THE CAYMAN ISLANDS LAW REFORM COMMISSION

ANNUAL REPORT NO. 14

1st APRIL, 2018 / 31st MARCH, 2019

Mr. Hector Robinson, QC
Chairman

FOREWORD

This being the first report since my appointment as Chairman on 29th October, 2018 it is with great pleasure that I present to the Honourable Attorney General the Fourteenth Annual Report of the Cayman Islands Law Reform Commission ("Commission"). The Report covers the activities of the Commission for the period 1st April, 2018 to 31st March, 2019.

I begin by extending my gratitude to the Honourable Attorney General for recommending and the Cayman Islands Government for confirming my appointment as Chairman of the Commission. It is a great privilege to lead such an important independent legal body and I look forward to advising the Government, through the final reports of the Commission, on areas of the law in need of reform.

I am grateful to my immediate predecessor, Mr. Kenneth Farrow, QC, for his distinguished contribution to the work of the Commission as a Commissioner for the last seven years, the last two as Chairman. The Commission, over the years, has benefited immensely from his scholarship. In particular, I must highlight his role as lead Commissioner in steering the Commission in the finalisation of its consultation papers and reports on the reform of the law relating to contempt of court and trusts respectively. Indeed, this Annual Report reflects several matters the consideration of which originated during Mr. Farrow's tenure and I hope to continue to guide the reform process in a manner which builds on the solid foundation that he has laid.

It is appropriate that I mention a number of appointments of Commissioners and Commission staff that have occurred during the reporting year. First, the Commission thanks former Commissioner and Director of Public Prosecutions, Honourable Madam Justice Cheryll Richards, QC for her exemplary service as Commissioner, from establishment of the Commission in 2005 until her appointment as a Grand Court Judge in December 2018. The Commission congratulates Hon. Madam Justice Richards on that well-deserved appointment. Like the Commission, which has benefited from the richness of her expert contribution during her 13 years as Commissioner, I expect that the judiciary and the jurisdiction will similarly benefit from Hon. Madam Justice Richards's sound expertise and judgment.

I welcome the appointment to the Commission of Acting Director of Public Prosecutions, Mr. Patrick Moran, as Commissioner. Mr. Moran replaced Hon. Madam Justice Richards on 1st December 2018. I look forward to having the benefit of Mr. Moran's substantial knowledge and expertise in criminal law, among other areas, as the Commission seeks to advance the law reform process.

I equally welcome the appointments to the Commission on 1st August, 2018 and 29th October, 2018 respectively of Mr. Abraham Thoppil and Honourable Mr. Justice Alexander Henderson, QC (retired).

Mr. Thoppil is an attorney-at-law and a Partner in the law firm of Maples and Calder. Mr. Thoppill has extensive experience and expertise in general corporate and commercial law, regulatory matters, all aspects of intellectual property, local business licensing, insurance, investment funds and finance. This breadth of expertise will certainly enure to the benefit of the Commission.

Hon. Mr. Justice Henderson, now a retired Judge, served as Judge of the Grand Court of the Cayman Islands and, including as a member of Financial Services Division of that Court, from 2003 to 2015. Prior to that, he served as Judge of the Supreme Court of British Columbia from 1995 to 2003. Mr. Justice Henderson currently occupies the position of Senior Counsel at the law firm of Dentons. It is without question that Hon. Mr. Justice Henderson will be an invaluable asset to the Commission and will bring a wealth of legal, judicial, academic and practical knowledge to the Commission.

As regards the staff of the Commission, having in our 2017/2018 Annual Report already recognized Mr. Jose Griffith's selection as Director of the Law Reform Commission I need only say that his appointment officially took effect on the commencement of this 2018/2019 reporting period.

I welcome the appointments of Mrs. Karen Stephen-Dalton and Mrs. Katherine Wilks as new members of staff to the Commission. Mrs. Stephen-Dalton was appointed as Senior Legislative Counsel of the Commission with effect from 29th September, 2018. She joins us from the States of Jersey where she previously served as Assistant Law Draftsman. Mrs. Wilks joined the Commission as Paralegal Officer with effect from 2nd January, 2019, having previously served as a Paralegal at Maples and Calder.

Having regard to the latest appointments of Commissioners and staff I thank the Portfolio of Legal Affairs for its role in facilitating the processes that have ultimately led to an increase in the capacity of the Commission.

During the 2018/2019 reporting period the Commission enjoyed a productive year in which several projects were finalized and others advanced to the consultation phase of the law reform process.

Let me first highlight the amendments to the Law Reform Commission Law in 2018 which will facilitate greater efficiency in the conduct of Commission's deliberations while at the same time streamlining other aspects of the Law. The Law now allows for meetings of the Commission to be convened through videoconference, teleconference or any other form of electronic communication determined by the Chairman. This amendment is in keeping with the utilization of modern electronic methods of conducting and validating meetings and other types of proceedings. Additionally, the Director of Public Prosecutions and the Solicitor General are now recognized as ex officio members of the Commission. This amendment dispenses with the need to go through the Cabinet appointment process to confirm the membership on the Commission of both the Director of Public Prosecutions and the Solicitor General, as was required prior to the amendment.

Two final reports were concluded by the Commission and submitted to the Hon. Attorney General during the reporting period. The first relates to the Statutory Regulation of Queen's Evidence. This report is supported by the Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2018 which, among other things, empowers the Director of Public Prosecutions to grant immunity from

prosecution in certain cases, allows the court to make a sentence reduction on guilty pleas and facilitates the review of sentences.

The second final report relates to the reform of the Trusts Law. This report is supported by the Trusts (Amendment) Bill, 2018. The proposals therein are intended to strengthen the effectiveness of the existing Trusts Law regime by enhancing the inherent jurisdiction of the Court in relation to the administration of trusts. The Commission takes pleasure in knowledge that the Final Report on the reform of the Trusts Law has been approved by Cabinet and that the supporting Trusts Law (Amendment) Bill, 2018 will be placed on the Legislative Agenda for debate in the Legislative Assembly in April, 2019.

The Commission will shortly submit to the Honourable Attorney General its Final Report on the reform of the law on Contempt of Court and the supporting Contempt of Court Bill, 2019, and Penal Code (Amendment) Bill, 2019.

Also, during the period under review, the Commission published for consultation its Discussion Paper on the enforcement of mortgage-type securities over real estate. This review seeks to respond to the heightened level of public comment, and concern, regarding the number of such procedures, colloquially referred to as "foreclosures".

After receiving extensive comments on our issues paper on bullying in schools, the Commission considered the views of respondents and these views have informed anti-bullying legislative proposals which will shortly be published for public consultation.

It is worth noting that the matters of foreclosures and bullying touch and concern issues which have been the subject of vibrant discussion amongst stakeholders and the general public. I anticipate that the responses received at the end of the consultation processes will facilitate the informed finalisation of our recommendations.

The Commission has also done substantial work on the reform of the law relating to third party litigation funding and is in the final consultation phase of that process.

Our role as a Commission has been and continues to be one in which we work towards adding value to the legal expertise of the Government. We strive to maintain a reputation for rigorous legal research and extensive community consultation so that we may produce timely and comprehensive law reform recommendations that provide modern solutions to complex policy issues.

With this aim at the forefront the work of the Commission continued with a focus on several projects in addition to those earlier mentioned. These include -

(a) Consumer Protection;
(b) Cybersecurity and Cybercrime;
(c) Penal Code reform;
(d) Severance of Joint Tenancy Agreements; and
(e) Reform of the Interpretation Law.

All of these projects are at various stages of the law reform process. More detailed reports on each of these projects can be found in later pages of this Annual Report.

Research of the Commission involves extensive public consultation with stakeholders including the courts, the legal profession, the public and community sectors, to enfranchise and respect all persons, and to listen and learn. We remain open to new ideas and approaches. We understand that for reforms to be truly effective it requires an understanding of past approaches before arriving at new solutions. While consultation appropriately takes time, the Commission remains conscious of the need for timely performance of its functions and timely delivery of its reports to the Honourable Attorney General.

The success of any institution depends on the strength and contribution of its personnel. Accordingly, I thank my fellow Commissioners, past and present, for their expert contribution and commitment to the law reform process and look forward to the continuation of their invaluable contribution as we seek to formulate recommendations that inform the enactment of unambiguous, fair and modern laws which we hope will enhance our democracy.

It has been a pleasure to work with the small but dedicated staff of the Commission and I express my thanks to them for facilitating my seamless transition into the chairmanship of the Commission.

We are greatly indebted to the many people who enhance and assist the Commission in fulfilling its mandate and we greatly appreciate the voluntary advice and assistance which we receive from the many individuals and groups with whom the Commission has consulted or who spontaneously contact the Commission.

The Commission certainly appreciates the support which it receives from the Honourable Attorney General and his Chambers and from other Government and non-governmental agencies.

The next reporting period will see the Commission adding new areas to its law reform agenda while concluding as many of the existing law reform projects as possible. As such, I look forward to the year ahead with confidence that the Commissioners and the staff of the Commission have the capacity to provide the Honourable Attorney General and the broader Cayman Islands community with innovative and sound recommendations on the continuous task of modernizing the legislative framework of the Cayman Islands.

Mr. Hector Robinson, QC
Chairman

1st April, 2019

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OVERVIEW OF THE LAW REFORM COMMISSION

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

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

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

(a) review and consider any proposals for the reform of the law which may be referred to it by any person or authority;
(b) 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;
(c) initiate and carry out or direct the initiation and carrying out of, studies and research necessary for the improvement and modernisation of the law;
(d) 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 Cabinet and the Legislative Assembly;
(e) 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
(f) 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 six Commissioners and two full time attorneys-at-law (the Director and Senior Legislative Counsel), a Paralegal Officer and an Administrative Secretary. 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 of the Cayman Islands based on comments from the public, interest groups or on its research.

The law reform process is a time consuming one and comprises of extensive consultation, legal research and writing. The Commission usually prepares two publications during the course of a project. The first publication, which is 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 http://www.lrc.gov.ky and www.gov.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 most 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 papers and reports and thirteen annual reports which are listed in the Appendix.

CAYMAN ISLANDS LAW REFORM COMMISSION

COMMISSIONERS

CHAIRMAN
Hector Robinson, QC
Partner at Mourant Ozannes

COMMISSIONER
Honourable Justice Alexander Henderson, QC
Senior Counsel at Dentons

COMMISSIONER
Vaughan Carter, Attorney-at-Law
Partner at Etienne Blake

COMMISSIONER
Abraham Thoppil, Attorney-at-Law
Partner at Maples and Calder

COMMISSIONER
Reshma Sharma, Attorney-at-Law
Acting Solicitor General

COMMISSIONER
Patrick Moran, Attorney-at-Law
Acting Director of Public Prosecutions

CAYMAN ISLANDS LAW REFORM COMMISSION

LEGAL AND ADMINISTRATIVE STAFF

DIRECTOR
José Griffith, Attorney-at-Law

SENIOR LEGISLATIVE COUNSEL
Karen Stephen-Dalton, Attorney-at-Law

PARALEGAL OFFICER
Katherine Wilks

ADMINISTRATIVE SECRETARY
Lourdes Pacheco

YEAR IN REVIEW

PROJECTS OF THE LAW REFORM COMMISSION
1st APRIL, 2018 TO 31st MARCH, 2019

MEETINGS OF THE COMMISSION

The Commission met four times between 1st April, 2018 and 31st March, 2019 on the following dates -

- 4th October, 2018;
- 6th November, 2018;
- 24th January, 2018; and
- 21st March, 2019.

COMPLETED PROJECTS

(a) Trusts Law Reform
(b) Statutory Regulation of Queen's Evidence

(a) Trusts Law Reform

In May 2018 the Law Reform Commission submitted for consideration of the Hon. Attorney General its Final Report on Trusts Law Reform. In our Discussion Paper of 5th April, 2017 ("the Paper"), we pointed out that we were asked to consider to what extent the Trusts Law (2011 Revision) ("the Law") could benefit from amendment. We remained of the view that a wholesale revision of the Law is not required but that there are certain discrete areas where, having regard to developments in other jurisdictions and the need to remain competitive with those jurisdictions, improvements to our legislative framework could be made.

Following the publication of the Paper, we received representations from the Society of Trust and Estate Practitioners, Cayman ("STEP") which were largely in favour of the approach which we had adopted. On the basis of those representations, we drafted a Trusts (Amendment) Bill, 2017 ("the Bill") to give effect to what appeared to be common ground. Copies of the draft Bill were sent to STEP, the then Cayman Islands Law Society, the then Caymanian Bar Association and the Hon. Chief Justice.

We considered discrete areas referred to in the Paper and made our recommendations. These relate to the following -

(i) Codification of trustees' duties;
(ii) The Hastings Bass rule;
(iii) Judicial variation of trusts;
(iv) Extra-judicial Variation of trusts;
(v) Dispute resolution;

(vi) The Law, Section 6(c);and
(vii) The Law, Section 91(b).

(i) Codification of Trustees' Duties

Having considered the relevant provisions of the United Kingdom Trustee Act, 2000, and the Jersey Trusts (Jersey) Law, 1984, we concluded that there is no justification for departing from the incremental approach of the common law. Circumstances change and we believe that approach, rather than codification, is best suited to serve the future development of this area of law in the Islands. Accordingly, we made no proposal for codification of trustees' duties.

(ii) The Hastings Bass Rule

We are of the view that the Islands should reflect the legislative changes in the Bermudian Trustee Act, 1975 and Bahamian Trustee Act, 1998. The Jersey Law goes somewhat further in that it applies not only to mistakes made by those exercising fiduciary powers, whether trustees or otherwise, but also to dispositions to trusts made by the settlor or others acting on the settlor's behalf, that is, those who are not acting in a fiduciary capacity. We see no need for this extended jurisdiction which is already covered by existing authority approved in *Futter v HMRC; Pitt v HMRC [2013] UKSC 26*. Accordingly, we recommended that our proposal be implemented in the form of clause 3 of the Bill which introduces section 64A in the Law.

(iii) Judicial Variation of Trusts

The issue here related to the condition that, pursuant to section 72 of the Law, a variation cannot be approved by the Court unless it is established by those proposing the variation that it is for the benefit of any minors or unborn who might be affected. The alternative is that it should be sufficient to establish that it is not to their detriment. The dividing line is somewhat thin and often depends on the ingenuity of counsel. We favour the "no detriment" approach. Accordingly, our approach is reflected in clause 4 of the Bill which amends section 72 of the Law.

(iv) Extra-Judicial Variation of Trusts

In the Paper we referred to the innovative provisions contained in section 58A of the British Virgin Islands, Trustee Ordinance, 1961. We are opposed to the introduction of similar legislation in the Islands. It seems to us that such provisions are more likely to lead to litigation rather than the orderly administration of trusts. Accordingly, we made no proposal for reform in relation to this topic.

(v) Dispute Resolution

We felt that the jurisdiction of the Court to approve, on behalf of affected minors or unborn, compromises of genuine disputes is centuries older than the statutory jurisdiction to vary trusts pursuant to section 72 of the Law. If the "no benefit" test is to be introduced in respect of the latter, there can be no justification for not introducing it in respect of the former. STEP did not comment in terms on this topic but did express the view that nothing was to be gained by attempting to introduce arbitration into the resolution of trust disputes.

We agreed and propose that the "no benefit" test be introduced as the touchstone for determining whether a compromise can be approved by the Court: clause 3 of the Bill, introducing section 64B of the Law, refers.

We noted that if section 64B is enacted, an amendment to the Grand Court Rules Order 15, 13(4) will be required substituting the "no detriment" test for the "benefit" test. Clause 6 of the Bill enables the Grand Court Rules Committee to make this amendment.

(vi) The Law, Section 6(c)

In the Paper, we raised the question whether, for the purposes of section 6(c) of the Law or generally, the definition of "trust corporation" in section 2 of the Law should be extended to include trust companies registered under the Bank and Trust Companies Law a controlled subsidiaries or private trust companies, that is, trust companies which do not satisfy that present definition because they are not required to be licensed. STEP indicated that it was content that the definition be extended to controlled subsidiaries but not private trust companies. The Commission supported that recommendation.

(vii) The Law, Section 91(b)

In the Paper we proposed that, for the reasons there given, section 91(b) of the Law should be amended so as to provide that a Cayman trust cannot be impugned by reason that it defeats the rights, claims or interests conferred by foreign law upon any person by reason of a relationship to the settlor – which represents the present position – or by reason of a relationship to any beneficiary (whether discretionary or otherwise). STEP supported this proposal and, accordingly, clause 5 of the Bill so provides.

The Commission believes that these proposed, discrete amendments will assist the Cayman Islands in remaining competitive as an off-shore trusts jurisdiction.

The Commission is pleased to know that its version of the Trusts (Amendment) Bill, save for two minor insertions, has been approved by Cabinet and will be placed before the Legislative Assembly for debate at the 3rd April, 2019 sitting of the Legislative Assembly.

(b) Statutory Regulation of Queen's Evidence

The Commission, in April, 2018, submitted to the Hon. Attorney General its Final Report on the Statutory Regulation of Queen's Evidence and the supporting Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2018.

In the Report, the Commission noted that the Cayman Islands have for some time been undergoing a changing crime dynamic and cultural shift where violence and the use of firearms have radically impacted the willingness of persons to provide information to the police. On a number of occasions the progress of criminal investigations and prosecutions have been impeded as a result of witnesses fearing reprisals and as a consequence refusing to assist the police in bringing criminals to justice.

In an attempt to address the issue of a failure to engage witnesses, the Government, in 2014,

enacted the Criminal Evidence (Witness Anonymity) Law. The Law has successfully been used in two instances involving offences of Murder/Possession of an Unlicensed Firearm and Robbery/Possession of an Imitation Firearm with Intent. However, as the Honourable Chief Justice articulated in judicial pronouncements, a witness anonymity order is not always appropriate in, for example, cases where the witness is on the fringes of gang association.

In response to a request by the Director of Public Prosecutions, as well as to public comments on the need to find varied ways of stemming the growth of crime in the Islands, the Commission undertook a review of the statutory regulation of accomplice evidence, also referred to as the Queen's evidence.

Queen's evidence is defined as evidence from someone who has been accused of committing a crime, given against the person accused with the witness, in order to have his or her own punishment reduced. It is argued that this would allow prosecutors to be more effective, not only in obtaining accomplice evidence but in securing quicker convictions.

The review by the Commission comprised a scoping paper and a Bill sent to the Hon. Chief Justice, the Criminal Defence Bar Association as well as to the Hon. Attorney General in March 2017. Thereafter a Discussion Paper and a Bill entitled the "Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2017" were submitted for public comment in August 2017. The Discussion Paper gave a summary of this area of the law in the Cayman Islands, the UK, the USA and Jamaica and it also summarised the main points of the Bill.

The Cayman Islands position was examined against the background of the United Kingdom approach which provides for the statutory codification of Queen's evidence and the use of the plea deal procedure as obtains in the United State of America.

In the Cayman Islands, a prosecutor has the power to secure the co-operation of potential co-defendants in an informal manner and has the power to determine whether or not to bring criminal charges and what charges to bring. This latter discretion of the Director of Public Prosecutions (DPP) is enshrined in section 57(2) and (6) of the Cayman Islands Constitution.

The existing practice is that should an accomplice inquire of the police as to any benefit if assistance is provided, the police would advise that no agreements or promises can be made and that it is a matter for the courts on the sentencing of an accomplice whether or not to take into account any assistance provided to the Crown. The police however undertake to bring to the attention of the court any such assistance by way of a sealed envelope containing a memorandum from a senior Police Officer. The sealed envelope procedure endeavours to protect the witness in instances where there may be gang affiliations and the extent of the assistance provided cannot be stated in open court as it may have implications for the safety of the witness. The Office of the DPP has no contact with accomplices.

It was with these principles in mind that the Commission formulated the Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill. The main precedent used in the drafting of the Bill was the UK Serious Organised Crime and Police Act, 2005.

Also considered in depth was the Criminal Justice (Plea Negotiations and Agreements) Act of 2005 of Jamaica, before its recent repeal in 2017 by the Plea Negotiations and Agreements Act, 2017.

The main provisions of the Bill are as follows -

- Clause 3 - In recognising the powers of the DPP to prosecute under section 57 of the Constitution, the legislation does not compel the DPP to enter into a plea agreement.

- Clause 4 - If the DPP is of the opinion that, for the purposes of an investigation or prosecution of any offence, it is appropriate to offer a person immunity from prosecution, the DPP may give the person an immunity notice. However an immunity notice ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the notice.

- Clause 5 - If the DPP thinks that, for the purposes of the investigation or prosecution of an offence, it is appropriate to offer a person an undertaking that information of any description will not be used against the person in any proceedings to which this section applies, the Director of Public Prosecutions may give the person a written restricted use undertaking.

- Clause 6 - The court is empowered to reduce the potential sentence of the defendant if the defendant has assisted in providing evidence, or offered to assist the investigator or prosecutor in providing evidence, in relation to the primary offence or any other offence.

- Clause 7 - A sentence may be reviewed by the court where a person has agreed to assist in a prosecution.

- Clause 8 - The public is excluded from proceedings in relation to the review of a sentence.

- Clause 9 - The accused has a right to legal representation when negotiating a plea deal.

- Clause 11 - An obligation is placed on specified persons to keep information secret and confidential under the legislation.

- Clause 12 - The victims are entitled to have a say before plea negotiations are confirmed.

- Clause 13 - A court is not bound to accept a restricted use undertaking or an agreement for a reduced sentence.

CURRENT PROJECTS

(a) Contempt of Court
(b) Foreclosures
(c) Anti-bullying Legislation

(d) Computer Misuse
(e) Penal Code Reform
(f) Interpretation Law Modernisation
(g) Severance of Joint Tenancy Agreements

(a) Contempt of Court

The Commission has completed its Final Report on the reform of the law of contempt and intends shortly to submit the report to the Honourable Attorney General for review. The review of the law of contempt was one of the longer projects of the Commission. The Commission endeavoured through its three consultations papers to educate the public and to solicit responses to one of the most fundamental but complicated areas of the judicial system.

Our research suggests that most of the law should be dealt with by the common law which would permit greater growth and development than codification.

In our report we stated that contempt of court is one of the few non-statutory criminal offences in the Islands. It is governed entirely by common law principles, both as to the scope of the offence and the method of disposal, principles which have been developed over the years on a case by case basis. It is also one of the few criminal offences in the Islands for which no maximum penalty, whether by way of imprisonment or fine, is prescribed.

The Attorney General, in 2003, instructed the Legislative Drafting Department to provide a bill to codify the law relating to contempt of court. A draft Bill was prepared in 2004 and subsequently transferred to the Commission in 2005 for more in-depth research. The draft Bill was reviewed by the staff of the Commission in February 2009 and a revised Contempt of Court Bill ("the draft Bill") was submitted to the Commissioners for their consideration on 5 March, 2009. The Bill, inter alia, dealt with the following-

(a) power to punish for contempt in face of court;
(b) failure to obey or comply with order of court;
(c) contempt in face of a tribunal;
(d) definition of spoken or written contempt;
(e) innocent publication and distribution;
(f) contemporaneous publication of fair and accurate reports; and
(g) confidentiality of jury's deliberations.

The draft Bill was discussed by the Commissioners between September and December 2009. It was agreed in March 2010 to deal with the review in three stages (similar to the approach taken by the Law Commissions of Western Australia and Tasmania) which are (a) contempt in the face of the court (b) contempt by publication and (c) contempt by disobedience to a court order. There will however be a single final report that encompasses the law of contempt as a whole. An internal paper was considered by the Commission in September, 2010.

Between 2010 and 2014 the topic of contempt was discussed several times by the Commission. Due to the wide scope of the law in this area the Commission decided in 2014 to continue to deal with the law in stages.

As a result three consultation papers were written on the subject, two in 2014 (January 10 and March 21) and one in July, 2016.

After lengthy research and deliberations by the Commission the following recommendations will be submitted for consideration -

(a) We do not recommend any changes in the substantive law relating to contempt in the face of the court. The concept of what conduct can be described as having been committed "in the face of the court" has been stretched so far that there must be some doubt as to whether it serves any useful purpose to treat this as a separate category. We also note that many acts which could be said to fall within this category are also covered by some statutory contempt-like offences.

(b) We recommend restricting and codifying the strict liability rule along the lines of the UK Contempt of Court Act, 1981 ("the 1981 Act"), sections 1 to 7, but with modifications to reflect the procedural law of the Islands and to take account of more recent developments.

(c) We do not recommend any changes to the substantive law concerning juror contempt, largely because of the modification of the traditional judicial warning to cover the risk referred to in paragraph 1 above.

(d) Despite its abolition as a separate category of contempt in the UK, we do not recommend abolishing contempt by scandalising the court.

(e) Acts interfering with the course of justice is, in effect, a rag-bag for all contempts which do not fall conveniently into any other category. We do not recommend any changes to the substantive law.

(f) We see no need for any changes in respect of so-called civil contempt, that is, the failure to comply with a court order, usually an injunction, or to honour an undertaking given to the court.

(g) One of our more important recommendations is the introduction of a provision to ensure that, on an application for committal or where the court acts of its own motion, it will not proceed to consider the guilt or otherwise of the alleged contemnor, unless it is first satisfied that the contemnor is, or has been, accorded certain protections which, in effect, replicate the relevant provisions of section 7 of the Bill of Rights. This will affect the way in which common law contempt is disposed of, including all of the different categories referred to above. We also recommend the introduction of maximum penalties for common law contempt.

(h) In so far as statutory contempt-like offences, we draw a distinction between those which effectively by-pass the Criminal Procedure Code by giving the court summary powers of disposal similar to those exercised by the Grand Court in dealing with common law contempt and those which create statutory offences the prosecution of which is governed by the Criminal Procedure Code. The former needs to be made compliant with section 7 of the Bill of Rights.

(i) With regard to tribunals, there can be no doubt that the Grand Court, in the exercise of its supervisory jurisdiction, can punish for contempt committed before, or in relation to, those tribunals which possess the characteristics of a court of law. We do not propose any changes in this regard.

Partial Statutory Codification

The Contempt of Court Bill, 2019 being proposed by the Commission seeks to codify the strict liability rules along the lines of section 1 to 7 of the UK Contempt of Court Act, 1981 but with modifications to reflect the procedural law of the Islands and to take account of more recent developments.

Both the Contempt of Court Bill and the Penal Code (Amendment) Bill propose the amendment or repeal of certain existing statutory contempt-like offences. The relevant provisions are section 27 of Grand Court Law (2015 Revision), section 39 of the Summary Jurisdiction Law (2019 Revision) and sections 107 and 111 of the Penal Code (2019 Revision).

There are two types of provisions which the Commission does not regard as penal in nature and do not therefore engage section 7 of the Bill of Rights. First, the Grand Court has an inherent power to order and procure the removal from court of persons who misconduct themselves. This power is recognised by section 35(1)(b) of the Judicature Law (2017 Revision) and is, by section 35(2), extended to the Summary Court. Although, where a court is sitting in public, any member of the public has a right to attend, that right is dependent on good behaviour.

Secondly, provisions designed to secure the attendance of witnesses at court cannot be regarded as penal even if their attendance is ultimately secured by an arrest warrant. However, the sanctions imposed for non-attendance are penal, whether they fall into our second or third category or both. Whether the deprivation of liberty, even for the short time between the offending act and "the rising of the court" can be regarded as engaging section 7 depends upon whether that can be regarded as part of the trial process or no more than equivalent to a remand in custody. In the context in which those statutory references appear, we incline to the latter view.

In clause 14 of the Contempt of Court Bill, the Commission proposes the repeal of section 27 of the Grand Court Law. Section 27(1) provides that "without prejudice to any powers conferred upon the Court under section 11(1), the Court shall have jurisdiction to order the arrest of and to try summarily any person guilty of any contempt of the Court or any act insulting to or scandalising the Court or disturbing the proceedings thereof, and any person convicted under this section is liable to imprisonment for six months and to a fine of five hundred dollars".

Section 27(2) provides that "for the purposes of this section, contempt of court shall include any action or inaction amounting to interference with or obstruction of, or having a tendency to interfere with or to obstruct, the due administration of justice."

Section 27 is not entirely easy to construe but, that apart, it is subject to the following objections:

(a) Section 11 confers upon the Grand Court "the like jurisdiction within the Islands which is

vested in and capable of being exercised in England by" the High Court and the Divisional Court. There can be no doubt that this confers upon the Grand Court the inherent jurisdiction of a superior court of record in cases of common law contempt both of the Grand Court itself, the Summary Court and any inferior courts. As such this provision is unnecessary.

(b) The power to try summarily is, without more, contrary to section 7 of the Bill of Rights. At the very least, section 27 would need to be amended to make it subject to clause 12 of the Contempt Bill.

(c) The definition of "contempt of court" in section 27(2) arguably encompasses the strict liability rule but without the modifications we recommend in Part 2 of the Contempt Bill. Again, at the very least, some appropriate amendment would be required.

(d) Some of the acts encompassed by the phrase "insulting or scandalising the Court or disturbing the proceedings thereof" are covered and will continue to be covered by provisions of the Penal Code.

(e) For some conduct which would fall within this section, the maximum penalties are too low.

(f) We are not aware that section 27 has ever been invoked.

In clauses 3 and 4 of the Penal Code (Amendment) Bill, the Commission proposes the amendment of section 107 and the repeal and substitution of 111 of the Penal Code respectively. With regard to section 107, clause 3 provides for the repeal of paragraph (d) which makes it an offence to do "anything in order to obstruct, prevent, pervert or defeat the course of justice." This provision, like section 27 of the Grand Court Law, is expressed in extremely broad language but, unlike section 27, it carries a maximum sentence of seven years.

It arguably includes much of the common law of contempt, such as contempt in the face of the court, the strict liability rule, and scandalising the court, but without the limitations to which those forms of contempt have been subjected by judicial decisions. Nor does it give the accused the benefit of the modifications of the strict liability rule which we are proposing in Part 2 of the Bill. It also raises the alternative prospect of what are, in effect, contempt cases being tried either by the Summary Court or by a jury, neither of which we would regard as desirable. Rather than subject paragraph (d) to special procedural limitations, the Commission would recommend its repeal.

The Commission doubts whether this will result in any person who might have been successfully prosecuted under this paragraph escaping criminal liability given the overlap with those forms of common law contempt mentioned above.

The Commission considers that, whether or not our proposed deletion of paragraph (d) is accepted, seven years is too high a maximum term of imprisonment for the various offences falling within section 107. Generally, four years is the maximum for contempt-like offences under Part IV of the Penal Code, the only exceptions being perjury, subornation of perjury and fabricating evidence where the maximum is seven years. As pointed out above, four years is also

the "default" maximum and we have proposed a maximum of five years for common law contempt.

Clause 4 of the Penal Code (Amendment) Bill replaces the existing section 111 of the Penal Code ("Offences relating to judicial proceedings") with a new section 111. Paragraphs (a) and (b) of the new section replace paragraphs (a), (b) and (i) of section 111(1) and section 39 of the Summary Jurisdiction Law. These provisions deal with conduct which might otherwise constitute contempt in the face of the court or scandalising the court.

Paragraph (c) is similar to the existing paragraph (b) but expressed in language derived from sections 28 and 29 of the Summary Jurisdiction Law and sections 42 and 45 of the Criminal Procedure Code. As indicated above, these sections deal with defaulting witnesses but provide for summary disposal. We consider it desirable that, as under the present law, the court retains the option of simply referring the matter to the relevant prosecuting authority rather than exercising its summary powers particularly as the latter will need to be qualified by reference to the protections contained in section 7(1) of the Bill of Rights.

Paragraph (d) will replace paragraphs (f) and (g). These provisions deal with wrongful interference with a witness whether before or after the witness has given evidence.

The Commission does not consider it either desirable or necessary to replace the remaining paragraphs of section 111. Our reasons for this conclusion are as follows -

(a) Paragraph (d) would appear to cover matters which fall within either the fair and accurate reporting of proceedings, the strict liability rule or scandalising the Court but are not necessarily co-extensive with their common law equivalent. We consider that they should be dealt with as common law contempts and not as statutory offences to be tried, irrespective of the court in which the relevant judicial proceeding is being held, either by the Summary Court or with a jury.

(b) Paragraph (e) is covered by clause 11 of the Contempt Bill.

(c) Paragraph (h) deals with a situation which is normally remedied by the issue of a writ of restitution rather than an application to commit for contempt. Similarly, we do not see the need for a specific statutory offence: there does not appear to be any similar statutory offence in respect of a judgment debtor who wrongfully retakes possession of goods taken under a writ of *fieri facias*.

It is hoped that the Government accepts our approach and learning in this area and proceeds to bring some clarity and reform in the areas addressed in the draft legislation.

(b) Foreclosures

The Commission, in November 2018, published its discussion paper titled- ***The Enforcement of Mortgage-Type Security Over Real Estate: Is reform of the law necessary?*** This Discussion Paper was prepared in response to a referral by the Honourable Attorney General, dated 30th January, 2018, requesting that The Commission review and consider whether it is necessary to

reform the law relating to the enforcement of mortgage-type security over land and, in particular, over residential properties.

The request followed a heightened level of public comment, and concern, regarding the number of such procedures, colloquially referred to as "foreclosures", in the recent past. The dominant theme of the public commentary has been the level of hardship, it is claimed, has been experienced by the owners of residential property, who have been affected by these procedures. These concerns were echoed by Members in the Legislative Assembly and prompted the Honourable Minister of Financial Services and Home Affairs to request, through the Honourable Attorney General, that the Commission conduct a comprehensive legislative review of the mortgage framework in the Cayman Islands.

The Discussion Paper noted the several statements in the public media to the effect that the number of residential "foreclosures" is inordinately high, and increasing. It was also noted that the official statistics produced by the Cayman Islands Monetary Authority (CIMA) show a significant, and steady, decrease in both the number of completed residential "foreclosures" and the rate of such procedures, relative to the total value of residential mortgages, from the second quarter of 2016 to the first quarter of 2018. It was observed that these procedures have decreased from a high in in the second quarter - 2016 of 27 such completed procedures, representing 2.82% of the total value of residential mortgages, to 9 completed procedures, representing 2.00% of total value, in the first quarter - 2018. The Commission did not examine whether there is a precise causative correlation, but it is a matter of public record that there has been, in general, an improvement in the local economy within the period covered by the CIMA 'foreclosure' statistics.

The expressed sentiments as to the conduct of commercial banks are not shared by the local commercial banks. The Cayman Islands Bankers' Association, whose website states that its membership comprises the majority of registered Cayman Islands banks and trust companies, has published a code of conduct governing its members, referred to as The Banking Code ("the Code"). The Code sets out guidelines for banks when enforcing its powers of sale under residential mortgage-type security. Some of the comments published in the news media suggest that there may be instances where the banks are not following the Code.

No doubt we expect that the consultation process which will follow the publication of the Discussion Paper should elicit the banks' response to this allegation. The Code is however entirely voluntary, and non-compliance with the Code does not give rise to legal recourse, unless that non-compliance also involves a breach of the law.

Based on the review and consideration of the current status of the law and the areas of concerns raised by various observers, the Commission has identified a number of possible areas and approaches to reform. The Commission did not, in the Discussion Paper, seek to make specific recommendations, but rather, to raise questions which may be considered during the consultation process which follows the publication of the Discussion Paper.

The main questions are as follows:

(a) Should there be new and separate legislation specifically dealing with the enforcement of mortgage security over residential property?

(b) If there should be new legislation, should it be comprehensive legislation adopting the principles prescribed under the EU Directives relating to residential immovable property dated February 2014, and discussed at section 3 below of the Discussion Paper?

(c) Alternatively, should specific provisions regulating the service and enforcement of notices of the exercise of a lender's statutory enforcement powers in respect of residential property be incorporated in broader consumer protection legislation?

(d) Should all contemplated reform be effected by amending the Registered Land Law (2018 Revision) (RLL)?

If amendments to the Registered Land Law are considered to be the most appropriate method of reform should the following areas be considered for amendment?

(a) Should the RLL make a distinction between the procedures to be adopted with respect to residential property as opposed to property used for other purposes?

(b) Should there be a reintroduction of the power of foreclosure whereby, pursuant to a court application, title to the charged property is transferred to the secured lender, but with the consequence that the obligations of the borrower are totally extinguished?

(c) Should there be an express power in section 75 of the RLL, or its equivalent, permitting a secured lender to sell the charged property by private contract, as well as by public auction?

(d) Should the RLL specifically define what constitutes a "public auction" and prescribe minimum mandatory requirements for a sale to be considered a public auction within the meaning of the Law?

(e) Should there be a codification of specific minimum steps a secured lender should take in order to demonstrate that it has acted in good faith in the exercise of its power of sale?

(f) Should there be a specific statutory prohibition against a lender selling the charged property to a party connected to itself?

(g) Should there be an express statutory prohibition against a pre-payment penalty for early redemption of a charge?

(h) Should there be a repeal of section 77 of the RLL, which allows the parties, in the terms of the charge, to amend the provisions of the RLL, specifically relating to the required period of default and the duration of a notice under section 72 ("the section 72 notice")?

(i) Should there be provisions for the creation of fixed term charges over residential property, pursuant to which the lender may not require the borrower to repay the entire loan "on demand" in the event of a single breach?

(j) Should there be a limit to the amount of expenses for which the borrower may be liable upon the enforcement of a power of sale?

Should any of the following amendments or new provisions be adopted regarding the section 72 notice?

(a) Should there be a prescribed form specifying the required contents of the notice, including the specific amounts outstanding, and the steps which the borrower should take to remedy the default?

(b) Should the section 72 notice be limited only to defaults in the payment of principal and interest and the defaults in keeping the property insured?

(c) Should there be a longer or shorter period of default which triggers a section 72 notice than that provided for at present?

(d) Should there be a longer or shorter period within which the borrower is required to remedy the default than that provided for at present?

(e) Should there be a prescribed pre-action protocol which should be followed by lenders who seek to enforce their security over residential property, to replace the voluntary Code of Conduct for Bankers, and which is to be taken into consideration by the courts to determine whether the lender has acted in good faith in exercising its security?

(f) Should there be a specific requirement that the secured lender serve all interested parties, such as, prior and subsequent chargees, and any person who has registered a caution against the charged property?

(g) Should there be an adoption of more modern modes of service which are more likely to bring the notice to the attention of the borrower?

(c) Anti-bullying Legislation

The Commission intends shortly to make available for public consultation anti-bullying in schools regulations. These regulations seek to complement the wider Education Policy which seeks to address school behaviour.

The proposed legislation includes provisions which –

(a) require every school to formulate an anti-bullying policy;
(b) require that an anti-bullying policy include provisions which —
- prohibit bullying;
- prohibit retaliation against a person who reports incidents of bullying;
- provide for disciplinary penalties to be imposed against a student who engages in bullying or retaliation;
- set out procedures for the provision of counseling or referrals to appropriate services;
- provide for programmes, interventions and other support mechanisms to be delivered

by social workers, psychologists or other professionals who have relevant training;

- provide for students to anonymously report bullying or retaliation;
- impose disciplinary penalties against a student who knowingly makes a false accusation of bullying;
- provide for the education of parents and guardians about bullying, the anti-bullying policies of the school and how parents and guardians can provide support and reinforce such anti-bullying policies at home;
- provide for the education of students on bullying, the anti-bullying policies of the school, the systems for the anonymous reporting of acts of bullying or retaliation;
- promote a positive school climate that is inclusive and accepting of all students irrespective of sex, race, colour, language, religion, political or other opinion, national or social origin, association, age, mental or physical disability, property, birth or other status;
- require the utilisation of surveys to collect information on school bullying from its students, school staff, parents and guardians of the students at least once every year;
- require the organisation of annual professional development programmes to educate teachers and school staff about bullying prevention and strategies for promoting a positive school climate;
- require the maintenance of a record of relevant information and statistics on acts of bullying or retaliation in school and reports of bullying; and
- contain any other prescribed requirements.

(c) hold the school leader responsible for the implementation and oversight of the regulations and any policies made thereunder to address bullying;

(d) require a member of the school staff as soon as reasonably practicable to report to the school leader any act of bullying or act of retaliation witnessed by that member of the school staff, or that has come to the attention of the member of the school staff;

(e) require a student to immediately report to the school leader any act of bullying or act of retaliation directed towards or witnessed by that student, or that has come to that student's attention;

(f) require the school leader on receiving a report of to notify —

(i) the parent or guardian of the student and the parent or guardian of the student who is alleged to have engaged in the bullying or retaliation; and

(ii) the police, if the school leader is of the opinion that the behaviour falls within the scope of the criminal law;

(g) require the school leader to communicate the results of the investigation to the person who made the report unless, in the school leader's opinion, it would not be appropriate to do so;

(h) prohibit a school from being registered to operate unless it provides the Department with a copy of its anti-bullying policy which is in compliance with these regulations;

(i) require a school leader, on a quarterly basis, to submit a written report to the Department which contains details of —

(i) all reported incidents of bullying;

(ii) the outcomes of the bullying investigations;

(iii) the measures utilised to counsel the person who was bullied and the person who engaged in the bullying;

(iv) the measures and outcomes of the measures employed to prevent a recurrence of the bullying;

(j) require school deregistration where there is a failure to comply with its anti-bullying policy; and

(k) imposes disciplinary penalties against a school leader of any school or a member of the school staff who acts in contravention of these regulations or any anti-bullying school policy.

(d) Computer Misuse

The issues of cybercrime and cybersecurity continue to be major concerns for law enforcement in the Cayman Islands and remains on the agenda of the Commission. The Commission in 2017 prepared an Issues Paper on Cyber Security Policy and Legislation. The Paper covered several areas including the concepts of cybersecurity and cybersecurity governance, critical information structures, computer misuse, international approaches to cybersecurity issues and elements of an effective cybersecurity legislative framework.

At its 6th November, 2018 meeting, the Commission noted that Utility Regulation and Competition Office ("OfReg") is already consulting and carrying out research in respect of cybercrimes and cybersecurity. In order to avoid duplication of efforts, it was agreed that the Commission would focus on computer misuse and rely on the expertise of OfReg to deal with cybersecurity.

An initial examination of the laws of the Cayman Islands and international and regional standards, strategies and conventions have identified number of issues which will require examination, research and consideration in formulating a Cayman Islands Government legal framework to provide effective cybersecurity and counteract the effects of cybercrime. Key among these issues is the requirement for legislation to criminalize certain forms of computer crime and the imposition of adequate penalties for acts constituting computer misuse.

The Computer Misuse Law (2015 Revision) of the Cayman Islands creates offences such as unauthorized access to computer material, unauthorized access with intent to commit or to facilitate the commission of further offences, unauthorized modification of computer material, unauthorized use or interception of a computer service and causing a computer to cease to function. In formulating the legal framework for cybercrime, consideration must be given to reforming the offences created by the Computer Misuse Law (2015 Revision) as the provisions for offences in that Law may not be sufficient to deal with the growing number and sophistication of cybercrimes. The offences recognized and established in international and regional conventions on cybercrime, such as the Budapest Convention, include the following –

(a) acts against the confidentiality, integrity and availability of computer data and systems, such as illegal access (hacking), data espionage, illegal interception of communications, data interference and system interference;

(b) illegal content including child pornography, other pornographic or erotic content, racism,

hate speech or glorification of violence, xenophobic material or insults relating to religious symbols, libel and false information, illegal gambling and online games;
(c) cyberbullying;
(d) computer related offences such as computer related fraud, forgery, phishing, identity theft and misuse of devices; and
(e) combination offences such as cyberterrorism and terrorism financing, computer warfare, cyber laundering.

The Commission has prepared an Action Plan which sets out the scope and depth of the proposed law reform project to reform the Computer Misuse Law (2015 Revision), including the research and consultation envisaged, the method of and approach to research and consultation and the time allocated for each stage of the law reform process.

The Commission has commenced its initial task of engaging in comprehensive research to determine the status of the law relevant to computer misuse in the Cayman Islands and to identify gaps, problems and deficiencies in the legal framework that would hinder the prevention of cybercrime and responses to cybercrime.

This will be followed by comparative research to examine international and regional standards, strategies and conventions and national legislation of other countries that seek to deal with the issues under consideration in respect of the legislative framework for counteracting cybercrime. In carrying out the comparative research, a proper investigation and evaluation will be undertaken of the approach and experience of key international and regional organisations and national governments in addressing the issues under consideration.

During the research stage, the Commission intends to engage with specified stakeholders who can assist with the initial research. These include representatives from OfReg, the Cayman Islands Monetary Authority, the Royal Cayman Islands Police Service and the Financial Reporting Authority all of whom are well versed in the field of counteracting cybercrime and will give the Commission relevant insight or information regarding cybersecurity and cybercrime. This early engagement during the research stage, and in advance of public consultations would bring substantial advantages to both the stakeholders and to the Commission.

On completion of the initial research, an analytical review of the material collected will be conducted. The analysis will provide suggestions for reform and the approaches that have been taken or avoided in other jurisdictions. A Consultation Paper will be prepared asking questions or making proposals to facilitate the consultation process, depending on the legal and other dynamics that give rise to the need to reform the Computer Misuse Law. The stakeholders and the public will be invited to give written responses to the Consultation Paper and a summary of both consultation meetings and written responses will be prepared together with an analysis of the responses. Based on this analysis a final decision on policy by the Commission will be required in the form of a Final Report which, depending on the policy, may include a draft Bill.

(e) Penal Code Reform

In our previous Annual Report we advised that the Attorney General in 2017 referred for the review of the Commission the Penal Code (2019 Revision) ("Penal Code"). We noted that since its introduction in 1975, the Penal Code has not undergone a comprehensive review. With the adoption of the Constitution of the Cayman Islands it is imperative that the Penal Code be reviewed to ensure that its provisions are compatible with the fundamental human rights principles enshrined in the Bill of Rights, Freedoms and Responsibilities in the Constitution of the Cayman Islands. The human rights provisions of particular relevance are principles include the guarantee of rights, freedoms and responsibilities, personal liberty, private and family life, expression, non-discrimination and protection of children.

The Commission, at its 6th November, 2018 meeting, confirmed that the review of the Penal Code would be carried out in phases and that, in the first instance, the Commission would examine the compatibility of the Penal Code's provisions with the fundamental human rights principles enshrined in the Bill of Rights, Freedoms and Responsibilities set out in the Constitution of the Cayman Islands.

An Action Plan has been prepared by the Commission which sets out the scope and depth of the proposed law reform project to review the Penal Code for compatibility with the human rights principles, including the research and consultation envisaged, the method of and approach to research and consultation and the time allocated for each stage of the law reform process.

The Commission is now in receipt of a proposal from the Legal Committee of the Alex Panton Foundation to decriminalize suicide and attempted suicide which is currently a common law offence in the Cayman Islands. The Attorney General has since requested that the Commission consider dealing with this matter separately from the wider Penal Code review.

The rationale for the proposal is that "the rates of suicide are continuously rising in the Cayman Islands, particularly amongst our children and young people". A recent national survey of all children and youth at Cayman Islands public and private schools, including the University College of the Cayman Islands students, undertaken by the National Drug Counsel in collaboration with the Alex Panton Foundation produced alarming statistics that this country cannot ignore. Most alarmingly, one in three children surveyed reported suicidal ideation and 13% reported actual attempted suicide, but only 5% of these children in need are seeking treatment.

At the second annual Mental Health Symposium held on 24th February, 2019 the state of mental health in the Cayman Islands came under close scrutiny and the distinction between the brain and the mind was recognized. One is a physical organ, and the other is a manifestation of people's emotions and experiences.

The Proposal sets out the potential benefits to the Cayman Islands as follows –

a) to safeguard the rights of the people with mental illness and align Cayman Islands with other progressive Commonwealth countries (including the UK, Canada, Australia, New Zealand, and most of Europe) that have abolished the crime of attempted suicide;
b) to encourage further dialogue and consultation on mental health in our community; and

c) to address mental health needs in our society with the potential to reduce delinquency and create a more productive workforce, and this proposal is an important step towards a healthier, more resilient population.

The current "mischief" or deficiency that the Proposal is intended to cure is stated to be that "While prosecution has never been sought for those who attempt suicide in the Cayman Islands, treating suicide as a crime as opposed to a mental health issue further perpetuates the stigma that currently shrouds mental health. Treatment, rather than prosecution, is the appropriate and recommended response to those struggling with mental health crises. Suicide is a public health concern that needs to be managed by governments and clinicians in a culturally sensitive manner. The perception of suicide and suicidal ideations as criminal creates a barrier that prevents people from seeking appropriate treatment."

(f) Interpretation Law Modernisation

The Commission has commenced the first phase of the law reform project to review the Interpretation Law (1995 Revision). A number of the rules of interpretation have already been identified as requiring review based on the enactment of the Constitution and other laws (such as the Police Law), many of which affect the general principles of interpretation, gender of words, nomenclature, commencement of laws, penalties and other matters contained in the Interpretation Law. The review will ensure that the Interpretation Law is consistent with current standards and other legislation and will ensure gender-neutrality, among other things.

During the research stage, the Commission intends to engage with specified stakeholders who can assist with the initial research. These include representatives from the Attorney General's Office, Legislative Drafting Department, Office of the Director of Public Prosecutions, the Courts, the Royal Cayman Islands Police Service, the Cayman Islands Legal Practitioners Association and the general public who will give the Commission relevant insight or information regarding the Interpretation Law.

(g) *Severance of Joint Tenancy Agreements*

The Commission has finalized for stakeholder consultation the Registered Land (Amendment) Bill, 2019 which seeks to amend the Registered Land Law (2018 Revision) in order to change how joint proprietorships may be severed.

At present a joint tenancy may only be severed in accordance with section 100(3) of the Registered Land Law (2018 Revision). Section 100(3) provides that joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument. In accordance with the Law proprietors must agree to severance.

This amendment will provide that such agreement will not be necessary as in most countries legislation has long provided for severance by notification and it is irrelevant that agreement is not reached. The law in this area was changed in the UK in 1925 by the Law Property Act. The amendment in clause 2 of the Bill provides for severance by the service of an instrument of declaration of severance and by the registration of the declaration in the Land Registry.

OTHER AREAS UNDER EXAMINATION

(a) Litigation funding;
(b) Consumer protection;
(c) Reform of the Defamation Law; and
(d) Reform of the Succession and Wills Laws.

CONCLUSION

The work completed by the Commission during 2018/2019 has been significant but there is much more to be done both in terms of finalising current projects and exploring new areas of reform. The Commission and its staff are determined to deliver a comprehensive service to the Cayman Islands Government.

APPENDIX

PUBLICATIONS/PAPERS

ISSUES PAPERS

- Enforcement of Foreign Judgments and Interim Orders – 6th March, 2012
- Directors' Duties: Is Statutory Codification Needed? – 16th January, 2014
- Conditional Fees: Legislative Recognition and Regulation in the Cayman Islands – 3rd September, 2015
- Bullying: Legislation, Policy or Both? – 19th January, 2016
- Cybersecurity: Strategic Policy and Legislation – 29th November, 2017

DISCUSSION/CONSULTATION PAPERS

- Review of the Legal Aid System in the Cayman Islands (Preliminary Paper) – 28th March, 2006
- Review of the Law of Landlord and Tenant (Discussion Paper) - 30th September, 2006
- Review of the Law of Landlord and Tenant (Consultation Paper) – 29th January, 2007
- Review of the Law regulating legal practitioners in the Cayman Islands – 29th January, 2007
- Review of Corporate Insolvency Law in the Cayman Islands and Recommendations for the Amendment of Part V of the Companies Law (2004 Revision) – 20th July, 2007
- Review of the legal aid system in the Cayman Islands – 14th December, 2007
- Enduring Power of Attorney, Preliminary Paper (Draft) – 19th January, 2009
- Regulation of Charitable Non-profit Organisations in the Cayman Islands - 26 January, 2009
- Review of the Arbitration Laws of the Cayman Islands - 11 May, 2009
- Review of the law of contempt of court in the Cayman Island s (Part 1)
  Contempt in the face of the court - September 2010
- Tort Reform - Caps on Non-Economic Damages and Reducing the Limitation Period – 22nd October, 2010
- Family Law Reform (Part 1) - Review of the Matrimonial Causes Law (2005 Revision) – 18th February, 2011
- Modernisation of the regulation of Strata titles in the Cayman Islands (Part 1) - Management of Strata Schemes – 4th April, 2011
- Introduction of the office of the Administrator-General in the Cayman Islands (Preliminary Paper) – 2nd June, 2011
- Introduction of the office of the Administrator-General in the Cayman Islands – 22nd March, 2012
- Modernisation of the regulation of strata titles in the Cayman Islands (Part 2) -Review of the creation, management and termination of strata schemes - 3rd January, 2013

- Family Law Reform (Part 2) – Review of the Matrimonial Causes Law (2005 Revision), the Maintenance Law (1997 Revision) and the Family Property (Rights of Spouses) Bill, 2013 – 9th July, 2013
- Contempt of Court -10th January, 2014
- Contempt of Court: The Sub Judice Rule, 21st March, 2014
- Legislative Protection of Whistle Blowers - an Examination of the Legislation in the Cayman Islands and other Jurisdictions - 14th April, 2014
- The Way Forward for Regulation of Timeshares in the Cayman Islands – 15th September, 2014
- Consumer Protection: Entrenching Consumer Supremacy in the Cayman Islands, 27th November, 2015
- Litigation Funding Review – Discussion Paper – 29th December, 2015
- Contempt of Court – 15th January, 2016
- Contempt of Court – 15th July, 2016
- Trusts Law Reform – 5th April, 2017
- Regulation of Queen's Evidence: Immunity from prosecution & reduced sentences – 25th September, 2017
- Enforcement of Mortgage-type Security over Real Estate: Is Reform of the Law Necessary – 23rd November, 2018

FINAL REPORTS

- Review of the Corporate Insolvency Law and recommendations for the amendment of Part V of the Companies Law - 12th April, 2006
- Review of the Law Regulating Legal Practitioners in the Cayman Islands – May 2007
- Review of Corporate Insolvency Law in the Cayman Islands and Recommendations for the Amendment of Part V of the Companies Law (2004 Revision) – 15 July 2007
- Review of the Law Regulating the Relationship of Landlords and Tenants in the Cayman Islands – July 2008
- Review of the Legal Aid System in the Cayman Islands – July 2008
- Is there a need for enduring Powers of Attorney in the Cayman Islands – 30th April, 2009
- Protection against Domestic Violence – 31st March, 2010
- Review of the Law regulating Charitable Organisations in the Cayman Islands – 31st March, 2010
- Tort Reform – 26th November, 2010
- Arbitration Law Review – Final Report 4th January 2012
- Introduction of the Office of the Administrator-General in the Cayman Islands – 8th August, 2012
- Enforcement of Foreign Judgments and Interim Orders Part I: Interim Orders in Aid of Foreign Proceedings – 8th March, 2013
- Enforcement of Foreign Judgments and Interim Orders Part II: Enforcement of Foreign Judgments – 8th March, 2013

- Sexual Harassment – 1st May, 2013
- Review of Legislative Protection for Whistleblowers in the Cayman Islands – 3rd December, 2014
- Legislative Protection of Whistle Blowers - an Examination of the Legislation in the Cayman Islands and other Jurisdictions – 5th December, 2014
- Stalking Legislation – 5th February, 2015
- The Way Forward For the Regulation of Timeshares in the Islands – 24th August 2015
- Review of the Matrimonial Causes Law (2005 Revision) and the Maintenance Law (1997 Revision); the Family Property (Rights of Spouses) Bill, 2016 – 24th August, 2015
- Modernisation of the Regulation of Strata Titles in the Cayman Islands – 9th November, 2016
- Directors Duties: Is Statutory Codification Needed – 30th March, 2017
- A Review of Litigation Funding in the Cayman Islands - Conditional and Contingency Fee Agreements – 26th January, 2018
- Regulation of Queen's Evidence: Immunity from Prosecution and Reduced Sentences – 20th March, 2018
- Trusts Law Reform – Final Report, 1st May, 2018
- Contempt of Court – Final Report – 23rd January, 2019

BILLS

- Legal Aid Bill, 2005
- Companies (Amendment) Bill, 2006
- Draft Residential Tenancies Bill, 2006
- Companies (Amendment) Bill July, 2007
- Legal Practitioners Bill, 2007
- Residential Tenancies Bill, 2008
- Draft Charities Bill, 2009
- The Trusts (Amendment) Bill - 26 June, 2009 (Draft)
- Protection Against Domestic Violence Bill, 2009
- Arbitration Bill, 2012
- Strata Titles Registration (Amendment) Bill, 2011
- Administrator-General Bill, 2012
- Foreign Judgments Reciprocal Enforcement (Amendment) Bill, 2012
- Grand Court (Amendment) Bill, 2012
- Sexual Harassment Bill, 2012
- Family Property (Rights of Spouses) Bill, 2013
- Foreign Judgments Reciprocal Enforcement (Scheduled Countries and Territories) Order, 2013

- Foreign Judgments Reciprocal Enforcement (Amendment) Bill, 2013
- Grand Court Amendment Bill, 2013
- Maintenance Bill, 2013
- Sexual Harassment Bill, 2013
- Charities Bill, 2014
- Penal Code (Amendment) Bill 2014 – Consultation Draft
- Protected Disclosures Bill, 2014
- Strata Titles Bill, 2014
- Timeshare Bill, Draft 2014
- Stalking (Civil Jurisdiction) Bill, 2014
- Funding of Litigation Bill, 2015
- Legal Aid Bill, 2015
- Whistleblower Protection Law, 2015
- Penal Code (Amendment) Bill, 2016
- Contempt of Court Bill, 2016
- Matrimonial Causes Bill, 2016
- Timeshare Bill, 2016
- The Tourism (Timeshare) (Amendment) Bill, 2016
- Plea Bargains Bill – Discussion Draft - August 2017
- Draft Consumer Protection and Guarantees Bill, 2017
- Draft Trusts (Amendment) Bill, 2017
- Contempt of Court Bill, 2018
- Criminal Justice (Offenders Assisting Investigations and Prosecutions) Bill, 2018
- Trusts (Amendment) Bill, 2018
- The Private Funding of Legal Services Bill, 2018
- Contempt of Court Bill, 2019
- Penal Code (Amendment) Bill, 2019
- Anti-Bullying (Schools) Bill, 2019

REGULATIONS

- Legal Aid Regulations, March, 2006
- Accountant's Reports Regulations, May 2007
- Legal Aid Regulations, 2015
- The Private Funding of Legal Services Regulations, 2018

ANNUAL REPORTS

- Annual Report no. 1 – 16th September, 2005/31st March, 2006
- Annual Report no. 2 – 1st April, 2006/31st March, 2007
- Annual Report no. 3 – 1st April, 2007/ 31st March, 2008
- Annual Report no. 4 – 1st April, 2008/ 31st March, 2009
- Annual Report no. 5 – 1st April, 2009/ 31st March, 2010
- Annual Report no. 6 – 1st April, 2010/ 31st March, 2011
- Annual Report no. 7 – 1st April, 2011/ 31st March, 2012
- Annual Report no. 8 – 1st April, 2012/ 31st March, 2013
- Annual Report no. 9 – 1st April, 2013/ 31st March, 2014
- Annual Report no. 10 – 1st April, 2014/ 31st March,2015
- Annual Report no. 11 – 1st April, 2015/ 31st March, 2016
- Annual Report no. 12 – 1st April, 2016/ 31st March, 2017
- Annual Report no. 13 – 1st April, 2017/ 31st March, 2018

The Cayman Islands
Law Reform Commission

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Law Reform Commission
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