

2013

THE YEAR IN REVIEW



2013 was a year with a number of developments of note which affected the human rights landscape in Bermuda. Centre for Justice provides the following as a survey.

Human Rights Act 1981

The most notable development in Bermuda was the prohibition of discrimination based on sexual orientation or age. This was accomplished by amendments to the Human Rights Act. This victory was due to the activism and staunch dedication of campaigners, who continued the fight undeterred by years of disappointment and unfulfilled promises. Centre for Justice is proud to have supported this campaign.

Harassment

Before amendments to the Human Rights Act were approved by the legislature, the Government had included a provision on harassment in the original bill. Centre for Justice was concerned by the unexpected provision, which would have resulted in police officers being shielded from human rights complaints in the exercise of their stop-and-search powers. After some advocacy, Centre for Justice is pleased to report that the Government responded to these concerns by removing the provision in its entirety.

While we would have preferred to have seen the harassment provision remain, but without the exemption for the police, we note that the Government plans to revisit the issue at a later point in time. To that end, Centre for Justice prepared a policy proposal to the Government addressing the question of discriminatory harassment. We look forward to continuing to focus on this issue in 2014.

Charging Guidance under PACE

One of our first victories for the year was the publication of “charging guidance” issued by the Director of Public Prosecutions under section 36 of the Police and Criminal Evidence Act 2006. That guidance outlines when the police are permitted to issue formal cautions in place of pursuing criminal prosecutions.

Until last year, what the guidance actually said was generally unknown. In the interest of fairness and transparency, Centre for Justice took the DPP to court to have the guidance made publicly available. We are pleased to report that settlement of the court case involved publication of the previous guidance issued in Oct 2010 and the replacement guidance issued in Feb 2013. We look forward to the Government taking the next step and placing the formal

cautioning programme on a firm statutory basis by bringing section 36 into effect.

Stop and Search

Centre for Justice continues to advocate for the repeal of section 315F of the Criminal Code, which permits police officers to stop and search individuals without reasonable suspicion. Not only do we believe that this provision offends against the Constitution, we also note its damaging impact on young people in Bermuda and suspect that it is counterproductive to effective community policing. In our opinion, the Bermuda Police Service (BPS) has a number of other powers to enable them to investigate crimes and keep Bermuda's residents safe.

The good news is that the downward trend in the use of this tactic by the police continued in 2013. According to statistics released by the BPS, the 2nd Quarter of 2013 saw the lowest incidence of stop and search since the 2nd Quarter of 2009 (down from a high in the 2nd Quarter of 2011). While this is a positive development, it is unacceptable that an unconstitutional tactic remains on the lawbooks.

In August 2013, a US Federal District Judge took the same view when she ordered a halt to the New York Police Department's blanket use of “Stop-and-Frisk” and placed it under federal supervision. The matter has been appealed, and we wait to see how the new Mayor of New York, Bill de Blasio, will take this matter further.

Corporation of Hamilton & Wheel Clamping

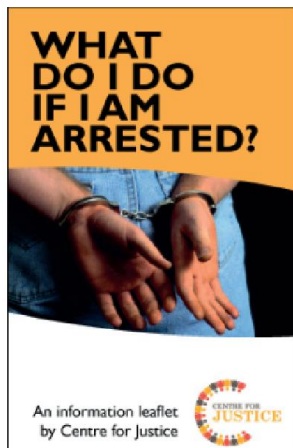
Centre for Justice recently made public its concerns about the Corporation of Hamilton's wheel clamping policy in the city. It is our view that the Corporation does not have the right to enforce this policy because its 2007 Ordinance created to give it this power was never gazetted, as required by the Municipalities Act 1923. It never became effective in law and therefore the Corporation never had the right to clamp cars and fine motorists.

This was under our mandate to promote the rule of law. We also provided information to the public to assist them should they feel they have a claim to a refund of any fees paid under this policy.

2013 was also a very busy year for Centre for Justice in terms of our public education focus. We have produced several guides on legal issues of interest to the community.

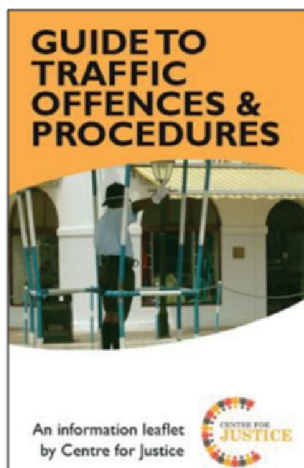
What do I do if I am arrested?

This is a leaflet designed to assist anyone who finds themselves in police custody without a lawyer. It starts by focusing on such topics as: talking to the police, being stopped and searched, and being arrested. It guides the reader through information on their rights in custody, participation in an identification procedure and how to get free legal advice.



Guide to Traffic Offences & Procedures

This guide will assist anyone finding themselves with a traffic ticket or summons to court for a motoring offence. It is particularly geared towards an area of our justice system where the assistance of lawyers is quite rare. The "Traffic" leaflet starts by focusing on such topics as: being stopped by the police and what happens if you are disqualified from driving. It explains some of the responsibilities concerning parking, seatbelts and maintaining your vehicle.

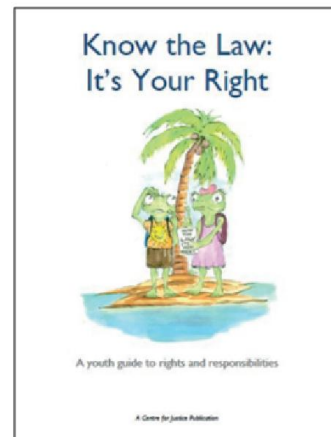


There is also an appendix to show some of the more commonly encountered offences, and the accompanying penalties for motorists found guilty.

Know the Law: It's Your Right - A youth guide to rights and responsibilities

Produced to give middle-school aged students in Bermuda the opportunity to learn basic laws and understand their rights and responsibilities, this youth guide was developed in consultation with key stakeholders, including middle school students, educators, child welfare professionals, law enforcement professionals and community leaders.

The guide provides an overview of the legal landscape and aims to encourage readers to consider the consequences of their actions, the choices and alternatives available to them and the impact of those choices on themselves and others.



Bermuda Cases goes live!

Centre for Justice is very proud to have launched our series of case summaries online in collaboration with Justis Publishing. Users of our website will find 110+ cases online, and we will continue to update it on an ongoing basis.

What to expect in 2014

Centre for Justice has a number of publications in the pipeline. Stay tuned for legal guides on the following:

- The Criminal trial process
- Criminal Appeals
- Labour Law
- Judicial Review
- Constitutional Rights and the European Convention on Human Rights
- Human Rights Act

Cases to Highlight

Smith v Minister of the Environment [2013] SC (Bda) 8 App

This judgment arose out of a long-running complaint of racial discrimination to the Human Rights Commission. Judge Hellman of the Supreme Court held that because everyone should have an equal opportunity to live without facing discrimination, the protections in the Human Rights Act 1981 should be interpreted broadly. He also endorsed a broad right to appeal human rights complaints to the Supreme Court.

To watch out for

In late 2013, the Government tabled extensions to contentious amendments made in 2010 to the Criminal Code and Firearms Acts, which were originally scheduled to last until 31 December 2013. The Firearms Act allows the police to hold certain individuals accused of firearms-related crimes in detention for up to 28 days without charge. The Criminal Code Act also allows the police to disperse any individual from certain designated anti-social 'hotspots' or risk facing arrest.

Centre for Justice will continue to monitor the impact these provisions, and others, will have on civil liberties.