene Postlethwaite

Administrative Officer (*Intakes*)

Sara Clifford

Education Officer

Darnell Harvey

Investigations Officer

Treadwell Tucker

Investigations Officer



TAWANA TANNOCK
CHAIRPERSON



JOHN HINDESS
DEPUTY CHAIR



BEN ADAMSON
COMMISSIONER



QUINTON BUTTERFIELD
COMMISSIONER



JAHAN CEDENIO
COMMISSIONER
from April 2016



DONNA DANIELS
COMMISSIONER



CARLA GEORGE
COMMISSIONER



JENS JUUL
COMMISSIONER



DANY PEN
COMMISSIONER



CAROLYN THOMAS RAY
COMMISSIONER



KIM SIMMONS
COMMISSIONER

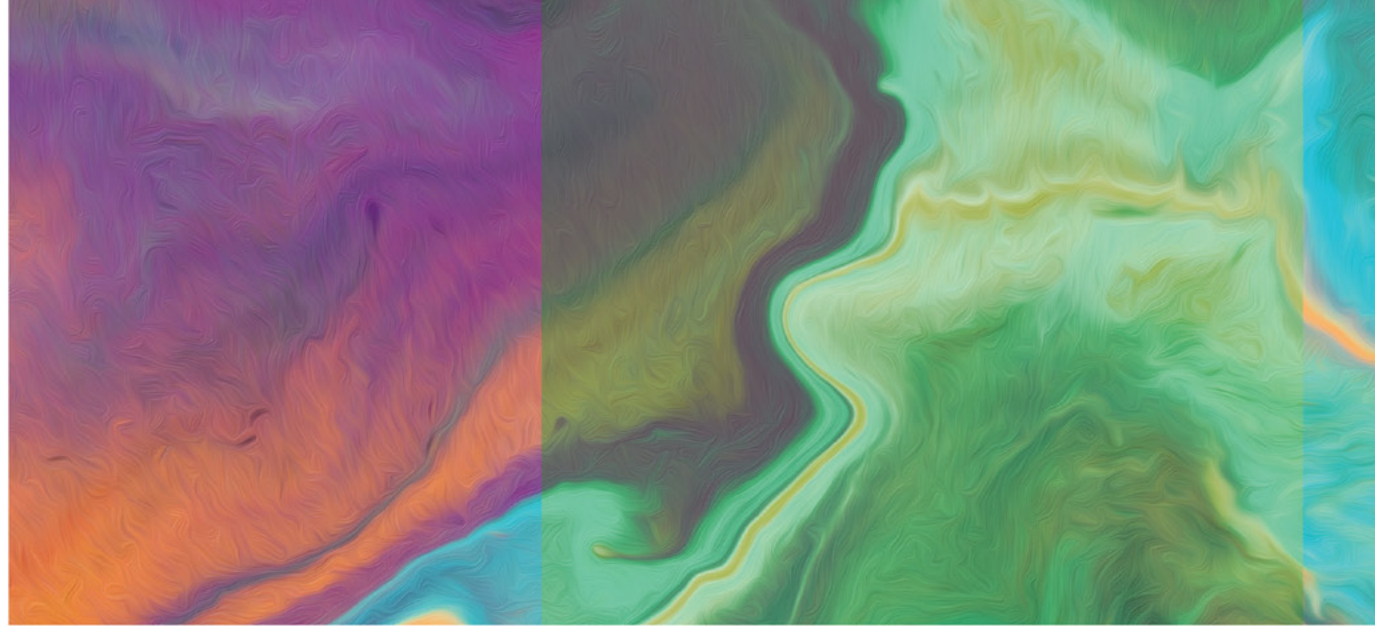


JONATHAN YOUNG
COMMISSIONER

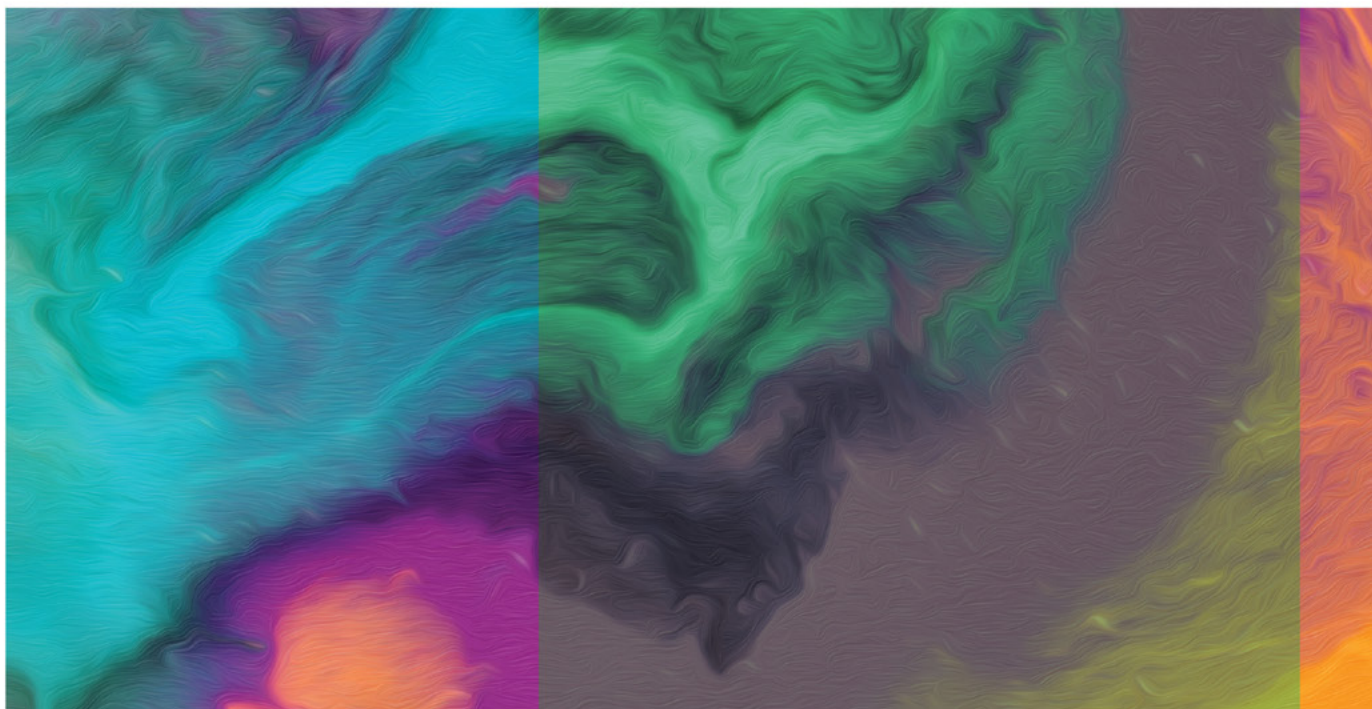
The Commissioners

The Commissioners completed the final year of the 3 year term on December 31, 2018. The Human Rights Commissioners are members of the public selected through a rigorous and independent recruitment process to serve for three year terms. The Commissioners are responsible for adjudicating complaints of discrimination by serving on Tribunals, serving as advocates in the promotion and protection of human rights.

**In 2018 the Commission bid farewell to Commissioner Quinton Butterfield as he relocated to Chicago. Commissioner Butterfield was a tremendous asset to the Commissioners and we wish him every success and happiness in his new home.*



OVERVIEW OF THE HUMAN RIGHTS ACT 1981



OVERVIEW OF THE HUMAN RIGHTS ACT 1981

The Human Rights Act was enacted in June 1981 by the Legislature, and became operational in May 1982 when the Human Rights Commission was established to administer human rights law in Bermuda. The Human Rights Act was intended to extend the rights guaranteed by the Bermuda Constitution 1968, and to address gaps in protection and meet the needs of our community. This evolution is depicted on page 56).

The Act provides a list of 'grounds' that are afforded protection from discrimination in certain areas of life in Bermuda. The Act continues to evolve.

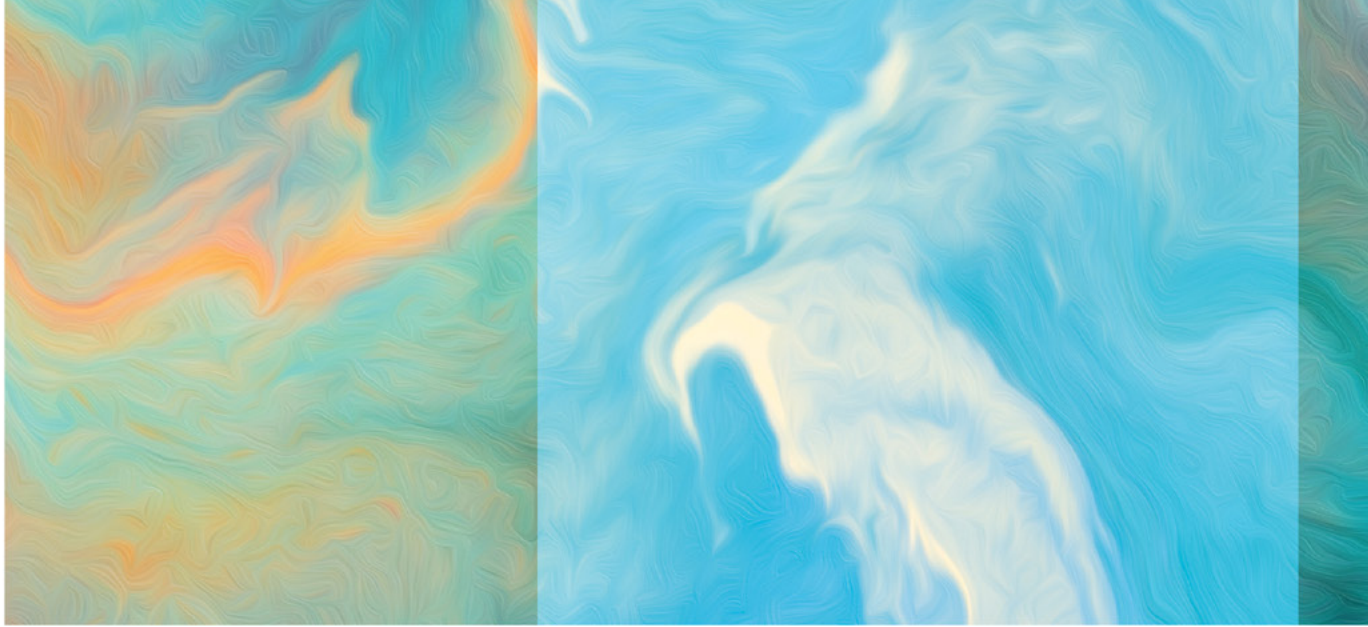
Grounds of Protection: The following list includes the 'grounds' or characteristics:

- Race, Place of origin, Colour,
- Ethnic or National Origins
- Sex or Sexual Orientation
- Marital Status
- Disability
- Family Status
- Religion or Beliefs or Political Opinions
- Criminal Record* (*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.*)
- Age* (*except in the area of employment and the Commission continues to advocate for its inclusion.*)

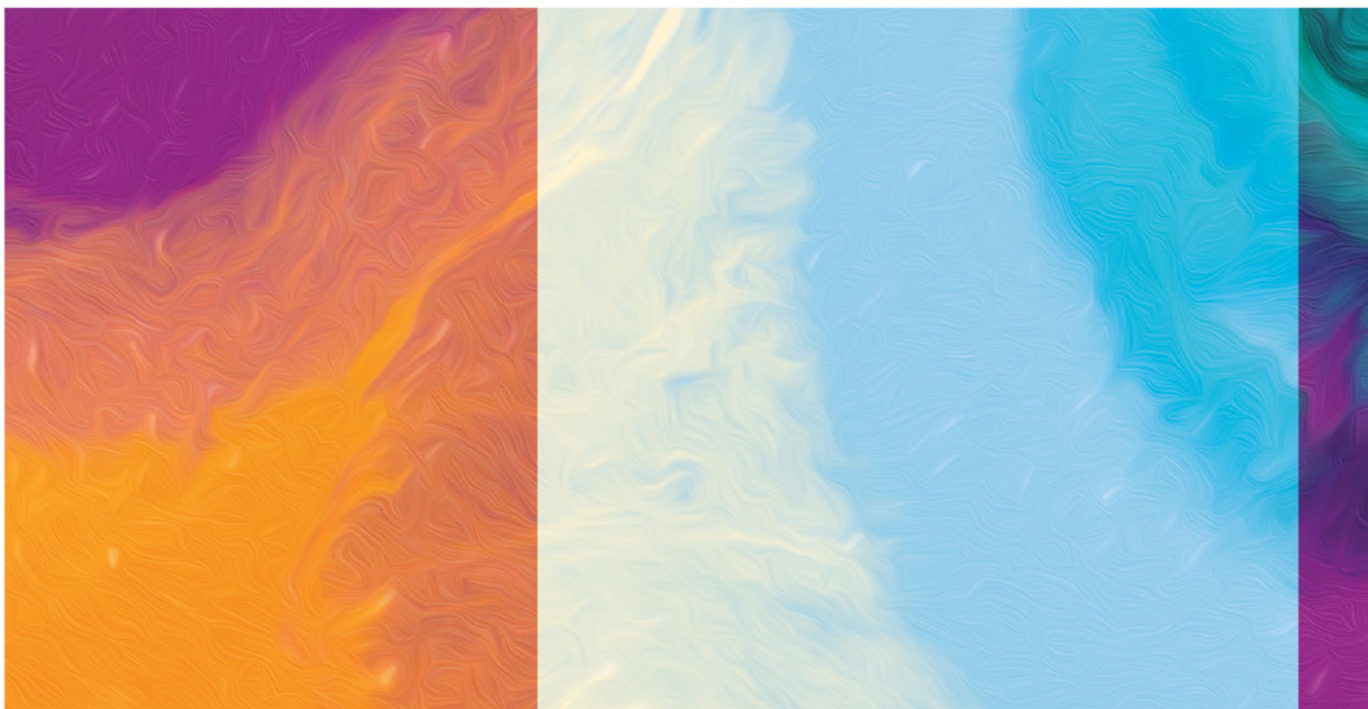
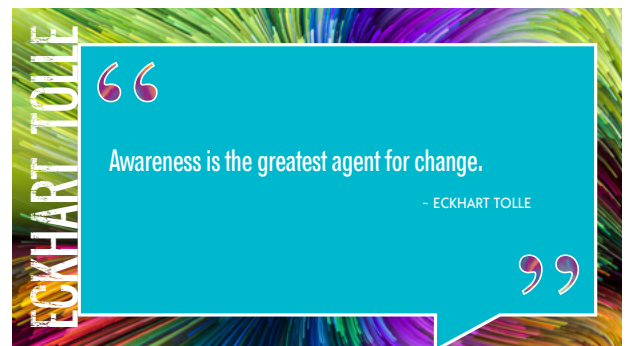
Areas of Protection: The Act outlines specific areas of protection from discrimination and harassment: housing and accommodation (Section 4), goods, facilities and services (Section 5) and employment (Section 6). Other areas include: notices (Section 3), organisations (Section 7) and taking part in proceedings under the Act (Section 8).

Protection against harassment (Section 6B) and Sexual harassment (Section 9) are also detailed in the Act. You can refer to Annex 4 for further explanation on the details of these categories.





EDUCATION AND AWARENESS



EDUCATION AND AWARENESS

Education is integral to the work of the Human Rights Commission. Human rights education is designed to expand upon legislated protection, and help foster a culture where rights are understood, evolved, balanced and respected.

In practice, for the Human Rights Commission, 'human rights' represents a host of urgent, distinct, complex and intersected issues that each require their own consideration, expertise and attention. The mandate relates to all areas of life in Bermuda, and therefore consideration of the Act, and the principles therein, is a shared responsibility. Legal commitments mean little unless

we are actively working to bring those commitments to life.

The educational duty of the Commission is met through a wide variety of methods: research to inform investigations, policy development and analysis, legislative review and associated advocacy, consultations, facilitated dialogues, presentations, and public and private engagements to address the broad spectrum of social justice and human rights issues requiring attention. In particular, it requires collaboration with experts, advocates and service agencies to provide practical assistance and shine a light on the myriad rights-issues affecting Bermuda.

While serving as a watchdog for violations of the Act, the Commission is also a resource and collaborator with stakeholders across the island to help align organizational and leadership practices with human rights considerations. Presentations are tailored to meet the needs of specific stakeholders and engagement can be either private (confidential) or public. Over the course of the past year, the Commission presented to a variety of businesses, schools, charities, and government departments.

The following features a sampling of public events from the year.





INTERNATIONAL WOMEN'S DAY

The Commission partnered with the Ministry of Social Development and Sports and Department of Communications to host an interactive breakfast panel at the Royal Hamilton Amateur Dinghy Club featuring the theme 'Press for Progress'. The convening featured a brilliant cohort of female entrepreneurs - Cheryl Kerr, Sharon Bartram, Kristin White, Mandy Oatley, Jennifer Smatt, and Alison Morrison – each of whom shared the challenges and opportunities they have experienced in their respective fields, together with lessons learned and recommendations to aid female entrepreneurs. A common theme was the importance of fostering an educational and economic environment that values and supports the entrepreneurial spirit and its essential contribution to the health and wellbeing of Bermuda.



PASSING OF THE BATON: 50TH ANNIVERSARY OF MARTIN LUTHER KING'S ASSASSINATION

School children across the island took part in an initiative to mark the 50th anniversary of the passing of Martin Luther King Jr. The cross-island school initiative to help reinforce our interconnectivity through shared history and the legacy of those that came before was coordinated by Glenn Fubler of Imagine Bermuda. The baton travelled over a two-hour timespan and was finally passed to the Executive Officer of the Human Rights Commission where it resides as a symbol of the duty we hold to protect and promote the rights of all.

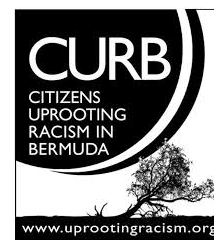


50TH ANNIVERSARY OF UNIVERSAL ADULT SUFFRAGE

The Commission was proud to join Imagine Bermuda, the Bermuda National Trust, Bermuda National Library, the Chewstick Foundation, and Citizens Uprooting Racism in Bermuda (CURB) in commemorating the 50th anniversary of the 'Right to Vote for All', the historic first election under the Bermuda Constitution Order 1968. The public was invited to cast a symbolic 'Vote of Thanks' in recognition of those on whose shoulders we stand. The strategic, collaborative, and courageous campaigning of Pauulu 'Roosevelt Browne' Kamarakafego resulted in the establishment of the Committee for Universal Adult Suffrage [CUAS] which finally put 'Voting Rights for All' on the centre stage.



CURB COMMUNITY CONVERSATIONS AND RESTORATIVE JUSTICE TRAINING



The Commission is extremely grateful for the ongoing efforts of Citizen's Uprooting Racism in Bermuda (CURB) - Bermuda's only racial justice agency. CURB's work is vital and despite the resistance and backlash they often face, they continue to advance their community healing initiatives. Bermuda was founded on a system of racism that was sustained for hundreds of years, with legal segregation continuing into the late 1970's. Naturally, addressing the legacy and current impact of racial trauma requires intentional and consistent care as it impacts the whole Bermuda community in one way or another. CURB's Community Conversation initiative began in 2017 and continued throughout 2018 with members of the public taking the time to participate in the 6-week training sessions. These convening's are helping in changing the way we talk about race, justice and access and allow people to face together the history of racial inequality and injustice in Bermuda. This past year the Commission welcomed the chance to support, promote and collaborate with this essential community organization.

BERMUDA NATIONAL GALLERY



Surrounded by the iconic work of Shepard Fairey, students engaged in a discussion about why human rights need to be protected and reflected on the role of art in promoting social justice issues. They discussed what they thought the pieces in the exhibit represented and how it made them feel. From the mouths of babes! It made for a profound and moving session. Special thanks to BNG Education Officer, and Human Rights Commissioner, Dany Pen, for her inspiring instruction.



INTERNATIONAL DAY OF THE GIRL 2018

Founded by Commissioner Carolyn Thomas in 2014, this free Bermuda event is held annually at the National Stadium and aims to introduce girls to male dominated activities as well as raise awareness about the challenges facing girls around the globe. The United Nations designated 11 October as the International Day of the Girl to recognise the particular struggles that girls face. Across the globe, girls are targeted for sexual exploitation and violence, and oppressive practices such as child marriage, denial of education and forced labour. Girls comprise the largest demographic living in poverty globally. While Bermuda is fortunate to have relative abundance, and security, we often underestimate the specific challenges that girls and women face. There were over 200 girls and boys at the 2018 event and a host of community vendors volunteered their services to stand in solidarity with girls all over the world.



THE FUTURE LOOKS BRIGHT!

It is always a privilege to engage with Youth Parliament– we are consistently reassured by the passion of these future leaders and the commitment of their volunteer program leaders.



EDUCATION &

HUMAN RIGHTS DAY

Warwick Academy Assembly

The Executive Officer and Education Officer joined Warwick Academy's annual human rights assembly honouring the day. Under the dedicated leadership of Francoise Wolfe, students presented on the tenets of the Universal Declaration of Human Rights and their application today.



70th Anniversary Commemoration

This year the Commission was invited to partner with Government House in the global recognition of the 70th Anniversary of the Universal Declaration of Human Rights (UDHR). The preamble of the Bermuda Human Rights Act makes reference to this touchstone document and its commitment to the 'inherent dignity and the equal and inalienable rights of all members of the human family'. The Commission was grateful to share the occasion with some of the many advocates, collaborators and partners working tirelessly in support of rights in Bermuda. Under the inspirational instruction of Mr. Rajai Denbrook guests were treated to several moving spoken word pieces by Dellwood Middle School's talented students featuring themes of remembrance, rights and inclusion.



ADVOCATES OF THE FUTURE

The Commission receives regular requests from students to assist in their school or university research pursuits. It is always a particular highlight to liaise with the interested students, and a welcome opportunity to engage and assist with projects or presentations in support of rights.

AWARENESS

RACE AND RESISTANCE SYMPOSIUM

SATURDAY | 3 NOVEMBER 2018

The Human Rights Commission was honoured to partner with the Bermuda College and the Oxford Centre for Global History and The Oxford Research Centre in the Humanities (TORCH) in hosting the “Race and Resistance: Understanding Bermuda Today” Symposium.

The Symposium was a collaborative educational event designed to provide an accessible exploration of Bermuda’s history of slavery and racial segregation. The day long convening and associated presentations and resources sought to explore the intersection of race, resistance and history in understanding the contemporary Bermuda landscape.

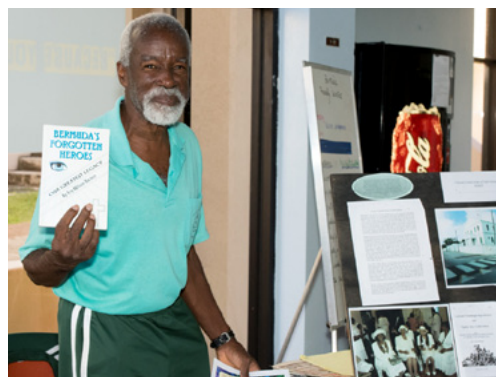
The event was a calling home of sorts, and featured an extraordinary representation of Bermudian scholars, leaders and activists working both at home and abroad. The response to the convening was tremendous. Panelists discussed Bermuda’s unique racial history from founding and emancipation through to the struggle for racial desegregation. A final plenary session focused on ways to address the legacy of racism in Bermuda today. A community marketplace allowed Conference attendees to source resources and associated products in celebration of Bermuda’s unique history.

The Symposium was held in honour of Dr. Eva Hodgson who continues to model a life of both academic pursuit and dedicated activism. While many recognise her as an author, famed for her frequent Letters to the Editor in the Royal Gazette detailing racial justice concerns, those fortunate enough to engage with her in person know that you will rarely meet a more curious, open and brilliant mind.

The events were livestreamed and each panelist was recorded to allow for wide distribution of the research and presentations on offer. The event drew a full crowd and confirmed what we knew to be true: there is a huge appetite to access the untold, uncomfortable and painful reality of our shared history in Bermuda. The Commission is grateful for the tireless efforts of so many in tracing, mapping and sharing these distinct stories that ground us in understanding Bermuda today.

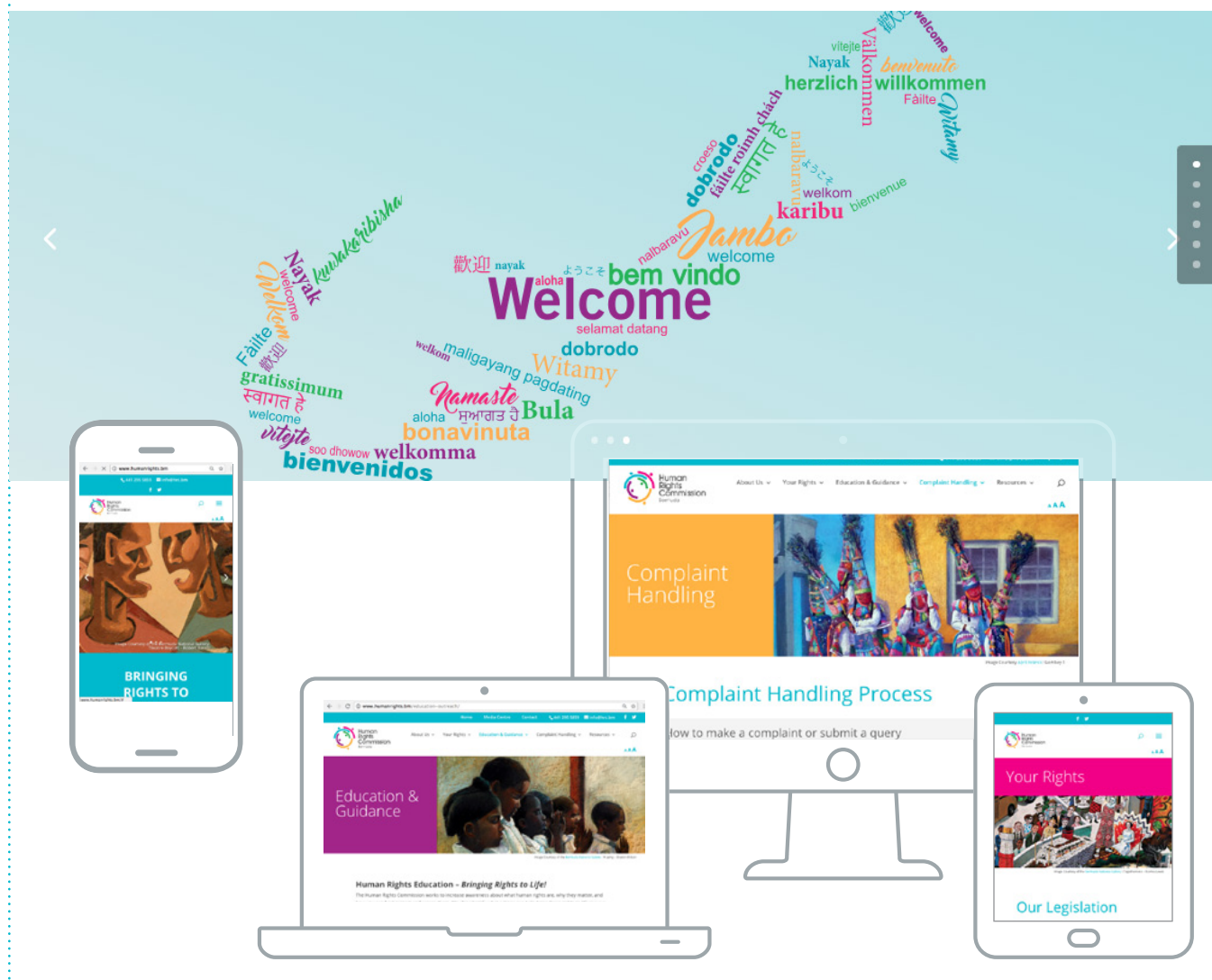
(The Symposium speakers and agenda are detailed in Appendix 6).





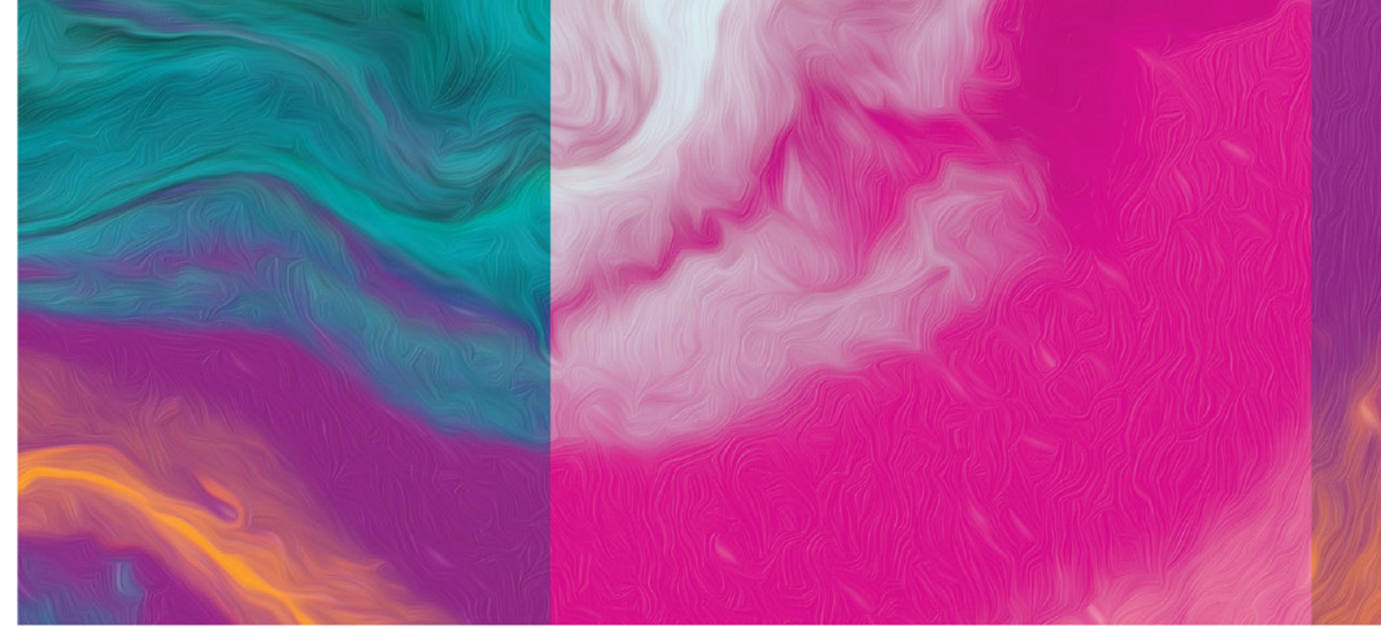
HUMAN RIGHTS COMMISSION WEBSITE | www.humanrights.bm

Human Rights Day 2018 saw the long awaited launch of our new website! The Commission seeks to provide clear and accessible information for the public, and a robust and user friendly website is a vital resource in fulfilling this commitment. The first phase of the site is complete with development continuing. We are grateful to the Bermuda National Gallery for allowing us to feature striking local artwork depicting experiences of both resistance and freedom. Public feedback and evaluation is encouraged as we seek to ensure it is a useful and dynamic public resource.

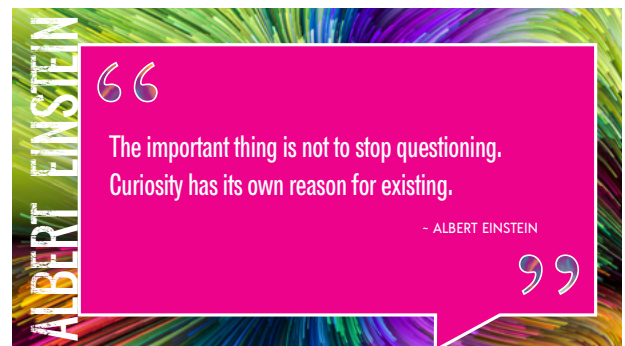


CONSULTATIONS

The Commission engaged in consultations with a variety of business, non-profit and government stakeholders in support of rights-based issues including protecting against sexual harassment in the workplace, Equality Impact Assessments, development of inclusive recruitment practices, reasonable accommodation policies, mental health and duty to accommodate strategies.



NETWORKING, LEARNING AND BEST PRACTICE



NETWORKING, LEARNING AND BEST PRACTICE

Networking and Knowledge Sharing:

The Commission is committed to exemplifying best practice in the field of human rights work. Information exchange with respected rights agencies continued to provide a resourceful and expedient means of advancing learning over the past year. Exchanging ideas and lessons learned with colleagues both locally and overseas enriched our research and policy development efforts.

Collaboration: Cooperation and dialogue on rights matters with both local and international advocates enhances the Commission's expertise and provides an opportunity to integrate different perspectives and methods into this work. Most importantly, collaboration offers an essential means of fulfilling duties in a responsible, resourceful and relevant manner. This past year saw the Commission spearhead significant collaborations in support of racial

justice, women's rights, and the creation of work environments free from discrimination and harassment.

Regional Consultations: The Commission continued to foster relations with colleagues in the Caribbean working in the field of human rights. It was a particular honour for the Human Rights Commission to host the Executive Officer and Chair of the Cayman Human Rights Commission – Deborah Bodden and James Austin-Smith – during their research mission to Bermuda. A comprehensive agenda was developed to allow time with government, spiritual and business leaders, as well as community advocates and rights champions. Despite the setbacks and challenges facing the rights landscape in Bermuda, as the oldest established human rights office in the region, the Bermuda Human Rights Commission is a valuable resource for our Caribbean neighbours who are working hard to engender formal rights mechanisms.

Just as the human rights field is dynamic and evolving, so too must be the skills and services of the Officers. The Officers of the Commission participated in a range of educational offerings to help 'sharpen the saw' and continue developing their professional acumen. The Commission team engaged in a **Forward Planning** and off-site **Team Building** initiative, and continued to fortify preparedness of the **Personal Information Protection Act (PIPA) 2016** coming into effect by attending the Bermuda Human Resource Association's presentation. The Office team also took advantage of the Bermuda Public Service Union's Block Chain Technology presentation, and joined the Centre for Justice for their conference addressing the **'Modernizing of the Constitution'**. The Officers of the Commission regularly engage in **legal education** to review jurisprudence pertinent to the work of the Human Rights Commission, and Bermuda's human rights framework as a whole. Officers attended a wide variety of public presentations and events in support of community dialogue and support services across the island.





COMPLAINT STATISTICS



Figure 1.
TOTAL INTAKES, 2014 - 2018

An intake is any form of contact made by a member of the public, whose intent it is to bring to the attention of the Office of the Human Rights Commission (the “Office”) a complaint or query. An intake may be lodged by telephone, mail, e-mail or by walk-in.

In 2018, 180 intakes were reported by the public.

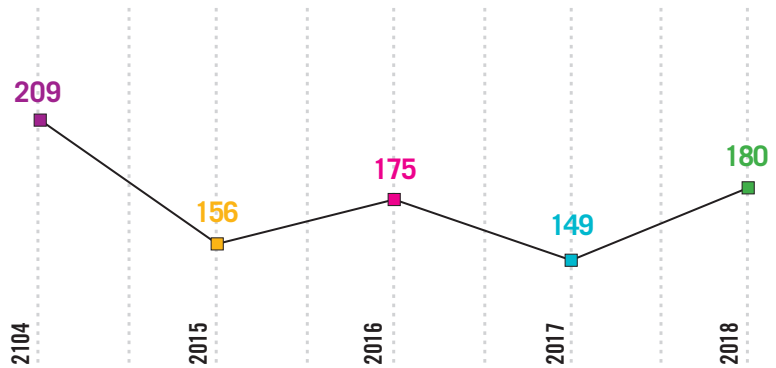
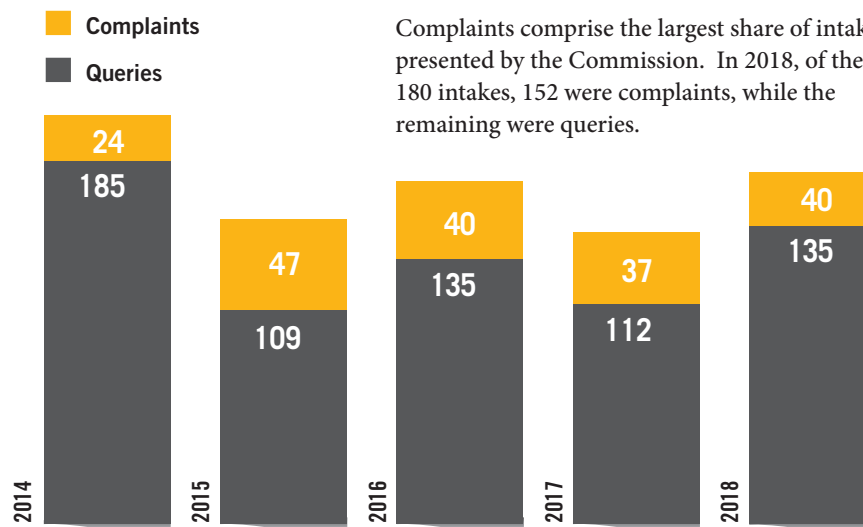


Figure 2.
INTAKES BY TYPE, 2014 - 2018

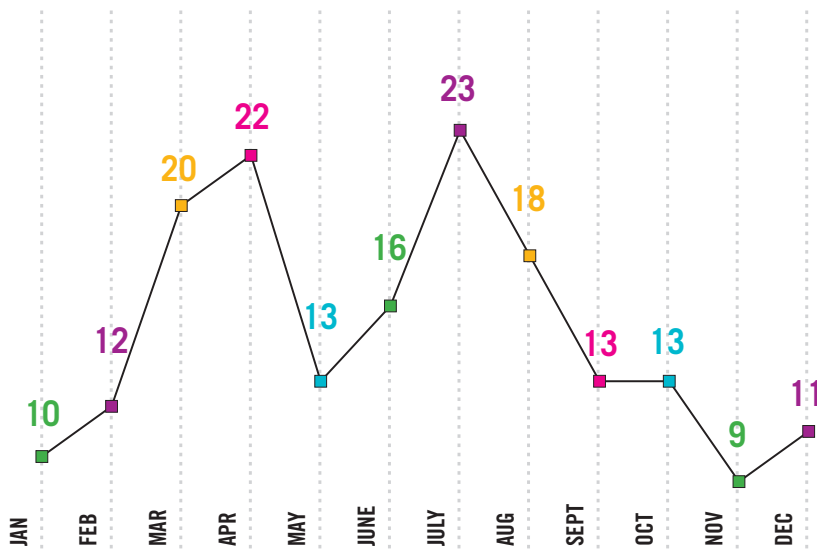
Intakes are comprised of complaints and queries. A complaint is any concern brought to the attention of the Office by a member of the public who believe their rights have been contravened under the Human Rights Act 1981 (the “Act”). A query is a request for information or any question regarding the Act*.

Complaints comprise the largest share of intakes presented by the Commission. In 2018, of the 180 intakes, 152 were complaints, while the remaining were queries.



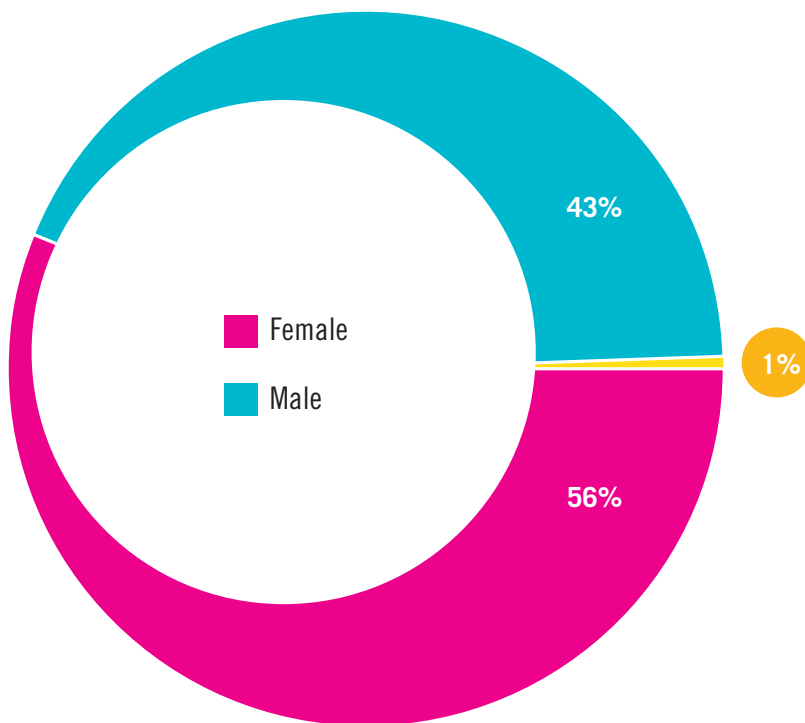
*The Commission is in the process of incorporating educational requests into the intake log for future data collection.

Figure 3.
INTAKES BY MONTH, 2018



In 2018, of the total monthly intakes, the largest number was received in July 2018 representing 13%. The least amount recorded was for the month of November at nine or 5% of the yearly total. The mean average intakes per month was fifteen.

Figure 4.
PERCENTAGE DISTRIBUTION OF INTAKES BY THE GENDER OF THE COMPLAINANT, 2018

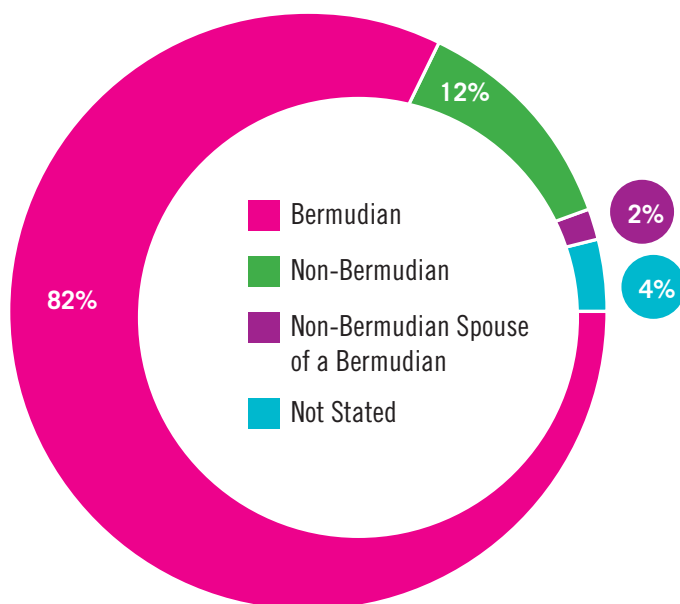


In 2018, females approached the Office of the Commission more frequently than males. Female Complainants represented 56% of Complainants while males comprised 43%. One (1) member of the public identified themselves as transgender.

Any member of the public who contacts the Commission and is recorded as an intake is classified as a Complainant for the Commission's procedural purposes.

Figure 5.

PERCENTAGE DISTRIBUTION OF INTAKES BY THE BERMUDIAN STATUS OF THE COMPLAINANT, 2018

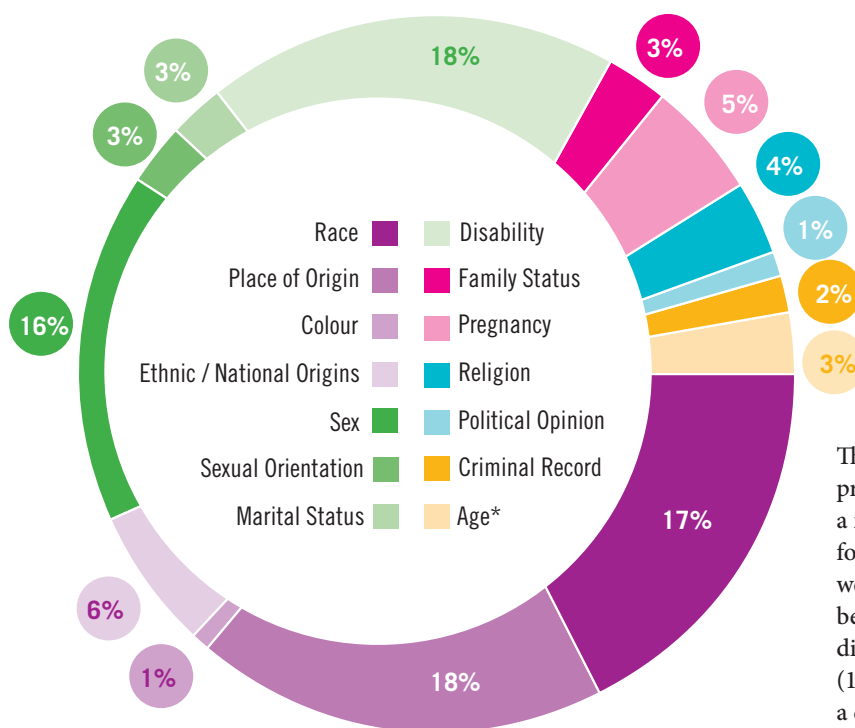


Bermudians represented 82% of the total number of Complainants in 2018. Persons who indicated they were non-Bermudian represented 12% or 22 people, while three non-Bermudian Spouses of Bermudians contacted the Commission representing 2% of intakes. There were 7 (seven) persons who did not identify their Bermudian status.

In 2018, there was no record of permanent resident certificate holders contacting the Human Rights Commission (the "Commission") to lodge a complaint or make a query.

Figure 6.

PERCENTAGE DISTRIBUTION OF INTAKES BY GROUND OF DISCRIMINATION, 2018*



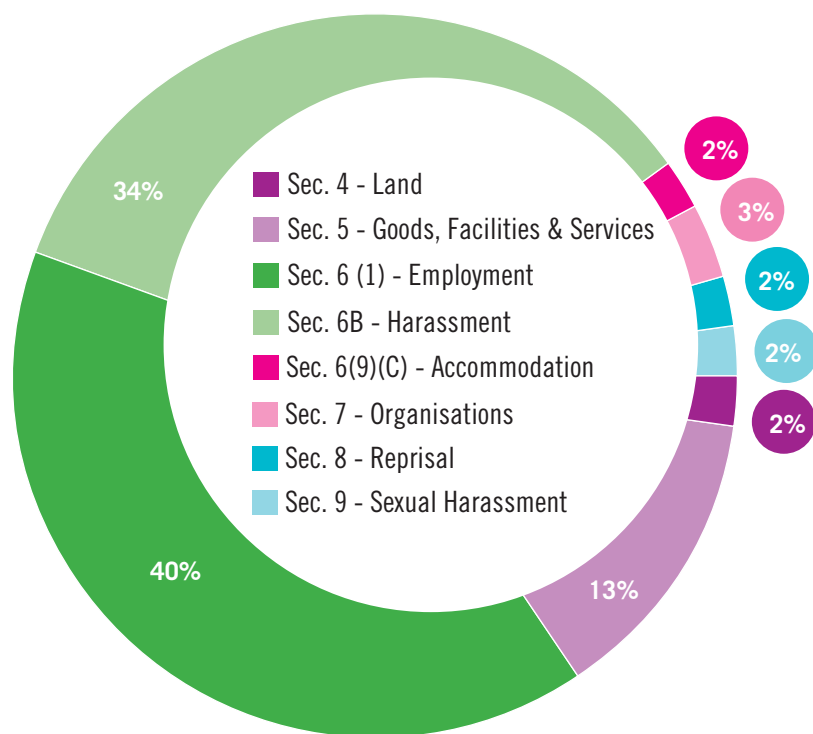
The majority of Complainants that approached the Commission in 2018 cited a number of grounds of discrimination for their matter but the most frequent were claims of a difference in treatment because of their place of origin (18%), disability (18%), race (17%) and sex (16%). All other grounds represented a combined total of 31% as depicted in Figure 6.

* Protection afforded in Sec. 4 and Sec. 5

Not included in the statistics for intakes are those where a ground was not identified. The number provided merely reflects statistics for declared grounds.

Figure 7.

PERCENTAGE DISTRIBUTION OF INTAKES BY AREA OF DISCRIMINATION, 2018

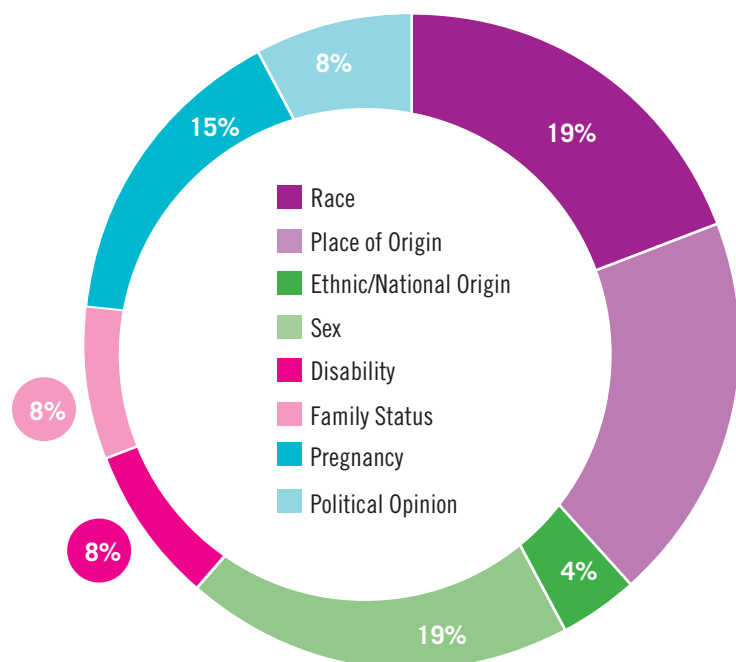


Intakes by area of discrimination displayed that the protected area of employment garnered the largest share of complaints at 40%. Dispersed in the category were complaints of being unfairly terminated, difference in pay, refusing to recruit and failure to promote, etc. At 34% workplace harassment was the next highest area followed by the provision of goods, facilities and services at 13%. See Figure 7.

Not included in the statistics for intakes are those where an area of discrimination was not identified. The number provided merely reflects statistics for declared areas of discrimination. Percentages may not equal 100% due to rounding.

Figure 8.

PERCENTAGE DISTRIBUTION OF ACTIVE INVESTIGATIONS BY GROUND OF DISCRIMINATION, 2018



There were twenty-three (23) investigations managed by Investigations Officers in 2018. 10 (ten) complaints were approved for investigation in 2018 and thirteen (13) were approved in earlier years and ongoing into 2018.

Race, place of origin and sex were identified as the ground of discrimination in five (5) matters, and as Figure 8 depicts resulting in a percentage share of 19% each. Allegations of discrimination based on pregnancy represented 15%, while family status, political opinion and disability represent 8% each. Ethnic or national origins was cited in 1 (one) complaint.

It should be noted that for a few investigations Complainants alleged discrimination under multiple grounds, and is reflected in the percentages in Figure 8.

* Protection afforded in Sec. 4 and Sec. 5

Figure 9.

PERCENTAGE DISTRIBUTION OF ACTIVE INVESTIGATIONS BY AREA OF DISCRIMINATION, 2018

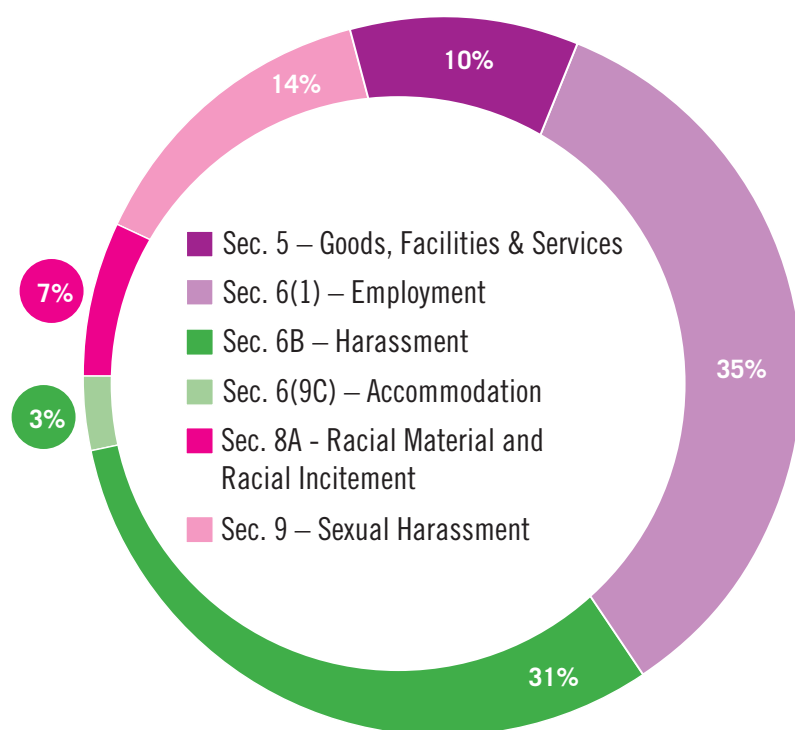


Figure 9 displays that most allegations of discrimination were identified as occurring in the area of employment at 35%. Ten (10) Complainants alleged that they were the victims of discrimination in the workplace under section 6(1) of the Act citing such practices as unfair dismissal, difference in pay, failing to recruit etc.

Also alleged in the workplace, was harassment at 31%, sexual harassment at 14% and there was one (1) allegation of failure to accommodate a disability. Remaining allegations cited were discrimination in the provision of goods facilities and services (3 or 10% of matters), distribution of racial material and racial incitement (2 or 7% of matters).

Table 1.

CLOSED INVESTIGATIONS BY OUTCOME, 2018

1
COMPLAINT
RESOLVED
via Conciliation/
Mediation

2
COMPLAINT
DEEMED
ABANDONED

1
COMPLAINT
DISMISSED

During 2018 there were four (4) investigation closures. One (1) was resolved via conciliation or mediation efforts. Two (2) matters were abandoned by the Complainants and one (1) complaint was dismissed.

Preliminary Inquiries

Section 14 of the Act, affords the Executive Officer, for the purpose of determining whether to undertake an investigation, the power to conduct preliminary inquiries if considered appropriate. During the reporting period, fifteen (15) preliminary inquiries were conducted with one (1) progressing to further investigation.

Conciliation/Mediation

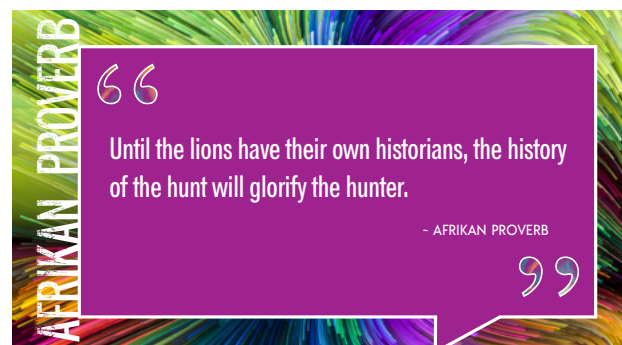
Complainants attempted conciliation in order to try to settle their complaints in 2018. These matters were resolved and closed.

Referrals to Other Agencies

The Human Rights Commission has a robust triage and referral process to assist the public in finding resolution to their query or complaint if their matter does not appear to fall under the Human Rights Act. In 2018, the majority of referrals were made to the Department of Workforce Development. Additional referrals were made to entities such as, the Bermuda Health Council, the Ombudsman of Bermuda, the Department of Immigration, the Community Centre on Angle Street, Women's Resource Centre, the Bermuda industrial Union, the Department of Social Insurance, Consumer Affairs, Aging & Disability Services, Rent Commission, the Department of Health and the Bermuda Bar Association.



TRIBUNAL JUDGMENTS AND LEGISLATIVE UPDATES



Court Case 1

HUMAN RIGHTS COMMISSION (First Plaintiff), K.F (Second Plaintiff), O (a minor) (by her next friend Tiffanne Thomas) (Third Plaintiff) and R.W (Fourth Plaintiff) v. THE ATTORNEY GENERAL AND MINISTER OF LEGAL AFFAIRS (First Respondent), THE MINISTER OF SOCIAL DEVELOPMENT AND SPORTS (Second Respondent) and THE DIRECTOR OF THE DEPARTMENT OF CHILD AND FAMILY SERVICES (Third Respondent)

SUPREME COURT – CIVIL JURISDICTION 2017: NO. 321

Facts

The Plaintiffs sought declarations in relation to Section 35 of the Children Act, 1998 (“1998 Act”). Specifically, declaratory relief was sought in relation to the obligations of the Family Court and others regarding the appointment of a litigation guardian and counsel to represent children during specified proceedings. The Plaintiffs also sought a declaration that the Second Respondent and/or Third Respondent have a duty to fund any such appointments.

Issues

The Supreme Court considered:

1. The duties of the Family Court and whether Section 35 of the 1998 Act was intended to operate like Section 41(6) of the Children Act 1989 (“UK Act”) in the United Kingdom;
2. Whether the Second and Third Respondent each have a duty to ensure that Section 35 of the 1998 Act is enforced;
3. Whether counsel and the litigation guardian have a duty to ensure that Section 35 of the 1998 Act is enforced; and
4. The issue of funding in relation to litigation guardians and counsel.

Judgment – Issue 1

The Court found that Section 35 of the 1998 Act was intended to operate like Section 41(6) of the UK Act. The Court clarified the duties of the Family Court by making the following declarations:

1. For the purpose of any specified proceedings, the court shall: (i) consider whether to appoint a litigation guardian for the child concerned; (ii) appoint a litigation guardian for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests; and (iii) give reasons for its decision.
2. Where, in the case of any specified proceedings, the child concerned is not represented by counsel, the court shall: (i) consider whether any of the conditions mentioned in Section 35(4) of the 1998 Act is satisfied; (ii) if it finds that any of the said conditions is satisfied, consider whether to appoint counsel to represent the child concerned; and (iii) give reasons for its decision.

3. An order appointing a litigation guardian or counsel to represent the child concerned is made subject to sufficient funds being available to fund such appointment.

Judgment – Issue 2

The Court considered Sections 8 and 9 of the 1998 Act and ultimately found that neither section imposed a duty on either Respondent to enforce Section 35 of the 1998 Act by way of ensuring that the Family Court is aware of its duties.

Judgment – Issue 3

The Court found that while the 1998 Act does not impose any specific duties on litigation guardians or counsel there always exists the duty of counsel to advise the court of any relevant statutory provisions, including Section 35 of the 1998 Act.

Judgment – Issue 4

The Court in its ruling on this issue noted that there are statutory mechanisms independent of the UK Act, which provide for the funding of litigation guardians and counsel appointed under that Act. In Bermuda there are no such statutory mechanisms. Justice Hellman in his ruling found that the courts will not construe a statute as authorising public expenditure merely by implication. The Court found that it would be wrong in principle to use its inherent jurisdiction to authorise statutory expenditure where the Legislature has not expressly done so. In considering the Constitutional implications of fair hearing rights, the Court found that the Constitution confers a right to representation to children but it does not also confer a right to have that representation publicly funded.

What does this mean for Residents?

This decision demonstrates the need for the Legislature to establish statutory mechanisms designed to fund litigation guardians and counsel. At present, while there exist clear declarations made by Justice Hellman as regards the duty of the Family Court to consider whether to appoint a litigation guardian and counsel, it remains subject to funding being available. The result of this will be that where the Court makes an order for the appointment of litigation guardians and counsel it may not be complied with due to a lack of funds being made available.

Court Case 2

MARIA AGUIAR (First Appellant)^[AAEM1] and ASHLEY AGUIAR (Second Appellant) v. THE CHIEF IMMIGRATION OFFICER (Respondent)

**SUPREME COURT – CIVIL JURISDICTION 2018:
NO. 172 & 173**

Facts

The Second Appellant appealed against the Decision Notice issued on 10 November 2017 by the Respondent pursuant to Section 71B(3) of the Bermuda Immigration and Protection Act, 1956 (“Immigration Act”). The Decision Notice imposed a civil penalty of \$5,000 for violation of Section 71A(1)(c) of the Immigration Act. The violation consisted of working at a hair salon without a work permit contrary to Section 60(1) of the Immigration Act.

The Second Respondent was born in Bermuda and her father is a PRC holder with Certificate B status. She was a student studying to become a hairdresser and was allowed by the owner of the salon to attend the salon in order for her to gain experience as a hairdresser. The arrangement began as part of a day release program facilitated by her school. The arrangement between the owner and the Second Respondent was informal, unstructured and without any obligation on the part of either party. The owner never treated the Second Respondent as an employee of a business nor was she ever paid by the owner. The Second Respondent never charged anyone for styling their hair.

Issues

With respect to the appeal filed by the Second Respondent the Supreme Court had to consider:

1. Whether it was a breach of Section 57 of the Immigration Act to work without remuneration for practical experience?

Judgment

The Court found that the unstructured informal arrangement established to allow the Second Respondent to obtain practical experience would not appear to come within the meaning of “employment” in accordance with the meaning of Section 57(2)(a) of the Immigration Act. The Court further found that the informal arrangement between the owner and the Second Respondent did not amount to the relationship of an employer and employee.

The Court noted that the crucial fact in its analysis was that the Respondent was not engaged in the ordinary business of a hairstylist but was limited to the activities undertaken in order to gain practical experience. An essential feature of the arrangement was that it was carried out within “reward, profit or gain.” In its assessment of Section 57(6) of the Immigration Act, the Court found that it only applies if the relevant activity “*is ordinarily in Bermuda continued, practised and carried on or engaged in for reward, profit or*

gain” but in this particular case no reward, profit or gain was obtained. Since the Second Respondent was obtaining practical experience as a hairstylist she was not engaging in “*any employment profession, trade or local business*” which “*is ordinarily in Bermuda continued, practised and carried on or engaged in for reward, profit or gain.*”

The Court ruled that the informal and unstructured arrangement that the Second Respondent had with the owner did not amount to engaging in gainful occupation within the meaning of Section 57(2) of the Immigration Act and as a result no permission was required under Section 60(1) of the Immigration Act. The Court found as a result of this that there was no relevant basis for imposing a penalty.

What does this mean for Residents?

This decision serves as a useful guide for residents in circumstances similar to that of the Second Respondent in addition to raising awareness around the daily challenges associated with residents who were born and raised in Bermuda but still remain without status.

Court Case 3

S, (a minor) (First Plaintiff) and B, (a minor) (Second Plaintiff) (By their next friend, EQUAL OPPORTUNITIES IN SPORT v. BERMUDA AMATEUR SWIMMING ASSOCIATION (Defendant)

SUPREME COURT – CIVIL JURISDICTION 2018: NO. 209

Facts

The Plaintiffs sought a declaration that that for the purposes of a sporting competition any person “deemed to belong to Bermuda” for the purposes of Section 11(5) of the Bermuda Constitution Order, 1968 (“Constitution”) is considered as equivalent to a citizen and/or national under Bermuda law.

The proceedings related to the eligibility of Bermuda athletes seeking to compete in events organised by the Central American and Caribbean Amateur Swimming Federation (“CCCAN”) as well as international sporting bodies. It is generally required that as a qualification for participation and winning the competition, the athlete must be a citizen or national of the participating countries. The Plaintiffs are two children who belong to Bermuda in accordance with the Constitution by virtue of being children of naturalised British Overseas Territories Citizens. The Defendant is responsible for selecting and entering Bermuda athletes in CCCAN events in accordance with their rules of eligibility. The rules stipulate that a competitor shall be a citizen, whether by birth or naturalization, of the nation they represent, provided that a naturalised person shall live in their country for at least one year prior to the competition.

Issues

The Supreme Court had to consider:

1. Who qualifies as a citizen or national of Bermuda for the purposes of participating in international competitions; and
2. Whether for the purposes of a sporting competition any person “deemed to belong to Bermuda” is equivalent to a citizen or national.

Judgment – Issue 1 and 2

The Court in considering the concept of citizenship or nationality in the context of Bermuda noted that Bermuda is a British Overseas Territory and not an independent state. The strict meaning of this is that there is no such thing as Bermudian nationality or citizenship, as internationally Bermudians are British citizens. Historically all persons who possess Bermuda status under the Bermuda Immigration and Protection Act, 1956 (“Immigration Act”) have been considered as nationals of Bermuda by the local and international sporting bodies. The Defendant has always treated all persons who possess Bermuda status as nationals of Bermuda for the purposes of participating in CCCAN events and CCCAN has accepted that designation.

The Court noted that the concept of a person possessing Bermuda status comes from the Immigration Act, which sets out the various methods of acquiring Bermuda status. The Court moved onto the more specific issue to be resolved, which is outlined in issue 2 as regards those that are deemed to belong to Bermuda in accordance with the Constitution.

The Constitution uses a different but related concept of “belonging to Bermuda” by way of Section 11(5), which sets out that a person is deemed to belong if that person:

- (a) Possess Bermudian status;
- (b) Is a citizen of the United Kingdom and Colonies by virtue of the grant by the Governor of a certificate of naturalization;
- (c) Is the wife of the person to whom either of the foregoing paragraphs of this subsection applies not living apart from such person under a decree of the court or deed of separation; or
- (d) Is under the age of 18 years and is the child, stepchild or child adopted in a manner recognised by law of a person to whom any of the foregoing paragraphs of this subsection applies.

As seen from the definition in Section 11(5) of the Constitution the concept of belonging to Bermuda is wider than the concept of Bermudian status. Chapter 1 of the Constitution concerns the Protection of Fundamental Rights and Freedoms of the Individual and seeks to extend to a person belonging to Bermuda substantially the same rights as enjoyed by a person possessing Bermudian status. In an analysis of Section 11(1) and Section 12(1) of the Constitution the Court set out that the fundamental right of

protection from discrimination enshrined in Section 12(1) may not be restricted in relation to a person who belongs to Bermuda. The effect Section 11(1) and Section 12(2) of the Constitution, as decided in *Minister of Home Affairs v. Williams* 2015, is that a person belonging to Bermuda enjoys the same rights in relation to freedom of movement and with respect to employment, engaging in any business or profession in Bermuda as a person who possesses Bermudian status.

The Court found that Bermuda law affords a large measure of equality to the concepts of Bermuda status and belonging to Bermuda. Furthermore, the differences noted were not material for this particular purpose. The Court ruled that all persons who either possess Bermudian status or are deemed to belong to Bermuda are to be considered as equivalent of nationals or citizens of Bermuda for the purposes of eligibility to compete in international sporting events.

What does this mean for Residents?

This result of this decision is that for the purposes of representing Bermuda internationally those deemed to belong to Bermuda are now eligible for selection. Participation would be subject to the rules of the international body, however, where they specify or otherwise require that for a person to be eligible to compete in or win such competition they must be a citizen and/or national of Bermuda, their status as belonging to Bermuda would be equivalent to a citizen or national.

Court Case 4

ATTORNEY GENERAL (Appellant) v. RODERICK FERGUSON (Respondent) and OUTBERMUDA (1st Respondent), MARYELLEN JACKSON (2nd Respondent), DR. GORDON CAMPBELL (3rd Respondent), SYLVIA HAYWARD HARRIS (4th Respondent) and THE PARLOR TABERNACLE OF THE VISION CHURCH OF BERMUDA (5th Respondent)

COURT OF APPEAL – CIVIL APPEAL 2018: NOS. 11 AND 12

Background

This appeal concerns the progression of LGBT rights within Bermuda. A brief summary of some of the events are as follows:

- **June 2013** – the Human Rights Act, 1981 (“Act”) was amended to include sexual orientation as a ground of discrimination.
- **February 2016**– the Government tabled a bill to make provision for civil unions to include same-sex partners.
- **June 2016** – the Government held a referendum. The turnout was less than 50% of those entitled to vote, which resulted in the questions being deemed “unanswered.”

- **July 2016** – the Private Members Bill, which sought to have marriages be void unless they were between a man and a woman was passed by the House of Assembly but rejected by the Senate. At about the same time the Civil Unions Bill was dropped.
- **May 2017** – the Supreme Court ruled in *Godwin and DeRoche v. Registrar General and others* that the Human Rights Act guaranteed same-sex couples the right to marry.
- **February 2018** – the Domestic Partnership Act 2018 (“DPA”) received the Governor’s assent 2018 and its Operative date was fixed to commence on June 1, 2018. This legislation sought to repeal the effects of the decision in *Godwin*.
- **May 2018** – the DPA was challenged in the Supreme Court in *Ferguson, OutBermuda, Jackson, Campbell, Hayward Harris and the Parlor Tabernacle of the Vision Church of Bermuda v. Attorney General*.
- **June 2018** – the Chief Justice Kawaley ruled in *Ferguson* that the Applicants were entitled to the declaration that the provisions of the DPA purporting to reverse the effect of the Supreme Court’s decision in *Godwin* are invalid because they contravene the provisions of Section 8(1) and Section 12(1) of the Constitution. The Court refused the Applicant’s request that the revocation provisions of the DPA be declared invalid on the grounds that there were enacted for a religious purpose.
- The Attorney General subsequently appealed the Chief Justice’s decision on Section 8(1) and Section 12(1) of the Constitution.

Issues

The Court of Appeal had to consider:

1. Whether Section 53 of the DPA (“revocation provision”) was passed for a religious purpose; and
2. Whether it offends Sections 8 and/or 12 of the Constitution.

Judgment – Issue 1

The Court of Appeal stated that Parliament’s freedom to legislate in Bermuda is constrained to the extent that it must not pass legislation that is inconsistent with the fundamental rights and freedoms of the Constitution. Nor, because it has a secular Constitution, can it pass laws wholly or mainly for a religious purpose. The Justices of Appeal found that it was necessary to look carefully at the circumstances that led to the passing of the DPA to determine what the underlying purpose of Section 53 was. In their ruling they concluded that the addition of the revocation provision was to reverse the decision in *Godwin* as well as that Section 53 was introduced into the DPA at least primarily for a religious purpose. The Court noted that the one purpose that did relate to the revocation provision was satisfying the religious demands of the opponents of same-sex couples, which allowed for them to conclude

that the underlying purpose of the revocation provision was religious.

The Justices of Appeal found that the revocation provisions in the DPA were passed for a mainly religious purpose and are therefore invalid and must be struck down.

Judgment – Issue 2

The Justices of Appeal noted that it is common ground that Parliament’s power to legislate requires it to comply with the Constitution and is subject to restrictions imposed by it and that any law passed in Bermuda will be void to the extent of any inconsistency with the Constitution. In consideration of Section 8 of the Constitution, freedom of conscience, the Court found that belief in marriage is a fundamental one, whether in opposite sex marriage or same-sex marriage and, following the decision in *Godwin*, Bermuda law drew no distinction between the two until the DPA became law. The Justices of Appeal were of the view that the Chief Justice was correct in holding that the Respondents’ Section 8 rights under the Constitution were violated by Section 53 of the DPA. The Court agreed with the Chief Justice that the State cannot pass a law of general application that favours those who disagree with same-sex marriage. Section 8 of the Constitution is there to protect the beliefs of minorities and their freedom of conscience. Their freedom of conscience matters and is not lightly to be interfered with. The Appellants did not advance any evidence to justify the interference.

In consideration of Section 12 of the Constitution, the issue turns on the meaning of “creed.” The Court found that “creed” should be given its broader meaning, however, all of the broader definitions refer to a system or set of beliefs rather than a single belief. The case of the Respondents was based on a single belief, namely a belief in marriage recognised by law in which same-sex couples ought to be able to participate.

The Justices of Appeal upheld the decision of the Chief Justice that there is a breach of Section 8 of the Constitution but not for Section 12.

What does this mean for Residents?

This result of this decision is that same-sex marriages were allowed to resume after a pause of several months that followed the enactment of the Domestic Partnership Act, 2018.

HUMAN RIGHTS (APPEALS) RULES 2018

The Human Rights (Appeals) Rules 2018 (“Rules”), were created by the Chief Justice, Ian Kawaley in exercise of the power conferred by section 21(5) of the Human Rights Act, 1981 (“Act”). The Rules were operative as of June 1, 2018, which has provided clear legislative support to assist parties that may wish to appeal a decision of the Human Rights Tribunal to the Supreme Court of Bermuda.

The Rules have aided in providing greater clarity to section 21 of the Act and improved the accessibility in filing an appeal from a Tribunal's decision for parties that are not legally represented and those with limited understanding of legal processes. The Rules have fixed a clear timeline for the Chairman to provide a record of the Tribunal proceedings to the Registrar of the Supreme Court to aide in expediting appeals. Finally, the Rules have clarified any ambiguities with regard to applications that are made in relation to an appeal, as the Supreme Court will be seized with the whole of the proceedings between the parties once an appeal is entered by the Registrar.

A copy of the Rules can be found on the Human Rights Commission's website as well as Bermuda Laws Online.^[MA2]

Tribunal Case 1

S.B.^[MA3] v. R&M LTD. & D.R. et al ^{[cs6][cs7]}

TRIBUNAL DECISION

Facts

The Complainant was employed by the First Respondent, R&M Ltd., which owns and operates the business known as St. David's Variety. The Second Respondent, D.R., is a part owner of R&M Ltd. The Complainant filed a complaint of discrimination against the Respondents, which alleged that she experienced a sustained campaign of harassment from the Second Respondent. The alleged harassment was said to have included sexual harassment directly from the Second Respondent as well as allowing other staff and customers to make offensive, rude and sexual comments towards her.

Allegations

1. The Second Respondent discriminated against her by sexually harassing her in the workplace contrary to Section 9(1) of the Human Rights Act, 1981 ("Act");
2. The Respondents discriminated against her by not taking such action as is reasonably necessary to ensure that sexual harassment did not occur in the workplace, contrary to Section 9 (3) of the Act; and
3. The Second Respondent discriminated against her by harassing her in the workplace because of her sex, contrary to Section 6B of the Act, as read with Section 2(2) (a)(ii) of the Act.

Judgment

The Tribunal found that the only form of harassment that occurred was sexual harassment in circumstances where an employee made a comment that was sexual in nature

to the Complainant. The Tribunal found that the sexual comment was vexatious, unwelcome and unacceptable. The Tribunal further found that the Second Respondent either implicitly supported the inappropriate comment or despite being present, did nothing about it. The Tribunal in its ruling noted that it is the responsibility of the employer to take such action as is reasonably necessary to ensure that sexual harassment does not occur in the workplace. The Tribunal ruled that the First Respondent contravened Section 9(3) of the Act, by failing to take the necessary steps to ensure that the Complainant was able to work in an environment free from sexual harassment.

Damages

In the assessment of damages, the Tribunal found that damages should be limited to injury to feelings. In making its determination, the Tribunal noted that there was a single incident of sexual harassment, which was proven, that was not very serious in nature and made an award of \$5,000 for injury to feelings to be paid by the Second Respondent. The Tribunal also awarded the Complainant costs in the sum of \$1,000 to be paid by the Second Respondent. The Tribunal in exercise of its authority under Section 20 of the Act, ordered that the First Respondents:

- a) Create an employee handbook that contains a sexual harassment policy and complaint procedure;
- b) Provide it to their employees; and
- c) Provide training to its employees on its implementation and correct conduct in the workplace.

What does this mean for Residents?

This decision demonstrates the need for employers to ensure that employees are allowed to work in environments free of sexual harassment while also having the appropriate protocols in place to deal with instances of sexual harassment. This is another case that demonstrates the Tribunal powers available under Section 20(1)(a) of the Act, which allows the Tribunal to order a party who has contravened the Act to do any act or thing to become compliant.



In Memoriam

Bermuda lost some remarkable social justice advocates over the past year. The Commission wishes to recognize these individuals whose commitment to human rights continues to give shape to our work and our community today. We salute their courage, determination and resolve in making Bermuda better for all.



QUINTON EDNESS

QUINTON EDNESS HAS BEEN DESCRIBED AS THE FOUNDING FATHER OF THE HUMAN RIGHTS COMMISSION. HIS PASSION AND DRIVE SAW THE PASSING OF THE INAUGURAL HUMAN RIGHTS ACT IN 1981 AND HE REMAIN ENGAGED AND INVESTED IN RIGHTS MATTERS FOR THE DURATION OF HIS LIFE. HIS HUMANITY, HUMILITY AND SACRIFICE FOR THE COUNTRY HE LOVED WAS RECOGNISED BY THE MANY INDIVIDUALS WHO SPOKE IN TRIBUTE TO HIM. AS SOMEONE DESCRIBED, "IF YOU CUT HIM, HE WOULD BLEED BERMUDA."

Mr. Edness was recognised as a respected broadcaster, businessman, and politician. He served as a United Bermuda Party MP for 30 years. He was awarded the CBE in 1992 in the Queen's New Year Honour's List for his public service. Mr. Edness was elected to Parliament in 1968 after he won the Warwick West seat and went on to serve in the UBP Cabinet in a variety of roles.

He led the ministries of home affairs, health and social services, marine and air, works, agriculture and fisheries and community affairs. Mr. Edness was a consummate politician and a UBP heavyweight who steered several major Acts through Parliament, including the Misuse of Drugs Act 1972, the Bermuda Housing Act 1980, the Human Rights Act 1981, the Public Works Act, 1984, the Waste and Litter Act 1987 and the Housing Assistance Programme 1988.

Sir John Swan shared of his friend, "Quinton had a profound conscience and sensitivity about people. His life's mission was to help people and he was prepared to make every sacrifice to achieve that aim. He trailblazed initiatives that helped ready Bermuda for the 21st century. Quinton was often the voice of reason and he never became bitter. He was a man who sacrificed so much for the good of Bermuda. He worked so hard and no one should forget that."

Progressive Labour Party Chairman, Owen Darrell, said it best of Mr. Edness, "His commitment to his island clear through his public service, we must give our thanks and gratitude to his wife and family for sharing him with us all."



RON LIGHTBOURNE

RONALD LIGHTBOURNE'S LIFE WAS SHAPED BY HIS COMMITMENT TO THE INHERENT DIGNITY AND WORTH OF ALL HUMAN BEINGS. THE COMMISSION IS GRATEFUL TO HIS DAUGHTER, JESSICA LIGHTBOURNE, FOR SHARING THE FOLLOWING TRIBUTE: "MY FATHER HAS OFTEN BEEN DESCRIBED AS A RENAISSANCE MAN. HE WAS A POET, SONGWRITER, PLAYWRIGHT, JOURNALIST, HUMAN RIGHTS ACTIVIST, TEACHER, PIANIST, SINGER, TRUMPETER, NOMAD. HE WAS A LOVER OF ART AND AN ADVOCATE FOR JUSTICE. HE TAUGHT ME THE WORD 'EQUITY' AND ITS MEANING IN THE CONTEXT OF RACIAL JUSTICE. HE TAUGHT ME THAT 'LEGAL' AND 'JUST' WERE NOT THE SAME THING.

The personal was political growing up with my father for my brother and me. His friends embodied diversity and his relationships reflected the ideals of inclusion. Case in point: we grew up in a household where my father's partner was a white woman in a wheelchair, human rights activist, Margaret Carter, and whose friend and helper, Rosalie Fox, was a black woman with intellectual disabilities. Activists and artists were common guests at our dinner table.

You need not look far in his writing to see the recurring themes of struggle, dreams, forgiveness, freedom and redemption. His hero was Nelson Mandela, evidenced by the tattoo he acquired in the latter years of his life, simply the name and the prison number, something he proudly showed to a former political prisoner turned tour guide during our pilgrimage to Robben Island a few months before his death.

While much of his activism was overt, demonstrated through picketing, writing and public speaking, much of his social justice work was accomplished by showing up in spaces and places which were infamous for being unwelcoming and exclusive. He also created access for others to do the same, showing up even if it was uncomfortable for all. Showing up even as the token.

The fight for the realization of the ultimate dream, the inherent dignity, worth and rights of all humans everywhere, continues, and I am proud that my father had a small part to play in making this dream come true."



LOUIS SOMNER

THE HUMAN RIGHTS COMMISSION WOULD LIKE TO EXTEND OUR CONDOLENCES TO THE FAMILY OF LOUIS SOMNER. OUR CONDOLENCES ALSO TO HIS COLLEAGUES AND FRIENDS AT THE BERMUDA INDUSTRIAL UNION WHO SERVED ALONGSIDE HIM FOR MANY YEARS ADVOCATING FOR WORKER'S RIGHTS ACROSS THE ISLAND. WE WOULD LIKE TO THANK LAVERNE FURBERT FOR SHARING THIS PHOTO OF BROTHER SOMNER. THE COMMISSION WAS FORTUNATE TO HAVE MR. SOMNER SERVE FROM 2012-2015 AS PART OF THE FIRST COHORT OF INDEPENDENTLY APPOINTED COMMISSIONERS. OUR CHAIR TAWANA TANNOCK REFLECTED ON THEIR SHARED SERVICE:

"I served with Louis for three years from 2012-2015. He provided a view that was unique among the Commissioners that served with him, voicing concerns that reflected those segments of the population who are often underrepresented at the table. He never failed to express his support, or vocalize his disagreement, and very often served as the barometer by which we measured the reasonableness of our approach to issues of the day, such as immigration, and he would never hesitate to offer an alternative way forward that was reflective of the concerns of many Bermudians. His honesty, frank approach and passion was greatly appreciated by the Commission and will be sorely missed."

Many people across the island have benefited from having Louis Somner advocating in their corner. He fought for what was just, always.



KIM YOUNG

KIM YOUNG SERVED ON THE HUMAN RIGHTS COMMISSION FOR TWO YEARS FROM 1995, AND REGULARLY ADVOCATED FOR THE HUMAN RIGHTS ACT TO BE AMENDED TO BAN DISCRIMINATION ON THE GROUNDS OF AGE AND SEXUAL ORIENTATION. SHE WAS RECOGNISED AS A TIRELESS ADVOCATE FOR THE RIGHTS OF WOMEN AND CHILDREN THROUGHOUT HER MANY YEARS OF PUBLIC SERVICE.

Mrs. Young was born in Australia and arrived in Bermuda in 1966 to work as a nurse at King Edward VII Memorial Hospital. She served as MP for Paget East from May 1997 until her political retirement at the General Election in July 2003. She was appointed Minister without Portfolio in May 1998, a few months before the UBP's tenure in government came to an end. While in Opposition, she served as Shadow Minister for Health and Family Services and spokeswoman for Environment and Women's Issues.

We are grateful to Commissioner Jonathan Young for providing insight into his beloved mother. As he shared, "Her life was defined by love, dignity, compassion, generosity and laughter. Her public life was defined by her leadership on behalf of the rights of women and children. At the Women's Resource Centre, she counselled women in their worst hour with effortless compassion. As president of the Women's Advisory Council to the Premier, she fought to create a world where we no longer needed a women's advisory council but had more women leaders of our own. If you wish to honour her memory, please give your time and love to someone who needs it."

A BEAUTIFUL LEGACY AND A RALLYING CRY FOR US ALL.

APPRECIATION AND ACKNOWLEDGEMENTS

This has been an extremely challenging year for the Commission and we are grateful to all those we have worked with, learned from, and been inspired by.

The Human Rights Commission could not fulfill our mandate without the expertise and initiative of the many members of the public who serve as advocates promoting the protections and aspirational commitments of the Human Rights Act in their daily work and lives.

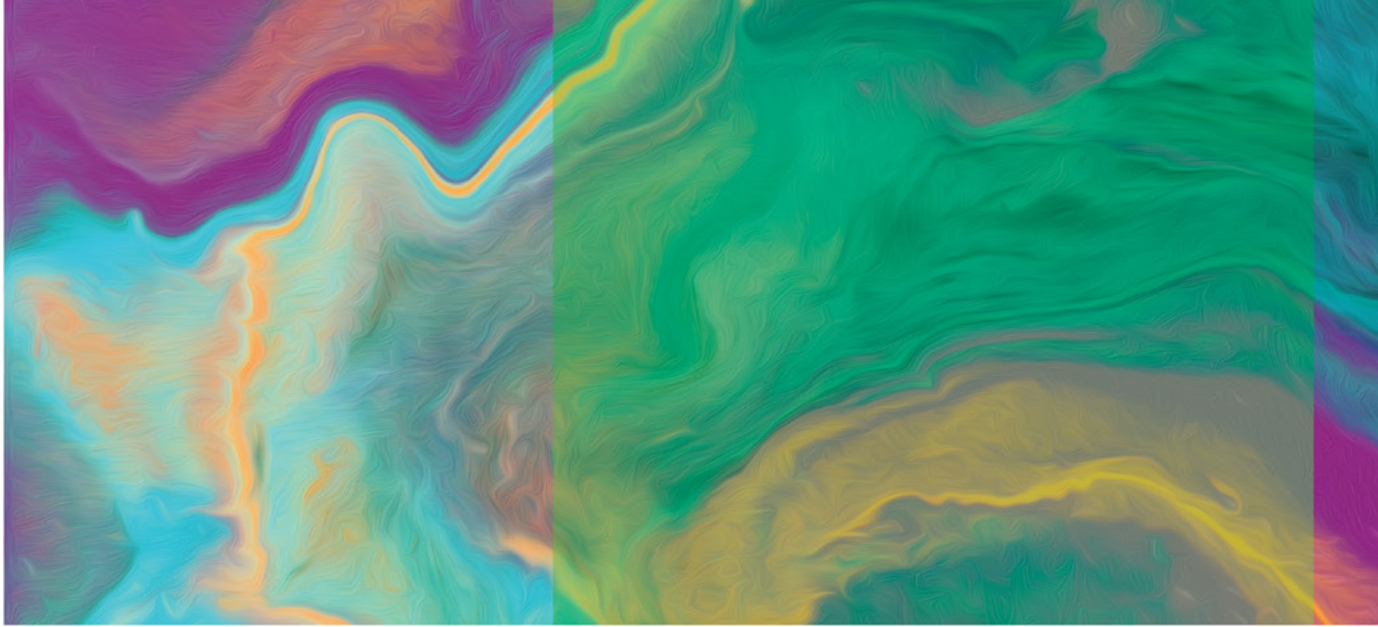
To those who came forward to request assistance, express concerns, submit complaints or share ideas - thank you for entrusting us. We recognise it takes great courage to pick up the phone or walk through the door to address concerns or experiences of discrimination and harassment.

The Act intersects with all areas of life in Bermuda, and our efforts over the last year were enriched by the educators, students, public servants, business, religious and spiritual leaders, service providers and partner agencies who worked with us to understand and promote the protections afforded.

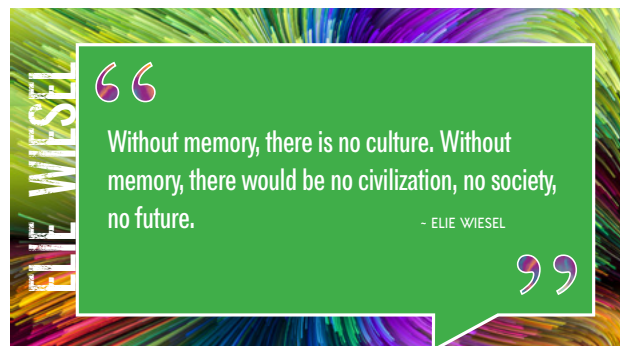
To the many stakeholders who have reached out to the Commission to address areas of concern in their practices, policies or spheres of influence in order to 'do better' in support of rights, we thank you for your example.

Finally, appreciation is extended to the 2016-2018 cohort of Commissioners who conclude their 3 year term of service this year. The post of Human Rights Commissioner is challenging. It requires commitment in terms of time, but equally with regard to caring for the confidential, sensitive, unpredictable, and urgent matters facing the Human Rights Commission, and community at large. We are grateful to the dedication of our exiting Commissioners and consider them Ambassadors for human rights always.





ANNEXES



ANNEX 1

HOW TO LODGE A COMPLAINT OR ADDRESS A QUERY

Anyone who believes they may have a complaint that contravenes the protections in the Human Rights Act have the right to contact the Office of the Human Rights Commission. The public may also contact the Office with any general queries, requests or concerns. You can choose to call, email or visit the Office to make contact.

- **WALK-IN** Human Rights Commission
Milner Place | Ground Floor | 32 Victoria Street | Hamilton HM 12
- **MAIL** P.O. Box HM 734 | Hamilton HM CX
- **PHONE** (441) 295-5859
- **EMAIL** humanrights@gov.bm
- **WEB** www.humanrights.bm

A complaint must:

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

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

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

ANNEX 2

COMPLAINT HANDLING PROCESS

1. **Complaint Received** – The complaint is received by any of the methods outlined in Annex 1, and it is then logged on the Commission’s confidential database. An Officer is assigned to obtain as much relevant information as possible to clarify the complaint. The Respondent(s) are notified and, in the first instance, a preliminary inquiry may be conducted to determine if there is sufficient evidence to justify further examination. The Executive Officer considers the complaint and, if it is determined to be a prima facie case, the Respondent(s) are notified and requested to respond to the complaint.
2. **Investigation and Conciliation** – An investigation into the complaint may begin once the parties have provided their initial statements. Efforts will be made throughout the process to try to resolve the dispute.
3. **Determination of Merit** – Following an investigation, the Executive Officer considers the evidence adduced and makes a decision as to whether or not the complaint appears to have merit (appears to contravene or violate the Human Rights Act). If it is determined that the complaint does not appear to have merit, the Complainant is offered the opportunity to be heard and a final decision is made. If the complaint appears to have merit, mediation may be offered to the parties by the Executive Officer as a means of resolving the matter before referral to a Tribunal.
4. **Referral to Chair** – If the matter is unresolved, or is unlikely to be settled, the matter is referred to the Chair of the Human Rights Commission who shall empanel a Human Rights Tribunal.



ANNEX 3

HUMAN RIGHTS TRIBUNAL PROCESS

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

Parties are first offered the opportunity to settle the dispute through mediation. If the parties do not agree to mediation, or mediation does not resolve the dispute, the Chair empanels a Tribunal. The Tribunal consists of three (3) Commissioners; a legally qualified Chair and two (2) members. The onus is on the parties to a complaint to supply the Tribunal with all evidentiary materials to support their claim, including witness statements.

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



ANNEX 4

AREAS OF PROTECTION UNDER THE HUMAN RIGHTS ACT 1981

In addition to the Grounds of Protection, the following areas apply:

Section 3: Notices – this Section provides protection as no one is allowed to display, publish or post any discriminatory sign, symbol or notice against any person or persons based on the protected grounds.

Section 4: Disposal of Premises – this Section provides protection for persons seeking to rent accommodation, acquire land or other premises – whether as a renter or as an owner. Persons cannot discriminate because of your race, place of origin etc.

Section 5: Goods, Services and Facilities – where a person is seeking to obtain goods, facilities or services, whether on payment or not, persons are protected from discrimination by others that would be a violation of any of the grounds set out in Section 2(2).

Section 6: Employment, Special Programmes & Harassment – this Section provides protection against discrimination in Employment. Employers are barred from discriminating in hiring, training, promoting, dismissing or demoting any person because of his race, etc. Employers and employment agencies are barred from discriminatory advertising.

Section 6B: Harassment – employees are protected against harassment from their employers. Harassment is persistent, vexatious and the employer, agents of employers or other employees should know or ought to know that it is not welcome by the employee.

Section 7: Organisations – protection against discrimination in clubs and other organisations, whether a member or not.

Section 8: Proceedings under the Act – persons are barred from treating someone who made a complaint under the Act, differently. For example, where an employer fires an employee, or punishes him/her, or intimidates such employee, because she/he made a complaint under the Act.

Section 8A: Racial Material & Harassment – persons are not allowed to publish racial material to incite or promote ill will against any part of the community because of their race or colour. No person should incite a breach of the peace against any part of the community, because of race, etc.

Section 9: Sexual Harassment – this Section provides protection from sexual harassment from employers, agents of employers, other employees, and landlords. The employer must protect against sexual harassment in the workplace.

Section 10: Discriminatory Covenants – where there is a legal instrument passing property, such as a Deed, if it is drafted in a discriminatory way so as to contravene the grounds as stated in Section 2(2) of the Act, the instrument would be deemed null and void. It would have no legal effect.

ANNEX 5

TIMELINE OF THE HUMAN RIGHTS ACT

EST. 1981



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

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)



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

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)

2000

2005

2010

2011

2012

2013

2016

Amalgamation:

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



Voluntary mediation introduced as the primary means of settling complaints

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



ANNEX 6

RACE AND RESISTANCE SYMPOSIUM SCHEDULE

RACE and RESISTANCE: Understanding Bermuda Today.

SATURDAY : 9:00am – 5:00pm
NOV.3 : Bermuda College
: Room G301

Sunday 4 November 3:00-5:00pm Guided Tour!

Join us in St. Georges for a guided tour hosted by a variety of Bermuda's historians through 7 of the 12 African Diaspora Heritage Trail sites! Meet in the Town Square.

*this is a free event with a donation of **\$10 donation** encouraged in support of the African Diaspora Heritage Trail and Bermuda Heritage Museum.

TIME	ACTIVITY
9:00 – 9:30am	Registration and breakfast in The Marketplace
9:30 – 10am	Welcome and opening address by event hosts: Dr. Curtis Tweed, BERMUDA COLLEGE Lisa Reed, HUMAN RIGHTS COMMISSION Prof. Wale Adebani and Stephen Tuck, OXFORD UNIVERSITY • Comments in honour of Dr. Eva Hodgson by Cordell Riley • Performance piece by Rajai Denbrook. • Moment of reflection
10:00 – 11:00am	PANEL 1: 1612 – 1834 Founding of Bermuda and the Fight for Freedom. <i>Each speaker given approx. 10 minutes and we wish to allow up to 10 minutes for Q&A.</i> Moderator: Meredith Ebbin
11:00 – 11:15am	Coffee Break
11:15 – 12:20	PANEL 2: 1834 – 1959 Struggle for Desegregation: Post-emancipation, identity and immigration. Moderator: Dr. Wale Adebani
12:20 – 1:15pm	MARKETPLACE VISIT and LUNCH
1:15 – 2:30pm	PANEL 3: 1959 – 2018 The Pursuit of Equality and Justice: Past and Present Moderator: Ru-Zelda Severin
2:30 – 2:40	Break
2:40 – 4:00pm	PLENARY SESSION and Q&A: Resistance and Transformation Today: What does it look like? Discussant: Rev. Dr. Nicholas Genevieve-Tweed
4:00 – 4:15pm	Closing Comments
5:00pm	MARKETPLACE to close at 5:00pm

PANELLISTS AND MODERATOR

Volunteers to assist with welcome, registration and seating.

Event Emcee: Kristin White

Speakers on behalf of hosts:

- Dr. Curtis Tweed, BERMUDA COLLEGE
- Lisa Reed, HUMAN RIGHTS COMMISSION
- Prof. Wale Adebaniwi and Stephen Tuck, OXFORD UNIVERSITY

- Dr. Clarence Maxwell
- Dr. Mike Jarvis
- Ajala Omodele
- Walton Brown

- Dr. Quito Swan
- Dr. Theodore Francis
- Lynne Winfield
- Rui De Sá

- Rev Dr. Nicholas Genevieve-Tweed
- Dr. Kristy Warren
- Dr. Radell Tankard
- Derrick Burgess
- Linda Bogle -Meinzer
- Robert Thomas
- McKenzie-Khol Tuckett

- Lynne Winfield
- Ajala Omodele
- Dr. Quito Swan
- Dr. Clarence Maxwell
- Dr. Theodore Francis
- Linda Bogle -Meinzer
- Robert Thomas
- McKenzie-Kohl Tuckett

**all panellists present.*

Kim Dismont-Robinson | Meredith Ebbin | Theodore Francis | Mike Jarvis | Clarence Maxwell |

HOSTED BY

BERMUDA COLLEGE | Human Rights Commission Bermuda | TORCH

RACE and RESISTANCE:

Understanding Bermuda Today.

SATURDAY **NOV.3** 9:00am – 5:00pm
Bermuda College Room G301

Join us as we convene with a variety of academics, researchers and activists to explore the history of race and racism through the lens of resistance in Bermuda.

SUPPORTED BY

Refreshments will be on offer and lunch will be available for purchase.

TO RESERVE TICKETS PLEASE VISIT THIS LINK ON EVENTBRITE UK:
<https://bermuda-symposium.eventbrite.co.uk> Or just Google: 'eventbrite, race, resistance, Bermuda' and the link will pop up! This is a FREE EVENT but tickets must be reserved as seating is limited.

QUERIES: Email bermudaraceresistance@gmail.com with any questions, or call 504-2543.

Design by ID Associates, Bermuda

Wale Adebaniwi | Bermuda Heritage Museum | Bermudians | Linda Bogle-Meinzer | Walton Brown | CURB (Citizens Uniting to Oppose Racism in Bermuda) | Rajar Debnath | Ajala Omodele | Dana Salsbie | Rachel Searin | Quito Swan | Radell Tankard | Stephen Tuck | Nicholas Genevieve-Tweed | Kristy Warren | Kristin White

RACE and RESISTANCE:
Understanding Bermuda Today.

SATURDAY **NOV.3**
9:00am – 5:00pm
Bermuda College, Rm G301

Hosted by: BERMUDA COLLEGE | Human Rights Commission Bermuda | TORCH

Supported by:

RACE AND RESISTANCE SYMPOSIUM (CONTINUED)



RACE and RESISTANCE: Understanding Bermuda Today.

- 1 WELCOME
- 2 SYMPOSIUM CONTRIBUTORS
- 4 SPEAKERS AND CONTRIBUTORS
- 20 PROFILE OF DR. EVA HODGSON
- 26 ACKNOWLEDGEMENTS
- 28 PROFILE OF BERMUDA COLLEGE, HUMAN RIGHTS COMMISSION AND UNIVERSITY OF OXFORD
- 30 SPONSORS

"Until the lions have their own historians, the history of the hunt will glorify the hunter."
~ African proverb

BERMUDA COLLEGE HUMAN RIGHTS COMMISSION UNIVERSITY OF OXFORD

RACE and RESISTANCE: Understanding Bermuda Today

WELCOME

On behalf of the Bermuda College, the Human Rights Commission and Oxford University, Welcome!

The Race and Resistance Symposium is a collaborative event dedicated to honouring Bermuda's history. It is intended to provide an accessible contribution to the telling of Bermuda's experience of race and racism through the lens of resistance. Its purpose is to provide a factual background and conceptual apparatus to understand the contemporary Bermudian landscape.

The convening is an opportunity to provide historical insight, analysis and grounding in order to understand the legacy of racism, and to explore actions for addressing its current manifestations in Bermuda today together with the potential for transformation.

The event provides a platform to shine a light upon the extensive work of Bermuda's academics and activists steadfastly stewarding our history, both at home and abroad. Today we are honoured to feature but a few.

The accessibility and sustainability of the event has been an important consideration. There has long been a call to ensure that Bermuda's history is well defined and embedded in the school curriculum. The day's presentations are being recorded with each panel session being edited for distribution as an educational resource. A publication featuring submissions from the speakers and others is also being developed for dissemination.

The convening is being hosted at Bermuda's only higher education institution The Bermuda College. We wish to reinforce the College as a hub of local and international learning and knowledge-sharing. Fostering an ongoing partnership between the Bermuda College and Oxford University is an exciting prospect for both institutions.

The event is held today in honour of Dr. Eva Hodgson with gratitude for her example as both a courageous activist and an ever curious academic.

RESISTANCE

the act of questioning, challenging, fighting against something that is attacking or undermining you, or simply refusing to accept something.'

Lisa Reed attended Rider University in New Jersey. She attained a Bachelor of Science in Finance and soon after completed a Master in Business Administration. In 2004, Lisa joined the Public Service and has served as a Management Consultant and then went on to serve as the Executive Officer of the Human Rights Commission, a post she has held since March 2010. Lisa is accountable for the management and administration of the office of the Human Rights Commissioner and leads with a high regard for the facts and an uncompromising commitment to building a society that respects the inherent dignity of all persons; a consensus that is truly inclusive for all.

Born in a Leap Year on February 29th, Lisa Lister was diagnosed as a toddler with a rare neurological disorder. However, Lisa has never let her disability hold her back. From early, Lisa has challenged her abilities by participating in activities such as ballet, horseback riding and cheerleading and more recently, social dancing with a "can-do" spirit.

Lisa has a solid reputation for service, leadership and as an activist for social justice. Lisa is committed to using her influence to consider creative solutions that have direct measurable impact on Bermuda's most pressing social problems. She has served as a Director of Big Brothers and Big Sisters, the Friends of the Dame Marjorie Dean Hope Academy and Bermuda Underwater Exploration Institute. Further, she chaired the Committee that produced Bermuda's National Policy on Disabilities. Lisa is the loving wife of Mr. Douglas Reed and the proud mother of two children, Jaden, aged 17, and Mia, aged 16.

Ru-Zelda Severin is presently a senior lecturer of Music and Education at Bermuda College. She has been an adjunct for music at Atlantic Union College and for education at Windward College and Mount St. Vincent University. She-Zelda was an integral part of developing a Classical Liberal Arts school in Massachusetts where she served as principal of the middle and high school. She has conducted many education and education technology workshops locally and abroad. In addition to her teaching responsibilities at Bermuda College, Ru-Zelda is Chair of the BC Journal Committee, which produces Bermuda's only peer reviewed journal of education, is Co-Chair of the National Educators' Institute Initiative, and a member of the Board of Education and the African Heritage Diaspora Trust.

Dr. Quito Swan is a Professor of African Diaspora History at Howard University. The author of *Black Power in Bermuda*, his scholarship is focused on twentieth century Black internationalism. His research has garnered several prestigious awards, including fellowships from the National Endowment for the Humanities, the American Council of Learned Societies and Harvard University. As a 2017 residential fellow at Harvard's Radcliffe Institute for Advanced Study, he completed his book manuscript on Bermuda's Rosewell Brown—*All of Africa is On Our Side*. He is currently a fellow at Washington DC's Wilson International Center for Scholars, where he is writing his next book about Black internationalism and Oceania.

Professor Quito Swan obtained his PhD in African Diaspora History from Howard University in 2005. His areas of expertise include Black internationalism, Black Power and decolonization across the Americas, Africa and the South Pacific. Swan teaches courses on the global

"Justice is what Love sounds like when it speaks in Public"
~ Michael Eric Dyson

DR. EVA HODGSON

Eva N. Hodgson, born in Hamilton Parish of a family with strong religious convictions and a deep concern for social justice, under the watchful eyes of her Aunt Annie and Emily Hodgson. Her undergraduate degree from Queen's University in Canada was made possible by a Government Scholarship. She returned to teach at Berkeley Institute and at the end of her first year there, she won a scholarship to study for the Diploma in Education at London University's Institute for Education. Later she was a scholarship to study geography in Great Britain and returned in 1959 with an Honours Degree in Geography.

Bermuda was deeply segregated in the 1950s and ruled by a strong, powerful white oligarchy. She experienced life in non-segregated societies, and on her return to Bermuda was deeply frustrated and angry at the indignities and insults that continued to be heaped on Black Bermudians. She began writing for the *Bermuda Recorder* (a Black owned newspaper) publicly expressing her concerns for the racism and social injustices she witnessed that were so deeply entrenched and widespread in Bermuda. In such a society she was

quickly labeled a troublemaker and began to feel the backlash and economic pressures placed on a young, Black woman who dared to raise her voice. Shortly after her return she was asked to become President of the Bermuda Union of Teachers, a position she held until the union was amalgamated with the White Teachers Association to form the Amalgamated Bermuda Union of Teachers, with Dr. Hodgson serving as its first President.

Largely as a result of the amalgamation of the two unions and her role as President, she won the Russell Award for contributing to World Peace from the World Confederation of the Organization of the Teaching Profession. This award took her to East Africa to attend the WCOT Congress in held in Kampala, as well as to Egypt and Uganda.

She was also invited to become one of the early members of the government's Labour Relations Advisory Council.

The Progressive Group and the 1959 Theatre Boycott brought about desegregation but it took till 1964 for the Bermuda Government to complete their review of legislation and it wasn't until 1971 that the primary schools were desegregated, and within a year there was "white flight" to private schools.

Bermuda was now in an era of colourblindness, and anybody who so much as mentioned racial disparities, was labeled a racialist and/or "playing the race card". Silence about the past descended on both Blacks and Whites, and Blacks knew that if they protested the continuing inequalities, there would be rapid economic repercussions against them individually and their families.

As the Bermuda Government hesitantly moved from segregation to post-segregation policies that ensured they would continue to stay in power, Dr. Hodgson continued to write about the continued blatant economic inequalities and racial oppression in Bermuda's society. The majority of the white community maligned her both publicly and privately, yet still she continued to raise her voice against these in power. As a consequence, the opportunity to teach at the Bermuda College was denied to her, even though she was more qualified than any other in Bermuda.

Her continued concern about the indignities and results heaped on Black Bermudians led her to write the seminal *Second Class Citizens: First Class Men* in 1983, and for the first time provided a detailed history of the period

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