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# ANNUAL REPORT **2019**

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Human  
Rights  
Commission  
Bermuda





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

This is the Annual Report for the year 1 January 2019 to 31 December 2019. It includes details of the work we carried out during this period for the fulfilment of our statutory mandate.

Further information about the Human Rights Commission is available on our independent website <https://www.humanrights.bm/>

### **Accessible Formats**

This document is available for download from our website at [www.humanrights.bm](http://www.humanrights.bm) in an electronic text format (PDF). Please contact the Human Rights Commission at 295-5859 should you wish to request other accessible formats or other communication supports.

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## MESSAGE FROM THE EXECUTIVE OFFICER

The experience of the Office of the Human Rights Commission (Commission) in 2019 reaffirmed that Bermudians are increasingly relying upon its public officers to provide human rights guidance and effectively administer complaints handling and alternative dispute resolution processes.

In particular, Bermudians represented 84% of the total number of complainants in 2019. This statistic forms part of a wider and continuous trend in an ever increasing number of complaint filings by Bermudians since 2016. Notably, the percentage of Bermudian persons filing complaints was only 44% in 2015 and leapt to 77% in 2016. This percentage climbed further to 78% in 2017 and again, in 2018 to 82%.

The start of this increased reliance by Bermudians appears to have coincided with the operative transfer of the Commission from the Government Department of Human Affairs to a Non-Ministry Office on 1 April 2016

date, (Transfer). This Transfer created a much needed arm's length relationship for the Commission with the Government of Bermuda. It further aligned the Commission more closely with the Paris Principles, a set of international standards adopted by the Global Alliance of National Human Rights Institutions (GANHRI) to assess the extent to which National Human Rights Institutions (NHRI) operate in practice without the influence of any political, economic or reputational agendas of States.

The Commission identifies this trend as the public's response to its amplified capacity to undertake more independent outreach initiatives and human rights advocacy, both in and outside of the Bermuda courts, for the achievement of its statutory mandate. There is now broadened recognition of the role that the Commission is intended to play in Bermuda society as a neutral complaints handling body. Such recognition has also generated an increase in both the public's awareness of human rights concepts and its scrutiny of the members of the Commission and its lack of full independence.

In recent years, the Commission has sought to effect an empowerment initiative to enable those who are 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. This has resulted in the Commission's focus on the identification of gaps in protection in the Act and planning for the further development of statutory protections.

The capacity of the Non-Ministry Office to fully advocate, enforce and educate the residents of Bermuda on all protected categories however requires the Commission to have greater independence with modernised accountability practices that support continued independence.

The experience of the Commission in 2019 has specifically underscored the necessity of continuing to expand its staffing complement to meet the evolving needs of the local population. Notably, despite the Commission having sufficient funding, the posts of Legal Counsel and Project Officer remained vacant since 2014 and 2017 respectively. On 9 August 2018, approval to fill both posts was approved by the Head of the Public Service. The Commission undertook recruitment for the Legal Counsel post on a priority basis shortly thereafter and the post was successfully filled on 11 February 2019.

The introduction of Legal Counsel in 2019 represented a tremendous milestone for the Commission and has accelerated the pace of the intended changes that the Commission seeks to advocate for moving forward. It has further allowed the Commission to obtain a clearer picture on the extent to which the Non-Ministry Office relies on external stakeholders in order to fulfil its statutory mandates in any given year.

For example, appointments of Human Rights Commissioners are currently completed by a statutory Selection and Appointment Committee comprised of members selected primarily by representatives of the elected Government of Bermuda and the Leader of the Opposition. In practice, the recruitment for public officers of the Commission is subject to influence by Government hiring policies and freezing, and approved by the Head of the Public Service. The Executive Officer is appointed by the local representative of the British Government, the Governor of Bermuda, acting on the recommendation of the Public Service Commission. These processes do not adhere to the international standard which expects this process to be more credible and transparent.

The Commission further has no direct access to the Legislature to table its Annual Report and any special reports for consideration and/or debate. The Act currently only enables an Annual Report to be tabled before the Legislature after its submission by the Commission to the Government Minister responsible for human rights. It is unclear what legislative responsibility the Legislature has to formally consider that Annual Report.

This contradicts the observations issued by the international accredita-

tion body for National Human Rights Institutions, GANHRI. These observations assert that: (i) NHRI should be given the legislative authority to table its reports directly to the Legislature rather than through the Executive Branch and (ii) that the Legislature should be required to discuss and consider the reports of the NHRI, so as to ensure that its recommendations are properly considered by relevant public authorities.

The above are simply examples of some of the operational practices which have prevented the Commission from gaining greater independence, as envisaged by the Paris Principles. The bolstering of its capacity and autonomy between 2016 - 2019 however has enabled the Commission to set an achievable objective for its completion of a full independent review of the Act, its operational practices and the commencement of an accreditation process with GANHRI by the end of 2022 (2022 Objectives).

The setting of these 2022 Objectives is the new catalyst for the emergence of a more resilient, independent and modernised NHRI for Bermuda. I wish to express my immense gratitude to the multiple stakeholders in the local and international community who have engaged and supported the Commission over the years, including members of the public who have sought human rights guidance and engaged with complaint resolution processes and the various sets of Human Rights Commissioners appointed to the Commission over fixed term periods. I would further extend my sincere appreciation and admiration to our public officers for their resolve, focus and vigilance throughout the years.

The combination of this community investment has directly contributed to the next phase of independent operations which the Commission seeks to develop and build the public trust.



Lisa M. Reed | EXECUTIVE OFFICER

Office of the Human Rights  
Commission for Bermuda

*The Executive Officer of the Commission is the public officer charged with responsibility for the continuity of the internal operations of the Commission, the management of its public officers, and the proper expenditure of the budget allocation granted by the Legislature. The post further shepherds sets of Human Rights Commissioners throughout their terms at the Commission through the delivery of formal reporting and provision of training opportunities. Apart from the formal adjudication of human rights complaints, the Executive Officer is directly involved or has direct oversight of all aspects of the Commission's activities for the fulfilment of its mandate established in the Human Rights Act, 1981.*



ANNUAL REPORT 2019

ABOUT THE

# Human Rights Commission

## OUR VISION

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

## OUR MISSION

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

### WHO IS OUR COMMUNITY?

The Commission considers all stakeholders in Bermuda to be part of our community, along with other international human rights bodies and advocates who enforce, develop and promote human rights aspirations, principles, law and policy.

### WHY OUR VISION AND MISSION STATEMENTS MATTER

Our Vision and Mission Statements are closely intertwined with the purpose of the Human Rights Act 1981 (Act) and the persuasive rationale for the legislation receiving the Royal Assent on 7 July 1981 and becoming operative in Bermuda on 21 May 1982.

The Recitals to the Act reveal that purpose and its wider connections to the Bermuda Constitution and the adoption of international standards for human rights on the island.

The Recitals to the Act:

- recognise that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the World;
- recognise that the inherent dignity and the equal and inalienable rights of all members of the human family is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;
- confirm that the European Convention on Human Rights applies to Bermuda; and
- acknowledge that the Constitution of Bermuda enshrines the fundamental rights and freedoms of every person whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedom of others and for the public interest:

The Recitals to the Act further accept that those rights and freedoms have been confirmed by a number of enactments of the Legislature, however:

- it is expedient to make better provision to affirm these rights and freedoms and to protect the rights of all members of the community through the enactment of the Human Rights Act, 1981.

In fulfilling the functions mandated in the Act, the Commission regularly reflects upon the purpose of its establishing legislation and shares the objectives of the Act by the adoption of a Mission Statement and Vision Statement. These statements embody both the historical legacy of the legislation and the evolving space that human rights concepts and principles develop throughout the World.

## OFFICERS OF THE COMMISSION



**Lisa Reed** EXECUTIVE OFFICER | **Sonia Astwood** ADMINISTRATIVE OFFICER

**Erlene Postlethwaite** ADMINISTRATIVE OFFICER | **Sara Clifford** EDUCATION OFFICER

**Darnell Harvey** INVESTIGATIONS OFFICER | **Treadwell Tucker** INVESTIGATIONS OFFICER

**Arion Mapp** LEGAL COUNSEL



## ACHIEVING OUR STATUTORY MANDATE IN 21ST CENTURY BERMUDA

### OUR STATUTORY MANDATE

Part III of the Act makes provision for our functions in the community and confirms that the Office of the Human Rights Commission (Commission) is responsible to the Minister for human rights for the administration of the Act.

Originally, our statutory mandate consisted of three main functions, namely:

**Administration of  
Complaints Processes**



**Development of  
Educational Programmes**



**Settlement/Enforcement  
of Complaints**



In addition, the Commission was responsible for encouraging an understanding of the fundamental rights and freedoms of the individuals guaranteed by Chapter 1 of the Constitution of Bermuda.

In 2010, the Government transferred the staff and functions of the Commission for Unity and Racial Equality (known by its acronym, CURE) to the Human Rights Commission and the Act was amended to incorporate additional functions of the Commission related to racial equality in Bermuda through a series of educational initiatives. These initiatives reflected the needs of the community and directly related to the empowerment of individuals.

These new functions included:

- promote equality of opportunity and good relations between persons of different racial groups;
- work towards the elimination of racial discrimination and institutional racial discrimination; and
- establish and maintain in such form as it considers appropriate, a register of employers from the information or data received from the Director of Statistics under subsection (2)(b).

### INDIVISIBLE PILLARS OF THE COMMISSION: OUR MANDATE, MEMBERS AND ACCOUNTABILITY PRACTICES

Like any institution, the efficacy of the Commission is predicated on its mandate along with the quality and adequacy of its members, and modern accountability practices to achieve that mandate.

Originally, the Commission operated from within the Department of Human Affairs. The Minister of Youth, Families Sports and Community Development (Minister) was responsible for the selection and appointment of fixed term Commissioners. Those Commissioners would screen human rights complaints, determine whether a complaint appears genuine, seek to conciliate and settle genuine complaints and refer the same to the Minister if the complaints were unable

to be settled. The Minister would then be responsible for determining whether to appoint Board of Inquiries to adjudicate complaints.

This distribution of accountability for the administration of the complaints process was wholly unsatisfactory. Firstly, the Commission lacked an arms-length relationship with the elected Government. Secondly, the Minister directly determined whether a complaint would be adjudicated upon and the individuals who would be appointed as Commissioners. Lastly, Commissioners generally did not have any background in human rights which created inconsistencies in their decisions to refer human rights complaints and those decisions often were delayed as the Commissioners were only scheduled to meet on a monthly basis. In sum, the complaints process was lengthy, inconsistent and improperly influenced by the Government. During this time, the Commission actively challenged these practices and advocated for greater independence.

On 26 October 2012, amendments to the Act, changed the accountability practices at the Commission. Complaints of discrimination would be received, investigated and referred by the Executive Officer to a Human Rights Tribunal for adjudication. This would result in the broad removal of the Minister's involvement, and as well, removed the necessity for the Department of Human Affairs to administer the Board of Inquiry. To effect this shift in accountability for the administration of the complaints process:

- the complaint screening function was transferred from the Commissioners to the public officers of the Commission (who have the technical skills coupled with already well-established screening processes) to perform this function; and
- the determinations as to whether a complaint is genuine, if it should proceed to investigation and if it should be referred for formal adjudication was transferred from the Commissioners to the Executive Officer.

Further, the functions of Boards of Inquiry were transferred to a Human Rights Tribunal.

On 1 December 2015, Cabinet further approved the transfer of the Commission to a Non-Ministry Office to create a much needed arm's length relationship with the office.

## **AN EVOLVING PROCESS: THE INTERPRETATION AND ACHIEVEMENT OF OUR MANDATE**

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

- **encouraging an understanding of Chapter 1 of the Bermuda Constitution** which guarantees the fundamental rights and freedoms of the individual in the jurisdiction and the constitutional limitations placed on those rights and freedoms;
- **scrutinising of existing laws and administrative acts**, as well as draft bills and policy proposals raised by the Government and advocacy groups, alike, to ensure that they are consistent with the requirements of the Act;
- **identifying international benchmarks for the realisation of the Act** and how to measure adherence to international obligations;
- **adopting proactive communication strategies** which utilise technological advancements and social media for wider outreach with the community and other jurisdictions;
- **providing technical advice, consultation and conducting surveys** in relation to human rights;
- **conducting research and inquiries** designed to ascertain the extent to which protection

provided to particular protected characteristics are being realised in practice in specific areas, and in relation to particularly vulnerable communities; and

- **monitoring compliance with specific rights recognised under the Act and providing reports**, including the Annual Report.

The capacity of the Commission to achieve this interpretation of our mandate was bolstered in February 2019 with the introduction of Legal Counsel to its offices.

As we look towards the future, **the Commission plans to champion the continued evolution of our mandate, members and accountability practices to:**

- reflect the shifting needs of individuals and marginalised groups in Bermuda;
- accommodate international developments which continue to bring waves of economic, social and technological change to our shores; and
- respond to any emerging inequalities which arise from societal change in Bermuda.

## ALIGNING THE ADMINISTRATION OF THE ACT WITH EVOLVING INTERNATIONAL HUMAN RIGHTS STANDARDS

### A GLOBAL PERSPECTIVE FOR AN ISLAND COMMUNITY

- Too often, human rights have been narrowly represented as pertaining only to matters of individual liberty. The Commission's mandate – to promote equality, human rights and good relations – offers us the opportunity to talk about rights in entirely different terms, in line with the Universal Declaration of Human Rights and the values and standards that we are charged with promoting as a human rights institution.

The Commission adopts a global perspective in the interpretation of its statutory mandate and seeks to align its administration of the Act with evolving international human rights standards. In this context, the Commission seeks for Bermuda's human rights enforcement to be achieved through the lens of the wider international systems of human rights which have been extended to the island:

#### Charter-based system

For many centuries, there was no international human rights law regime in place. In fact, international law supported and colluded in many of the worst human rights atrocities, including the Atlantic Slave Trade and colonialism. After the trauma of the Second World War, in particular Hitler's racially-motivated atrocities in the name of national socialism, 50 states gathered to adopt United Nations Charter (UN Charter). The main accomplishment of this human rights system is the elaboration and near-universal acceptance of the International Bill of Human Rights, comprised of three major international human rights instruments:

- 1 Universal Declaration of Human Rights, adopted in 1948 by all UN Member States, including Great Britain, has formed part of normative international human rights standards and is referenced in the recitals to the Act;
- 2 International Covenant on Civil and Political Rights, adopted in 1966 and extended to Bermuda on 20 May 1976; and
- 3 International Covenant on Economic, Social and Cultural Rights, adopted in 1966 and extended to Bermuda on 20 May 1976.



### Treaty-based system

The treaty-based system developed even more rapidly than the Charter-based system. The first treaty adopted in 1948 addressed the experience of the Nazi Holocaust. Since then, a huge number of treaties have been adopted, covering a wide array of subjects, eight of them on human rights—each comprising a treaty monitoring body—under the auspices of the United Nations:

- 1 International Convention on the Elimination of All Forms of Racial Discrimination adopted in 1966 and extended to Bermuda on 7 March 1969;
- 2 Convention on the Elimination of All Forms of Discrimination against Women adopted in 1979 and extended to Bermuda on 16 March 2017;
- 3 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted in 1984 and extended to Bermuda on 8 December 1992;
- 4 Convention on the Rights of the Child adopted in 1989 and extended to Bermuda on 7 September 1994;
- 5 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted in 1990, not extended to Bermuda as of yet.
- 6 Convention on the Rights of Persons with Disabilities adopted in 2006, not extended to Bermuda as of yet.
- 7 International Convention for the Protection of All Persons from Enforced Disappearances adopted in 2010, not extended to Bermuda as of yet.

### Regional-based system

Since the Second World War, three regional human rights regimes—norms and institutions that are accepted as binding by States—have been established. Each of these systems operates under the auspices of an intergovernmental organisation or an international political body. Most notable in this regard is The Council of Europe, which adopted its primary human rights treaty in 1950: European Convention of Human Rights and Fundamental Freedoms (ECHR), which was extended to Bermuda on 23 October 1953.

“

## HOW OLD ARE HUMAN RIGHTS?

The United Nations pinpoint the origin of Human Rights to the year 539 BC.



When the troops of Cyrus the Great conquered Babylon, Cyrus freed the slaves, declared that all people had the right to choose their own religion, and established racial equality. These and other precepts were recorded on a baked-clay cylinder known as the Cyrus Cylinder. **The provisions of the Cyrus Cylinder served as inspiration for the first four Articles of the Universal Declaration of Human Rights adopted in 1948 by the United Nation's General Assembly.**

## NOT BY STATES ALONE: THE COMMISSION AS A NATIONAL HUMAN RIGHTS INSTITUTION

Human rights activism can be described as a struggle to ensure that **the gap between human rights and human rights law is narrowed down** in order to ensure the full legal recognition and actual realisation of human rights. History shows that governments do not generally grant rights willingly but that rights gains are only secured through a successful challenge to absolutist authority.

Advancements in human rights are not dependent only on States. This concept was **officially recognised by the UN General Assembly in its 1993 resolution which addressed the need for all States in the World to set up independent national human rights institutions (NHRIs) for the promotion and protection of human rights at the national level.**

Annexed to this resolution were *Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights, known as the "Paris Principles"* (Paris Principles). The Paris Principles are endorsed by the World Conference on Human Rights and constitute a set of internationally recognised standards. These standards are adopted by the Global Alliance of National Human Rights Institutions (GANHRI) to independently assess the credibility, independence and effectiveness of NHRIs, without the influence of any political, economic or reputational agendas of States.

In this vein, **a balance in power for the benefit of the Global Community is established:** States are free to decide the best type of NHRI for their domestic purposes, however, the NHRI established by the State will be judged by an independent international body in accordance with international standards.



### International Accreditation: 2022 Objective for the Commission

In the near future, the Commission will be a bridge between the national and international arena, reporting to international human rights mechanisms an accurate picture of the human rights situation in Bermuda, while applying international human rights standards at the national level, with a full understanding of the local context.

NHRIs are periodically accredited before the Sub-Committee on Accreditation (SCA) of GANHRI with one of the following statuses:

“A” status – NHRI is fully compliant with Paris Principles;

“B” status – NHRI is partly compliant with Paris Principles; or

No status – NHRI is not compliant with Paris Principles.

## An “A” status NHRI will have:

**Mandate and Competence:** A fully effective “A” status NHRI will have a broad mandate based on universal human rights norms and standards and the competence necessary to effect this mandate.

**Autonomy from Government:** In order to properly challenge an elected Government, fully effective “A” status NHRI will have autonomy from that elected Government.

**Independence:** A fully effective “A” status NHRI will have independence from all stakeholders, both in law and in practice, as guaranteed by statute or Constitution.

**Pluralism:** A fully effective “A” status NHRI will have an inclusive and transparent selection and appointment process for their leadership to provide for broader representation of national society and to ensure the integrity and quality of its members.

**Adequate Resources and Staffing:** A fully effective “A” status NHRI will have an appropriate level of funding in order to guarantee its independence and its ability to determine its priorities and activities. It will also have the power to allocate funding according to its priorities, while complying with financial accountability requirements applicable to other independent agencies of the State. It will further be legislatively empowered to determine the staffing structure and skills required to fulfil the mandate and select staff in accordance with national law.

**Adequate Powers of Investigation:** Where provided with a mandate to receive, consider and/or resolve complaints alleging violations of human rights, a fully effective “A” status NHRI should have the necessary functions and powers to adequately fulfil this mandate.

Full compliance with the Paris Principles has long been accepted as the best outcome for the Commission for the benefit of the residents of Bermuda by members of the Commission, the Government and individual advocates for human rights enforcement.

Since the establishment of the Commission in 1982, its public officers have made various attempts to commence the accreditation process for an independent assessment of the Office’s alignment with the Paris Principles.

In 2014, the Office of the United Nations High Commissioner for Human Rights also underscored to the Commission that a specific process would need to be followed for any such accreditation due to Bermuda being a British Overseas Territory. At that time, the predominant view of the accreditation body considered that a strong national human rights protection system in a State would have one consolidated and comprehensive national human rights institution and the Commission would need to have certain arrangements in place with the United Kingdom for its application to be considered.

Challenges related to appropriate staffing, independence and resources, however, prevented the completion of this process. **Our greatest challenge, to date, has been the achievement of sufficient autonomy from the Bermuda Government and other stakeholders.** Notably:

The Commission was originally established by the Act to operate as part of the Government, from within the Department of Human Affairs. Complaints of discrimination were received outside of the jurisdiction of the Commission and the Department of Human Affairs administered the Boards of Inquiry which adjudicated on those complaints.

In 2012, the complaints screening process was legislatively amended to provide greater autonomy from the Government and to reflect the technical capacity of the public officers of the Commission (in comparison with appointed Commissioners).

In 2016, the Commission was transferred to a Non-Ministry Office to further bolster autonomy from the Government.

From 2016 - 2018, the Commission focused on investing significant time to educate and change the nature of its relationships with all stakeholders, including the Government, to reflect the current Non-Ministry status.

In February 2019, the Legal Counsel post (originally created in December 2015) was filled after the Commission received its first approval to recruitment for that post from the Head of the Public Service in August 2018.

Against this backdrop, it is clear that the transfer of the Commission to a Non-Ministry Office by the Government and Legislature was the catalyst for the series of events that followed leading to the Commission's greater autonomy from the Government.

There remain significant changes to be made to our Act and our internal working practices to place the Commission in the best position to serve the community, however:

- the bolstering of our capacity and autonomy between 2012 - 2019 now enables the Commission to properly set an achievable objective for the completion a full independent review of our accountability practices and the commencement of our accreditation process with GANHRI by the end of 2022.



“ BERMUDIANS REPRESENTED **84%**  
OF THE TOTAL NUMBER OF  
COMPLAINANTS IN 2019...

...an increase from only 44% in 2015

“ In recent years the Commission has sought to effect an empowerment initiative to enable those persons 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.



“ The introduction of Legal Counsel in 2019 represented a tremendous milestone for the Commission and has accelerated the pace of the intended changes that the Commission seeks to advocate for moving forward. It has further allowed the Commission to obtain a clearer picture on the extent to which the Non-Ministry Office relies on external stakeholders in order to fulfil its statutory mandates.

The background of the cover features a stylized, hand-drawn illustration of a globe. Various birds are depicted in flight around the globe. On the right side, a city skyline is visible, with a prominent building that has a flag on top. The entire illustration is rendered in a light, sketchy style. The text 'ANNUAL REPORT 2019' is positioned vertically on the left side, with '2019' in a larger, bolder font. The title 'COMPLAINT MANAGEMENT Statistical Analysis' is centered on the right side, with 'COMPLAINT MANAGEMENT' in a smaller, bold font and 'Statistical Analysis' in a larger, bold font. There are three horizontal white lines: one above the vertical text, one below it, and one below the title.

ANNUAL REPORT **2019**

**COMPLAINT MANAGEMENT**

# **Statistical Analysis**

## INTAKES AND PRELIMINARY INQUIRIES

Where a person is desirous of submitting a complaint to the Office of the Human Rights Commission they can do so in accordance with section 14H(1) of the Human Rights Act, 1981.

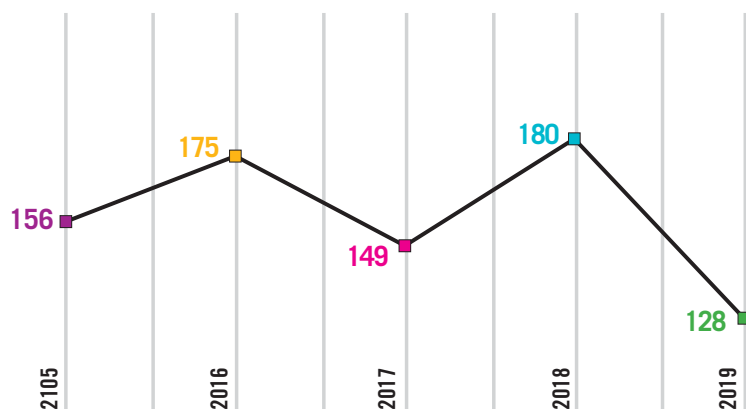
An intake consists of any form of contact made by a member of the public, whose intent it is to bring to the attention of the Office of the Human Rights

Commission a complaint or query. 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.

When an intake is filed, the Executive Officer in the first instance is responsible for screening the complaint to determine whether it appears to disclose a prima facie case of discrimination. At this stage, appropriate referrals are made, if applicable and the matter may either be

dismissed where a complaint discloses a prima facie case of discrimination, notice of the complaint is forwarded on to the Respondent(s) with an invitation to reply. This is referred to as the 'Complaint Received Stage.' When appropriate to do so, the Executive Officer may also conduct a preliminary inquiry in accordance with section 14I of the Act for the purpose of determining whether to undertake an investigation.

FIG. 1 | TOTAL INTAKES FOR THE PERIOD, 2015 - 2019



Intakes are comprised of complaints and queries.

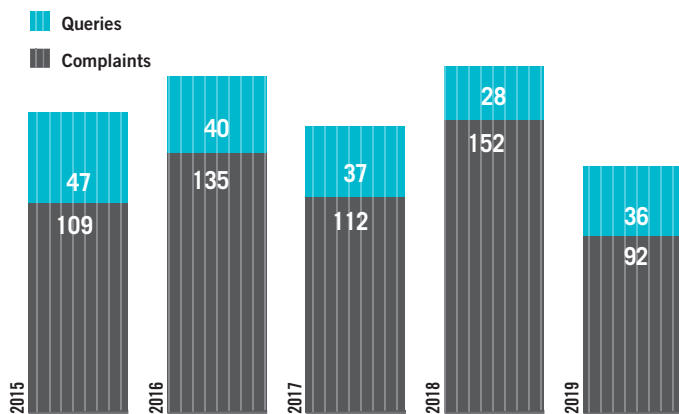
- A complaint is classified by the Office as any concern brought to the attention of the Commission by a member of the public who believes their rights have been contravened under the Human Rights Act.
- A query is classified by the Office as a request for information or any question regarding the Act.

In 2019, a total of one hundred twenty eight (128) intakes were reported to the Office of the Human Rights Commission by members of the public.

**128**

total number of intakes in 2019

FIG. 2 | INTAKES BY TYPE FOR THE PERIOD, 2015 - 2019



When considering queries and complaints in 2019, complaints comprised the largest portion of intakes received by the Office. Of the total one hundred twenty eight (128) intakes received, ninety-two (92) were classified as complaints, while the remaining were classified as queries as illustrated in Figure 2.

### Complaints Classified by Approach to the Commission

Members of the public may contact the Office of the Commission to log a complaint by telephone, mail, email or by walk-in.

Of those complaints received:

**55%**

by telephone

**14%**

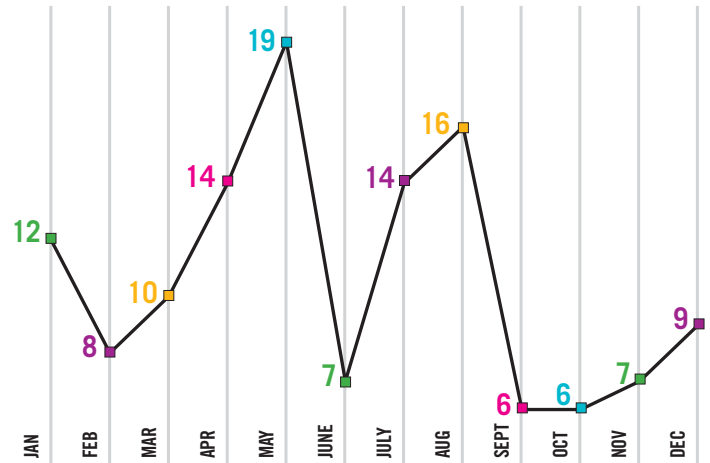
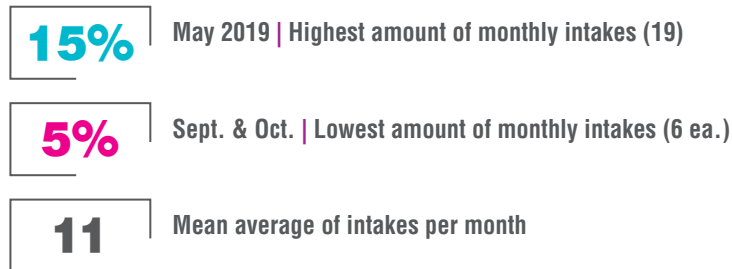
by email

**31%**

walk-in or scheduled appointment

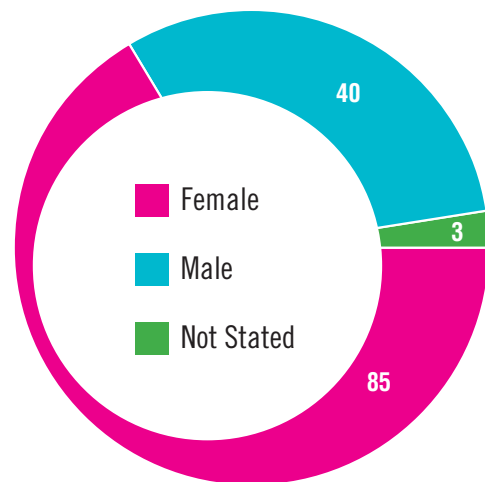
**FIG. 3 | ANNUAL INTAKES BY MONTH, 2019**

As shown in Figure 3, of the total monthly intakes, the highest number was received in May 2019 representing 15%. The lowest number of intakes were recorded in the months of September and October respectively, at six (6) each or 5% each of the yearly total. The mean average number of intakes per month was eleven (11).



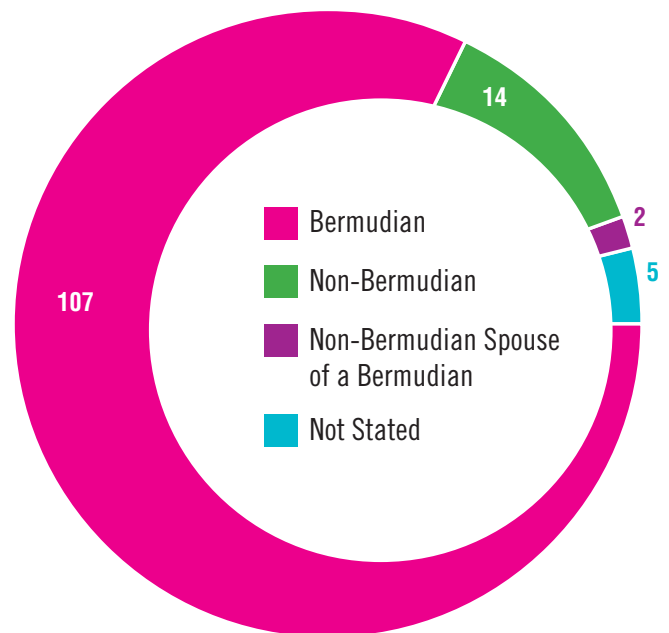
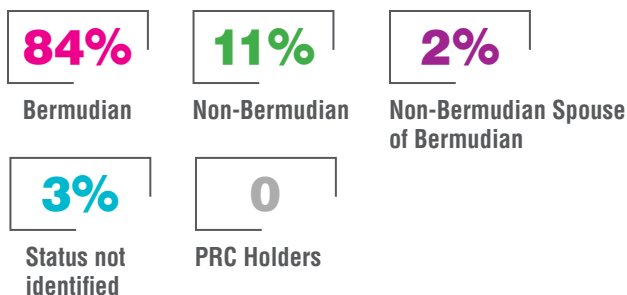
**FIG. 4 | INTAKES BY GENDER OF THE COMPLAINANT, 2019**

As illustrated in Figure 4, females approached the Office more frequently than males. Female complainants represented 66% of complainants, while males comprised 31%. Three (3) complaints were recorded whereby the gender was not stated.

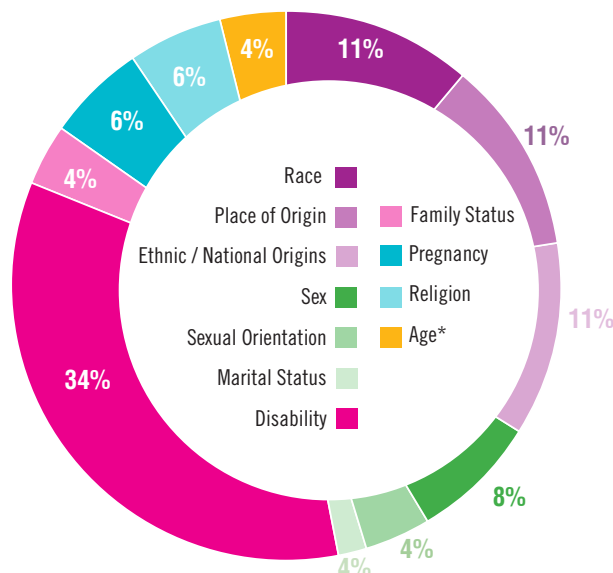


**FIG. 5 | INTAKES BY STATUS OF THE COMPLAINANT, 2019**

Figure 5 illustrates the status of complainants of intakes received by the Office. Bermudians represented (84%) of the total number of complainants in 2019. Complainants that indicated they were of non-Bermudian status represented 11%, while the number of Spouses of Bermudians who contacted the Commission represented 2% of intakes. There were five (5) complainants that did not identify their status. In 2019, there were no (0) permanent resident certificate holders on record as contacting the Office to lodge a complaint or make a query.



**FIG. 6 | DISTRIBUTION OF INTAKES BY GROUND OF DISCRIMINATION, 2019**



Note 1: \* Protection afforded in section 4 and section 5

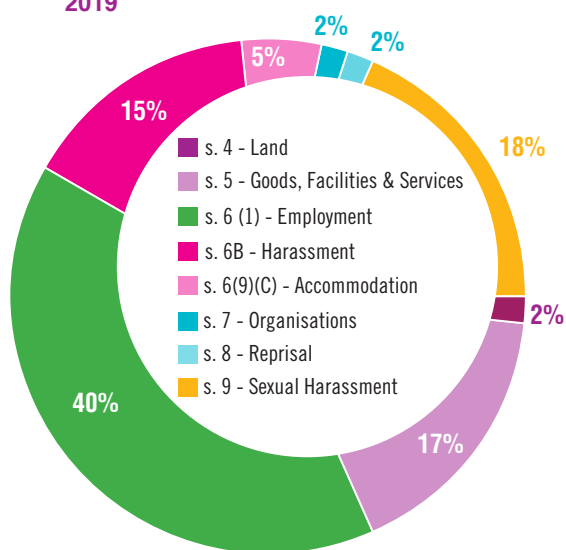
Note 2: Not included within the statistics for intakes are those where a ground was not identified.  
The number provided merely reflects statistics for declared grounds.

The majority of complaints logged in 2019 cited claims of discriminatory difference in treatment on the grounds of disability 34%, race 11%, place of origin 11%, and ethnic or national origins 11%. All other grounds represented a combined total of 34% as depicted in Table 6 and Figure 6.

**Table 6 – Intakes by Ground of Discrimination, 2019**

Ground of Discrimination (section 2(2)(a))	Number (#)	Percent (%)
i) Race	6	11
i) Place of Origin	6	11
i) Colour	-	-
i) Ethnic or National Origins	6	11
ii) Sex	4	8
(ii) Sexual Orientation	2	4
(iii) Marital Status	1	2
(iiiA) Disability	18	34
(iv) Family Status	2	4
(4) Pregnancy	3	6
(vi) Religion	3	6
(vi) Beliefs	-	-
(vi) Political Opinion	-	-
(vii) Criminal Record	-	-
* Age	2	4

**FIG. 7 | INTAKE BY AREA OF DISCRIMINATION, 2019**



Note: Not included within 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.

Table 7 illustrates that the majority of complaints logged in 2019 cited claims of discrimination within the protected area of employment at 40%. A number of employment related discrimination complaints also included unfair termination and refusal from recruitment.

Claims of discrimination within the protected area of goods, facilities and services amounted to 17% of intakes while complaints of discriminatory workplace harassment amounted to 15% of intakes. See Table 7 and Figure 7.

Workplace related sexual harassment claims accounted for 18% of intakes.

**Table 7 – Intake by Area of Discrimination, 2019**

Area of Discrimination	Number (#)	Percent (%)
Section 3 - Notices	-	-
Section 4 - Land	1	2
Section 4A - Bermudians and Land	-	-
Section 5 - Goods, Facilities & Services	10	17
Section 6 (1) - Employment	24	40
Section 6A - Special Programmes	-	-
Section 6B - Harassment	9	15
Section 6(9)(C) - Accommodation	3	5
Section 7 - Organisations	1	2
Section 8 - Reprisal	1	2
Section 8A - Racial Material and Racial Incitement	-	-
Section 9 - Sexual Harassment	11	18
Section 10 - Discriminatory Covenants	-	-
Section 11 - Law that sanctions discriminatory covenant	-	-
Section 12 - Contracts	-	-
<b>Total</b>	<b>60</b>	<b>100</b>

## Preliminary Inquiries

Preliminary inquiries are customarily conducted to attempt to resolve and clarify specific aspects of a complaint prior to a decision being made on whether an intake can proceed onward to an investigation.

During 2019, a preliminary inquiry was conducted in four (4) matters. One (1) matter progressed to the investigations stage of the complaints handling process while another matter advanced to the complaints received stage where the Respondents were informed of the complaint and an offer to reply to the allegations was made, however, the Executive Officer determined that the complaint did not appear to be genuine and the complaint was closed. One complaint was closed by the Executive Officer after she determined that the complaint did not appear to disclose a prima facie case of discrimination and appropriate referrals were made. The remaining matter was still ongoing at the end of 2019. The preliminary inquiry stage, provides the Commission with an opportunity to clarify, examine and better understand certain issues prior to the investigation stage.

## Investigations

Once a decision is reached that a complaint discloses a prima facie case of discrimination, notice is sent to the Respondent(s) with an invitation to respond to the allegations made. The Executive Officer reviews the information provided throughout the Complaint Received Stage with a view to determining whether to investigate the intake. In accordance with section 15(1) of the Act, the Executive Officer shall investigate a complaint where it appears to be genuine that unlawful discrimination has occurred by reason of any alleged contravention of the Act or where the Executive Officer has reasonable grounds for believing that any person has contravened any provision of the Act.

Where a decision is made to investigate, the Executive Officer provides all parties with notice of her decision and in accordance with section 15(4) of the Act, determines the terms of reference for the investigation. The Executive Officer delegates her authority over investigations to an Investigations Officer who conducts the investigation and who objectively seeks such information from the parties and any witnesses that are deemed to be appropriate. At all stages of the investigation, parties are aware of the opportunity to resolve the dispute by way of the Commission's Voluntary Mediation Programme and are encouraged to do so. At the conclusion of the investigation, the Investigator provides the Executive Officer with the details obtained throughout the investigation prior to a decision being made by the Executive Officer with respect to the disposition of the complaint.

During the investigation, the Executive Officer provides all parties to the complaint with an opportunity to provide documents, witnesses and their own perspectives on the complaint. The Executive Officer by way of section 16 of the Act, has the power to collect, inspect and examine records, subject to any just claim of privilege.

Throughout the entirety of the complaint process, Officers evaluate whether or not they have a conflict of interest in the relevant matter and understand that it is imperative for the Commission to maintain neutrality as an advocate for fairness throughout the investigative process.

In 2019, there were twenty-five (25) investigations assigned to and conducted by Investigations Officers, of which, six (6) were approved for investigation in 2019 and nineteen (19) were approved previously and ongoing into 2019.

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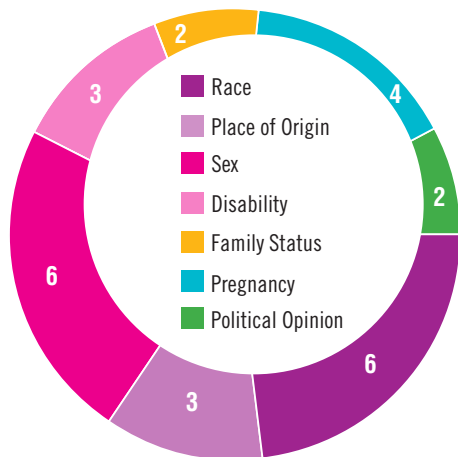
## SEXUAL HARASSMENT

In accordance with section 9 of the Act, employees have the right to be free from any form of sexual harassment within the workplace by their employers and their fellow employees. Employers are further required by the Act to ensure that such harassment does not take place which means that employers may be found liable in the event that the organisation, including fellow employees, are found to have sexually harassed an employee.

This means that employers should have effective policies and procedures in place that demonstrate the organisations commitment to their employees' right to be free from sexual harassment including consequential mechanisms and disciplinary measures.



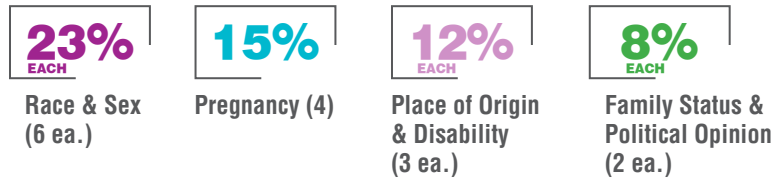
**FIG. 8 | ACTIVE INVESTIGATIONS BY GROUND OF DISCRIMINATION, 2019**



Complaints may have multiple grounds of discrimination cited and thus, the following figure reflects a total greater than the total number of investigations.

Figure 8 illustrates that race and sex were identified as the grounds of discrimination in six (6) matters, representing 23% respectively in each. Of the investigations, those based on pregnancy represented 15% or a total of four (4) cases, while place of origin and disability represented 12% or a total of three (3) cases respectively in each.

Of the complaints investigated, two (2) cases of family status and two (2) cases of political opinion represented 8% or a total of four (4) cases.



**FIG. 9 | ACTIVE INVESTIGATIONS BY AREA OF DISCRIMINATION, 2019**

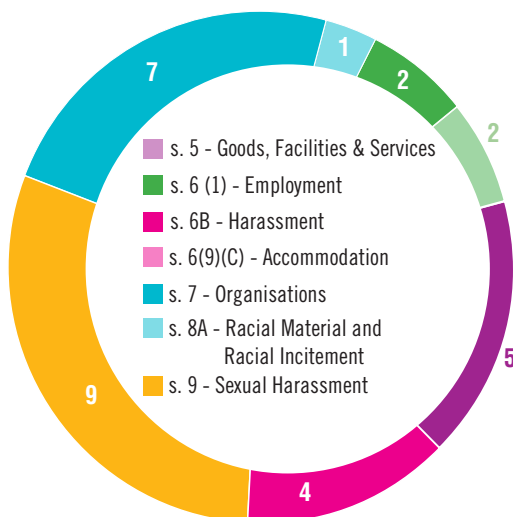
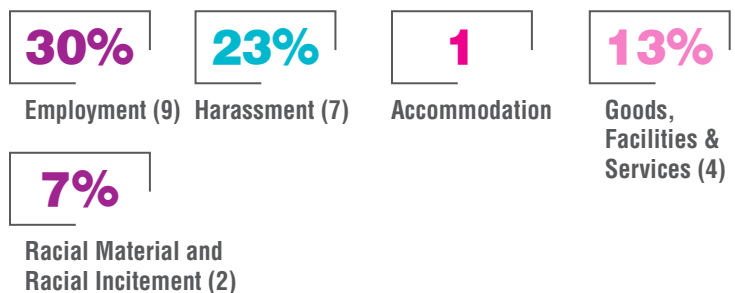


Figure 9 shows that most allegations of discrimination were identified as occurring in the area of employment at 30% with nine (9) Complainants alleging that they were the victims of discrimination in the workplace under section 6(1) of the Act, citing such practices as unfair dismissal and failing to recruit, etc.

Also alleged in the workplace was harassment at 23%, sexual harassment at 17% and there was one (1) allegation of a failure to accommodate a disability. Remaining allegations cited were discrimination in the provision of goods facilities and services (four (4) or 13% of matters), distribution of racial material and racial incitement (two (2) or 7% of matters).



## DISPOSITION OF INVESTIGATIONS

During 2019, there were ten (10) investigation closures. Three (3) were resolved through conciliation or mediation, one (1) was abandoned by the Complainant and the remaining six (6) were referred to a Tribunal.



# COMPLAINT SUMMARIES, VOLUNTARY MEDIATION PROGRAMME AND REFERRALS

## COMPLAINT MANAGEMENT: EXAMPLES OF COMPLAINTS

This section aims to provide a few examples of complaints of discrimination that were filed with the Office of the Human Rights Commission through the reporting period. In order to preserve confidentiality, details have been modified and identifying information has been omitted from each summary below.

### Based on Reprisal – Time Barred

A Complainant alleged discrimination based on reprisal, as per section 8 of the Act, having previously filed a complaint of discrimination against their employer. The Complainant expressed that they were no longer permitted to fulfil senior management duties with the company. The Executive Officer noted that the complaint was time barred as the incidents described occurred more than two (2) years prior to the Complainant filing their complaint. The matter was closed and the Complainant was provided with appropriate referrals. Section 14H(1)(c) of the Human Rights Act, 1981 requires that a complaint be filed within six (6) months of the alleged contravention, however the Executive Officer may entertain a complaint up to two (2) years after an alleged contravention, if satisfied that there are good reasons for the delay and that no one will be prejudiced by the delay.

### Based on Race – Complaint Withdrawn

A Complainant alleged that they experienced harassment in the workplace by their employer contrary to section 6B(1) of the Act as read with section 2(2)(a)(i). The Complainant expressed they were subjected to a poisoned work environment as they were repeatedly called racially derogatory names in their place of work. The Complainant indicated that they terminated their employment due to the poisoned work environment, however before an investigation into the complaint was progressed, the Complainant withdrew their complaint.

### Enquiry – Referral

A member of the public reported that they were wrongfully dismissed from their job after the company made a new hire. The individual sought advice on what they would be able to do and as well, they were of the belief that they had been wrongfully terminated. The facts set out by the individual were thoroughly vetted by the Executive Officer and a determination was made that it did not appear as if the Human Rights Act, 1981 had

been contravened. The member of the public was referred to the Department of Workforce Development as it appeared that they required advice related to the Employment Act, 2000.

### Based on Pregnancy – Deemed Abandoned

A Complainant reported that they were employed on a continuous basis for over a year with a restaurant when she learned that she was pregnant. The Complainant informed her employer that she was pregnant and she was subsequently placed on paid administrative leave due to concerns about their job performance. The Complainant indicated that this was the first time they had been made aware of the concerns relating to their performance. Several attempts were made to contact the Complainant to obtain additional information, however, the Complainant did not respond to the correspondence. The Executive Officer determined that the Complainant had abandoned their complaint and the matter was closed.

### Based on Disability – Referred to Investigation

A Complainant reported that they were a member of an organisation and had been discriminated against on the ground of disability when they were refused the same benefits that were provided to other members once the organisation became aware of their disability. Additionally, the Complainant alleged that they were expelled from the organisation also due to their disability. The Executive Officer referred this matter to an investigation in accordance with section 15(1) of the Human Rights Act, 1981.

## COMPLAINT MANAGEMENT: DISPUTE RESOLUTION – VOLUNTARY MEDIATION PROGRAMME

In accordance with section 14(f) of the Act, the Human Rights Commission has a statutory obligation to assist parties in reaching a resolution. One means by which the Office is able to assist the parties in resolving their differences is through the Commission's alternative dispute resolution service called the **Voluntary Mediation Programme**.

Conciliation is a "user friendly" means of dispute resolution which involves having a neutral Conciliator meet with the parties to a dispute to assist them in resolving the issues and to reach a settlement agreement. The role of the Conciliator includes assisting the parties to a dispute by suggesting

plausible solutions aimed at resolving the issue. Whereas the role of a Mediator is to act as a facilitator who initiates dialogue and communication between the parties in an entirely neutral manner.

The benefits of conciliation are that it allows for both parties to work towards a mutually agreeable solution prior to a matter being referred to a Tribunal. Where a matter is referred to a Tribunal, parties are still permitted access to the Commission's Voluntary Mediation Programme by way of mediation. In addition to achieving a resolution in a more expeditious manner, conciliation and mediation also allows for parties to remain in control of the decision-making responsibilities.

The Conciliation and Mediation process is confidential which means that all discussions held during a conciliation meeting cannot be relied upon should the matter proceed to a Tribunal. If parties are able to reach an agreement during the respective Conciliation or Mediation meeting(s), a binding agreement may then be signed. The Conciliation and

Mediation processes are at all times voluntary and if either party is uncomfortable at any stage with how Conciliation or Mediation is proceeding, that party may end the process without penalty.

## **CONCILIATIONS AND MEDIATIONS IN 2019**

Of the fifteen (15) Conciliation offers provided to parties of complaints in 2019, six (6) of the offers were declined, one (1) was still awaiting a response at the end of 2019, three (3) progressed through the conciliation process and were resolved, while five (5) conciliations remained ongoing. There were no mediations held in 2019.

## **REFERRALS TO OTHER AGENCIES**

The Commission provides a robust triage and referral process to assist the public in finding resolution to their query or complaint in the event their matter does not appear to fall under the jurisdiction of the Human Rights Act. In 2019, the majority of referrals were made to the Department of Workforce Development.

During the reporting period, additional referrals were made to organisations such as, the Ombudsman of Bermuda, the Bermuda Police Service; Advocacy groups and non-profit organisations such as the Women's Resource Centre, Age Concern, La Leche League of Bermuda, CURB; Unions such as the Bermuda Public Services Union and Bermuda Industrial Union; various government departments including the Department of Immigration, Department of Social Insurance, Consumer Affairs and Rent Commission, Department of Health, the Staff Medical Review Board, Bermuda Health Council, Aging and Disability Services, Department of Financial Assistance, Department of Transport, Bermuda Small Business Development Corporation, Charities Commission, and Bermuda Housing Corporation; and the provision of legal guidance or legal services such as the Department of Legal Aid, Bermuda Bar Association and Free Legal Clinics at the Centre on Angle Street (Central Zone) and the Western Zone Clinic at Sandy's Community Centre.





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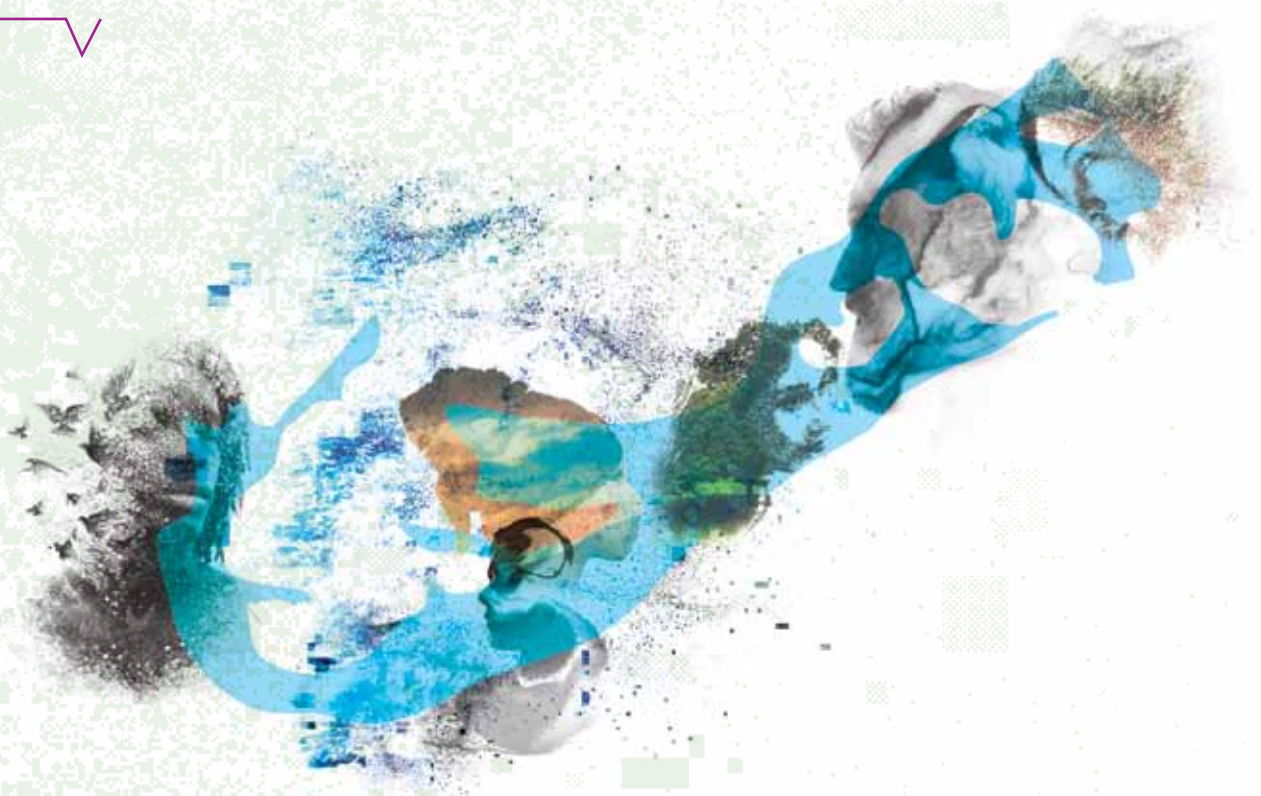
# Education and Engagement

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Every individual and every organ of society... shall strive by teaching and educating, to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.

**All residents of Bermuda have rights and responsibilities which are enshrined under the Bermuda Constitution Order 1968 and which are extended through the Human Rights Act, 1981.** Amongst other protections, these fundamental rights forbid discrimination based on certain personal characteristics in areas of daily life. Discrimination may be rooted in ignorance and thus, it is integral that human rights education programmes provide residents with understanding about the fundamental rights and freedoms along with their duties as citizens. Human rights education is designed to enhance legislated protections, beyond enforcement, to help inspire a culture with shared responsibility to consider, balance, evolve, and uphold rights.

Fulfilment of the Commission's educational mandate is necessarily dynamic and adaptable. Educational delivery is enabled through research, policy development and analysis, strategic guidance, facilitated dialogues, training and development, networking, tailored presentations, consultations, and various stakeholder partnerships. Fostering trust and relationship-building within the community underpins the Commission's education and engagement efforts. The Commission is pleased to profile examples of education in action from 2019.



## RIGHTS IN THE COMMUNITY



“

**LGBTQI+ Bermudians and organisers of Bermuda Pride’s first events are proud to embrace the fight against all forms of discrimination.**

**Bermuda’s inaugural Pride Parade was held on 31 August 2019 in recognition and celebration of Bermuda’s LGBTQI+ community.** The event saw an unprecedented show of public support with the Bermuda Police Service estimating 5,000+ people in attendance.

The theme, ‘We Belong’ was chosen by the Pride Organising Committee to signify that it was time for Bermuda’s LGBTQI+ community to ‘publicly and unapologetically assert their citizenship in their homeland and to openly acknowledge the importance of the diversity that makes up Bermudian society’. Bermuda Pride was scheduled to coincide with the 25th Anniversary of the Stubbs’ Bill, and the organisers marked celebrations by including tributes to those who championed for the decriminalisation of homosexuality including Dr. John Stubbs, Dame Lois Browne-Evans and Mr. L. Frederick Wade.

The Commission was honoured to participate in the weekend of historic events and commemorations. Against the backdrop of ongoing legal challenges surrounding marriage equality, the Pride Committee built an inclusive event framework in recognition of the sociocultural context of Bermuda and intersectional nature of the LGBTQI+ experience. The organisers added stripes to the Pride rainbow in recognition of Bermuda’s majority black population and the legacy of slavery and segregation. The symbolic stripes sought to encourage the LGBTQI+ community to fight not only for specific LGBTQI+ rights but other issues affecting LGBTQI+ people, including racism, sexism and economic inequality. As the organisers stated, ‘LGBTQI+ Bermudians and organisers of Bermuda Pride’s first events are proud to embrace the fight against all forms of discrimination.’



## Truth and Reconciliation Community Conversations and Restorative Justice Practices, Citizens Uprooting Racism in Bermuda (CURB)



The Commission for Unity and Racial Equality (CURE) was dissolved in 2010, and its legislated functions were transferred into the Human Rights Act. The Act includes protection from discrimination and harassment based on race, nationality and place of origin, as well as specific safeguards as relates to race relations and racial justice, detailed under Section 14C. The Commission welcomes the chance to support the delivery of CURB's community-building initiatives.

CURB launched the Truth & Reconciliation Community Conversations and the Restorative Practices Certification in 2017. To date, two hundred seven (207) participants have undertaken the 6-week Truth and Reconciliation initiative, and there have been two hundred five (205) graduates of the Restorative Practices Certification. Addressing the Truth and Reconciliation process, a CURB spokesperson shared, "These convening's are helping to change the way we talk about race, justice and access. It allows people to face together the history of racial inequality and injustice in Bermuda with a view to grow as a community in understanding. Some think it's about converting people to a way of thinking; not so, it's more about creating space for empathy and honest exchange to face the reality of distinct experiences and learn to listen to others' views and perspectives."



## Sunday Service for All



“

...each person's religious right to have access to safe spaces to worship and to live in the light of God's love. For these reasons and many more, our doors are open, and we want to share in this with you.

WESLEY METHODIST

**“You Are Beautiful Just As You Are”, was the theme for Wesley Methodist's annual 'Service of Inclusion'.** The Commission participated for the fourth consecutive year in the service held to publicly recognise the LGBTQ+ community in the Bermuda community, and in particular, welcome members of the church's congregation.

In 1988, Wesley Methodist Church along with two of its sister churches in Bermuda voted in favour of remaining affiliated with the United Church of Canada. During that time, the entire church was split on the issues of ordination of gay and lesbian members as Ministers, and on how homosexuality is treated spiritually. Wesley Methodist publicly committed to recognising and affirming, “each person's religious right to have access to safe spaces to worship and to live in the light of God's love. For these reasons and many more, our doors are open, and we want to share in this with you”.

The Executive Officer, Lisa Reed, provided the keynote address at the 2019 commemoration hosted by the Disability Advisory Council (DAC) on 4 December. The theme for the UN commemoration was, 'The Future Is Accessible.' This bold notion inspired the Executive Officer's testimony chronicling the reality of Bermuda's inhospitable landscape for persons with disabilities. Having served as the Chairperson of the National Accessibility Advisory Council, which oversaw the research and submission of a National Accessibility Plan, the Executive Officer addressed the outstanding status of recommendations from the 2007 report and reinforced their ongoing relevance today.

Without the will for strategic, inclusive and intentional national action, there is little prospect of the future becoming accessible. The Executive Officer emphasised that we must be honest in asking how Bermuda will become accessible: Do we want an accessible Bermuda? If so, what is going to change to make it so? What are we prepared to enable, and to do differently – in all spheres of life – to truly make Bermuda accessible and inclusive for all who are differently-abled.

The Executive Officer's speech can be viewed on [Bernews](#) at 9:19.



## The Future is Accessible: International Day for Persons with Disabilities



Bermuda's public calendar received two additions: the commemoration of National Hero, Mary Prince, and the 170th anniversary of the arrival of the first Portuguese immigrants. The inclusion of these days marked an opportunity to promote national healing and cultural awareness, so essential in building a healthy and cohesive community.

### Mary Prince Day

The second day of Cup Match was renamed in honour of one of Bermuda's National Heroes, Mary Prince. With Cup Match comprised of two consecutive holidays, Emancipation Day is the first and the second day, known as Somers Day, received the symbolic update.

The origins of Cup Match are founded in the observance of Emancipation, commemorating the Slavery Abolition Act 1833 when people of African descent were no longer forcibly working for others, treated as property or sold as an object under the law, and could claim their citizenship. The 'holiday' began as a sporting competition between Bermuda's Friendly Societies designed to uplift and fortify the black community.

Mary Prince's autobiography, 'The History of Mary Prince', published in 1831, is a first-hand account of the brutality of slavery in Bermuda and it is widely recognised that her seminal text adding impetus to the emancipation movement throughout the former British Empire. The renaming of Somers Day to Mary Prince Day honours the origins of the national holiday and is a poignant remembrance of Bermuda's ongoing emancipation from the legacy of slavery.

The installation of Mary Prince Day was timely as it coincided with ground breaking research into her life being unveiled. Bermudian researcher, LeYoni Junos, presented her work, 'My Name is Sue', at



## An Inclusive Year

“

**A Comissão de Direitos Humanos tem a honra de comemorar a cultura diversificada e a rica herança da nossa família portuguesa nas Bermudas.**

**TRANSLATION**

The Human Rights Commission is honoured to celebrate the diverse culture and rich heritage of our Portuguese family in Bermuda.

Oxford University's, 'Racialisation and Publicness in Africa and the African Diaspora' Conference in June 2019. Ms. Junos' research revealed the name of Ms. Prince's mother and Ms. Princes' correct date of birth. Ms. Junos emphasised the significance of honouring the work of local researchers and historians, as she felt the island had too often abdicated responsibility for research into its records to overseas academics.

**Honouring Bermuda's Portuguese Heritage**

In honour of the 170th anniversary of the arrival of Portuguese immigrants in Bermuda, a national holiday was held on the 4 November 2019. Premier David Burt's Declaration in the House of Assembly, reflects the Commission's belief in the fortifying impact of acknowledging Bermuda's diverse heritage, 'From her earliest origins, Bermuda has always been a mix of people with roots in other countries. We are unique in the world as we have no true native people. Bermudians are rightly proud of their heritage and the ability to trace family ties to the Caribbean, Europe, South America and of course Africa. Every aspect of Bermudian life—from politics and public service, to culture, sports, and industry—has been influenced by Bermudians of Portuguese heritage. From the original families and those subsequent immigrants, Portuguese culture is an integral part of Bermuda's cultural fabric.'

Ms. Andrea Moniz-DeSouza, the Honourary Counsel of Portugal in Bermuda, reinforced the significance of the national celebration, 'The marking of this momentous occasion is of crucial importance to the Portuguese Community of Bermuda, as it is both a sign of formal recognition by the Government and an acknowledgement of the community's contributions for the last 170 years to an Island, which we all call home. We are at our best when we unite and celebrate our differences.'



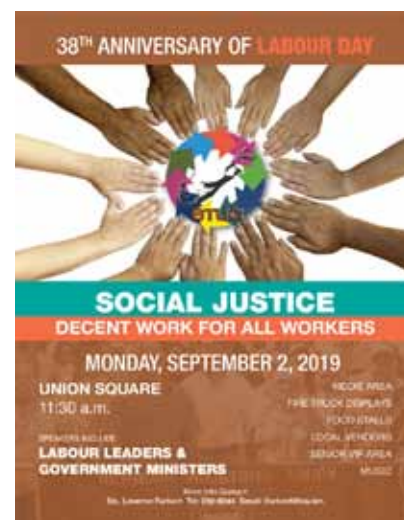
Established in 2014, this free public event is aimed at providing a safe environment to expose Bermuda's girls to traditionally male-dominated activities, in addition to raising awareness of the challenges faced by girls around the world. Girls comprise the largest demographic living in poverty and face inequitable access to education, nutrition, legal rights, equity of inheritance, protection from discrimination, forced child marriage and forced labour and violence. The Commission provided age-appropriate resources on gender equality for parents and guardians to discuss with their children. The lively event held at National Stadium draws a wide array of vendors and allows girls to try a wide range of sports and STEAM (Science, Technology, Engineering, Arts and Mathematics), activities.

## International Day of the Girl



In 1981, the Bermuda Industrial Union led the fight for better wages for private and public sector workers with a historic strike. This marked the commencement of Bermuda's Labour Day celebration first held on 6 September 1982. Many of the complaints received by the Commission relate to allegations of discrimination or harassment in the workplace. Ensuring workplace policies and practices uphold the duties outlined in the Human Rights Act and model the principles of Decent Work as outlined by the International Labour Organisation, is essential in the creation of healthy and prosperous work environments. The Commission values supporting the annual celebrations to salute the steadfast efforts of advocates across the island, and to continue to shine a light on protecting the rights of all workers in Bermuda.

## Labour Day Celebrations



## Human Rights Day

“

These human rights issues, these things, they are part of our lives too – every day, and in ways adults don’t always understand. I don’t want to have to wait on the sidelines until I’m older to contribute, and then have to clean up the mess that the older generation has left behind.

STUDENT FORUM PARTICIPANT



The Commission participated in a commemoration at Government House hosted by his Excellency Governor John Rankin. As 2019 marked the 30th Anniversary of the United Nations Convention on the Rights of the Child, a Youth Forum was coordinated under the facilitation of Mr. Rajai Denbrook, Project Coordinator with Citizens Uprooting Racism in Bermuda (CURB).

The Forum highlighted the leadership role of young people in addressing diverse human rights issues. Students from CedarBridge Academy, Berkeley Institute and Somersfield Academy candidly discussed rights-issues facing young people in Bermuda including race and equity, the right to inclusive education, domestic violence, gang association, mental health and economic hardship. It was a powerful testament to the value of enabling young people to inform efforts to address current issues of the day. As one of the students shared, ‘These human rights issues, these things, they are part of our lives too – every day, and in ways adults don’t always understand. I don’t want to have to wait on the sidelines until I’m older to contribute, and then have to clean up the mess that the older generation has left behind.’

Governor Rankin praised the panellists, ‘International Human Rights Day reminds us of the importance of promoting and protecting the fundamental human rights that all should be able to enjoy. This year marks the 30th Anniversary of the UN Convention on the Rights of the Child and this was a valuable opportunity to hear and learn from young people in Bermuda, gaining their perspective on what rights mean for them now and for the future.’

## The Future Looks Bright

“

Human rights education is key to addressing the underlying causes of injustice around the world. The more people know about their rights, and the rights of others in society, the better equipped they are to protect them.

SALIL SHETTY | Secretary General of  
Amnesty International

The Commission regularly receives requests from students to assist with school, university or independent research pursuits.

The Commission has a duty to encourage an understanding of the protections afforded under the Human Rights Act, 1981, together with the broader human rights framework and welcomes wide-ranging engagements with the public we serve. It is a particular highlight to liaise with students to share more about the work of the Commission and support efforts in rights promotion, debate and research.

# CONSULTATIONS AND GUIDANCE

**The Commission coordinated a cross-agency consultation in April 2019 with the Minister of State for the Commonwealth and United Nations, Lord Ahmad of Wimbledon, together with Government House, to provide insight into domestic human rights and social justice initiatives.** The requested focus for the consultation was in the areas of race, women and gender, children and the LGBTQI+ community. Frontline service agencies and advocates were invited to share the most pressing challenges facing their organisations in service to the public and what measures were required to help overcome those challenges. Agencies present for the roundtable included the Coalition for the Protection of Children, the Family Centre, OUT-Bermuda, Citizens Uprooting Racism in Bermuda, the Centre Against Abuse and the Women's Resource Centre. Issues raised included the absence of legislative support for reducing recidivism rates of offences against children, economic disparity along racial lines, advocacy on behalf of children in the Courts; and the lack of public services and creation of safe spaces for the LGBTQI community. Lord Ahmad indicated that the role of his Ministry was to maintain awareness of the Overseas Territories' efforts to fulfil domestic obligations to protect all citizens and eradicate discrimination and to work in consultation with the Government of Bermuda.

## **Roundtable with Lord Tariq Ahmad of Wimbledon**

**The Commission is intentional about fostering relationships with local and international rights agencies.** Cross jurisdictional knowledge exchange provides the chance to learn from different approaches and enhance expertise. As such, the Commission was delighted to liaise with representatives from the States of Guernsey, a British Crown Dependency, as they developed a business case to establish the first Equality and Rights Institution on their island.

## **Establishment of a National Human Rights Institution, Guernsey**

As an established National Human Rights Institution, the Commission continues to reflect on optimising its structure and service delivery, so this was a welcome invitation particularly coming from another small island state. The consultation allowed for candid discussion to aid the Guernsey team in their deliberations. Topics included: relationships with other institutions, education and promotion strategies, relationship-building with stakeholders, staffing and resources, enforcement policies and legislation, implementation procedures, as well as efforts to align with the United Nations Paris Principles as a National Human Rights Institution.



## **Bermuda Mental Health in Bermuda Situational Analysis**



**The Commission participated in a Mental Health Situational Analysis hosted by the Mid-Atlantic Wellness Institute (MAWI) and led by a team from the Pan American Health Organization (PAHO) and Public Health England (PHE).** The interview tasked participants with addressing three central questions:

- What is going on with mental health in Bermuda?
- Who is doing what?
- How can we improve mental health in Bermuda?

The purpose of the consultation was to gather stakeholder data to inform a national plan for the Government to improve mental health services in Bermuda.

The interview was striking as it revealed the siloed nature of the sector, and uncertainty regarding which agencies were active and what kind of services were on offer. The Commission emphasised the importance of broad and inclusive interviewing with a cross-section of stakeholders to ensure accurate analysis, buy-in and applicability ahead of formulating a national strategy.

## Bermuda Public Service Union (BPSU) – Workers Task Force



The Bermuda Public Service Union (BPSU) convened a cross-section of community and service agencies stakeholders to establish a collaborative working group to address issues of workplace xenophobia, racism, bullying and harassment with the migrant worker community. The BPSU's call for action aligned with the work of the Migrant Worker Task Force established by the Commission in 2014 to promote the rights of all employees and to provide accessible information on employment, immigration and human rights matters to marginalised and vulnerable employees in Bermuda. Proposed objectives of the initiative include expanding outreach, building trust, raising awareness of the positive contribution of migrant workers and the functioning of the Bermuda economy, addressing precarious employment conditions, reviewing labour legislation, and promoting the value of cultural diversity.

### The Commission liaises with stakeholders across the public and private sector regularly.

Stakeholders may approach the Commission with specific requests for assistance, or with general concerns. Confidential consultations allow for frank dialogue to strengthen understanding of and compliance with the Human Rights Act, 1981.

A few examples of the kinds of issues addressed in stakeholder consultations\*:

**Organisational Practices:** A company approached the Commission requesting a review of their recruitment material. An applicant had expressed concern to Human Resources about some of the questions included on the company's employment application. The review revealed several potentially discriminatory elements that did not align with the company's commitment to inclusive recruitment practices. The Commission provided recommendations, and emphasised the importance of regularly evaluating and updating materials, policies, and practices to ensure human rights and employment compliance.

**Policy Review:** A Human Resource Manager approached the Commission seeking guidance with regards to their organisation's Sexual Harassment Policy. The organisation had a policy, but it was dated, and did not include clear enforcement procedures. The Commission reinforced procedural protocol as well as the duty of employers to ensure a safe working environment and clearly communicating a zero-tolerance policy toward sexual harassment in the workplace.

**Legislative Development:** Government is an essential stakeholder in upholding domestic and international human rights obligations, and the Commission serves as a resource. Incorporating human rights standards into policy and legislation development is vital to ensuring compliance and integrating rights considerations into national decision-making mechanisms. The Commission consulted with public officers from a range of Government Departments throughout the year providing recommendations in support of best practice.

## Human Rights Guidance

*\*The Commission emphasises that consultations do not replace or represent formal legal advice, but rather reinforces the expectations laid out in the Human Rights Act, 1981, as well as guidance on best practice.*

The Executive Officer attended a consultation hosted by His Excellency Governor John Rankin at Government House to discuss the promotion of disability rights and support services in Bermuda with visiting Director of Overseas Territories, Ben Merrick. Mr Merrick is responsible for the United Kingdom's policy towards its Overseas Territories with a particular focus on good governance, the rule of law, economic sustainability and international relations.

## Disability Services: Consultation with Director of Overseas Territories at Government House

# TRAINING, DEVELOPMENT AND NETWORKING

Rights protection and promotion is a dynamic and evolving field, in terms of sociocultural realities on the ground, as well as educational methodologies, jurisprudence and international regulatory instruments. As representatives of the Bermuda's National Human Rights Institution, the Officers are committed to advancing their skills and awareness of the local and international human rights landscape in order to provide relevant and responsible service delivery.

**Team Forward Planning:** The Officers participated in a half-day planning session to revisit annual organisational goals, actions, and performance metrics to support the operational objectives of the Commission. Having recently filled the Legal Counsel post which resulted in a long-awaited expansion of resources, the session enabled Officers to focus on shifts in alignment within workflow and the identification of key tasks to achieve strategic objectives.

**The Canadian Association of Statutory Human Rights Agencies (CASHRA) holds an annual conference dedicated to the improvement and promotion of human rights.** The Commission's Legal Counsel, Arion Mapp attended this year's event hosted by Prince Edward Island Human Rights Commission from 25-27 June 2019.

The Conference centered around the theme, 'Balancing Rights and Responsibilities' and addressed a range of issues pertinent to the work of the Commission. Sessions covered the intersectionality between religious freedom and equality including the development of the law before tribunals and the courts; the monitoring of accessibility rights in Canada, which flagged that systemic barriers remain in place within the education and employment sphere. A session dedicated to sexual harassment focused on the need to create a culture of safer workplaces and inclusivity. The session challenged the inadequacies of policies that simply ensure compliance with the use of appropriate wording instead of focusing on the eradication of sexual harassment within the workplace.

The sessions on balancing access to justice with procedural fairness and empowering participants in the complaint process to be particularly useful as the Human Rights Commission of Bermuda continues to implement a series of improvements to the frontline challenges faced by the institution. Another issue addressed was finding the balance between procedural fairness and efficiency, given the significant challenges that Commissions face when it comes to available resources, competencies, staffing and overall capacity to meet the breadth of their statutory mandates.

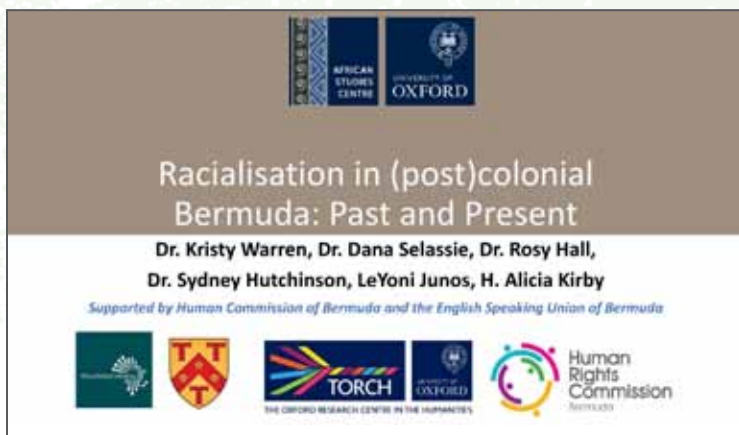
The Conference provided valuable exposure to inform decision-making related to the institutional knowledge of both recent and pending Canadian human rights decisions, aid efforts to consider necessary amendments to the Act and, to serve as an important reminder that the challenges that the Commission may sometimes face locally are similar to those experienced in other jurisdictions and that through the exploration of best practices, human rights frameworks the world over must continue to be fortified.

## CASHRA Conference



## University of Oxford Conference, Racialisation and Publicness in Africa and the African Diaspora

In November 2018, the Commission partnered with the Bermuda College and the Oxford Research Centre in the Humanities (TORCH), Race and Resistance Network to host a collaborative conference and marketplace entitled “Race and Resistance: Understanding Bermuda Today”. On the success of the Race and Resistance Conference, the Commission was invited by Professor Wale Adebaw, Rhodes Professor of Race Relations and Director of the Oxford African Studies Centre, to participate in the Racialisation and Publicness in Africa and the African Diaspora Symposium held from 26-29 June 2019.



A call for papers was issued ahead of the November 2018 Race and Resistance Conference, resulting in a full panel of Bermudian academics and researchers being accepted to present at the Oxford event. The Commission was proud to contribute to the sponsorship of the Bermudian scholars' attendance.

The Oxford Conference sought to examine why and how racial identities and categories are constructed, imagined and inscribed into the social, political and economic processes, practices and relationships in Africa and the African Diaspora, with significant consequences and implications for human life as well as for what Achille Mbembe describes in *Critique of Black Reason* (2017) as the global 'in-common'. The stated aim of the conference was to examine how groups, relationships, encounters, institutions, social processes, and thought are racialised in continental Africa and in the Black Diaspora, including how these processes of racialisation are both enacted or performed in public.

The Executive Officer received a formal invitation from Professor Wale Adebaw, a Fellow of St Antony's College at the University of Oxford, for Sara Clifford, Education Officer and Relationship Officer, to attend the convening in Oxford as a representative of the Human Rights Commission. The Bermuda panel was entitled: 'Racialisation in (post) colonial Bermuda: Past and Present' and featured the research of Bermudians Dr Dana Selassie, Dr. Rosemary Hall, LeYoni Junos, and H. Alicia Kirby with Dr. Kristy Warren serving as moderator. Bermuda's contribution was singled out by the keynote speaker with LeYoni Junos' research cited as one of the finest examples of 'decolonising research' she had encountered.

The Commission's Education and Relationship Officer and Oxford's Conference Coordinator engaged the Bermuda panellists to share more about their research and invite their thoughts on how they wished to see their research utilised in support of public education and greater racial awareness in Bermuda.

The programme featured research from across the African Diaspora and despite the vastly distinct geographical and sociocultural contexts represented, the necessity of understanding historical legacies and their current manifestations was an urgent theme. The Conference reinforced the significance of supporting Bermuda's researchers and scholars in the promotion of Bermuda's history as an essential tool in fostering a healthy and vibrant community. The Commission will continue to collaborate with Oxford University and the Bermuda College to identify and create platforms for broad and accessible development and dissemination of educational resources to the public.



**Officers attended the ICO's briefings to support duties under the Public Access to Information (PATI) Act 2010.** The briefings provided trainings for public authorities from recent ICO decisions and resolutions and the opportunity for knowledge exchange between authorities. Topics included the application of the personal information exception, transfer of PATI requests under section 13 and third party notifications under section 39 of the PATI legislation.

### Information Commissioner Office (ICO) Quarterly Briefings



### 10th Biennial Caribbean Ombudsman Association (CAROA)



Hosted by the Ombudsman of Bermuda, Victoria Pearman, the theme for the international convening was, "Strengthening the Role and Performance of Ombudsman and Human Rights Institutions in the Caribbean". The Executive Officer, Lisa Reed, joined a panel of public authority representatives and others to share strategies on, 'Strengthening Relationships While Maintaining Independence'. Panellists discussed the considerations required in a small jurisdiction to strike a balance between knowledge-sharing and exchange with like-mandated agencies with the need to maintain organisational authority.



ANNUAL REPORT 2019

APPOINTMENT OF

**Legal Counsel**

## INTRODUCTION OF LEGAL COUNSEL TO THE OFFICE OF THE COMMISSION

The Commission recognised that, as a national institution, it has a crucial role to play in promoting and ensuring the indivisibility and interdependence of all human rights. With this in mind, the post of Legal Counsel was approved and the main duties require the post holder to (i) provide legal advice related to human rights complaints and procedures (ii) tribunal litigation and (iii) management and administration. The post holder reports directly to the Executive Officer and advises the Executive Officer on matters relating to the legal interest of the Commission in the Executive Officer's discretion.

Furthermore, the post is accountable for the provision of expert legal services and technical guidance, inclusive of legal opinions, litigation of cases referred for adjudication in the public interest, and the effective representation of the Commission's interest before Human Rights Tribunals and the Supreme Court.

Additionally, this role extends to:

- scrutinising existing laws and administrative acts, including draft bills and policy proposals raised by the Government to ensure that they are consistent with the requirements of the Act;
- identifying national-level benchmarks against which the realisation of the Act and adherence to international obligations can be measured;
- conducting research and inquiries designed to ascertain the extent to which protection provided to particular protected characteristics are being realised in practice in specific areas, and in relation to particularly vulnerable communities; and
- monitoring compliance with specific rights recognised under the Act.

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In addition to fulfilling the roles envisioned, Legal Counsel has been instrumental in providing advisement to the streamlining of numerous processes and policy amendments, and worked closely with Authorities pertaining to requests for access to information.



On 8 February 2019, Mr. Arion Mapp was appointed to the post of Legal Counsel, which was the first appointment of its kind within the Commission, as the Commission was previously the only Commission in the world without an in-house legal counsel.

Mr. Mapp was called to the Bermuda Bar on 3 October 2014 and has over five years of litigation experience having previously worked within a firm that specialised in all matters pertaining to criminal litigation before the Magistrates' Court, the Supreme Court and the Court of Appeal. During that time Mr. Mapp was also an external legal vendor for the Commission providing legal advice and technical guidance to Officers of the Commission, appearing on behalf of complainants before the Human Rights Tribunal and assisting complainants throughout the Commission's Voluntary Mediation Programme. Prior to completing his legal studies, Mr. Mapp was a legal intern at the Commission during the summer months in 2011 and 2012 at a time where critical proposed legislative amendments to the Human Rights Act, 1981, were underway.

Legal Counsel has throughout the year in addition to fulfilling the roles envisioned by the post holder, implemented an added layer of screening into the complaint process to streamline the vetting of complaints, developed legislative policies relating to the interpretation of the Human Rights Act, 1981, appeared before the Human Rights Tribunal and worked closely with the Information Officer and the Head of the Public Authority on matters pertaining to requests for access to information.

Legal Counsel has had the opportunity to represent the Commission both locally and abroad, attending the 2019 Canadian Association of Statutory Human Rights Agencies conference, which was held in Charlottetown, Prince Edward Island, Canada in addition to attending various community/advocacy initiatives to assist in increasing the Commission's understanding of how the organisation can better serve the public.



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Newly appointed to the post of Legal Counsel in February 2019, Mr. Arion Mapp, is welcomed by the Executive Officer. The post is the first of its kind within the Commission.





ANNUAL REPORT **2019**

# **Accountability in Action**

# ACCOUNTABILITY IN ACTION

This section of our Annual Report addresses the accountability of the:

- Bermuda Government;
- Governor of Bermuda, as a representative of Her Majesty's Government;
- Executive Officer and technical public officers employed by the Commission;
- Human Rights Commissioners appointed to the Commission on fixed term basis; and
- statutory Selection and Appointment Committee responsible for the selection and appointment of Human Rights Commissioners

For the governance and staffing of the Commission;

For the effectiveness of human rights recognition, advocacy and enforcement in Bermuda, in accordance with the Paris Principles;

For funding and expenditure in connection with the remuneration of Commission members and the operation of our organisational structure.



## WHY DISCUSS THE BERMUDA GOVERNMENT AND HER MAJESTY'S GOVERNMENT AS PART OF THE COMMISSION'S ACCOUNTABILITY OVERVIEW?

As the Commission currently lacks full independence from the State and as Bermuda remains a British Overseas Territory, it is necessary to widen the accountability discussion to include these Actors who are recognised by international human rights bodies and regulators as responsible for the status of human rights enforcement in Bermuda.

## ISSUING ANNUAL REPORTS FOR PUBLIC ACCOUNTABILITY

### AN ESSENTIAL REQUIREMENT OF THE PARIS PRINCIPLES

In issuing this Annual Report, the Commission seeks to adhere to the *Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights* (Paris Principles).

The Paris Principles constitute a set of internationally recognised standards for the status, structure, mandate, composition, power and methods of operation of National Human Rights Institutions (NHRIs). They have been adopted by the Global Alliance of National Human Rights Institutions (GANHRI) to independently assess the credibility, independence and effectiveness of NHRIs without the influence of any political, economic or reputational objectives of States.

Section A.3(a) of the Paris Principles requires NHRIs to be responsible for submitting to the Government, Parliament and any other competent body reports on any matters concerning the promotion and protection of human rights.

2018 marked the 25th anniversary of the establishment of GANHRI and the endorsement of the Paris Principles by the UN. It further marked the 70th anniversary of the Universal Declaration of Human Rights.

## GANHRI'S GENERAL OBSERVATIONS ON FULFILLING THIS OBLIGATION

With a view to assisting NHRIs in fulfilling their reporting obligations under Section A.3(a) of the Paris Principles, GANHRI provides the following guidance on its requirements, based on international proven practices:

- Purpose of Reports:** Annual, special and thematic reports serve to highlight key developments in the human rights situation in a country and provide a public account, and therefore public scrutiny, of the effectiveness of an NHRI. The reports also provide a means by which an NHRI can make recommendations to Government and monitor respect for human rights by Government.
- Content of Reports:** The annual report of an NHRI is a vital public document that not only provides a regular audit of the government's performance on human rights but also an account of what the NHRI has done. As such, this report should include an account of the activities undertaken by the NHRI to further its mandate during that year and should state its opinions, recommendations and proposals to address any human rights issues of concern, and the Government's action on its recommendations.
- Publication of Reports:** It is important for an NHRI to publicise and widely distribute an annual report on its national situation with regard to human rights in general, and on more specific matters. It is vitally important that all the findings and recommendations of the NHRI be publicly available as this increases the transparency and public accountability of the NHRI. In publishing and widely disseminating its annual report, the NHRI will play an extremely important role in educating the public on the situation of human rights violations in the country.
- Submission of Reports:** The NHRI should be given the legislative authority to table its reports directly to the legislature rather than through the Executive. The legislature should be required to discuss and consider the reports of the NHRI, so as to ensure that its recommendations are properly considered by relevant public authorities.

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2018 marked the 25th anniversary of the establishment of GANHRI and the endorsement of the Paris Principles by the UN. It further marked the 70th anniversary of the Universal Declaration of Human Rights.



## 2019 REPORTING STATUS AS A COMMISSION

The Commission is statutorily required by section 30A of the Act to make a report to the Bermuda Government Minister responsible for human rights (Minister) on the activities of the Commission no later than six (6) months after the end of each calendar year. The Minister is required under the Act to lay the report before both Houses of the Legislature as soon as the same is received from the Commission and the Legislature appears to be under no statutory obligation to formally consider the report. This procedure is currently not in full alignment with the General Observations and the Commission advocates for legislative changes to achieve such alignment. On Human Rights Day (10 December 2018), the first independent website of the Commission went live and has allowed the Commission to upload digital copies of its Annual Reports to more widely publicise them and increase the transparency and public accountability of the Bermuda NHRI.

[www.humanrights.bm](http://www.humanrights.bm)



## APPOINTMENT AND ACCOUNTABILITY PRACTICES

### THE GOVERNOR OF BERMUDA



The Governor, acting upon the recommendation of the Premier of Bermuda, appoints the Minister responsible for human rights. Furthermore, the Governor, acting upon the recommendation of the Public Service Commission, is empowered under the Act to appoint the Executive Officer to the Commission.

### THE MINISTER WITH RESPONSIBILITY FOR HUMAN RIGHTS

The Minister with responsibility for human rights represents the elected Bermuda Government's interests and policy objectives to the Commission and the international community. The Commission considers those interests and objectives in advancing its own independence and long-term goals for the adoption of human rights standards in Bermuda.

The Commission is responsible to the Minister for the administration of the Act however the State remains responsible for the adherence to international human rights standards and obligations, as enshrined in the conventions and other legal instruments extended to Bermuda.

## SELECTION AND APPOINTMENT COMMITTEE

A statutory Selection and Appointment Committee (Committee) is responsible under the Act to invite applications from the general public to serve on the Commission as Commissioners, review all applications, interview applicants and appoint candidates to serve as Commissioners for fixed three year terms.

This public application process was implemented in 2012, following the advocacy of the Commission to implement a more open and inclusive process for Commissioner appointments and to replace the former model of Ministerial appointments.



In September 2018, Nadine Francis was appointed as the Head of the Selection and Appointment Committee by the Hon. Lovitta Foggo JP, MP, who was the Government Minister with responsibility for human rights issues at that time. The other members of the Committee responsible for the appointment of the current set of Commissioners are: Linda Foggo Franks, Willie Ferguson, Dean Williams and Mr. Lorren Wilson.



## **EXECUTIVE OFFICER**

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

The Executive Officer is responsible for (i) the full oversight of all human resources functions involving technical public officers, (ii) the strategic development and execution of the Commission's interpretation of human rights enforcement, education and advocacy mandates, (iii) oversight of programmes internal to the Commission for the intake, investigation, and mediation of human rights complaints, involvement in Court proceedings and wider education and communication opportunities with the public, (iv) expenditure by the Commission as the Accounting Officer for the Commission and (v) correspondence with any representatives, inclusive of those from the elected Bermuda Government and the UK Government.

The Executive Officer is intended to submit reports solely and directly to the Commission through the Chairperson. This accountability practice was approved on 1 April 2015 to bolster the Commission's independence from both the Bermuda Government and Government House. Previously, the Executive Officer had a dual reporting obligation to both the Chairperson and the Director of Human Affairs. This dual reporting responsibility was in force for over three (3) decades, from the inception of the Commission in 1982 to the 31 March 2016.

Once Commissioners have been appointed by the Committee, the Office of the Commission is responsible for on-boarding the appointees. In practice, the Executive Officer shepherds the various sets of the Commissioners through their fixed terms at the Commission, arranges training and, where appropriate, facilitates the provision of legal advice from external service providers for the Commissioners.





## FINANCIAL ACCOUNTABILITY

### ACCOUNTING OFFICERS

Lisa Reed was appointed by the Governor on 1 March 2010 as the Executive Officer of the Commission and has served as the Accounting Officer for the Non-Ministry Office since her appointment.

In delivering this role, the Executive Officer is supported by the Accountant General, the Non-Ministry Comptroller, the Director of Project Management and Procurement, and the Director of Internal Audit who operate independently of the Commission.

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

The Office of Project Management and Procurement provides guidance to public authorities regarding project management and procurement activities to ensure that contracts are awarded to providers of goods and services based on the principles of transparency, competition and the use of objective criteria in decision making.

The Department of Internal Audit is classified as a Non-Ministry Office and provides, amongst other things, reasonable assurance that persons entrusted with public funds carry out their functions effectively, efficiently, economically, ethically, equitably and in accordance with international standards for the professional practice of internal audit.

### WHAT IS AN ACCOUNTING OFFICER?

This role is assigned to an officer of a department or office whom the Minister of Finance regards as responsible for the custody and control of funds appropriated by the Legislature and for the collection of revenues due to that department or office.

In delivering this role, an Accounting Officer has responsibility for maintaining a sound system of internal control that supports the delivery of policies, aims and objectives, whilst safeguarding the public funds and assets.



## STATEMENT OF ACCOUNTING OFFICER'S RESPONSIBILITIES

The responsibilities of the Accounting Officer of the Commission including keeping proper records of expenditure of the budget funding allocation received by the Commission from the Legislature. At 31 March of each fiscal year, our Accounting Officer is required to certify that balances on the accounts in our office are correct and provide a reconciliation of those balances to supporting documentation.

## 2019 – 2021 BODY OF COMMISSIONERS

On 24 February 2019, the statutory Selection and Appointment Committee (Committee) confirmed its appointment of to the Commission of the 2019-2021 set of Human Rights Commissioners.

In accordance with section 13(1A) of the Act, one third of the persons appointed by the Committee could be in possession of a legal qualification and knowledge of human rights law. The Chairperson is required by the Act to possess these qualifications and be a member of the Bermuda Bar in good standing.

### The 2019 – 2021 body of Commissioners appointed by the Selection and Appointment Committee are:

#### **CHAIRPERSON** | Vaughan Caines

*Member of the Bermuda Bar in good standing in accordance with section 13(1A) of the Act.*

#### **DEPUTY CHAIRPERSON** | Ed Ball Jr.

#### **GENERAL COMMISSIONERS**

Rajeev Goonewardene

Mary Lodge

Charleda Mahon Gibbons

James McCulloch

Kai Musson

Ravi Pachai

Alex Potts

Cristen Seuss

Jessica Steede

Stacey-Lee Williams

## CHALLENGES TO INDEPENDENCE AND ACHIEVEMENT OF MANDATE

### CHALLENGES IDENTIFIED BY THE COMMISSION

Since the Commission's establishment in 1982, its experience, capacity and technical public officers have increased for the benefit of the Community. The transfer of the Commission from the Department of Human Affairs to a Non-Ministry Office by the Bermuda Government and Legislature in 2016 was a tremendous milestone for the Commission and its greater autonomy from the Bermuda Government.

The public continues to engage the Commission in the resolution of human rights violations through the filing of human rights complaints against private entities, individuals and public authorities for mediation, conciliation and formal adjudication in the Tribunal. The Commission further continues to engage businesses and public authorities through consultations and issuance of policy guidance. Wider educational initiatives have been achieved through public advocacy via various communication channels and involvement in legal proceedings in the Supreme Court of Bermuda.

Despite these activities, the office confronted a wide range of challenges in 2019 in connection with becoming fully Paris Principle compliant and operating within the expected international standards.

These difficulties had a real impact in the effectiveness of the Commission within the jurisdiction and are linked to the absence of having:

- full independence and the guarantee of full independence under the Act;
- genuine autonomy from the Bermuda Government and the UK Government;
- pluralism in Commissioner membership;
- adequate funding and freedom from inappropriate financial controls restricting independence such as full ability to recruit for technical officers without influence from Government hiring and staffing policies of the day; and
- proper international representation, such as being invited to contribute to country reports submitted to the United Nations bodies and committees in line with State treaty obligations.

While these challenges are experienced by a number of NHRIs worldwide (almost 33% of NHRIs are not yet compliant with Paris Principles), the Commission remains focused on realising full compliance in the interests of the community.

**Section B.2 of the Paris Principles** requires NHRIs to have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

### WHAT IS GANHRI'S FUNDING EXPECTATIONS DURING A CHALLENGING FINANCIAL CLIMATE?

GANHRI's General Observations confirm that, although the provision of "adequate funding" is determined in part by the national financial climate, States have the duty to protect the most vulnerable members of society, who are often the victims of human rights violations, even in times of severe resource constraints.

The Legislature approved the Commission's Operational Budget for the 2019/20 fiscal year at \$1.26M.

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**The bolstering of capacity and autonomy between 2012-2019 now enables the Commission to properly set an achievable objective for the completion of a full independent review of the Act, accountability practices and the commencement of our accreditation process with GANHRI by the end of 2022.**

## LEGISLATIVE AMENDMENTS

In recent years, much of the Commission’s focus on amendments to the Act has been spent on continuing to identifying gaps in protection and planning for the further development of statutory protections. Expansion of the protected categories, inclusive of age in the area of employment and protection from discrimination by association are some of the areas identified by the Commission as recommendations to the Government of Bermuda.

However, the capacity to fully advocate, enforce and education the public on all protected categories in Bermuda requires a fully independent Commission with modernised accountability practices that support continued independence.

At this time, no statutory mechanism exists to enable the Commission to directly table reports for consideration by the Legislature and this is one of the proposed changes to the Act.

The last comprehensive review of the Act occurred in the fall of 2010 and resulted in the 2012 Amendments which became operational in October 2012. At the time of that review, the Commission was part of the Government of Bermuda, specifically operating within the Department of Human Affairs, and therefore unable to formally lead the review and fully advocate for change as an independent NHRI.

Now that the Commission has been transferred to a Non-Ministry Office and has Legal Counsel, the Commission is better positioned with greater capacity to collate quantitative data, draft proposals and engage in preliminary consultations with stakeholders to properly inform and develop this report to the Legislature.





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# **ANNEXES I - VI**

# ANNEX I

Milner Place, Ground Floor | 32 Victoria Street | Hamilton HM 12  
PO Box HM 734 | Hamilton | HM CX | Bermuda  
T. (441) 295-5859 | [humanrights@gov.bm](mailto:humanrights@gov.bm)



The Hon. Tinee Furbert J.P., M.P.  
Minister with Responsibility for Human Rights  
The Cabinet Building  
105 Front Street  
Hamilton HM 12  
Bermuda

## Letter of Transmittal

### Annual Report of the Office of the Human Rights Commission for Bermuda For the Year Ending 31<sup>st</sup> December 2019

Dear Minister Furbert,

It is my pleasure to transmit the Annual Report of the Office of the Human Rights Commission for Bermuda (**Commission**) for the calendar year 2019 (January 1, 2019 to December 31, 2019). This Report is made pursuant to Section 30A of the Human Rights Act 1981 (**Act**) for you to lay before the Houses of the Legislature in accordance with the statutory procedure established by the Act.

This Report addresses the activities of the Commission during the above-mentioned reporting period and specifically focuses on the application of the international standards for the operation of National Human Rights Institutions (known as the *Paris Principles*) to the practical day-to-day practices of the Commission in its current organisational structure.

It further reflects upon the bolstering of the capacity and autonomy of the Commission between 2012-2019. This was effected as a result of:

- (i) the 2012 Amendments to the Act, as lead by the Government of Bermuda, which revised the accountability practices of the Commission;
- (ii) the 2015 approval of Cabinet to transfer the Commission from the Government of Bermuda, Department of Human Affairs to a Non-Ministry Office; and
- (iii) the 2018 approval for the Commission to recruit for the Legal Counsel post, as received from the Head of the Public Service. This approval resulted in the filling of this post within the Commission in February 2019 and had significant positive impact on the deliverables of the Commission during the reporting period.

In celebrating this accomplishment, the 2019 Annual Report also observes that the accountability practices of the Commission along with the Act require independent review.



In this respect, it is worth noting that the last comprehensive review of the Act occurred in the fall of 2010 and resulted in the 2012 Amendments which became operational in October 2012. At the time of that review, the Commission was part of the Government of Bermuda, and therefore unable to formally lead the review and fully advocate for legislative change as an independent National Human Rights Institution.

In recent years, much of the Commission's focus on amendments to the Act has been spent on identifying gaps in human rights protection and planning for the further development of statutory protections. In this respect, we wish to recognise our working partnership with the former Minister with responsibility for human rights, the Hon. Wayne Furbert, J.P., M.P., in 2019, who supported the expansion of the protected ground of age into the area of employment with respect to our Act.

Nonetheless, the capacity of the Commission to fully advocate, enforce and educate the public on all protected categories in Bermuda requires a fully independent Commission with modernised accountability and operational practices. This is the *primary focus* of the Commission moving forward because this is what the Paris Principles require and this is what the accreditation body for National Human Rights Institutions, Global Alliance for National Human Rights Institutions (GANHRI), would focus upon in assessing the performance of the Commission.

The bolstering of the Commission's capacity and autonomy between 2012-2019, as led by the Government of Bermuda, Cabinet and the Head of the Public Service, now enables the Commission to properly set an achievable objective for the completion of a full independent review of the Act, accountability practices and the commencement of our accreditation process with GANHRI by the end of 2022.

Moving forward, it is our hope that the Government of Bermuda will continue to exercise nimble support by efficiently advancing amendments to the Act which are put forward by the Commission, some of which are detailed in this 2019 Annual Report.

Respectfully,

**Lisa M. Reed**  
**Executive Officer**  
**Office of the Human Rights Commission for Bermuda**

## ANNEX II

### 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.

● <b>WALK-IN</b>	Human Rights Commission Milner Place   Ground Floor   32 Victoria Street   Hamilton HM 12
● <b>MAIL</b>	P.O. Box HM 734   Hamilton HM CX
● <b>PHONE</b>	(441) 295-5859
● <b>EMAIL</b>	humanrights@gov.bm
● <b>WEB</b>	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 III

### COMPLAINT PROCESS

- 1. Complaint Received** – The complaint is received by any of the methods outlined in Annex II, and then appropriately logged. The Administrative Intake Officer is assigned to obtain as much relevant information as possible to clarify the complaint. There may be instances where a preliminary inquiry is conducted in accordance with section 14I of the Human Rights Act, 1981, which notifies the Respondent(s) of the complaint with a view of determining if there is sufficient information to justify further examination. Once all relevant details are obtained, the Executive Officer must be satisfied that the complaint discloses a prima facie case of discrimination prior to the Respondent(s) being requested to formally respond to the complaint. Once in receipt of a response by the Respondent(s), the Executive Officer makes a determination with respect to whether or not the complaint appears to be genuine.
- 2. Investigation and Conciliation** – Where the Executive Officer determines that a complaint appears to be genuine in accordance with section 15(1) of the Human Rights Act, 1981, the matter is referred onward to an investigation. Parties to a complaint are also provided the opportunity to resolve their dispute by way of the Human Rights Commission's Voluntary Mediation Programme.
- 3. Determination of Merit** – Following an investigation, the Executive Officer considers the information obtained throughout by both the Complainant and the Respondent and determines whether the complaint, which alleges a contravention of the Human Rights Act, 1981, appears to have merit. Where a determination is made that the complaint does not appear to have merit, the Complainant is offered the opportunity to be heard prior to the matter being dismissed.
- 4. Referral to Tribunal** – Following an investigation, if the Executive Officer determines that a complaint appears to be meritorious and where the matter is unresolved, or is unlikely to be settled, the matter is referred for adjudication to a Human Rights Tribunal.

# ANNEX IV

## HUMAN RIGHTS TRIBUNAL PROCESS

A Human Rights Tribunal is an independent body empanelled to resolve complaints of alleged discrimination in a fair, impartial and timely manner. Presently, the Tribunal is comprised of three (3) individuals; a legally qualified Tribunal Chair and two (2) members. Where a matter is referred to a Tribunal, the members have no previous knowledge, involvement or information pertaining to the investigation process. The onus is on the parties to a complaint to supply the Tribunal with all evidentiary materials to support their claim, which is inclusive of witness statements.

The Tribunal is the trier of fact and are empowered to determine whether unlawful discrimination has occurred. Where a Tribunal determines that discrimination has occurred, the Tribunal may award damages, issue recommendations and make such orders that are enforceable and subsequently registered with the Supreme Court.

Where a party wishes to appeal a decision of the Tribunal they may do so by way of the Supreme Court. The Human Rights (Appeals) Rules 2018 provide guidance for parties wishing to appeal a Tribunal decision.

### Tribunal Process Phases

The below sections describe the human rights complaint adjudication process. It is the role of a Human Rights Tribunal to ensure the process is fair and relatively quick.

#### Case Management Hearings

A case management hearing is a hearing held to discuss the complaint process. A Tribunal may give directions or orders regarding the steps that may be held.

The Tribunal may:

- Schedule dates for another case management hearing, a preliminary hearing, a substantive hearing, a judgment hearing or a costs hearing
- Determine whether there is any further opportunity for settlement before a hearing
- Determine whether other issues need to be resolved before a hearing
- Set a schedule for submissions on an application made by either party

- Confirm that the participants are prepared to proceed to a hearing and that the hearing can be completed within the dates scheduled for the hearing
- Determine whether the participants will produce an agreed statement of facts
- Confirm or set dates for a party to take steps, including:
  - produce a list of the witnesses the participant intends to call at the hearing
  - produce witness statements
  - produce a list of documents the participant intends to submit into evidence at the hearing
  - produce a brief statement of the factual and legal basis for the remedy or order sought.

#### Directions Ordered by the Tribunal

The Tribunal will give instructions to the parties on how they are to prepare the case which are known as “directions.” The directions are intended to ensure that all matters pertaining to the case are made known to the Tribunal and to all parties to the complaint before the substantive hearing. There are several purposes behind this. One is so that it becomes clear which parts of the case are disputed and which are not – only the disputed issues will need a Tribunal’s decision. Another is so that the Tribunal can make the right arrangements for the hearing, including allowing enough time for it to be heard. A third reason is so that the parties themselves are able to get a full understanding of each other’s case. This third purpose enables the parties to the complaint to concentrate their preparation on the disputed issues, which will help the Tribunal to reach a decision on those issues. It also makes it easier for the parties to “settle” the case or to come to a sensible agreement which would make a hearing unnecessary. The parties have duties both to assist and co-operate with the Tribunal and to try to reach an agreement where possible.

Tribunals may direct parties to participate in the Commission’s Voluntary Mediation Programme where there is a possibility of resolving the dispute before the hearing. In those circumstances, the Office will arrange for mediation services which are at no cost to the parties.

The directions given by a Tribunal are issued to assist the parties in understanding what they are required to comply with in the preparation of their case.

# ANNEX V

## AREAS OF PROTECTION UNDER THE HUMAN RIGHTS ACT 1981

In addition to the Grounds of Protection set out within section 2(2)(a) of the Act, 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 them, or intimidates such employee, because they 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.

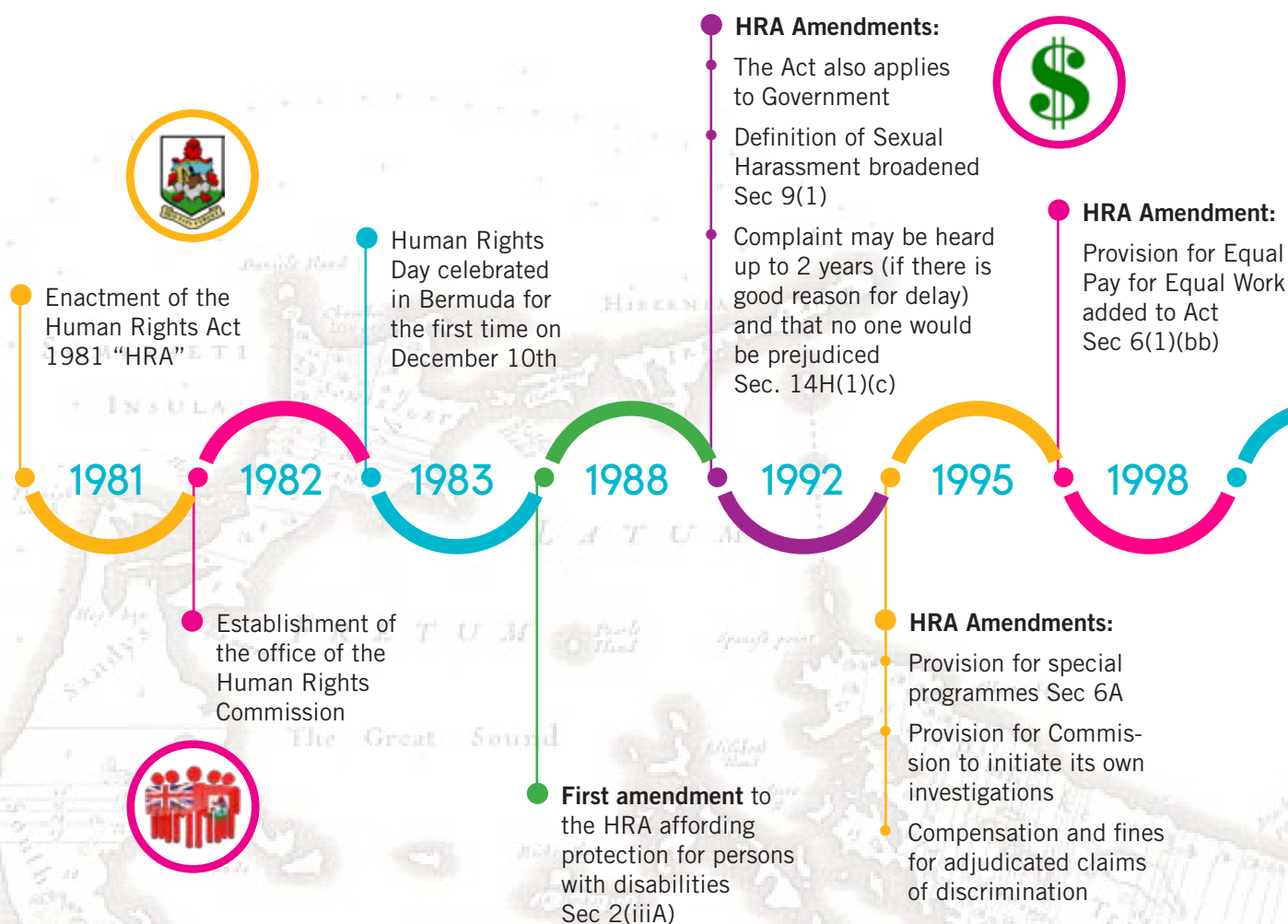
**Section 9: Sexual Harassment** – this section provides protection from sexual harassment from employers, agents of employers, other employees, and landlords. The employer must protect against sexual harassment in the workplace.

**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 VI

# Timeline of the Human Rights Act

EST. 1981



Human  
Rights  
Commission  
Bermuda

### 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





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