

Bermuda HealthCare Patients Want Their Files Back!!

A week and a few days after a standing-room only meeting held at the Dr. E. F. Gordon Hall on Wednesday (March 13, 2019) patients of Bermuda HealthCare Services and Brown-Darrell Clinic whose files were seized by members of the Bermuda Police Service more than two years ago, took their complaint to Government House on Friday, March 22, 2019. Over 70 patients joined a caravan of buses traveling to Government House, then Hamilton Police Station to deliver the letter to the Police Commissioner and lastly to the House of Assembly to deliver it to the Premier and Members of Parliament.

Below is the letter that was delivered to the Governor and others:

March 22, 2019

His Excellency, Mr. John Rankin
CMG Governor of Bermuda
II Langton Hill Pembroke HM 13,
Bermuda Your Excellency,

RE: Patients Rights-
Unlawful Seizure of Files

We, the undersigned, are patients of the Bermuda HealthCare Services and Brown-Darrell Clinic ("the Clinics").



Photo courtesy of Trevor Lindsay of Bermuda News As It Happens

As you will no doubt be aware, approximately two (2) years ago, the Bermuda Police Service ("BPS") gained entry into Bermuda HealthCare and broke into Brown-Darrell to search and seize patients' medical files, including all of ours. Through a publicized videotaping of the search and seizure, the general public witnessed the BPS covering the security cameras at the Clinics so that we could not see what they were doing with our files. The Clinics' attorneys immediately went to Court and were successful in obtaining a Court Order preventing the BPS from further access to our files. However they were not returned to us at that time. Instead in February 2017, the BPS were allowed to copy our seized

files, and could only access them by making and being successful in a further application to the Court. They made that application in June 2018. In February 2017, we deemed it necessary to retain our own attorneys to represent us, the patients. It is in this capacity that we write this letter.

On 12th February 2019, the Court ruled that the BPS may have access to our files for anonymous review. We have instructed our attorneys to appeal this decision because we do not consent to our files being seized, accessed, anonymized, redacted or analyzed. We believe that it is a breach of our fundamental rights to

(continue on page 4)

AIDS WARNING

To all of you approaching 60, have reached 60, or have past 60, this message is specially for you.

Senior citizens are the leading carriers of AIDS!!!
Yes, AIDS

HEARING AIDS
BAND AIDS
WALKING AIDS
MEDICAL AIDS
GOVERNMENT AIDS
and most of all
MONETARY AID
(to their kids)
Oh, and let's not forget HIV
(Hair is Vanishing)

Make sure you pass this warning on to all your friends, they deserve a smile today.



Respectfully Submitted
by Nurse Beverley Howell MA BScN (Hons.) R.N.

On March 18, 2019 according to society I am NOW a 'Senior Citizen' so I decided to have a little humour for this column since from my perspective AGE is just a number and does NOT define me!!.

Besides You ALL know I LOVE an Acronym
so I am a G.E.M. ~ a Genuine Energized Model

Let's be clear a GEM is PRECIOUS so read this hilarious

'AIDS WARNING for SENIORS'~
SMILE and have a LAUGH with Me!!

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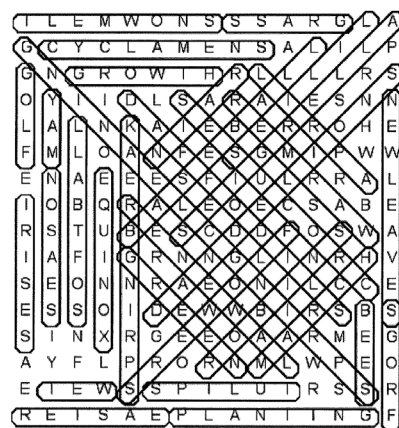
**GENERAL COUNCIL
REPRESENTATIVES**
Shirlene Simons
David Bean

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PUZZLE • SOLUTION

SPRING

This is the solution to the puzzle located [here](#).



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SEASON
SNOWMELT
SOFTBALL
SPRING BREAK
SPRING CLEANING
TULIPS
WARMER
WET

The hidden sentence is: APRIL SHOWERS BRING MAY FLOWERS

The Combined Opposition is Alive and Well in Bermuda

In my opinion it is no small wonder that Premier David Burt stated the following during the Motion to Adjourn on February 15, 2019 “Mr. Speaker, it is now crystal clear that the Royal Gazette has joined hands with the Opposition, One Bermuda Alliance, in a concerted effort to cast doubt and irreversible tarnish this Government’s work in the diversification of this economy”. As I see it, Premier Burt just cited one occasion where the “Royal Gazette has joined hands with the Opposition”, but one only has to read the newspaper on a daily basis to see that the Royal Gazette is a part of the “combined opposition”.

During his farewell speech, after retiring from active politics, former Premier Ewart Brown stated “The combined opposition has never been weaker, never been more desperate, and never been more deadly. A wounded, cornered animal is perhaps the deadliest of all the denizens of the wild. Never forget that”. That was in 2010. However, nine years later, in the year 2019 the “combined opposition” is weaker and more desperate that it was in 2010, and this is mostly due to the landslide victory in 2017. Back in 2010, the PLP had 22 seats and the UBP (now OBA) had 14 seats. But in today’s Parliament, the PLP Members of Parliament occupy 25 seats, while the OBA only occupy 11 seats, hence making the Opposition of more wounded animal.

And indeed, the combined opposition is more desperate than ever. This is evidenced by the front page of the Royal Gazette. I’m sure I can go back further, but in this instance I will just refer to the front page stories carried in Bermuda’s only

daily newspaper for the past week. Every article written about the PLP is a negative one. Listed below are some of the most recent headlines:

“Concern over new line up at the Human Rights Commission”

“PLP under fire for media contract”

“No contract for \$1.67 bus schedule”

“Report critical of school safety”

“School Janitor: Mould (sic) made me sick”

“Burgess draws race card over next DPP”

The accompanying stories to the above-mentioned headlines have all been negative about the Progressive Labour Party Government. In fact, since the PLP’s victory at the polls in July 2017, there have been few positive stories written about the PLP Government, the Party or any of its members. Yet, in the ensuing two years since Bermuda went to the polls, there have been few, if any negative articles written about the Opposition OBA or any of its members, elected or otherwise.

However, since the 2017 General Election the PLP, under the leadership of Premier David Burt has fulfilled the following Platform Promises amongst others:

- Levelled the playing field for black businesses by reforming government procurement policy
- Reversed OBA cuts to Scholarships, expanding access to scholarships and providing financial support to 445 students to ensure access to Bermuda College for all Bermudians
- Introduced the first STEAM programme into Bermuda’s public schools, preparing our Bermudian youth for the careers and economy



IN MY OPINION

BY LAVERNE FURBERT

of today and tomorrow

- Amended the Immigration Act to give it priority over the Human Rights Act.
- Created the Violence Reduction Programme to rehabilitate violent offenders and reduce the reoccurrence of violent, aggressive behaviour
- Ended the forced conscription of young Bermudian men and have created new career opportunities within the Royal Bermuda Regiment
- Provided government workers with their first pay increase in almost a decade
- Introduced a Housekeepers training Program with our hotels, the Bermuda Hospitality Institute and the Ministry of Workforce Development that protected entry-level positions for Bermudians and provided participants with certification from The American Hotel and Lodging Association.
- Created a Summer Entrepreneurship Program for our Bermudian youth to cultivate and encourage entrepreneurship while creating an opportunity to earn money over the summer
- Created the Land Title Registry to protect Bermudian home ownership

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Bermuda HealthCare Patients Want Their Files Back!! (continued from page 1)



Photo courtesy of Trevor Lindsay of Bermuda News As It Happens

privacy and patient confidentiality for the BPS to continue to access and use our files without our consent.

In simple terms, we object to our files being seized and copies held without our consent in the strongest way. Further, we take the view that this must be contrary to the public interest and a fundamental breach of our rights. Our medical files contain our extremely private history of some of the most painful and stressful experiences of our lives. Our medical files belong to us. We confided in our doctor things that we have never disclosed to our husbands, our children, our parents, our employers or our friends on the clear and fundamental understanding that this information was to be held in strict confidence and would not be shared with anyone else. As long as the BPS are in possession of our files against our consent, many of us stand to be further humiliated and the fundamental principle of doctor-patient confidentiality is undermined and eroded. For our files to be taken and copies held without our consent is a violation of the gravest degree.

Suppose one of us has HIV or erec-

tile dysfunction, or has had cancer or herpes and has required various tests to monitor our myriad symptoms. Perhaps one of us has experienced complications from a surgical abortion we had many years ago before we married or during our marriage, and that information is the reason our doctor detennined that periodic CT Scans of our abdomen/pelvis were necessary. No matter how anonymous our files are made, they will not be anonymous in the end when and if one of us is forced to testify to having had an abortion in order to truthfully state why we believe a test was ordered. Governor, please imagine how embarrassing that would be. This is precisely why there is a fundamental principle of confidentiality between doctors and patients. Otherwise, patients do not feel free to disclose and discuss what is necessary for doctors to treat us properly.

Imagine the nightmares many of us are having at the thought of the authorities reading our medical files. The small size of Bermuda also must be taken into account when carrying out the "public interest" test. Members of the BPS are our neighbours, sit next to us in church, work with

us, chat with us in the grocery store. Imagine how terrifying the thought is that our neighbors and the general public will know things about us that our husbands and wives do not even know. There are others of us who have no issue with our information being known to others per se but are requesting our files back out of principle because we do not consent to the BPS seizing our file without asking their permission. Please see enclosed a USB stick with a video clip from a recent meeting that took place between us and our attorneys.

It is important to differentiate this case from other cases where it may be appropriate to override doctor-patient confidentiality in the interest of the public; these cases are made only where the indiciae of fraud are so overwhelming that there is no room for differences in judgement about medical necessity. This is clearly not one of these cases. Here, Governor, we direct you to the words of our very own former Chief Justice Ian Kawaley in a ruling involving this very same matter: "...complex criminal fraud cases not involving obvious dishonesty (such as cases based on false invoices) are notoriously difficult to prove in all parts of the world where jury trial is the mode of trial for such cases".

Save in a national emergency, the BPS and/or DPP are not permitted to take such extreme action? The BPS never once came to any one of us to ask if they could take or use our files nor did the BPS ever invited any one of us to make a witness statement in relation to any criminal

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Bermuda's Continued Struggle with Racism

When you read through the opinion page of the Royal Gazette (RG) you realize how far we have not come as a country when it pertains to race. The Royal Gazette itself displays its role in keeping the question alive when it prints only certain aspects of the news and which community is shown in the most negative light especially its leadership.

There are only one or two, or maybe three black Bermudians who have dared express an opinion on this RG opinion page commonly known as the blogs, and often when they do they are subject to what I call selective censorship. I have experienced that in my attempts to express an opinion. You often see a red strip which claims you have not logged in correctly; or a RG explanation which claims that the paper is reviewing your opinion - which means that opinion will not see the light of day. You can see the opinion on your computer but no one else will and eventually your opinion is deleted. I have had that experience many times while others who have expressed an opinion on the same subject are given the green light.

I will give you two examples of this happening to me. One dealt with Bermuda being placed on the EU black list of tax exempt countries and the other a response to how Bermudians should come together written by another writer on the same page. Both of my opinions were blocked by the editor expressly put there to monitor comments posted which turn out to be of a

controversial nature, at least in the eyes of those who considered them to be too critical of the status quo.

As I said, I shared my opinion on Bermuda being put on the EU black list which most posters blamed on the PLP government. Premier Burt stated that "the buck stops here", meaning at his desk, that famous president Truman statement. I stated that for Bermuda to be placed on the EU stop list was not the fault of Premier Burt because the EU had been gunning for Bermuda and for a host of offshore businesses for some time and that includes England which made its own demands with respect to Bermuda's international business and which still threatens Bermuda if it does not go along with its wishes with regard to Bermuda opening up its offshore business books to England.

That is why Britain did not lift a finger in Bermuda's interests and went right along with the EU, You see a myth has been exposed, the myth that Bermuda is in a special relationship with England as its remaining largest colony.

There are still those who want to hang on to that myth. There are many fifth columns in Bermuda who would betray the interests of Bermuda to outside interests (England).

I attempted to write that there should be a united Bermuda to outside threats. I said that Bermuda's political divide should not come

THE OTHER ALTERNATIVE



BY ALVIN WILLIAMS

first. A recent example of this bipartisan support was shown in the government's protest against the idea that British citizens should have the right to vote in Bermuda's elections. This protest was supported by the OBA Leader, Craig Cannonier. Bermuda has struggled against this for years and we finally got rid of the three-year expat vote which allowed Commonwealth citizens (mainly British) the right to vote in our country.

I also pointed out the lack of unity on display when former OBA Finance Minister Bob Richards took the side of the Cayman Island leader against the former PLP Premier Paula Cox whose attempts to gather tax agreements which now in the wake of the EU black list appear to be of no value. This opinion was also blocked by the Royal Gazette as they took the side of those who raised their glasses at the prospect at increased problems to be faced by the PLP government.

CURB Defends Deputy Speaker Derrick Burgess' Comments

"Deputy Speaker, MP Derrick Burgess recently stated in the House that he hoped the next DPP is a Black, born Bermudian. This preference of the Deputy Leader is understandable, given that he felt the indignity of Segregation, witnessed and experienced the gross inequities that continued in Bermuda post Segregation, and is aware of the many inequities that continue today. He recognizes that one of the ways we can repair the harm of the past is to proactively ensure that moving forward there is a more appropriate recognition of Black Bermudians' value and expertise when it comes to positions of power and authority within our society. So he seeks fairness, a rebalance of the inequities of the past, and so voices that hope.

"Some have called this racist, and from online blogs and Facebook it appears his statement has offended a great many people of European descent, with many saying, "It shouldn't matter what color or gender the person is as long as the person is qualified and good at that job" or "It should be the person best suited for the job, not dependent on their colour/race/creed/sex." These statements are valid and fit into what the CURB mission states "A Bermuda where skin colours favours no-one." However we recognise this is an ideal that we aim for, but in reality the Census statistics clearly show the continuing inequities in the work and hiring environment, with the gap widening every year.

"Most of us intellectually and emotionally support these statements of fair and equal access, after all we're good people and we realise this is the



way it should be. However, the reality is we are not there yet, and for many Black Bermudians this is not their reality and from their perspective they ask where have the voices of Whites been when these inequities continue to be visited on people of colour.

"Just like Black Lives Matter activists are accused of reverse racism for asking not to be murdered by police; so are activists in Bermuda called racists for pointing out race and its inequities and asking for greater equality or access to opportunities. This is not about flipping the script and giving Black Bermudians access over Whites, instead it is about fairness, access and opportunities that have been denied and continue to be denied to Black Bermudians.

"For hundreds of years in Bermuda the edge, the advantages, access and the opportunities were primarily given to whites. Current day Census results continue to demonstrate these racial inequities. Now when there is a call for equal access and fairness, it is viewed as reverse racism by whites. It is not reverse racism, it is merely competition on a level playing field. For those who have always had access it feels like reverse racism.

"Black Bermudians continue to be passed over for employment opportunities, offered less compen-

sation or are simply not hired despite having the requisite qualifications. What is clear is that the facts show a much greater preference for the appointment of foreigners or Bermudians of European descent to positions of power or seniority both within our criminal justice system, and the broader work environment. This, despite the fact that Black Bermudians are both highly educated and capable of being appointed to such positions and at 70% numerically make up the majority of the Bermudian population.

"So as a society we must ask why is it that this imbalance continues? What is it that makes people again, and again, pass over Bermudians of African descent? How do we reconcile this reality with the statement on the Royal Gazette Facebook page that, "We just need to appoint the best person for the job no matter their skin color." We must ask ourselves what are we willing to do to repair the inequity that continues to harm our Black community today? How can we ensure that stereotypes, prejudice and discrimination does not continue to influence decisions about who should be hired, promoted or gain access to opportunities?

"The denial of race is a central narrative in the perpetuation of racism, and those who make claims of post-racialism, or who insist that to see race is to participate in racism only contribute to a growing divide. We must acknowledge the past has left our society damaged and divided, recognize the need to repair the harm, and take action to ensure the imbalance and inequities do not continue."

Dwayne Caines Announced as New Secretary and CEO of Corporation of Hamilton

The City of Hamilton recently announced the appointment of Mr. Dwayne Caines as the new Secretary and Chief Operating Officer.

Of the appointment, Mayor Charles Gosling, said, "This is a demanding position, one that requires a strong command of the law, broad communication skills and effective leadership and management abilities. We interviewed a number of qualified candidates for this role but it was Dwayne's vast experience and previous responsibilities that ultimately clinched our decision. His work on the strategic planning process at the Bermuda Police Service as well as his secondment to a government ministry speaks volumes to his capabilities and his references conveyed a very high regard to his team-building skills, accessibility and his positive effect on department morale. I'm delighted he has accepted the position as I believe he'll be a tremendous asset to the City."

Upon notification of his intended departure from the Bermuda Police Service, Commissioner Stephen Corbishley remarked: "I am delighted for Mr. Caines in light of his new role. He has given 18 years of public service with the BPS and possesses exceptional understand-



ing to the needs of communities across Bermuda and I am confident he will do the same for the City of Hamilton. He is a strong leader with integrity and independent thought and the BPS is sorry to see him depart but I look forward to working with him as a strategic partner in his new role."

Mr. Caines said of his new role, "I am humbled and honored to serve the people of Bermuda in this demanding and exciting role. It is an opportunity for me to use my leadership and strategic management skills to effectively move the City forward. I am also looking forward to meeting with the City stakehold-

ers to get a better understanding of their needs, ideologies and perspectives in order to make Hamilton more efficient, dynamic and inclusive."

Dwayne Caines has a Bachelor of Arts Degree in Public Relations with minors in Business and English from Oakwood University. His Post Graduate Studies were undertaken at Wayne State University in Michigan. Mr. Caines has also completed a number of courses in the United Kingdom on Project Management, Strategic Management and Leadership.

Mr. Caines is due to start his new role in May.



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Is an employer liable for acts of sexual harassment committed by employees?

In this third and final article in the series of articles on sexual harassment, I will look at a number of questions related to an employer's liability for acts of sexual harassment committed by employees.

These questions are important because many people would say, "How can an employer know what is going on between two employees?" or, "An employer cannot control sexual relations between two adults". You may ask "What happens if an employee is sexually harassed by a supervisor of the company or, did the company provide a written policy prohibiting sexual harassment?" These issues and other topics will be addressed under the following questions:

1. Does the Human Rights Act 1981 make an employer liable for acts of sexual harassment committed by employees?
2. When will an employer be liable for sexual harassment committed by a supervisor?
3. When is sexual harassment considered to have taken place on the job?
4. Does a written policy protect an employer from liability for acts of sexual harassment committed by employees?

I. Does the Human Rights Act 1981 make an employer liable for acts of sexual harassment committed by employees?



DELROY DUNCAN

The Human Rights Act 1981 ("the 1981 Act") does not contain a section which clearly states that an employer will be liable for acts of sexual harassment committed by employees.

Section 6B of the 1981 Act prohibits employers from harassing employees, but does not include a reference to sexual harassment. However, Sections 9 (1) and 9(3) of the 1981 Act are set out below. These sections, when read separately and jointly, clearly suggest that an employer can be found liable for acts of sexual harassment committed by supervisors and employees.

9 (1) No person shall abuse any position of authority which he occupies in relation to any other person employed by him or by any concern which employs both of such persons, for the purpose of harassing that other person sexually.

(3) A person who is an employee has a right to freedom in his workplace from sexual harassment by his employer, or by an agent of his em-

ployer, or by a fellow employee, and an employer shall take such action as is reasonably necessary to ensure that sexual harassment does not occur in the workplace.

Individuals and employees are personally liable for their acts and omissions. However, in some circumstances, the law of Bermuda will also make an employer liable to compensate employees for sexual harassment caused by another employee when those acts occur during the course of their employment. This approach to making an employer liable for the acts of employees is taken from the general legal principle called vicarious liability. Simply stated, *vicarious liability* makes an employer liable for the wrongful conduct of an employee.

Employers should beware, in the recent Bermuda human rights case of *Apex Construction Management Limited v Battiston, Mason and Grant* decided in April 2015; Chief Justice Kawaley made it plain that the potential liability of an employer for the conduct of an employee was not confined to *vicarious liability*. The case concerned discrimination in relation to employment on the ground of race, however, relying upon the Canadian Supreme Court legal authority *Robichaud v Canada (Treasury Board)* 1987 2 S.C.R. 84, the Chief Justice ruled that the primary purpose of the 1981 Act is to remove discrimination in Bermuda. The law of Bermuda will not be restricted by technical rules applying to vicarious liability when deciding whether an employer is liable for the conduct of supervisors or employees.

(continue on page 9)

Is an employer liable for acts of sexual harassment committed by employees? (continued from page 8)

In such circumstances, the law will be interpreted in a way to ensure relief is given to persons who have suffered unlawful discrimination. This means employers are more likely to be found liable for acts of sexual harassment committed by supervisors and employees.

Based upon the Apex Construction case and the Supreme Court of Canada legal authority Robichaud, it appears it is only a matter of time before the Supreme Court of Bermuda hands down a decision in which an employer is held liable for acts of sexual harassment committed by supervisors or employees. The courts of Canada have both extended and expanded the doctrine of vicarious liability to sex discrimination and sexual harassment cases, thus making employers responsible for the conduct of their employees.

II. When will an employer be liable for sexual harassment committed by a supervisor?

Sections 9 (1) and (3) of the 1981 Act clearly cover the potential liability of an employer for acts of sexual harassment suffered by an employee at the hands of a supervisor, or in circumstances where a supervisor does nothing to stop and/or report sexual harassment committed by another employee.

A series of cases decided in Canada and the United Kingdom suggest how the Courts of Bermuda may consider whether the behavior of a supervisor exposes an employer to liability for sexual harassment.

In *Tomkins v Public Service Electric Gas Co. (Tomkins III)* (3rd Cir.1977) the Court of Appeal decided that where an employer has actual or constructive knowledge of a supervisor's sexual advances and does not take prompt and appropriate remedial action, the employer may together with the supervisor be held liable for sexual harassment. Constructive knowledge simply means a person is aware of circumstances, which suggest they know the facts but either ignore the facts or pretend not to see the facts.

In the case of *Robichaud v Brennan* 1982, 3 C.H.R.R the tribunal found the employer liable for acts of sexual harassment committed by its employee, a member of the management, *primarily because the employer decided not to deal with the complaints of sexual harassment at all.*

The case of *Wall v University of Waterloo*, (Ontario 1996) 27 C.H.R.R considered what authority a supervisor held over an employee making a complaint of sexual harassment. The Board of Inquiry decided that because the supervisor had authority to make decisions that could

seriously affect the employee's position, the supervisor was part of the directing mind of the company. The company was therefore liable for the acts of sexual harassment committed by the supervisor.

Courts and Boards of Inquiry will take the following matters into consideration when determining an employer's liability for sexual harassment committed by a supervisor:

Was a policy in place to deal with the conduct when the sexual harassment occurred?

Did the employer have actual or constructive knowledge of the sexual harassment when it occurred?

Did the employer investigate and appropriately deal with the complaint of sexual harassment?

As stated in a previous article in this series of discussions on sexual harassment, the Courts in Bermuda rely upon decisions handed down from Boards of Inquiry and Courts in Canada, particularly, when the cases are decided in Ontario. For this reason, one can safely assume, it is only a matter of time before the Courts of Bermuda decide an employer is liable for acts of sexual harassment committed by a supervisor.

III. When is sexual harassment considered to have taken place on the job?

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Bermuda HealthCare Patients Want Their Files Back!! (continued from page 4)



complaint. That would have been the appropriate course, but it was never done.

Instead the BPS seized and are holding copies of our files without our consent. Our attorneys have advised us that there is a plethora of case-law world-wide to support the position that the authorities are not permitted to take our medical files without our consent in these circumstances. It is not in the public interest. This is the case even in the most serious of cases.

We want our files back.

We do not want anyone other than our doctors to see our medical records. We want copies of our medical files to be returned to us immediately. We are horrified, angry and insulted that the BPS are using our most private medical information against our express consent. We are indignant that our files have been retained without our consent. We are upset that in a world where democratic societies are designed to protect patient-doctor confidentiality, our understanding and agree-

ment that our files would be held in confidence, unless we expressly agreed otherwise, is being undermined and ignored. The stress that this has caused has had significant implications for some of us who already suffer from ill-health.

To be clear, we refuse to provide witness statements or testify if this matter ends up going to trial. The fact that we are even having to contemplate such events is nothing short of appalling. We refuse to be treated this way.

Your Excellency, we are coming to you with a desperate plea to support us given your Constitutional Authority with regard to the overall control of the BPS in our request to make this right and to have our files returned to us, and to ensure that patients and patients' private medical information are totally left out of any pursuit the BPS and DPP may have.

We fight not just for us, but also for all citizens of Bermuda, who need their fundamental rights to be able to disclose their health concerns to their doctors without fear.

We have been reliably advised that the BPS and the DPP are under your remit. Therefore, you have the power to review and inquire into this fundamental breach of our human rights. We respectfully beg you to instruct that our files be returned to us with no further delay and that the pursuit and attempted use of any of our private medical information be abandoned immediately. For all of the reasons laid out above, and in the particular circumstances of this case, we will not stop fighting for our basic human rights to have our confidential medical files returned and to have all of our medical information remain as it was intended to be- strictly confidential. Please direct all correspondence in reply c/o our attorney Victoria Greening of Chancery Legal, Chancery Hall, 52 Reid Street, Hamilton.

Respectfully submitted,

Signed by the Patients of Bermuda
Health Care Services &
Brown-Darrell Clinic

(See Signatures Attached)

cc: Hon. David M. Burt, JP, MP,
Premier of Bermuda

Members of Parliament

Sir Simon McDonald,
Permanent Under-Secretary of
State for Foreign Affairs, FCO, UK

Mr. Larry Mussenden, Director
of Public Prosecution

Mr. Steve Corbishley,
Commissioner of Police

Is an employer liable for acts of sexual harassment committed by employees? *(continued from page 9)*

An important question which arises is whether an employer should be concerned with an employee's behaviour during his/her off duty time? In the Canadian Supreme Court case *Robichaud v R*, 2 S.C.R.84 the Court decided that sexual harassment does not necessarily occur only in the course of employment. The phrase in the course of employment is interpreted broadly to include matters related to employment such as a conference outside the work premises.

The Canadian Courts and tribunals have stated that in the course of employment includes harassment by supervisors during off duty hours. The reasoning has been explained on the basis that if employers can discipline employees for offences committed off duty, such as theft and the use of narcotics, which can damage an employer's business, why shouldn't the same result apply when acts of sexual harassment have been committed by an employee outside working hours?.

Employers beware of the office

party. A court is likely to find that a social gathering of colleagues is an extension of the employees employment when the gathering is work related. In the United Kingdom case *Stubbs v Chief Constable of Lincolnshire Police and Walker* [1999] I.C.R. 547 the Employment Appeal Tribunal found that a policewoman was sexually harassed by a male colleague during an after-work function in a pub. The Chief Constable was found vicariously liable for his acts.

IV. Does a written policy protect an employer from liability for acts of sexual harassment committed by employees?

In the Canadian Supreme Court case of *Robichaud* previously referred to in this article, the Court stated that the existence of a policy against sexual harassment together with a mechanism to handle employee complaints, could provide an employer with a good defence.

An employer can take three proactive protective measures.

Firstly, the employer must make

sure that a comprehensive sexual harassment policy is in place. That policy should be readily available to all employees and include sensitivity training programs for managers, supervisors and employees on sexual harassment issues. The policy must include the process by which a complaint of sexual harassment can be brought to the attention of management.

Secondly, the employer must implement the policy, supervisors and managers must be made aware of the signs of sexual harassment and know what plan of action to follow. The company's policy and procedure should let employees know the company is committed to a sexual harassment free work place.

Thirdly, employers must effectively and thoroughly investigate incidents of sexual harassment reported by employees.

The source material for this article is the 2006 Bermuda Supreme Court case *Harris v Rice and Thorne* and the Third Edition of the book "Sexual Harassment in the Workplace" by Aggarwal and Gupta.

The Combined Opposition is Alive and Well in Bermuda *(continued from page 3)*

- Placed 4 new buses on the road to improve service and reliability
- Eliminated payroll tax for disabled Bermudians
- Slashed Payroll Tax for Bermudians earning less than \$96,000
- Increased seniors' pensions
- Decriminalized Cannabis under 7 grams
- Reversed OBA immigration policy that made it harder for Bermudian entertainers to earn a living
- Doubled the guaranteed capacity of the Bermuda Economic Development Corporation providing an

- option for Bermudian entrepreneurs who have been underserved by local banks
- Modernized hotel concessions to stay ahead of our global competition, while creating better accountability for hiring, training and promoting Bermudian workers and entertainers
- Providing tax relief for first-time entrepreneurs
- Expanding home Health and Seniors care benefit under HIP to provide additional income to families while reducing overall

- costs to the healthcare system
- Created a National Workforce Development Plan, in collaboration with our key stakeholders

In spite of the numerous positive initiatives emanating from Alaska Hall and the Cabinet Office, Bermuda's only daily newspaper chooses to focus on the negative. Is it because the Editor of the *Royal Gazette* is a friend and family member of the One Bermuda Alliance?

Snippets of Bermuda's Black History – Part II

Eliza Jane Lusher

Mrs. Lusher was born c.1819, the daughter of two slaves, Anthony Darrell and Lettice Jones. She married John Lusher in 1837 and subsequently gave birth to two daughters but became a widow in 1852. She risked her life caring for the military families at Ireland Island and although the Colonel at the time promised compensation for her before he died, she was never paid. In 1855 she petitioned the British Government to serve as a nurse during the Crimean War. The Governor gave enthusiastic support to her request but the British declined without explanation. This was the war that propelled Florence Nightingale to prominence. In 1856 there was a yellow fever outbreak. Lusher is credited with treating 85 persons over several months using her own medications and supplies. All of them survived, but were poor and unable to pay her. Sometime later she petitioned Government again. She explained that she had become seriously ill herself, her finances were depleted and she therefore applied for some compensation. Her petition was read in the House of Assembly on August 6, 1856 and was lost by 8 votes (AYES - 5, NAYS - 13). Eliza Lusher died in 1859. The cause of death is not known but in her petition she mentioned that she had become seriously ill. This invites speculations that she may have contracted yellow fever herself.



Stephen Richardson

Mr. Richardson was formerly a shipwright but as a pilot he rescued a young woman and her father from what could have been a fatal accident in November 1838. The two had attempted to land on the South Shore near Hungry Bay from the Brig "Jean" which was about three miles offshore. Richardson was piloting a four oared gig. The seas were very high and it was overset near a reef. Richardson swam to shore with the young lady and her father who was Archdeacon (Bishop) Spencer. In 1839 the Archdeacon provided the Church of England land for the building of Paget Glebe School and Southampton Glebe School for blacks. He was also instrumental in the establishment the Lane School as the first school for blacks in 1836

Augustus Swan

Mr. Swan was born in 1820 and at an early age distinguished himself as an apt pupil. At 17 year old he was a fellow teacher of Jeremiah Cocoran at the Lane School. The newspaper of the day reported that he was deserving of great praise for his management of affairs and teaching skills at the School. He left there in 1846 to open his private seminary at his residence where he taught many prominent people of the era. Swan was involved with many civic, charitable, church and self-help organizations. He became a successful city merchant and unsuccessfully ran for Parliament in 1849 becoming the first black man to go through the process.

Minister DeSilva Updates Public on New Bus Service



On Friday, March 22, 2019, the Minister of Tourism and Transport, the Hon. Zane DeSilva, issued the following Ministerial Statement regarding the public bus service. The statement is as follows:

“Mr. Speaker, this Government is committed to providing a quality public bus service that commuters, students and visitors can rely on. To this end, there are several initiatives underway at the Department of Public Transportation. These include:

- The New 2019 Bus Schedule
- New Bus Purchases
- Repairs and Maintenance
- Real-Time Passenger Information System, and
- Digital Fare Media

Mr. Speaker, this week marked the start of the new 2019 public bus schedule, which will address the shortage of available buses, eliminate bus cancellations and provide reliable service levels. The new schedule operates on 50 buses at peak times, which means there is some reduction in frequency, and is a temporary measure while DPT replenishes the aging bus fleet.

Mr. Speaker, The new bus schedule is off to a good start, with sufficient buses to meet the public bus schedule. The school bus service is

operating without the additional support of minibuses.

As the schedule is new, some adjustments are to be expected. The Operations team at DPT is closely monitoring the performance of the new schedule and actively addressing issues as they arise. For example, extra “sweeper” buses are being deployed to supplement the schedule, where required.

Mr. Speaker, 1901, the first of the eight (8) new buses was delivered in February 2019. The second bus will arrive by mid-April, followed by one bus every three weeks through August 2019.

Mr. Speaker, the Memorandum of Understanding (MOU) between this Ministry and the Rocky Mountain Institute was signed in November 2018 to explore greener options and a less costly bus service. A request for information (RFI) was issued in January of this year to identify suitable bus options. This information will be used to prepare the next request for proposal (RFP) for new buses.

Mr. Speaker, MAN (our bus manufacturer) and DPT technicians recently completed the mid-life refurbishment of fourteen (14), 2009 series buses. This involved the

replacement of the engine, transmission, and differential on each bus. This project will provide five more years of reliable operation for these buses.

Mr. Speaker, upgrading the bus service is not limited to new buses. Access to real-time updates on the bus service and cancellations is a reasonable expectation in 2019. DPT is working to provide real-time passenger information through online services, such as Google Transit and local third party applications (Apps). This will be implemented in 2019.

Mr. Speaker, consistent with modernizing the bus service, this Ministry recently concluded an RFI, and is in the process of preparing an RFP, for Digital Fare Media. The current system of cash, paper tickets and tokens is antiquated. Electronic ticketing provides revenue assurance and the ridership data necessary to analyze and improve the bus service. Having the ability to purchase tickets online, tap and go will improve access to the bus service and enhance the customer experience.

Mr. Speaker, the Department of Public Transportation is committed to moving Bermuda with a quality public bus service. These initiatives are evidence of the progress to date. Thank you, Mr. Speaker.”

Further to the update provided by Minister DeSilva, the Ministry of Tourism and Transport thanks the public for their patience and valued feedback on the new bus schedule. Please continue to email your comments to info@dpt.bm, where they will be logged and responded to. To report an issue by phone, dial 292-3851 and select the “dispatch” option. Also, go to www.gov.bm/bus to view and download the 2019 Bus Schedule to your desktop or mobile device.



FrontLine Employee

March 2019

Wellness, Productivity, and You!

Have a Good Mental Health Day at Work

If you suffer from depression and/or anxiety, you know that their symptoms don't park themselves at the front door when you arrive at work. They might affect your mood and productivity, with some days being worse than others. Be sure to develop a strategy for yourself so you can manage the symptoms that are making your day a struggle. Reach out to an employee assistance program. Contact a "health buddy" (someone with whom you can share or can create a scenario of mutual support), take rejuvenating short breaks away from the work site, or work with your medical provider to explore reasonable accommodations. Both you and your employer want the same thing: You feeling your best and benefiting from your skills and abilities.



Tech for To-Do Lists: Try Trello

Most of us use to-do lists, and there are now many to-do list apps to choose from. One is based on tech billionaire Lief Andreesson's personal method of managing his life. It's called Trello (and is available at [Trello.com](https://trello.com)). Its basic use is free. Andreesson is one of the founders of the Internet. He helped develop the web browser. Although a tech genius, he still uses 3"x5" cards for his to-do list. Still, Trello is digitally based on the way he creates, sorts, and edits cards. Put checking it out on your to-do list.



Gratitude's Got Science Behind It

The benefits of practicing gratitude have real science behind it. This principle recognizes that how we think and condition ourselves to think produces expectations and plays a significant role in our self-esteem, perception, decisions, and ability to manage stress. Research supports the benefits of practicing gratitude. In one study, those who wrote about gratitude ten minutes a day were more optimistic and felt better about their lives, exercised more, and had fewer visits to physicians than those who did not. Practicing gratitude is a simple process: You simply reflect regularly on the people and things you are grateful for.

Source: www.health.harvard.edu (Search: "thanks, happier")



Giving Feedback that Sticks

Advice about giving feedback often centers on reducing the recipient's defensiveness, not whether feedback will create change. However, there is a science-based approach for the latter. It's called "Situation – Behavior – Impact (SBI)." You can download a free tool that explains how to use it, developed by the Center for Creative Leadership, an international training and research institute. You'll enjoy its usefulness for improving workplace relationships. Three carefully coordinated elements comprise SBI: Identifying the *situation* needing feedback, describing the *behavior* needing change, and explaining the *impact* of the behavior in a way that prompts the recipient to make changes.

Download: <https://www.mindtools.com/blog> [search: "feedback tool"]



Information in *FrontLine Employee* is for general informational purposes only and is not intended to replace the counsel or advice of a qualified health or legal professional. For further help, questions, or referral to community resources for specific problems or personal concerns, contact a qualified professional. Add "http://" to source links to follow. Link titles are always case sensitive.

Helping clients and families through social work

ELEVATE is the theme for Social Workers Month this year. Celebrated every March, this year social workers at the Mid-Atlantic Wellness Institute (MWI) are educating the public on what they do. The ELEVATE theme means elevate how social workers practice, empower and collaborate for the betterment of the community they serve.

Social workers help people in all stages of life, from children to the elderly, and in all kinds of situations, from adoption to hospice care. Social work is one of the fastest growing careers worldwide, and the need is expected to double in the next two years.

At MWI, social workers support mental health, intellectual disability and substance abuse service users.

Vakita Basden, Child and Adolescent Services (CAS) social worker, explains, "I can spend an average of four hours out of a seven-hour work day providing services for CAS' inpatient unit when it is open. There are four inpatient beds at CAS. My work includes individual, group and family work along with case management. I also provide psychoeducation for groups, families and individuals who may have concerns regarding medication, parenting, grief, support or developmental stages."

Michelle Edwards is the social worker for Acute Mental Health Services.

"Social workers in mental health



Leroya Hardtman, Michelle Edwards, Vakita Basden and Teresa Martin.

play a critical role helping clients and families address the impact of enduring mental illness and providing supports for enhancing one's quality of life," Michelle says. "We work as part of the interdisciplinary healthcare team to assess and provide appropriate interventions for service users to achieve optimum recovery treatment goals and rehabilitation. We have to be aware of the latest local legislation. People may also not realise that I have to help an average of four tourists per year with repatriation overseas."

Teresa Martin, Turning Point Substance Abuse Centre social worker, assists patients with job readiness skills and facilitates sessions on effective communication.

"Turning Point services over 200

patients with dual diagnosis including a form of addiction," she says. "One of my jobs is to lead a life skills group for the patients so they can learn how to operate daily with as few difficulties as possible."

In Intellectual Disability, Leroya Hardtman is the social worker. "Social workers working with individuals with intellectual disabilities understand how this group faces particular risks for poverty and poor healthcare," she explains. "I have to navigate the complex web of social services available. I often work not only with the person with a disability but also with their caregiving families. Collaborating with community partners and agencies plays a significant role for a social worker working with the intellectual disabled population."

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SPRING

Find and circle all of the words that are hidden in the grid.
The remaining letters spell a message about Spring.

T	L	E	M	W	O	N	S	S	S	A	R	G	L	A
G	C	Y	C	L	A	M	E	N	S	A	L	I	L	P
G	N	G	R	O	W	T	H	R	L	L	L	L	R	S
O	Y	I	I	D	L	S	A	R	A	I	E	S	N	N
L	A	L	N	K	A	I	E	B	E	R	R	O	H	E
F	M	L	O	A	N	F	E	S	G	M	I	P	W	W
E	N	A	E	E	E	S	F	I	U	L	R	R	A	L
I	O	B	Q	R	A	L	E	O	E	C	S	A	B	E
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ALLERGIES
APRIL
BASEBALL
BEES
CROCUSES
CYCLAMENS
DAFFODILS
DANDELIONS
EASTER
EQUINOX
FLOWERS

FROGS
GOLF
GRASS
GREEN
GROWTH
IRISES
LILIES
MARCH
MAY
NEW LEAVES
PLANTING

RAIN
RENEWAL
ROBINS
SEASON
SNOWMELT
SOFTBALL
SPRING BREAK
SPRING CLEANING
TULIPS
WARMER
WET

SOLUTIONS ON PAGE 2