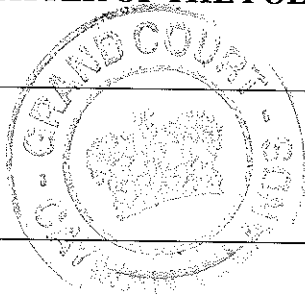


IN THE GRAND COURT OF THE CAYMAN ISLANDS

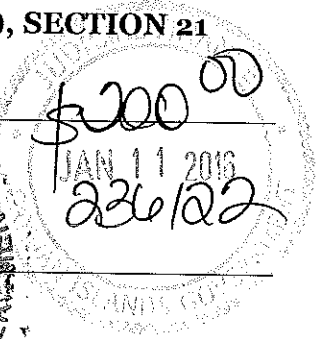
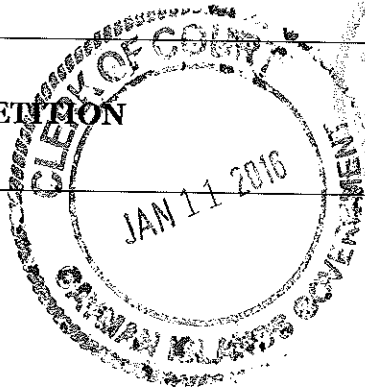
CAUSE NO. **Goody** OF 2016

IN THE MATTER OF THE BILL OF RIGHTS, SECTIONS 9, 16 and 19
AND

IN THE MATTER OF THE POLICE LAW (2014 REVISION), SECTION 21



PETITION



TO: THE GRAND COURT

THE HUMBLE PETITION OF:

- (1) The Royal Cayman Islands Police Association of P.O. Box 909, KY1 1103
- (2) Dane Pinnock of P.O. Box 909, KY1 1103
- (3) Claire Pinnock-Jackson of P.O. Box 10933, KY1 1007.
- (4) to (11) The police officers or former police officers listed in the Schedule to this petition.

PETITIONERS

and

- (1) The Commissioner of Police.
- (2) The Attorney General of the Cayman Islands.

RESPONDENTS

SHOWS THAT

The Relevant legislation

- 1. Section 21 of the Police Law (2014 Revision) ('**2014 Law**') (which revised the Police Law 2010) provides that:

(1) A police officer who has attained the age of sixty years, shall be retired without prejudice and may, in special circumstances and for such temporary periods, be accepted for such service as may be fixed by contract.

(4) The Commissioner may

- (a) in the public interest;*
- (b) on medical grounds; or*
- (c) to improve the efficiency of the organization*

call upon any police officer... to retire on pension.

(7) The provisions of this section shall not apply to a police officer appointed prior to the date of commencement of this Law but, on and after that date, the provisions of Section 20 of the Police Law (2006 Revision) shall continue to apply to him as if this Section had not come into force.

2. Section 20 of The Police Law (2006 Revision) (**'the 2006 Law'**) to which section 21(7) of the 2014 Law refers provides that:

(1) Non-gazetted officers who have attained the age of fifty-five years, shall be retired without prejudice to their being accepted for such further period or periods of service as may be fixed by contract

(3) The Commissioner may call upon any officer who has attained the age of fifty to retire.

3. The effect of these provisions is:

- a. Any non-gazetted police officer (i.e. one below the rank of Chief Inspector) in the service of the Royal Cayman Islands Police Service (**'RCIPS'**) before section 21 of the 2014 Act was enacted, namely 11 November 2010, is required to retire when they attain the age of 55 years.
- b. Any police officer who is appointed to hold office with the RCIPS after the 11 November 2010 shall not be required to retire until they attain the age of 60 years.

4. Schedule 2 of the Constitution of the Cayman Islands Part 1: The Bill of Rights Freedoms and Responsibilities (**'The Bill of Rights'**) provides at section 9:

(1) Government shall respect every person's private and family life, his or her home and his or her correspondence.

(3) Nothing in any law or done under its authority shall be held to contravene this section to the extent that it is reasonably justifiable in a democratic society—

(a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) for the purpose of protecting the rights and freedoms of other persons;

5. Section 16 of Bill of Rights provides:

(1) Subject to subsections (3), (4), (5) and (6), government shall not treat any person in a discriminatory manner in respect of the rights under this part of the Constitution

(2) In this section, "discriminatory" means affording different and unjustifiable treatment to different persons on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental or physical disability, property, birth or other status.

(3) No law or decision of any public official shall contravene this section if it has an objective and reasonable justification and is reasonably proportionate to its aim in the interests of defence, public safety, public order, public morality or public health

(4) Subsection (1) shall not apply to any law so far as that law makes provision—

(d) whereby persons of any such description of grounds as is mentioned in subsection (2) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is objectively and reasonably justifiable in a democratic society and there is a reasonable proportionality between the means employed and the purpose sought to be realised.

6. Section 19(1) of the Bill of Rights provides:

(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.

The Petitioners

7. The First Petitioner is the Royal Cayman Islands Police Association, an incorporated association representing police officers who serve with the RCIPS.
8. The Second Petitioner was born on 8 June 1958 and was aged 55 years on 8 June 2013. He enlisted in the RCIPS on the 1 October 1991. In his service he attained the rank of Inspector. On 25 July 2013 he was, in accordance with section 21 of the 2014 Law, required to retire. Prior to his retirement he was informed that he could not continue to serve as an Inspector but would be required to be re-engaged as a Senior Constable. After his retirement he applied for and was accepted work with the RCIPS at a reduced rank of Senior Constable.
9. The Third Petitioner was born on 17 September 1960 and is aged 55 years. She enlisted in the RCIPS on the 19 January 1987. She was promoted to the rank Detective Sergeant on the 1 April 2006. She was required to retire on 17 September 2015.
10. The Fourth to Eleventh Petitioners are officers or former officers who are in a similar position to the Second and Third Respondents in that they joined the RCIPS before 11 November 2010 and have either been required to retire at the age of 55 or will be required to retire at that age.

Interference with private and family life

11. The requirement imposed by section 21(7) of the 2014 Law on a serving police officer to retire at age 55 is an interference with that police officer's private and family life and is an unjustifiable breach of the Section 9 of The Bill of Rights for the following reasons:
 - a. The expression 'private life' encompasses the right of an individual to form and develop relationships with other human beings including relationships of a business or professional nature.

- b. It is in the course of their working lives that the majority of adults have the opportunity to develop personal relationships.
- c. In the case of police officers, the nature of their occupation is such that many of the relationships formed during their working lives are particularly close and significant. Members of the police force form a small and close knit community where members provide each other with mutual support.
- d. The requirement to retire at age 55 has tangible consequences for the material and emotional well-being of the individual officers and their families.
- e. The requirement to retire at age 55 necessarily results in a loss of professional status.
- f. The requirement that any re-engagement must be at a reduced rank of Constable or Senior Constable necessarily affects those of higher rank by their loss of status and professional reputation.
- g. The requirement to retire at age 55 unjustifiably interferes with the existing and developed relationships formed during a police officer's service and interferes with the right to form other relationships whilst that officer is at work.

Discrimination on the grounds of age

- 12. The requirement imposed on officers who joined the RCIPS before the 11 November 2010 to retire at age 55 years, which requirement is not imposed on officers who have been appointed after that date, directly and indirectly discriminates against older police officers on the grounds of their age. This is because they, the older officers, are required to retire at age 55 whereas younger officers who have recently joined the RCIPS will not be required to do so but will instead be entitled to remain a police officer until they are aged 60.

13. The effect of the discriminatory requirement imposed on older officers to retire at age 55 is that they have been discriminated against in respect of their rights under section 9 of the Bill of Rights and this discrimination, which is on the grounds of their age, is also an unjustifiable breach of section 16 of the Bill of Rights.

Discrimination on the grounds of nationality

14. By contrast with the Caymanian officers (and other officers recruited from Caribbean jurisdictions), officers recruited to the RCIPS from the United Kingdom before the 11 November 2010, and who are British by nationality and non-gazetted officers (i.e. who are below the rank of Chief inspector), are not required to retire at age 55. Alternatively, if they are required to retire at age 55 they have in practice been re-engaged without loss of rank.
15. The advantageous treatment given to officers of British Nationality, recruited from the United Kingdom, directly discriminates against non-British officers. The effect of this discriminatory treatment is that non-British officers have been discriminated against in respect of their rights under section 9 of the Bill of Rights and this discrimination, which is on the grounds of their nationality, is also an unjustifiable breach of section 16 of the Bill of Rights.

Irrationality

16. Further, the administrative act of the RCIPS in retiring those non-British officers of the RCIPS who were engaged before the 11 November 2010 at age 55 is a breach of section 19 of the Bill of Rights for the following reasons:
 - a. It is unlawful, irrational and disproportionate, alternatively;
 - b. If it is not unlawful it is nevertheless irrational and/or it is disproportionate.

17. The First Petitioner has an interest on behalf of its members who are serving police officers and to ensure that those officers' rights under the Bill of Rights are respected.
18. The Second and Third Petitioners are directly affected by the breach of their rights under sections 9, 16 and 19 of the Bill of Rights. By reason of section 21(7) of the 2014 Law the Second Petitioner was required to retire at 55 years and the Third Respondent will be required to retire at 55 years. The Fourth to Eleventh Petitioners are similarly affected. The Petitioners would like to have continued to serve in the RCIPS at their attained rank until they were aged 60 years.
19. Insofar as officers have, after being required to resign, accepted contractual service at the reduced rank of Constable or Senior Constable they have done so in reasonable mitigation of their loss. Their personal relationships with work colleagues have been, and continue to be, adversely affected by their loss of status by being required to retire and by being permitted to accept re-engagement only at the reduced rank.
20. For the reasons set out above section 21(7) of the 2014 Law is incompatible with sections 9, 16 and 19 of the Bill of Rights.

AND YOUR PETITIONER will ever pray:

This Honourable Court:

- (1) Grant a declaration pursuant to section 26(1) of the Bill of Rights that section 21(7) of the Police Law (2014 Revision) is incompatible with sections 9, 16 and 19 of the Bill of Rights.
- (2) Alternative to (1) grant a declaration pursuant to section 26(1) of the Bill of Rights that section 21(7) of the Police Law (2014 Revision) is incompatible with section 19 of the Bill of Rights.

(3) An order that the Second to Eleventh Petitioners who have been required, or will be required, to retire at age 55 years in breach of their rights under sections 9, 16 and/or 19 of the Bill of Rights shall be awarded damages against the Respondent for all financial losses arising out of their loss of office which has resulted from this breach of their rights. Such damages to be assessed.

(4) Such other Order as the Court thinks fit.

AND your Petitioner will ever pray etc.

Dated the day of January 2016


PRIESTLEYS

FOR AND ON BEHALF OF THE PETITIONERS

NOTE: This Petition is intended to be served on the Attorney General of the Cayman Islands and the Commissioner of Police.

This Petition was presented by Priestleys, Attorneys at Law, whose address for service is Priestleys, Second Floor, Caribbean Plaza, 878 West Bay road, George Town, P.O. Box 30310 Grand Cayman KY1 – 1202, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2016

IN THE MATTER OF THE BILL OF RIGHTS, SECTIONS 9, 16 and 19

AND

IN THE MATTER OF THE POLICE LAW (2014 REVISION), SECTION 21

SCHEDULE

TO: THE GRAND COURT

THE HUMBLE PETITION OF:

- (4) Melbourn Warren of P.O. Box 909, KY1 – 1103.
- (5) Clive Smith of P.O. Box 909, KY1 – 1103.
- (6) Leslie Franklin of P.O. Box 909, KY1 – 1103.
- (7) Derrick Elliott Snr. of P.O. Box 909, KY1 – 1103.
- (8) Antonio Jackson of P.O. Box 909, KY1 – 1103.
- (9) Clesford Lumsden of P.O. Box 909, KY1 – 1103.
- (10) Howard Campbell of P.O. Box 909, KY1 – 1103.
- (11) Hugh Cotterell of P.O. Box 10432, KY1 – 1104.

NOTICE OF HEARING

Take Notice that the hearing of this Petition will take place at the Law Court, George
Town, Grand Cayman on the day of 2016.