

***In the matter of the Complaints Commissioner Law (2006
Revision)***

Own Motion Investigation

Legislation and the Individual's Right to Privacy

Own Motion Investigation Report Number 14 (a)

Prepared by the Office of the Complaints Commissioner

Date: 28 September 2009

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Aim of the Office: To investigate in a fair and independent manner complaints against government to ascertain whether injustice has been caused by improper, unreasonable, or inadequate government administrative conduct, and to ascertain the inequitable or unreasonable nature or operation of any enactment or rule of law.

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Foreword

In accordance with the powers conferred on the Commissioner under section 6(1) of the Complaints Commissioner Law (2006 R), this report was completed by Analyst Barrie Quappé.

The Complaints Commissioner Law (2006 Revision) section 20(2) states that: "The Commissioner may lay before the Legislative Assembly reports on the inequitable or unreasonable nature or operation of any enactment or rule of law".

1. Executive Summary

On 8 April 2009 the Office of the Complaints Commissioner (“OCC”) launched an Own Motion investigation into the unreasonable or unjust operation of Legislation and the individual’s right to privacy.

The Complaints Commissioner Law (2006 Revision) section 20(2) states that “The Commissioner may lay before the Legislative Assembly reports on the inequitable or unreasonable nature or operation of any enactment or rule of law.”

The focus of the investigation was on the publication of an individual’s name in legislation. The Complaints Commissioner Law (2006 Revision) section 20(2) as referenced above, gives the Commissioner the responsibility to report whenever there are seen to be issues in the law. This particular publication included an individual’s name and this was patently wrong to the OCC.

This Executive Summary Report is entitled Report Number 14 (a). A more detailed report of this investigation will be given directly to the Minister responsible for this Ministry and that will be Report Number 14 (b). This action is taken by the OCC so as not to compound the injustice that has been visited upon the individual whose name was published in legislation.

Legislation ideally provides a framework on which society can rely to maintain law and order once it is actively followed and enforced. In other words, legislation applies to the entire populace.

At the Human Rights Today Symposium held in the Cayman Islands from September 11-14 2001, one of the resolutions reaffirmed the principals of the Universal Declaration of Human Rights. The Universal Declaration of Human Rights at article 12 states that: “No one shall be subjected to arbitrary interference with his privacy...”
(www.humanrights.ky)

On 31 January 2008, at a presentation to the Cayman Islands Human Rights Committee, Lord Anthony Gifford, Q.C. noted that there is room for improvement for the protection of human rights in local legislation.

The current picture that emerges is that while the right to privacy is not a new concept and is an expectation of most democratic societies, the Cayman Islands still has gaps in legislation for errant problems to occur.

The Complaints Commissioner is of the opinion that this investigation is desirable in the public interest for the purposes of halting an evolved errant practice of the publication of an individual’s name.

This has occurred more than once as it related to the Mental Health Law (1997 Revision) 15(1) (b) wherein the ability to prescribe a ‘place of safety’ for a mentally disordered

person. Nowhere in this law does it require the individual's name to be a part of this prescribing process. However, paragraph (b) states that "the Governor may, by regulations-
(b) prescribe procedures to be used in the administration of this Law."

At no time was the OCC able to find procedures that had been developed relating to this law and so in order for this law to be utilized we found that an ad hoc process ensued. A Ministry representative stated that they have "conventions" that are followed for the drafting of legislation but he did not produce a document outlining said process.

2. CONCLUSION

Our investigation led us to the conclusion that the specific procedures for prescribing a "place of safety" as set out in the Mental Health Law (1997 Revision) 15(1) (b) have never been defined; thereby allowing the administration of this law to be carried out in an ad hoc fashion - which contributed to the errant publication of an individual's name. Care must be taken in the drafting of legislation to avoid infringements of the individual's rights as and where possible.

In the light of our findings we make the following recommendation.

RECOMMENDATION #1

It is recommended that the Ministry research and develop a process as prescribed by the Mental Health Law (1997 Revision), (to be put forth as a Regulation) to administer the designation for a place of safety giving due consideration to the preservation of patient privacy.