



*The Cayman Islands*  
*Law Reform Commission*  
**1 April, 2010/31 March, 2011**

**SIXTH ANNUAL REPORT OF THE  
LAW REFORM COMMISSION**





## **FOREWORD**

I am pleased to submit to the Honourable Attorney General the Sixth Annual Report of the Law Reform Commission. The Report covers the activities of the Commission from 1<sup>st</sup> April, 2010 to 31<sup>st</sup>, March 2011.

The 2010/2011 year proved to be another exceptionally busy one as the Commission sought to advance law reform initiatives that have a direct bearing on the needs of the contemporary Cayman Islands society. Therefore, as a Commission, our role has been to work towards adding value to the legal enterprise of Government and by extension the needs of society by drawing on our skills of research and analysis and representing issues in an impartial manner.

The Commission is very cognisant of the Cayman Islands Constitution Order, 2009 and in particular the Bill of Rights Freedoms and Responsibilities which is due for implementation in November 2012. We appreciate that the provisions in the Constitution will undoubtedly have to inform our research and shape the formulation of the final recommendations made on issues that affect the rights and freedoms of individuals within the Cayman Society. In fact, the current projects of the Commission do take into account the possible constitutional implications.

During the period under review, the Commission continued work on several projects which are at different stages of the law reform process. These include strata titles reform, family law reform, contempt of court issues, arbitration modernisation, consumer protection, sexual harassment and stalking. Despite the challenges and intervening law reform priorities that have served to curtail our progress in several of these matters, the Commission remains committed to devising ways to improve its service and timeliness in the finalisation of law reform reports while reinforcing our commitment to relevance and integrity.

In particular, we were pleased that the staff of the Commission were afforded the opportunity to attend the sitting of the Legislative Assembly to observe the legislative stages leading towards the enactment of Protection from Domestic Violence Law, 2010. That Law represents the culmination of several months research into identifying the critical issues and formulating the appropriate recommendations which ultimately would serve to protect the most vulnerable in our society from the various forms of domestic violence. The domestic violence project had serious social and criminal implications and we are happy that the Law is now in force.

While the Charities Bill, 2010 developed by the Commission did not share similar success in advancement when it was laid before the Legislative Assembly, the Commission, having regard to the extensive research conducted, is satisfied that its Final Report submitted on charities fairly articulated its views. Indeed, it is widely accepted by law reformers worldwide that not all recommendations of any law reform commission will find their way into the statute books and if they do, there may be minor or substantive modifications to those initial recommendations. This certainly does not serve to devalue the quality of the research produced but rather may reflect a divergence between policy and the recommendations formulated.

In May 2010, the issue of tort reform was referred to the Law Reform Commission. The Commission was requested to conduct stakeholder consultation in order to invite submissions on that aspect of tort reform which deals with (i) the placement of legislative caps on the award of non-economic damages in cases of personal injury with a particular focus on medical malpractice and (ii) the reduction of the limitation periods applicable to claims for damages for personal injury.

The Commission commenced research into the concepts of non-economic damages and statutory limitation periods and produced a draft Consultation Paper entitled Tort Reform - Caps on Non-Economic Damages. In the Consultation Paper, several provisional recommendations were articulated on which stakeholders and the public were invited to comment. However, in light of later decisions of Cabinet on this issue, the Commission took the decision to discontinue work on the project until such time as the Government requests that research be resumed and finalised.

As I approach the end of my five year tenure as Chairman of the Law Reform Commission, I must express my gratitude for the opportunity to have been of service to the community in this capacity.

The strength of the Law Reform Commission comes in large part from the contribution of its personnel. In this context, I would like to express my thanks to the Director and staff of the Commission. It is my considered view that the level of productivity coupled with the excellence of the work of the Commission is in large part a tribute to the skills and dedication of the staff.

I would also like to express my appreciation of the enthusiasm and commitment of my fellow Commissioners who are of the highest legal caliber. I extend my gratitude to the

Hon. Attorney General for his continued support of the work of the Commission. My thanks to all stakeholders and the general public who have contributed to the work of the Commission.

During the next year, I join the Commissioners and staff in a commitment to continuing the law reform process and maintaining our high standards as we seek to conclude current projects and explore new areas of research.

Langston R.M. Sibblies, QC, JP  
Chairman

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## OVERVIEW OF THE LAW REFORM COMMISSION

The Law Reform Commission was established by the Law Reform Commission Law No. 6 of 2005 and commenced operation on 16 September, 2005.

In accordance with the Law, the Commission's mandate is to study and keep under constant review the statutes and other laws comprising the law of the Cayman Islands with a view to its systematic development and reform, including in particular -

- the modification of any branch of the law as far as that is practicable;
- the elimination of anomalies in the law, the repeal of obsolete and unnecessary enactments and the simplification and modernisation of the law;
- the development of new areas in the law with the aim of making them more responsive to the changing needs of Cayman Islands society;
- the adoption of new or more effective methods for the administration of the law and the dispensation of justice; and
- the codification of the unwritten laws of the Cayman Islands.

The Commission, in the performance of its functions, may-

- review and consider any proposals for the reform of the law which may be referred to it by any person or authority;
- prepare and submit to the Attorney General from time to time, a programme for the study and examination of any branch of the law with a view to making recommendations for its improvement, modernisation and reform;
- initiate and carry out or direct the initiation and carrying out of, studies and research necessary for the improvement and modernisation of the law;
- undertake, pursuant to any such recommendation approved by the Attorney General, the formulation and preparation of drafts in the form of Bills or other instruments for consideration by the Governor in Cabinet and the Legislative Assembly;
- provide, at the instance of Government departments and other authorities concerned, advice, information and proposals for reform or amendment of any branch of the law; and
- with the approval of the Attorney-General, appoint or empanel committees, whether from among members of the Commission or from among persons outside the Commission or both, to study and make recommendations to the Commission on any aspect of the law referred to it by the Commission.

The work of the Commission is carried out by five part-time Commissioners and two full time legal counsel (the Director and Legislative Counsel) and one executive officer. The Commission is a department of the Portfolio of Legal Affairs but it acts independently in

its review of matters. Its recommendations are based on its own research and analysis of ideas submitted by stakeholders and by the public.

The Attorney General refers matters to the Commission but the Commission may initiate and carry out studies and research necessary for the improvement and modernisation of any area of the law based on comments from the public, interest groups or on its research.

The law reform process is a time consuming one and comprises extensive consultation, legal research and writing. The Commission usually prepares two publications during the course of a project. The first publication, the Discussion or Consultation Paper, sets out the Commission's preliminary suggestions for reform. The preliminary suggestions are usually made after legal research is carried out by the staff of the Commission and after such research has been considered by the Commissioners. The Commission either publishes the Discussion or Consultation paper on [www.gov.ky](http://www.gov.ky) or the [www.caymanjudicial-legalinfo.ky](http://www.caymanjudicial-legalinfo.ky) or it submits the consultation paper to identified stakeholders for comments.

The second publication is a Final Report, which is submitted to the Attorney General. It contains the final recommendations of the Commission and, in all cases to date, a draft law. The Commission makes its final recommendations after it takes into account the responses it receives to the Discussion or Consultation Paper. Since its establishment the Commission has produced several project reports and five annual reports which are listed in the Appendix.

## THE COMMISSIONERS AND STAFF OF THE LAW REFORM COMMISSION

1. The Commissioners are-

- Langston Sibblies, Chairman, QC, JP
- Mrs. Eileen Nervik
- Mr. Justice Andrew Jones, QC
- Ms. Cheryll Richards, Solicitor General, QC
- Mr. Ian Paget- Brown.



Commissioners from left to right- Mr. I. Paget- Brown; Mrs. E. Nervik, Mr. Justice A. Jones QC; Ms. C. Richards (Solicitor General) QC and Mr. L. Sibblies, Chairman, QC, JP

2. The members of staff of the office of the Commission are-

- Ms. Cheryl Ann Neblett, Director
- Mr. José Griffith, Legislative Counsel
- Mrs. Kimberly Allen, Executive Officer.



From left to right- Ms. Cheryl Neblett, Mr. José Griffith and Mrs. Kimberly Allen

## **YEAR IN REVIEW- PROJECTS OF THE LAW REFORM COMMISSION FROM 1 APRIL, 2010 TO 31 MARCH, 2011**

### **Meetings of the Commission**

3. The Commission met four times between 1 April, 2010 and 31 March, 2011 on the following dates-

- 25<sup>th</sup> August, 2010
- 18<sup>th</sup> October, 2010 (informal meeting; no quorum)
- 8<sup>th</sup> December, 2010
- 18<sup>th</sup> January, 2011
- 31<sup>st</sup> March, 2011.

### **Law Reform Commission Bills examined in the Legislative Assembly**

#### **Charities Bill, 2010**

4. The Law Reform Commission having detailed in its Fifth Annual Report the work leading towards the conclusion of the research and recommendations on charities submitted to the Attorney General on 29<sup>th</sup> April, 2010 its final Report entitled “The Review of the Law Regulating Charitable Organisations in the Cayman Islands”.

5. This Report included a draft Charities Bill, 2010 which was considered by Cabinet. Instructions were later issued for the Bill to be forwarded to the Legislative Assembly for enactment. Accordingly, the Bill was published in the Gazette on 21<sup>st</sup> June, 2010 and Legislative Assembly Standing Orders were suspended in order to allow the Bill to be placed on the Order Paper for debate on the 25<sup>th</sup> June, 2010.

6. At that time however, debate on the Bill was deferred by the Government in order to facilitate further consultation having regard to concerns raised by stakeholders. The Law Reform Commission remains satisfied that the recommendations for reform contained in the Report were the culmination of in-depth legal research into the operation of the charitable sector in the Cayman Islands. The resulting Charities Bill took into account the conditions existing within the local charities sector balanced against the international obligations of the Cayman Islands as they relate to regulating the charities sector. The Commission, having provided the Government with its Final Report is *functus officio*.

#### **Protection from Domestic Violence Bill, 2010**

7. The Law Reform Commission in its Fifth Annual Report outlined the reform process which resulted in the conclusion of the research and recommendations on domestic violence. A final Report entitled “Protection Against Domestic Violence”

along with the Protection from Domestic Violence Bill, 2010 was submitted to the Attorney General on 29<sup>th</sup> April, 2010.

8. Cabinet considered the final Report and issued instructions for the Bill to be forwarded to the Legislative Assembly for enactment. Accordingly, the Bill was published in the Gazette on 16<sup>th</sup> August, 2010 and was later successfully approved by the Legislative Assembly without amendment on 8<sup>th</sup> September, 2010. The Protection from Domestic Violence Law, 2010 came into force on 25<sup>th</sup> October, 2010.

9. The Commission believes that the Law enhances the protective remedies available to specified categories of persons and will improve the systemic reaction to violence within the domestic setting by ensuring that the legal responses in particular protect the most vulnerable people who are, or may become, exposed to domestic violence.

## **COMPLETED PROJECTS**

### **Tort reform**

10. On 13<sup>th</sup> May, 2010, the issue of tort reform was referred to the Law Reform Commission by the Hon. Attorney General. The Commission was requested to conduct wide stakeholder consultation in order to seek input on proposals to-

- (i) amend the Torts (Reform) Law (1996 Revision), using Chapter 74 of the Civil Practice and Remedies Code of Texas (“the Texas model”) as a guide in order to limit non-economic damages awards to a maximum of CI\$500,000;
- (ii) amend section 13 of the Limitation Law (1996 Revision) to reduce the limitation period after knowledge of injury to one year and to extend this amendment to infants after they have reached the age majority;
- (iii) amend section 13 of the Limitation Law to reduce the limitation period for personal injury from three years or, as is the approach in the State of Florida, specifically carve out actions for medical malpractice or wrongful death and reduce the limitation period for those actions to two years; and
- (iv) amend section 15 of the Limitation Law to reduce the ultimate limitation period from fifteen years to ten years and to make that section applicable to all negligence actions including personal injury actions governed by section 13.

11. The objective of the consultation by the Law Reform Commission was to invite submissions on that aspect of tort reform which deals with (i) the placement of legislative caps on the award of non-economic damages in cases of personal injury with a particular focus on medical malpractice and (ii) the reduction of the limitation periods applicable to claims for damages for personal injury.

12. The Commission commenced research into the concepts of non-economic damages and statutory limitation periods. The Commission examined the arguments

surrounding the introduction of legislative measures to reduce non-economic damages and limitation periods which have been proposed as possible options to achieving a reduction in indemnity subscription rates or insurance premiums charged in order to mitigate the costs of medical malpractice litigation.

13. Our research defined and described the key legal concepts of tortious liability, non-economic damages and statutory limitation periods. An assessment was undertaken of the concerns of the Cayman Islands Medical and Dental Society and the Medical Profession Society as they relate to the award of substantive non-economic damages in personal injury actions and the impact of such awards on insurance premiums attached to medical malpractice coverage. This assessment was facilitated by examining the approach of the courts in the Cayman Islands in awarding damages for non-economic losses.

14. The Commission analysed whether placing legislative caps on non-economic damages or reducing the time limits within which a personal injury claim may be pursued was justified based on the evidence that existed. Of further benefit to our research, were the varied legislative and non-legislative approaches to the issues of capping non-economic losses and reducing the limitation period as they obtain in several jurisdictions including the States of Florida and Texas, Canada, Ireland, New South Wales, New Zealand, the United Kingdom, Bahamas, Bermuda, Barbados and Jamaica.

15. The research findings of the Commission were relied upon in the formulation of a draft Consultation Paper entitled “Tort Reform - Caps on Non-Economic Damages”<sup>1</sup>. In the Consultation Paper, the Commission articulated several provisional recommendations on which stakeholders and the public were invited to comment. The provisional recommendations were as follows:

- The Commission does not recommend the imposition of legislative caps on the ability of the court to exercise its jurisdiction in the assessment and award of non-economic damages in personal injury actions.
- The Commission recommends for consideration the following options as a means to ameliorate any impact of medical malpractice litigation-
  - (a) Legislative Reform Options:
    - (i) Introducing a standard of care in medical negligence.
    - (ii) Establishing an expert witness rule.
    - (iii) Alternative dispute resolution.
  - (b) Quasi-Legislative Reform Options:
    - (i) Require periodic payment of awards.
    - (ii) Pre-trial screening panels.
    - (iii) Review medical negligence reporting systems.
    - (iv) Review medical guidelines.

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<sup>1</sup>Dated 22<sup>nd</sup> October, 2010.

- (v) Government operated medical malpractice liability coverage.
- (vi) Government patient compensation programmes.
- (vii) Government subsidies to health care providers.
- (viii) Clinical Indemnity Schemes.
- (ix) Captive Insurance Schemes.

- The Commission does not recommend reducing the limitation period applicable to personal injury actions from three to two years.
- The Commission is of the view that the accrual and knowledge rule should continue to be the standard applied in determining the period from which a limitation period should commence.
- The Commission does not recommend reducing the ultimate limitation period from fifteen to ten years.
- The Commission recommends the introduction of an ultimate limitation period of thirty years to be made applicable to personal injury claims. This period is to be qualified by providing the court with a discretion to exclude the thirty year period based on the circumstances of the case.
- The Commission believes it to be in the public interest that as a general rule, the limitation period should run against a minor only after he has attained the age of majority and that the period should be set at either three or six years after the date of knowledge.
- The Commission recommends that consideration be given towards permitting persons to enter into agreements to reduce or extend either the basic limitation period or ultimate limitation period in the event of personal injury litigation.

16. The Consultation Paper was published on 25<sup>th</sup> October, 2010 and submitted to several stakeholders in the medical, legal and insurance fraternity and to the general public in order to solicit views on the Commission's provisional recommendations. On 19<sup>th</sup> November, 2010 the consultation period expired by which time the Commission received written submissions from the following persons and organisations:

- Mr. Michael Anderson;
- Mr. Timothy Ridley;
- Mrs. Theresa Lewis-Pitcairn
- The Honourable Mr. Justice Charles Quin, QC;
- The Cayman Islands Law Society; and
- The Nursing and Midwifery Council.
- Ms. Jeanette Verhoeven;
- The Human Rights Commission;
- The Cayman Islands Medical and Dental Society (CIMDS); and
- Mr. Charles C. O'Sullivan, Director of Besso Limited (Besso Ltd.).

17. The Consultation Paper received varied responses from the above persons and organisations. Three commentators expressed agreement with the recommendations of

the Commission. However, three other commentators were of the view that the appropriate legislation to impose caps on non-economic damages should be introduced and one drew the Commission's attention to the no-fault approach to the issue of medical damages as obtains in New Zealand. The Human Rights Commission in its response expressed the view that no human rights implications arose from the consultation paper. The Commission examined all responses from the abovementioned persons and organisations.

18. However, the Commission at its meeting of 17<sup>th</sup> January, 2011 noted that it had become aware that a Government Bill was sponsored and gazetted on 31<sup>st</sup> December, 2010 for the express purpose of limiting the amount of non-economic damages that can be awarded by a court in cases of "a health care liability claim in tort".

19. The Commission therefore thought it prudent to cease further work on this project given that Government's decision and the pending Bill in the Legislative Assembly has made the issue a moot one. The Commission notes that since its decision, the Medical Negligence (Non-economic Damages) Law, 2011 has been enacted in order to deal with the issue of limiting non-economic damages.

## **CURRENT PROJECTS**

### **Review of the law relating to arbitration**

20. The Law Reform Commission reported in its Fifth Annual Report on the publication of its arbitration discussion paper entitled "Review of the Arbitration Laws in the Cayman Islands". Based on the comments received on the discussion paper, the Commission proceeded to formulate a draft Arbitration Bill, 2010. This Bill was published and forwarded to the following primary stakeholders for consultation on 18<sup>th</sup> June, 2010-

- The Hon. Attorney General;
- The Hon. Chief Justice;
- Cayman Islands Law Society;
- Cayman Islands Bar Association;
- Cayman Islands Society of Professional Accountants;
- Society of Trust & Estate Practitioners;
- Cayman Islands Chamber of Commerce;
- Cayman Islands Bankers' Association;
- Cayman Islands Compliance Association; and
- Cayman Islands Financial Services Association.

21. The Bill contained provisions dealing with the formation of an arbitration agreement, the power of the court to stay legal proceedings in order to facilitate an arbitration agreement, the commencement of arbitration proceedings, the composition of an arbitral tribunal, the jurisdiction of the arbitral tribunal, the conduct of arbitral proceedings, power of the arbitral tribunal to order interim measures, making of the

arbitral award, power of the court in relation to an award and procedures to be followed where the arbitration agreement provides for the appointment of a mediator.

22. That consultation period expired on 23<sup>rd</sup> July, 2010. By that time the Commission had received responses from the Legal Department, the Cayman Islands Bar Association (CBA), the Cayman Islands Law Society (CILS) and Mr. Veeraraghavan Inbavijayan, an Advocate/International Arbitrator based in India.

23. Generally, the responses from all commentators supported the introduction of the modernised Bill. However, the CBA and CILS expressed particular concerns in relation to certain provisions of the Bill. The Commission examined those concerns and has since prepared a revised Arbitration Bill which along with the specific concerns of stakeholders will be included in our final Report on Arbitration. The aim of the Commission is to conclude its final Report on Arbitration by May 2011.

#### **Family Law Project (Part 1)- Review of the Matrimonial Causes Law (2005 Revision)**

24. In its first year of operation the Law Reform Commission agreed to undertake a review of the Matrimonial Causes Law, (“MCL”) the Affiliation Law and the Maintenance Law.

25. The project commenced with an examination of the Matrimonial Causes Law (2005 Revision) and a discussion paper was sent for public consultation on 24<sup>th</sup> February, 2011. The purpose of the discussion paper is to highlight the areas which the Commission believes are in need of reform and to seek the input of the public on such issues and any other issues which they may identify.

26. The areas dealt with in the discussion paper included the following-

- (a) grounds for divorce;
- (b) promotion of reconciliation- mediation in divorce proceedings;
- (c) protection of the interests of children in matrimonial proceedings;
- (d) recognition of unions between men and women other than marriage
- (e) divorce proceedings;
- (g) financial relief in the Cayman Islands after separation or divorce in another jurisdiction;
- (h) ancillary orders in divorce proceedings;
- (i) damages for adultery;
- (j) pre-nuptial agreements;
- (k) protection of children in matrimonial proceedings who are the result of artificial insemination;
- (l) domicile and jurisdiction of the court in matrimonial proceedings.

27. The public was invited to comment generally on the need for reform in this area and the following are some of the issues which were highlighted for discussion-

- A. Should the MCL be reformed to provide for one ground for divorce i.e. irretrievable breakdown or should the Cayman Islands continue to require parties to prove fault or separation?
- B. Would a single no-fault ground be more effective in reducing acrimonious divorces?
- C. If the grounds of separation should be retained, should they be shorter? If the periods should be shorter, what should they be?
- D. Could the divorce rates be reduced in the Cayman Islands if parties are legally required to undergo counselling or mediation? Should parties who may be at the end of their tether in their relationship be forced to go through such a process? Should such services be funded by the government?
- E. Does the Law sufficiently protect the interests of children in matrimonial proceedings?
- F. Should the Law recognise and regulate common law unions between men and women?
- G. Should the MCL be reformed in similar terms to the UK or Hong Kong to permit the grant of summary divorces where there are no children and the hearing of some financial arrangements after a divorce has been granted?
- H. Should the law be reformed to give the Grand Court power to grant ancillary relief to resident persons under decrees made in other jurisdictions?
- I. Should the Law be reformed to contain provisions similar to sections 25, 25A, 28 and 37 of the UK MC Act of 1973 as highlighted at paragraphs 85 to 106?
- J. If the ground of adultery is retained, should the right to claim damages for adultery be abolished? If the ground is retained should there be a time restriction on the commencement of a petition on the ground of adultery? Should the joinder of a co-respondent be continued?
- K. Should the Law be reformed to provide statutory recognition of pre-nuptial agreements?
- L. Should the Law be reformed to provide for children of the marriage who are the result of artificial insemination? Is this an issue for the Cayman Islands?

M. Should the Law be reformed to widen the jurisdiction of the court to deal with petitions for divorce based on the domicile, nationality or residence of either of the parties?

N. Are there any other areas of reform which should be considered? If so, what are they?

28. Copies of the paper were sent also to the Caymanian Bar Association and the Cayman Islands Law Society for their comments. The deadline for submission of comments was 31 March, 2011 but the Commission has agreed to a request by the Law Society to extend this to 8 April.

### **Review of the Strata Titles Registration Law and Regulations**

29. As indicated in the Fifth Annual Report this project which was referred to the Law Reform Commission on 31<sup>st</sup> July, 2006 by the then Chairman of the Cayman Islands Law Society, Mr. Charles Quin (now Justice Quin) commenced in April 2009. Details of the commencement of the project are contained in the Fifth Annual Report.

30. After in-depth consultation with the Strata titles sub-committee of the Law Reform, the Commission agreed with the Director in December 2010 that the Strata Titles Registration (Amendment) Bill which seeks to reform the management and termination of strata schemes, should be submitted for public comment. However, pursuant to the request of the Ministry of District Administration, Works & Gender Affairs, a copy of the Bill was sent to the Ministry for preliminary comments in February, 2011. Comments were received on 4<sup>th</sup> March and the Bill and discussion paper are currently being revised to take into account the preliminary comments of the Ministry.

31. In preparing the discussion paper and Bill, the Commission considered the papers and recommendations for reform presented by various attorneys and other persons at the strata titles conference of 2007.<sup>2</sup> The following strata (or condominium) legislation of New South Wales, South Australia, Western Australia, Queensland, Florida, New York and Ontario have also been considered for guidance in this review-

- (a) New South Wales-
  - the Strata Schemes (Freehold Development) Act, 1973;
  - the Strata Schemes (Leasehold Development) Act, 1986;
  - the Strata Schemes Management Act, 1996;
  - the Community Land Development Act, 1989;
  - the Strata Schemes Management Regulations, 2010;
- (b) South Australia- Community Schemes, Act;
- (c) Western Australia- The Strata Titles Act, 1985;
- (d) Queensland-Body Corporate and Community Management Act 1997;
- (e) Florida- Condominium Act, Chapter 718;
- (f) New York- Condominium Act Article 9-B of the Real Property Law; and

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<sup>2</sup> 19 April, 2007

(g) Ontario- Condominium Act, 1998.

32. The paper and the Bill cover the following matters-

- (a) insurance of buildings and other type of insurance;
- (b) constitution and powers of executive committee;
- (c) levy of contributions;
- (d) procedure at meetings; bye-laws;
- (e) strata accounts;
- (f) variation and termination of strata schemes; and
- (g) resolution of disputes under strata legislation.

33. The Bill and consultation paper will be sent for public consultation in April 2011.

#### **Review of the law of contempt of court**

34. Research is ongoing in this area of the law. The Commission decided in March 2010 to deal with the review in the three stages (similarly to the approach taken by the Law Commissions of Western Australia and Tasmania) which are (a) contempt by publication; (b) contempt by disobedience to a court order and (c) contempt in the face of the court. A discussion paper dealing with contempt in the face of the court has been prepared and was submitted to the Commissioners for comments in September 2010. The areas covered by this paper are as follows-

- jurisdiction of the court in the Cayman Islands;
- defining the offence;
- taping of proceedings; televised proceedings;
- mens rea;
- summary proceedings relating to the offence;
- penalties;
- contempt in the face of a tribunal.

35. There will however be a single final report that encompasses the law of contempt as a whole.

#### **OTHER PROJECTS**

36. Reviews of legislation to deal with sexual harassment and stalking and the regulation of time shares are continuing. In January 2011 the Attorney General requested that the Commission consider and advise on the feasibility/necessity for legislation to establish an Administrator General to administer estates that are usually handled by such office. He is of the view that that there is a long overdue need for such a public office in these Islands. Research on this has commenced.

## **LEGISLATIVE DRAFTING PROJECTS OF THE STAFF OF THE COMMISSION**

37. The Director and Legislative Counsel, as legal officers of the Portfolio of Legal Affairs, also undertake from time to time legislative drafting and other legal projects on behalf of the Portfolio of Legal Affairs. The Commissioners do not participate in these projects.

38. As indicated in the Fifth Annual report In September 2009 the Director met with officers of the Department of Environmental Health and the Ministry of District Administration, Works & Gender Affairs to discuss the preparation of legislation dealing with environmental health, solid waste management, management of hazardous materials, health and safety laws, food safety and primary health care. This project was referred to the staff of the Law Reform Commission due the depth of research which is required. The following legislation was submitted by the Director to the Ministry between July 2010 and March 2011-

- (a) the Dangerous Substances Handling and Storage (Amendment) Bill, 2010;
- (b) the Pipelines Regulations, 2010;
- (c) the Food Safety Bill, 2010; and
- (d) the Safety and Health at Work Bill, 2011.

39. Legislative Counsel has also drafted for consideration the Primary Health Care Bill. This Bill seeks to streamline the Public Health Law (2002 Revision) by dealing specifically with matters concerning, water supply, the notification of diseases and sexually transmitted diseases. We are currently awaiting a policy paper with respect to this Bill and the other draft legislation specified in paragraph 38.

40. In December 2010 the Director was asked by the Attorney-General to draft an amendment to the Terrorism Law relating to the designation of persons as being involved in terrorist activities and the freezing of their assets. This legislation was passed on 18<sup>th</sup> March, 2011.

## **PROFESSIONAL TRAINING OF STAFF OF THE COMMISSION**

41. The recommendation of alternative dispute resolution methods such as mediation has in recent times featured prominently in several Law Reform Commission proposals. In this regard, Legislative Counsel, in an effort to acquire a deeper understanding of the mediation concept, participated in the International Mediator Accredited Training Course, 14<sup>th</sup> - 18<sup>th</sup> March, 2011. The mediation course was conducted through the London School of Mediation and successful completion of the course will result in the award of a Mediation Certificate which would establish Legislative Counsel as a qualified Mediator.

## APPENDIX

### Publications/Papers

1. A Review of the legal aid system in the Cayman Islands- A preliminary discussion paper; Draft Legal Aid Bill; Draft Legal Aid Regulations (28 March, 2006)
2. First Annual Report of the Law Reform Commission 2005/6 (31 March, 2006)
3. Final Report- A Review of the Corporate Insolvency Law and recommendations for the amendment of Part V of the Companies Law; Draft Companies (Amendment) Bill (12 April, 2006)
4. Discussion paper- The Law of Landlord and Tenant; Draft Residential Tenancies Bill (30 September, 2006)
5. Consultation paper - A Review of the Law regulating legal practitioners in the Cayman Islands (29 January, 2007)
6. Second Annual Report of the Law Reform Commission 2006/7 (31 March, 2007)
7. Final Report - A Review of the Law regulating legal practitioners in the Cayman Islands; Draft Legal Practitioners Bill; Draft Accountant's Reports Regulations (31 May, 2007)
8. Final Supplemental Report of the Law Reform Commission- Review of Corporate Insolvency Law in the Cayman Islands and Recommendations for the Amendment of Part V of the Companies Law (2004 Revision); Companies (Amendment) Bill (20 July, 2007)
9. Discussion paper- A Review of the legal aid system in the Cayman Islands (14 December, 2007)
10. Third Annual Report of the Law Reform Commission 2006/7 (31 March, 2008)
11. Final Report- A Review of the legal aid system in the Cayman Islands (15 July, 2008)
12. Final Report- Review of the Law regulating the relationship of landlords and tenants in the Cayman Islands (11 August, 2008)
13. Preliminary Discussion paper- Is there a need for enduring powers of attorney in the Cayman Islands? (20 January, 2009)
14. Discussion paper- Regulation of Charitable Non-profit Organisations in the Cayman Islands (26 January, 2009); Draft Charities Bill, 2009
15. Review of the Law Regulating Charitable Organisations in the Cayman Islands, Final Report (29 April, 2010)
16. Fourth Annual Report of the Law Reform Commission 2008/9 (31 March, 2009)
17. "Is there a need for enduring powers of attorney in the Cayman Islands? Final Report No. 6 (30 April 2009)
18. Discussion Paper – Review of the Arbitration Laws of the Cayman Islands (11 May, 2009)
19. The Draft Charities Bill (26 June, 2009)
20. The Draft Trusts (Amendment) Bill (26 June, 2009)
21. The Protection Against Domestic Violence Legislative Proposals, (12 October, 2009)
22. The Protection Against Domestic Violence Bill, (12 October, 2009)

23. Fifth Annual Report of the Law Reform Commission 2009/10 (31 March, 2010)
24. Protection Against Domestic Violence Final Report (29 April, 2010)
25. Review of the law of contempt of court in the Cayman Islands (Part 1)- Consultation paper- Contempt in the face of the court (September 2010)
26. Tort Reform Consultation Paper -Caps on Non-Economic Damages and Reducing the Limitation Period (22<sup>nd</sup> October, 2010)
27. Family Law Reform (Part 1) Discussion Paper - the Matrimonial Causes Law (2005 Revision)

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**31 March, 2011**