



Human Rights Amendment (No. 2) Act 2011

SECOND READING BRIEF FOR DEBATE IN THE HOUSE OF ASSEMBLY

on

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**By
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Minister of Youth, Families and Sports**

Human Rights Amendment (No. 2) Act 2011

Mr. Speaker, I am pleased to lead the debate today on the Bill entitled the Human Rights Amendment Act (No. 2) Act 2011, to be re-titled the Human Rights Amendment Act 2012.

Mr. Speaker, as Members of this Honourable House will know, the Human Rights Commission was formally established in Bermuda in 1981.

Mr. Speaker, the legislated mandate of the Human Rights Commission is to promote awareness relating to matters of discrimination, work towards the elimination of

discrimination, and to provide protection for all people residing in Bermuda in keeping with the provisions of the Human Rights Act, 1981.

Mr. Speaker, For nearly 30 years, the Act has served to provide a code of non-discrimination between people in Bermuda and to extend the fundamental rights and freedoms which are enshrined in the Constitution. However there comes a time when a review of existing legislation is prudent to examine what is working and what could be improved upon. There have been attempts to ensure that the Act remained relevant by way of several amendments over the years, however at no point during

its thirty year history has such an extensive assessment of its functions and effectiveness been undertaken.

Mr. Speaker, the rationale for this wide-ranging review is threefold:

Firstly in 2010, the Government transferred the staff and functions of the Commission for Unity and Racial Equality (CURE) to the Human Rights Commission thus providing the basis of an extensive internal review of the HRC with the purpose of identifying areas of opportunity with the expanded capacity.

Secondly the Commission's thirty year old administrative processes and practices are out of date, causing delays in the investigation, and disposition of complaints. The lengthy and circuitous intake and investigations processes frustrated and confused the public and reinforced the belief that cases dragged on indefinitely and that the Commission is ineffective. This led to an overall lack of public trust in the HRC.

And Thirdly the Ombudsman, Boards of Inquiry and Court Decisions have long commented on the need for change to the Human Rights Act in order for it to measure up to other human rights instruments around the world.

Mr. Speaker, There are currently two (2) provisions in the Human Rights Act where the Minister plays a pivotal role in the determination of a human rights matter. The first is his role in the selection and appointment of the Commissioners. The second is his power to determine which human rights cases are actually heard by a Board of Inquiry. Criticism has been levied at the Ministers dual functions under the provisions of the Act, particularly from the courts who assert that tribunals and commissions, especially those dealing with such sensitive areas such as human rights, be free of political involvement. Further, concerns of Ministerial involvement have been exacerbated by the Ministers power under the Act to decide whether to appoint a Board

of Inquiry to adjudicate a complaint once it is forwarded to him by the Commission.

Mr. Speaker, the Department of Human Affairs reviewed the organizational structures, functions and administrative processes of Human Rights Commissions in New Zealand, Australia, the United Kingdom, South Africa and the Canadian provinces of Ontario, British Columbia and Prince Edward Island. Inquiries in the wider Caribbean revealed that there are very few Human Rights Commissions. The review generated wide-ranging and extensive recommendations to amend the Act, and results indicated that Commissions generally operate using either a Traditional, Hybrid or Direct Access model.

Mr. Speaker, Bermuda's Human Rights Commission operates according to the Traditional Model and functions as follows: screens complaints; conducts investigations; seeks to conciliate and settle complaints of unlawful discrimination; refers complaints to the responsible Minister for discretionary referral to a Board of Inquiry for settlement. In the Hybrid Model, staff members perform screening functions, investigate the case if it is meritorious, dismiss the complaint after investigation if there is no evidence, or refer the complaint to a Tribunal composed of Commissioners. The Tribunal hears the case and makes a decision. Prince Edward Island, Canada is one example of this type of operation. The third model is the Direct Access Model where persons file complaints

directly with a Human Rights Tribunal. The Commission maintains an education and advocacy role only. Ontario, Canada is such an example of a Direct Access Model.

All three models were considered by the Department of Human Affairs, and a “Bermudianized” Hybrid Model was recommended as the best option.

Mr. Speaker, this Bill seeks to modernize the organizational structure and streamline the administrative processes and practices to ensure an efficient and effective Human Rights Commission capable of serving the public while being held to the highest standards. The Bill will ensure that the complaints process is clear to the public and that all cases progress in a timely manner. The

objective is to ensure that knowledgeable and competent decisions are made which will withstand scrutiny throughout the progression of a human rights complaint.

Mr. Speaker this Bill represents the second phase of the overhaul of the Human Rights Act. The first phase occurred in 2011 with the Human Rights Amendment (Unreasonable Hardship) Act which was passed in July and became operational in early December.

Mr. Speaker, the Human Rights Commission currently operates as follows: the **Commissioners** screen complaints and determine whether a complaint appears genuine. If the complaint appears genuine, the

Commissioners approve a complaint for investigation. The **staff of the Commission** conducts investigations and present their findings to the **Commissioners** at a monthly meeting. The **Commissioners** seek to conciliate and settle complaints of unlawful discrimination through the offer of mediation and other methods, however if they are unable to do so they **must** refer complaints to the Minister for referral to a Board of Inquiry.

Mr. Speaker, Bermuda's Human Rights Commissioners generally do not have any background in human rights. Decisions often get delayed as the **Commissioners** are only scheduled to meet monthly, and that monthly meeting may not even take place **if** there is no quorum.

This makes the progression of cases through the Commission, then on to the Minister and then to a Board of Inquiry an extremely lengthy and confusing process for the parties.

Mr. Speaker, The Bill shifts the complaint screening function, currently being performed by **the Commissioners,** to **the staff of the Commission** who are professionals and have the technical skills coupled with already well established screening processes to perform this function. **The Executive Officer of the Commission** will determine if a complaint appears genuine and if it should proceed to investigation.

Mr. Speaker, the Bill will also transfer the functions of the Boards of Inquiry to a Human Rights Tribunal and convert the Commissioners role from a screening role to an adjudication of complaints role with the same quasi-judicial authority and responsibilities of the former Board of Inquiry process. Complaints of discrimination will now be received, investigated and adjudicated within the Human Rights Commission and not be moved out of its jurisdiction to the Minister and then to the Department of Human Affairs to administer the Board of Inquiry process, as is currently the case. The Tribunal would hear cases referred to it by the Executive Officer and render decisions on the merit of the complaint.

Mr. Speaker, Boards of Inquiry as they currently exist will be replaced by the Human Rights Tribunal. Each Tribunal will be made up of three (3) members from the total number of Human Rights Commissioners. The Minister will no longer refer matters to Boards of Inquiry thus removing any potential for political involvement. These changes will also ensure a timely resolution of a complaint and continuity in its progression.

Mr. Speaker, with all of the changes being made by this Bill the new procedure for a complaint will be as follows:

- The complaint of discrimination will be made to the staff of the Commission who will as a team

determine if it falls within the ambit of the provisions of the Act;

- Instead of the Commissioners deciding whether to investigate the complaint as is now the case, the Executive Officer will make that final determination, in consultation with his trained staff;
- Once an investigation is conducted the Executive Officer will determine if there is a prima facie case and will forward it to the Chairman of the HRC for a tribunal to be empanelled;
- The Chairman, who is legally qualified reviews the file and empanels a Tribunal.

Mr. Speaker, the Executive Officer plays a key role throughout the intake and investigation process and in the determination of whether there appears to be a case. It is important to note that there will be an appeal process available to complainants if they are not happy with the determination of the Executive Officer. Should the Executive Officer determine that there is no case, the complainant may appeal to the Chairman of the HRC who will have the final word.

Mr. Speaker, the replacement of Boards of Inquiry with Human Rights Tribunals and the conversion of the role of Human Rights Commissioners to adjudicators will require a new selection and appointment process for

Commissioners. Rather than the Minister appointing members of the public to the Human Rights Commission as at present, the new process will entail the formation of a Selection and Appointment Committee to undertake a recruitment process for Commissioners. Criteria and qualifications for the Commissioner appointments would be established by the Minister responsible for Human Rights, the Department of Human Affairs and the Executive Officer of the Commission. Persons wishing to become Human Rights Commissioners would need to apply for the positions. The Selection and Appointment Committee will be comprised of the Head of the Committee who is appointed by the Minister, one representative recommended by the Premier, one

representative recommended by the Leader of the Opposition and two representatives from the general public appointed by the Head of the Committee. The Committee will invite applications from the general public for persons to serve on the Commission, review all applications and interview applicants, and appoint the twelve (12) Commissioners.

Mr. Speaker, in order to ensure that any Orders handed down by a Tribunal are complied with, a new provision has been added to allow for Orders of a Tribunal to be made Orders of the Supreme Court. The objective is to ensure enforcement of an Order made by a Tribunal.

Mr. Speaker, the ability for complainants to apply to the Commission for financial assistance, in relation to an appearance of legal Counsel in the tribunal process only, remains in the Act however in order to avoid conflict or any appearance of bias the Department responsible for Human Rights, currently the Department of Human Affairs, will now be responsible for considering the application for assistance based on a “standardized means” test.

Mr. Speaker, the Bill takes into account that Boards of Inquiry may have already been referred for a hearing by the Minister or underway on the Commencement Date of the Amendment Act. The Bill allows for those Boards

which have been appointed to continue until they have determined the complaint.

Mr. Speaker, the Government recognizes that major changes to the Act and the Commission are required to restore and regain the public's trust and confidence. As it stands, the Commission remains a cumbersome institution in its present form amid the Government's ongoing efforts to ensure streamlined efficient public service. In order to ensure that Bermuda is able to gain international recognition and, most importantly, local trust, the Commission must evolve to become a credible, legitimate, relevant and effective body.

Thank you Mr. Speaker!