



# OFFICE OF THE PREMIER

CAYMAN ISLANDS GOVERNMENT

## Statement on Fair Employment Opportunity Commission

By Premier Hon. Alden McLaughlin, MBE, JP, MLA

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Mr. Speaker, it is almost impossible to turn on our computers or televisions these days without seeing some news story regarding immigration, including anti-immigrant sentiments, expressed by politicians, nationalists and people worried about job losses around the world. Cayman is no different in that respect and increasingly anti-immigrant sentiments are seen and heard on the talk-shows, television, social media and wherever Caymanians gather.

Mr. Speaker, as I wound up the budget debate in this Honourable House in November, I spoke about the benefit of immigration and the need for us to protect the rights of Caymanians but I also warned against falling into the trap of xenophobia. I noted that Cayman owes much of what we have in development and opportunity to immigration. It was immigration and inward investment that allowed these Islands, and all of us, to progress as we have done these past 50 years.

I also noted that immigration, like fire, is a good servant but a bad master. We must ensure that businesses have the workers they need to grow and prosper, and in so doing to help

Cayman and Caymanians prosper and thrive. But while we appreciate the benefits of immigration we cannot ignore the local concerns regarding immigration; concerns that have challenged government after government ever since the Cayman Islands population first started to really grow. In the main those concerns have been about jobs. In the early stages those who inhabited these hallowed halls responded to the need for control of immigration and the economy by passing the Work Permit Law in 1969. But as the number of work permits grew, so did the concerns and by 1971 it was thought necessary to pass the Caymanian Protection Law. Following numerous amendments over the next 2 decades the legislation was revised and modernised and in 1992 the Immigration Law was passed. In the ensuing years there has probably been no other law that has been amended more times than the Immigration Law - mostly seeking to get a fair balance between employers having access to needed workers from overseas and ensuring that Caymanians are treated fairly and have opportunities for employment.

But complaints of discrimination against Caymanians in the labour force remain widespread. As I have said, these are not new; however, the complaints and resentment are growing, and to date no amount of change to the Immigration Law has alleviated the concerns. The stories about Caymanians being treated unfairly in the labour market are legion. Personally, hardly a day passes that I do not hear an anecdote of a Caymanian being discriminated against or treated unfairly with respect to employment. By being treated unfairly I am talking about qualified Caymanians who are able to do a particular job being unjustifiably refused an opportunity to work or being passed over for a training opportunity or promotion. Indeed, at times they may not even have received an opportunity for an interview. In some cases we know the stories first hand, either through constituents, family or friends and so know them to be true. That having been said, I acknowledge that not every

complaint is valid - we also know the stories of the people that we have helped acquire a job, with employers giving them a chance, sometimes a second chance, only to find ourselves feeling disappointed when the individual leaves the employment without good reason - expecting the country or an elected member to bear the burden of their living costs.

I mention this Mr. Speaker because we have to be honest with each other as Caymanians. But I want to focus today on those Caymanians who try hard to find and keep employment. And who come to us feeling let down because despite their experience and their qualifications they feel shut out of the job market.

Mr. Speaker, besides complaining about this issue publicly all that successive generations of legislators have done is to keep tweaking the Immigration Law to fix one loophole or another so as to try to ensure fair opportunities for Caymanians. It is time that we cease tinkering at the edges and accept that a fundamental change is necessary if we are to address this longstanding and growing issue of discrimination against Caymanians in the job market. In an economy that is growing and that has as many work permits as we do, it is simply unacceptable that a qualified and experienced Caymanian should not find employment. My Government is determined to fix this issue, which is threatening to undermine the social fabric of these beloved Islands we call home.

Mr. Speaker, one of the key measures we are taking is development of a Human Resources Department, whose remit will be to better regulate the labour market, including access to work permits. But this will not be enough, so we are also proposing to change the laws regarding the advertising of jobs as well as implement a National Jobs Clearinghouse to improve the transparency and fairness of the labour market.

But this too will not be enough - and I know that we will still hear complaints about discrimination. And when we do hear them, what are we as elected members able to do? Should we simply resort to tweaking the Immigration Law and Regulations yet again?

No, Mr. Speaker successive governments have tried this approach over the last 45 years and it has only led to an Immigration Law that has become even more complex and burdensome to manage.

And even more attempts at increased enforcement of the Immigration Law will have limited success in alleviating the concerns of discrimination in the minds of Caymanians. There is a fine line between ensuring companies follow the law regarding the hiring of Caymanians, and having an over-bearing enforcement approach that discourages business. Incentivising businesses to hire Caymanians has also been discussed for some time but has never really gotten off the ground. However, we do intend during this year to dust off and implement plans for what has been called the accreditation system that will seek to reward those businesses that do the right thing regarding the hiring and training of Caymanians. But this too will not resolve concerns of fair treatment. There is a need for an avenue for Caymanians to go when they have concerns regarding hiring practices. My Government will address this vacuum by establishing Cayman's first Fair Employment Opportunities Commission.

Employers and immigrants have access to an Immigration Appeals Tribunal if they believe that a work permit or permanent residency application has been incorrectly refused. If you are employed and have a complaint against your employer you have access to the Labour Appeals Tribunal. But if you are a Caymanian jobseeker and believe that you were incorrectly treated when applying for a job or bypassed for a promotion, you have nowhere

to go. The practice of writing a letter to the Immigration Board may sometimes result in the work permit application for a non- Caymanian being refused, but it rarely results in the complainant being given the job in question.

Ironically, while many Caymanians look to the Immigration Law & Department for protection against discrimination, the Immigration Law does not in fact specifically address discrimination against Caymanians - there are no references to "discrimination" in the Immigration Law (2015 Revision). Due to the lack of a legislative mandate for the Immigration Department, there is no official process for handling complaints of discrimination from job-seekers or those seeking promotion. Hence the department is frequently criticised for "failing to protect Caymanians" and for "failing to enforce the law".

The Fair Employment Opportunities Commission, which we propose, with its legislated framework would fill a gap that now exists.

It is not just the Immigration Law that is inadequate with regard to anti-discrimination provisions.

Section 80 (1) of the Labour Law (2011 Revision) states that "no person (whether an employee or employer) may discriminate against another by reason of race, colour, creed, sex, pregnancy or any reason connected with pregnancy, age, mental or physical disability." Penalty for doing so is a maximum of 12 months in prison and a \$5,000 fine.

Section 80, which consists of 135 words, does not apply to Caymanians per se and applies only to "employees and employers", i.e. it excludes job applicants.

Women, by contrast, have had extensive protection against workplace discrimination since the Gender Equality Law was passed in 2011.

Neither does the Labour Relations Bill in its current form significantly enhance protection against workplace discrimination for Caymanians

Finally, while the Bill of Rights contains protection against discrimination this only applies "vertically", that is between individuals and government. Specific laws are required to apply the rights "horizontally", between individuals and other parties.

In summary there is no current law to protect Caymanians from discrimination by employers and no process by which Caymanians can officially complain or seek redress against instances of discrimination.

The Fair Employment Opportunities Commission would supplement other tools for ensuring the hiring of Caymanians while also providing Caymanians with the assurance that Government and law abiding employers do care about Caymanian employment.

It would also have the ability to sanction. Exactly what those sanctions involve will need to be decided but would likely include administrative fines on businesses that are deemed to have hiring practices that are unfair to Caymanians.

The Commission will be independent to avoid possible perceptions of bias toward business and must be able to maintain a balance and to apply the relevant aspects of the law. As such it would be headed by a Commissioner appointed by the Governor in a manner similar to the appointment of the Auditor General and Ombudsman. It is envisaged that the Commissioner would be an experienced attorney or retired judge and the office would be staffed by individuals with legal and investigative skills.

This will not be some form of affirmative action commission. But it will be a commission that will consider the law and determine whether the complaint of unfair treatment is valid. It will

be important that the business community and public do not believe that this body is subject to political interference but instead operates independently and in accordance with the rule of law.

In addition to providing Caymanians with an avenue to seek redress when treated unfairly, a Fair Employment Opportunity Commission will provide other benefits. Whilst there are Caymanians who believe that Caymanian job-seekers are frequently discriminated against by employers, there is no data by which the government or the general public can correctly gauge the real extent of the problem, the effectiveness of existing legislative and enforcement efforts or the impact of new measures to reduce this discrimination. The work of a Fair Employment Opportunity Commission would, over time, provide data regarding the occurrence of such incidents and what segments of the job market are more impacted by incidents of real or perceived discrimination.

There are no proactive measures to prevent workplace discrimination against Caymanians. There is also no campaign to educate Caymanians as to their employment rights and/or what to do if they believe their rights have been violated. A Fair Employment Opportunities Commission would also perform these duties.

Such a commission is not a unique idea Mr. Speaker. Indeed many countries have similar commissions under names such as Equal Opportunity Commissions and Equal Employment Opportunity Commission. So we are not implementing something entirely novel.

Mr. Speaker, it is our intention to consult widely with the business community with regards to the proposed Fair Employment Opportunity Commission. We also intend, as part of the exercise regarding the creation of a new Human Resources Department that a new work

permit regime operates efficiently and effectively without undue delays, providing a high level of service.

As I said at the start, this Government recognises the importance of businesses having access to quality, necessary personnel but we also recognise that we need to do something new to ensure that Caymanians not only believe that they will be treated fairly in the job market but where they do not so believe, that they have an avenue to take their grievances. If we do nothing and allow the current beliefs of unfairness to fester and grow, we may end up where the Bahamas was in the 1970s with an unsettled business climate and great resentment amongst local people and with business leaving our shores.

If properly set up, Mr. Speaker, within a legal framework and operated in an independent and fair manner, a Fair Employment Opportunity Commission can only be considered as something positive by Caymanians and within the business community.

If a business is operating as the law requires and is treating Caymanian job applicants fairly then they will have nothing to fear regarding the implementation of such a commission.

Mr. Speaker, this is an important initiative and one I wanted to share with the Honourable House and the public at the earliest stage possible. We will move the initiative through the machinations of the Government process including consultations with all stakeholders. You can expect to hear more about this in the coming months.

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