

IN THE SUMMARY COURT AT GEORGE TOWN

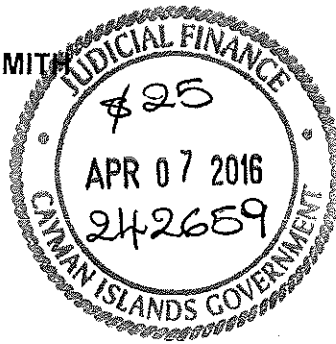
Cause No. SC 0083 of 2016

BETWEEN: CHRISTINE ALISON RAE-SMITH

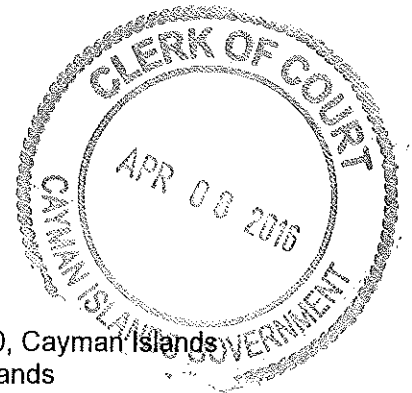
Plaintiff

AND: (1) WINSTON CONNOLLY
(2) ROY MCTAGGART

First Defendant
Second Defendant



PLAINT



To the Defendants

To the First Defendant P.O. Box 12001 APO, Grand Cayman KY1-1010, Cayman Islands
c/o 530 North Sound Road, George Town, Grand Cayman, Cayman Islands

To the Second Defendant P.O. Box 2158 GT, Grand Cayman KY1-1105, Cayman Islands
c/o Government Administration Building, 5th Floor, George Town, Grand Cayman, Cayman
Islands

THIS PLAINT has been issued against you by the above – named Plaintiff in respect of the claim set out on the next page.

Within 14 days after service of this **Plaint** on you, counting the day of service you must either satisfy the claim or return to the Court Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form stating therein whether you intend to contest this action. If you intend to defend the action, in whole or in part, you must set out **full particulars of your defence** in the space provided in the Acknowledgement of Service form.

If **you fail** to satisfy the claim or fail to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without any further notice to you.

Issued this 8 day of April 2016

See overleaf for particulars of the Plaintiff's claim

PARTICULARS OF CLAIM

1. On the 28th of June 2013 the Plaintiff entered into a Contract of Employment with the Defendants for an initial period of one year, renewable on an annual basis, commencing on 1st July 2013.
2. As per Sections 3 and 14 of the Contract of Employment, said Contract of Employment was subject to termination by either party giving the other party a minimum of 30 days notice of intention to terminate, in writing.
3. As per Section 4 of the Contract of Employment the Plaintiff was to be paid a monthly salary of CI\$2,632.00.
4. As per Section 10 of the Contract of Employment the Plaintiff was entitled to annual leave of 15 working days in the amount of CI\$1,976.25.
5. The Plaintiff had not taken any vacation leave for the 12 month employment period 1st July 2014 to 30th June 2015 and was therefore upon termination, due payment of 15 working days, as per Contract of Employment and Sections 14(1), 14(10) and 14(11) of the Labour Law (2011 Revision).
6. The Plaintiff continued in the employment of the Defendants until 17th September 2015 when her employment was terminated by way of a letter from the Defendants' attorney-at-law, stating that her position has become redundant by reason of the closure of your Employer's office.
7. The Defendants have failed to pay the Plaintiff the required one months notice pay in lieu of one month's written notice as per her Contract of Employment and Section 10(1)(b) of the Labour Law (2011 Revision) in the sum of CI\$2,632.00.
8. The Defendants have failed to pay the Plaintiffs salary up to and including 17th September, 2015, the date of her termination, instead offering only to pay her up to and including 15th August, 2015.
9. The Plaintiff is due her salary for the month of August 2015 and for the period of 1st to 17th September 2015 in the sum of CI\$4,123.47.
10. On 12th October 2015 the Plaintiff filed a complaint with the Department of Labour & Pensions requesting they collect her unpaid salary, unpaid vacation pay, unpaid notice pay, severance pay and settlement for unfair dismissal.
11. The Department of Labour & Pensions referred the matter to a Labour Tribunal for severance pay and unfair dismissal.
12. On 2nd February 2016 a Labour Tribunal hearing convened to hear the matter of the Plaintiff against the Defendants.

13. On 3rd March 2016 the Labour Tribunal's decision in favour of the Plaintiff was made, and she was awarded severance pay and settlement for unfair dismissal. The Labour Tribunal found that her employment was terminated on 17th September 2015.
14. On 4th March 2016 the Defendants sent a cheque to the Department of Labour & Pensions in settlement of the Labour Tribunal's ruling for severance pay and settlement for unfair dismissal.
15. The Defendants' want the Plaintiff to accept the payment of severance pay and unfair dismissal as full and final settlement, and they have refused to pay the Plaintiff her unpaid salary, unpaid vacation pay and unpaid notice pay.
16. The Department of Labour & Pensions has failed to collect the Plaintiff's unpaid salary, unpaid vacation pay and unpaid notice pay, advising the Plaintiff that this is a civil matter.

AND the Plaintiff claims:

- (1) The sum of CI\$7,688.74.

Unpaid Wages August 2015	CI\$2,632.00
Unpaid Wages 1/9 to 17/9/15	CI\$1,491.47
Unpaid Vacation Pay 15 days	CI\$1,976.25
Unpaid Notice Pay One (1) Month	<u>CI\$2,632.00</u>
Total	CI\$8,731.72
Less Pension & Health Deductions	<u>CI\$1,042.98</u>
	CI\$7,688.74

- (2) Interest calculated at the rate of 10% per annum, as per Section 31(2) of the Labour Law (2011 Revision) from 17th September 2015 to date.
- (3) Interest to continue at the per diem rate until this matter is settled.
- (4) Fixed cost of CI\$575.00, alternatively costs to be assessed.


Plaintiff's Signature

Plaintiff's address for service
P.O. Box 10210
23 Whirlwind Drive
Casurina Creek Apt. 3
Grand Cayman KY1-1002
Cayman Islands

Phone number: 922-1186
Email: christine.rae@live.com

**The MLA Offices of
Winston Connolly & Roy McTaggart**

P.O. Box 12001, SMB, Grand Cayman, Cayman Islands, KY1-1010
926-0999/winston@winstonconnolly.ky & 916-2330/roy@mctaggart.ky

This contract of employment is dated the 28th day of June 2013 between **WINSTON CONNOLLY/ROY MCTAGGART** and **CHRISTINE RAE-SMITH**.

1. EMPLOYER

The employers are: **WINSTON CONNOLLY & ROY MCTAGGART** ("The Employer").

2. EMPLOYEE

The employee is **CHRISTINE RAE-SMITH** ("The Employee")

3. TERM OF EMPLOYMENT

Subject to the provisions below, this contract is initially for a period of one year, to commence on the 1st day of July 2013. It will thereafter be renewable on an annual basis, giving one month's notice of renewal and by mutual consent between the employee and the employer. This contract is subject to termination by either party giving the other party a minimum of 30 days notice of intention to terminate, in writing.

4. REMUNERATION

The employee will be paid the sum of C\$2,632.00 per month and this salary is due and payable on the 28th day of each month, or if that date falls on a weekend or holiday, the next business day after that date. The employee will receive a pay statement in a form that complies with the applicable law.

5. HEALTH INSURANCE

The employee will be paid health insurance in accordance with the relevant laws. The employer's contribution to the employee's health insurance is \$200.00 per month. The employer will pay directly to the insurer, the total monthly premium for the employee's health insurance plan, with the employee's portion being deducted from the monthly salary.

6. PENSION

The employee will be paid pension (5% of the salary), in accordance with the relevant laws.

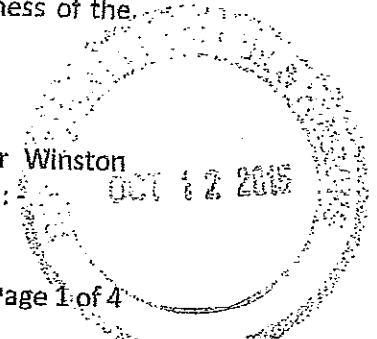
7. OTHER BENEFITS

The employee will be given the use of a cellular phone for use in the business of the office and for which expenses will be paid by the employer.

8. DUTIES AND RESPONSIBILITIES

The employee is being employed as the **Constituency Liaison Officer** for **Winston Connolly, MLA** and **Roy McTaggart, MLA**, with the main duties being as follows:

Initialed _____



**The MLA Offices of
Winston Connolly & Roy McTaggart**

P.O. Box 12001, SMB, Grand Cayman, Cayman Islands, KY1-1010
926-0999/winston@winstonconnolly.ky & 916-2330/roy@mctaggart.ky

- Provide effective, efficient, administrative and communications support and personal assistance to the employer;
- Manage the MLA offices of the employer including developing and maintaining constituents' database, office files and accounts and advise the employer of, and consult on, any budgetary or other problems that may arise;
- Develop and implement appropriate policies and practices for the efficient operations, administration, and management of the MLA offices
- Advise constituents about community or government services and direct them to appropriate organisations, departments and agencies.
- Interpret and anticipate any relevant needs of the relevant constituency and make recommendations to the employer to address the same
- Meet with constituents and community groups to address their needs and schedule constituency clinic for persons to meet directly with the employer.

9. HOURS OF EMPLOYMENT

This appointment is full-time with office hours from 8:00am – 3:00pm from Monday - Friday. The employer reserves the right to vary the timing or length of the hours of work to meet any changes in the needs of the organisation, subject to prior discussion with the employee and with reasonable notice. The employee may be required to work additional hours as may be necessary to enable the employee to discharge their professional duties including evenings, weekends and public holidays. The employee is eligible to receive overtime for time worked in excess of the standard work week. By mutual agreement, the employee may receive time in lieu for overtime worked.

10. VACATION

The employee will be entitled to annual leave of 15 working days, in addition to all public holidays in the Cayman Islands, and such leave will be pro-rated for any year of service not completed. Vacation is to be taken at a time that is mutually convenient to the employee and the employer, and must be requested at least one month in advance of the intended period of leave.

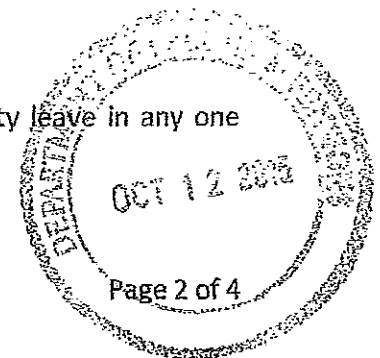
11. SICK LEAVE

The employee will be entitled to ten (10) days sick leave in any one year of employment. This leave is for actual illness only and a doctor's certificate is required for any period of sick leave of more than two consecutive days.

12. MATERNITY LEAVE

The employee shall be entitled to twelve calendar weeks' maternity leave in any one year of employment, as provided for in the Labour Law.

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P.O. Box 12001, SMB, Grand Cayman, Cayman Islands, KY1-1010
926-0999/winston@winstonconnolly.ky & 916-2330/roy@mctaggart.ky

13. PROBATIONARY PERIOD

This position is subject to a Probationary period of six (6) months, at which time the employee's job performance shall be subject to review and continued employment subject to confirmation by the employer.

14. TERMINATION OF EMPLOYMENT

The employee may have their employment terminated at any stage within the probationary period by one week's notice in writing, where it is considered that there are grounds for such termination. Subject to the above, the period of employment is subject to termination by either party giving the other, a minimum 30 days notice in writing of the intention to terminate.

15. CONFIDENTIALITY

The employee hereby agree not to use, copy, publish or disclose, directly or indirectly, any information relating to the personal or professional business of the employer or their MLA office, finances, projects, plans, constituents, associates, or any other matter that might be regarded as confidential, except in the proper performance of your duties or with the permission of the employer. For the avoidance of doubt, this extends to social media. All confidential information should be returned to the employer on the request of the employer. This restriction extends after the termination of the employee's employment for any reason, and is without any time limit but does not apply to information which is, or comes into the public domain otherwise than through the employee's unauthorised disclosure. A breach of confidentiality will be considered misconduct and may lead to summary dismissal.

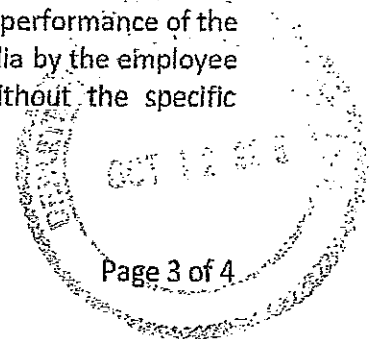
16. CONFLICT OF INTEREST

The employee hereby agrees to not engage directly or indirectly in any activities, contracts or obligations which are, or likely to be, inconsistent, incompatible or in conflict with the interests of the employer in their duties as elected representatives in the Cayman Islands Government or where this may adversely affect the performance of the employee's duties under this contract. Any potential or actual conflict of interest must be declared in writing to the employer as soon as it becomes known.

17. USE OF THE NAMES OF THE EMPLOYER

The employee hereby agrees not to represent herself as an agent of, or to use the name of, either of the employer or their office for any purpose beyond the performance of the duties under this contract. There should be no contact with the media by the employee concerning the activities of the MLA office or the employer without the specific authorisation from the employer.

Initialed _____



**The MLA Offices of
Winston Connolly & Roy McTaggart**

P.O. Box 12001, SMB, Grand Cayman, Cayman Islands, KY1-1010
926-0999/winston@winstonconnolly.ky & 916-2330/roy@mctaggart.ky

18. DUTY TO PERFORM FAITHFULLY

The employee hereby agrees to serve the employer faithfully, honestly and diligently, to be accountable to the organisation in the conduct of all duties, and to account for all monies, bills, cheques and other documents which shall come into the employee's hands as the Constituency Liaison Officer for Winston Connolly & Roy McTaggart.

19. ENTIRE AGREEMENT & VARIATION

This Agreement constitutes the entire Agreement between the parties and supersedes any previous Agreement, understanding or discussions between all parties, and may only be varied by agreement of all parties, confirmed in writing and signed by all parties.

20. DISPUTES

All parties agree to use their best efforts to amicably resolve disputes outside of the judicial system on any matter arising out of or relating to this contract. This may include the use of professional mediation services agreed to by both parties. If a dispute cannot be amicably settled then either party may serve notice of dispute upon the other.

21. GOVERNING LAW

This contract will be governed by and construed in accordance with the laws of the Cayman Islands.

I understand, agree and accept all of the contents of this Contract of Employment.

Signed this 28th day of June 2013
By CHRISTINE RAE-SMITH

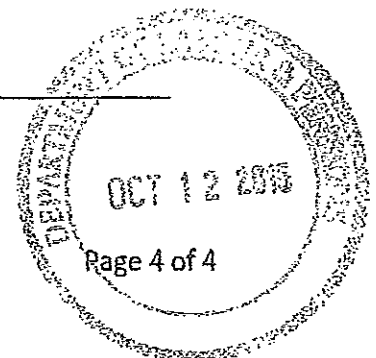
Christine Rae-Smith

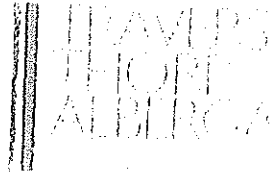
Signed this 28th day of June 2013
For and on behalf of the MLA Offices of Winston Connolly & Roy McTaggart

Winston Connolly

Roy McTaggart

Initialed _____





Our Ref: MLA/acb/M1027-001
Tel: +1 345 949 0699 ext 221
Email: malberga@traversthorpalberga.com

17 September 2015
PRIVATE AND CONFIDENTIAL

By Hand and Email

Christine Rae-Smith
George Town
Grand Cayman
Cayman Islands

Dear Ms Rae-Smith,

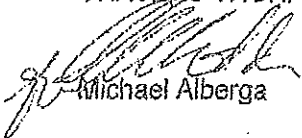
RE EMPLOYMENT WITH MLA OFFICES
WINSTON CONNOLLY & ROY MCTAGGART

We act on behalf of Winston Connolly and Roy McTaggart (the Employers), and bring to your attention that your position has become redundant by reason of the closure of your Employer's office.

In the light of the circumstances we have prepared a cheque in the amount of CI\$3,582.64 calculated in accordance with the Labour Law. We have set out the calculations in the schedule attached which are made in full and final settlement of all matters relating to your employment.

Please collect the cheque at our offices in exchange for the office keys, the post office keys, and Winston Connolly's spare car key.

Yours faithfully,
TRAVERS THORP ALBERGA


Michael Alberga

*Term
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CONFIDENTIAL



Department Of Labour and Pensions

PRELIMINARY WORKSHEET

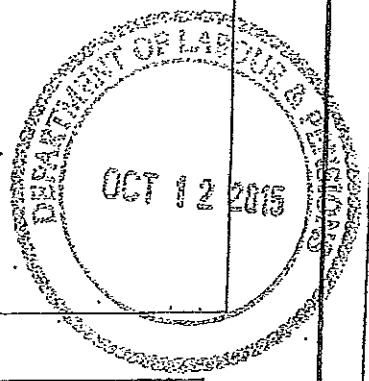
Date: <u>17 Oct 15</u> DD/MM/YY	Case Number: _____
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Employee Information	Employer Information
Name: <u>CHRISTINE A. RAE-SMITH</u>	Company: <u>MUA OFFICE of Winston Connolly</u>
Place of Birth: <u>GRAND CAYMAN</u> <input type="checkbox"/> WP <input type="checkbox"/> SH <input type="checkbox"/> PR	Company Contact: <u>Winston Connolly or Roy McTaggart</u>
Job Title: <u>Constitution Liaison Officer / P.A.</u>	Position: _____
Date of Birth: <u>13-11-78</u> (Date/Month/Year)	Physical Address: <u>Exot Admin Bldg.</u>
Physical Address: <u>#23 Whirlwind Drive</u>	Postal Address: _____
Postal Address: <u>10210 KY-1002</u>	Office Number: <u>Winston Cell: - 926-0779</u>
Contact Number Home: _____	Company Cell: <u>Roy McTaggart - 916-2330</u>
Contact Number Cell: <u>922-1186</u>	Fax Number: _____
Email: <u>Christine.Rae@live.com</u>	Email: <u>WConnolly@Gov.gy</u>

Nature of Visit Labour Enquiry Labour Complaint Occupational Safety & Health

FOR OFFICIAL USE ONLY - DO NOT WRITE BELOW THIS LINE

<input type="checkbox"/> Unfair dismissal	<input type="checkbox"/> Severance pay	<input type="checkbox"/> Notice pay
<input type="checkbox"/> Vacation pay	<input type="checkbox"/> Public holiday	<input type="checkbox"/> Maternity leave
<input type="checkbox"/> Compassionate leave	<input type="checkbox"/> Overtime	<input type="checkbox"/> Sick leave
<input type="checkbox"/> Temporary suspension	<input type="checkbox"/> Pension <input type="checkbox"/> contacted	<input type="checkbox"/> Medical <input type="checkbox"/> contacted
<input type="checkbox"/> Probationary period	<input type="checkbox"/> Periods/Time of wage payments	
<input type="checkbox"/> Other	<input type="checkbox"/> On the Job Injury	



Officer Assigned: _____

Entered By: _____

STATEMENT CHRISTINE RAE-SMITH

I started working for Winston Connolly and Roy McTaggart in their MLA Constituent Office as their Constituent Liaison Officer/Personal Assistant on July 1st, 2013. (See attached Employment Contract).

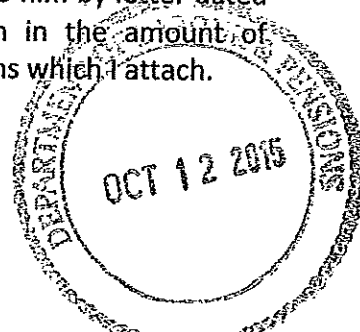
During my employment with the MLA's, Winston Connolly also had me working for one of his private companies for a time when they needed assistance. Winston Connolly and I also went into a beach cleaning business together in 2015. I am the majority shareholder in this company at 60% and the sole director.

On the evening of August 6th, 2015 I was detained by the Police for questioning in a matter and held in custody until August 10th, 2015 and released. To date no charges have been laid against me.

Upon release I attempted to contact both my employers by telephone but was unable to get them to answer or return my calls. As they would not take or return my telephone calls I emailed them on August 12th, 2015 regarding my employment (see attached). To date I have not spoken with either of them. The only communication I have received on this matter has been from Attorney Michael Alberga.

Mr. Alberga initially called me requesting me to come in and see him so that I could resign my position. When his first effort for me to come in to see him did not happen, he started to "harass" me by calling my mother, my daughter, my attorneys and my father. I eventually agreed to meet with him on or around August 25th, 2015, and took with me two personal friends to witness the meeting. At this meeting Mr. Alberga again tried to negotiate for me to resign. We told him to put something together in writing to let me see what "they" were proposing. Upon receipt we would review and get back to them. On August 26th, 2015 Michael Alberga's office sent an email with (1) Draft Separation Agreement (2) Draft Promissory Note and (3) Draft Compensation Breakdown for review (see attached). For a number of reasons this was not accepted by me. I did not agree that my personal business dealings with Winston Connolly should be incorporated into an Employment Separation Agreement. They were completely separate matters and Mr. McTaggart had nothing to do with our private business venture. There were other emails back and forth in an attempt to come to a Settlement Agreement and for them to pay me what I was due under the Labour Law and Employment Contract (see attached).

As Mr. Alberga could not bully me into resigning and accepting what was being forced on me he sent me a termination letter on September 17th, 2015 together with a Statement of Compensation in the amount of C\$3,582.64 (see attached). I responded to him by letter dated September 21st, 2015 with my calculated Statement of Compensation in the amount of C\$9,004.74 (see attached). Since then we have had various communications which I attach.

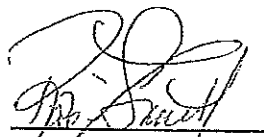


As I was denied access to the MLA office to collect my personal belongings I had to get the police to assist with this. On Friday October 9th, 2015 I was given access to the office where I was able to retrieve my personal belongings. All corporate documents and files relating to my personal business venture with Winston Connolly had been removed and were not available to me.

On September 29th, 2015 I was contacted by my health insurance provider and my pension provider and advised that my employers had paid my health insurance through November 2015 and my pension through November 2015. As I have not been paid since July 2015 I do not know how they have paid pension through November 2015.

My Statement of Compensation is correct in the sum of CI\$9,004.74 for what they owe me. I have been made redundant and this was not done until September 17th, 2015. I do not accept the amount that they have calculated. I have been unsuccessful in getting my employers to pay me what is due to me under the Labour Law and my Employment Contract. I would like the department to get me my outstanding wages, my outstanding vacation pay, my notice pay and my severance pay.

My termination letter states that I have been made redundant due to the closure of my employer's office. As of today's date I am not aware of any public announcement advising of the office's closure and they advertise that the gasoline petition can be dropped off and picked up from these offices (see attached). I therefore question the validity of the reason for my termination and therefore also now seek compensation for unfair dismissal.



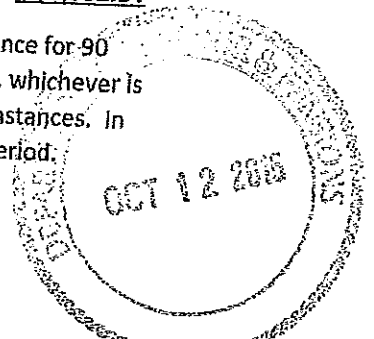
Christine Rae-Smith
12th October 2015



**Statement of Compensation as a result of Resignation of
Christine Rae-Smith**

Salary to 15 th August 2015 (CI\$2,635.00)	CI\$1,316.00
Vacation Pay (15 days per Employment Contract)	CI\$1,976.25
Ex Gratia Payment in lieu of severance (2 weeks salary)	CI\$1,316.00
Plus Employer's Pension Contribution on Salary to 15 th August (5%)	CI\$ 65.80
Plus Employer's Pension Contribution on Vacation Pay To 15 th August 26, 2015 (5%)	CI\$ 98.81
Plus Employers portion of Health Insurance Premium To the end of August 2015	CI\$ 246.00
Plus Employers portion of Health Insurance Premium (from 1 st September to 15 th November 2015 CI\$246 x 2 + CI\$123 x 1)	CI\$ 615.00
SUB TOTAL entitlement	CI\$5,633.86
SUBTOTAL payable to the Employee (Salary, Vacation, Ex Gratia)	CI\$4,608.25
Less Employee's Pension Contribution on Salary to 15 th August (5%)	CI\$ 65.80
Less Employee's Pension Contribution on Vacation Pay to 15 th August (5%)	CI\$ 98.81
Less Employee's portion of Health Insurance Premium To the end of August 2015	CI\$ 246.00
Less Employee's portion of Health Insurance Premium (from 1 st September to 15 th November 2015 CI\$246 x 2 + CI\$123 x 1)	CI\$ 615.00
SUBTOTAL payable by Employee	CI\$1,025.61
TOTAL PAYABLE TO EMPLOYEE (CI\$4,608.25 -- CI\$1,025.61)	CI\$3,582.64

*The Health Insurance Legislation requires Employers to continue to pay medical insurance for 90 days after an Employee leaves their employment OR until new employment is obtained, whichever is the earlier. The Law requires the employer to deduct the full premium in normal circumstances. In this case, the Employer has agreed to pay their portion of the premium for the 90 day period:

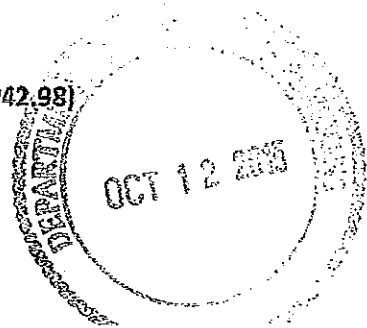


Rae-Smith

Statement of Compensation

Christine Rae-Smith

Salary August 2015	CI\$ 2,632.00	
Salary September (1/9 to 17/9/2015)	CI\$ 1,491.47	
Vacation Pay (15 days per Employment Contract)	CI\$ 1,976.25	
Notice Pay (1 month as per Employment Contract)	CI\$ 2,632.00	
Severance Pay (2 weeks as per Labour Law)	CI\$ 1,316.00	
PLUS		
Employer's Pension Contribution Salary August (5%)	CI\$ 131.60	
Employer's Pension Contribution on Salary 1/9 to 17/9/15(5%)	CI\$ 74.57	
Employer's Pension Contribution on Vacation Pay (5%)	CI\$ 98.81	
Employer's portion of Health Insurance Premium (August 2015)	CI\$ 246.00	
Employer's portion of Health Insurance Premium (1/9/15 to 31/10/15 \$246.00 x 2)	CI\$ 492.00	
SUB TOTAL entitlement	CI\$11,090.70	
SUB TOTAL payable to the Employee (Salary, Vacation, Notice, Severance)		CI\$10,047.72
LESS		
Employee's Pension Contribution Salary August (5%)	CI\$ 131.60	
Employee's Pension Contribution on Salary 1/9 to 17/9/15 (5%)	CI\$ 74.57	
Employee's Pension Contribution on Vacation Pay (5%)	CI\$ 98.81	
Employee's portion of Health Insurance Premium (August 2015)	CI\$ 246.00	
Employee's portion of Health Insurance Premium (1/9/15 to 31/10/15 \$246.00 x 2)	CI\$ 492.00	
SUB TOTAL payable by Employee		CI\$ 1,042.98
TOTAL PAYABLE TO EMPLOYEE (CI\$10,047.72 - CI\$1,042.98)		CI\$ 9,004.74



Christine Rae-Smith



Department of Labour & Pensions

Cayman Islands Government

2nd Floor, Mid Town Plaza, Elgin Avenue
P.O. Box 2182 George Town
George Town, Grand Cayman KY1-1105

Phone: 1(345)945-8960

Fax: 1(345)945-8961

Email: kara.connor@gov.ky

Labour Tribunal

Thursday, 03 March 2016

DD011287790KY.

Complainant

Christine Rae Smith
P.O. Box 10210
Grand Cayman KY1-1002

RD011287786KY.

Respondent

MLA Office of Roy McTaggart & Winston Conolly
Travers Thorp Alberga
P.O. Box 472
Grand Cayman KY1-1106

Matter: Christine Rae Smith v MLA Office of Roy McTaggart & Winston Conolly

The enclosed Decision of the Labour Tribunal hearing held on 2nd February, 2016 in the matter of **Christine Rae Smith v. MLA Office of Roy McTaggart & Winston Conolly** is provided in accordance with section 75 of the Labour Law (2011 Revision).

Tribunal Order - Severance

It is the unanimous decision of the Labour Tribunal to that the Complainant is entitled to Severance pay in accordance with Section 40 of the Labour Law. **The Respondent is hereby ordered to pay severance pay in the full amount of \$1316.00 to the complainant within 14 days of notification.**

Severance: \$1316.00

Tribunal Order - Unfair Dismissal

It is the unanimous decision of the Labour Tribunal to that the Complainant is entitled to Compensation for Unfair Dismissal in accordance with Section 55 of the Labour Law. **The Respondent is hereby ordered to pay compensation in the full amount of \$1316.00 to the complainant within 14 days of notification.**

Compensation: \$1316.00

TOTAL AWARD: \$2632.00

Right to Appeal

Any person aggrieved by this Tribunal Decision, by virtue of the Labour Law (2011 Revision), may within fourteen (14) days of the date of this letter of notification, appeal this Decision. The appeal application must be made in writing, addressed to the Chairman of the Labour Appeals Tribunal, in care of the Department of Labour & Pensions, at the above address. The appeal application should provide the reasons why you assert that the Tribunal has made an error of fact or Law. **Should an appeal not be filed within the prescribed timeframe full payment of the award will become due within fourteen (14) days of the date of this letter of notification.**

Please be guided accordingly.

Yours faithfully,

FILE COPY

Kara Connor
Labour Tribunal Secretary



DEPARTMENT OF LABOUR & PENSIONS

2nd Floor, Mid Town Plaza, Elgin Avenue
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Grand Cayman, Cayman Islands KY1-1105
Phone: 1(345)945-8960 Fax: 1(345)945-8961

LABOUR TRIBUNAL

Chairpersons	Deputy Chairpersons	Members	Members
<i>Gregory Barnes</i>	<i>Felicia Deslandes</i>	<i>Clarence Bothwell</i>	<i>Marie Reinke</i>
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<i>James Kennedy</i>	<i>Phillip D. Ebanks</i>	<i>Angelita Edwards</i>	<i>Isatou Sey</i>
<i>Kimbert Solomon</i>	<i>Jennodell Myles</i>	<i>Kent McTaggart</i>	<i>Edward Solomon</i>
<i>Martha Rankine</i>	<i>Sheena Sigsworth</i>	<i>Anna Pereira Johnson</i>	<i>Eddie Thompson</i>
<i>Kathryn Rowe</i>	<i>Noel Webb</i>	<i>Carlton Powery</i>	<i>James Whittaker</i>

DECISION

Case Title: Christine Rae-Smith v MLA Offices of Winston Connolly and Roy McTaggart

Date of Hearing: 2 February 2016

In Attendance: **Labour Tribunal Members**
 Chairperson: Kathryn Rowe
 Deputy Chair: Jennodell Myles
 Deputy Chair: Noel Webb
 Member: Edward Solomon

Secretary:
Kara Connor

For Employee:
Christine Rae-Smith – Complainant
Christopher Phillips – lay representative and witness
Sandra Solomon - witness

For Employer:
Michael Alberga – Counsel
Winston Connolly - witness
Roy McTaggart - witness

The hearing was closed to the press and the public

FILE COPY

CHRISTINE RAE-SMITH V MLA OFFICES OF WINSTON CONNOLLY AND ROY MCTAGGART

1. The application of Christine Rae-Smith (the "Application") was heard by the Labour Tribunal (the "Tribunal") on 2 February 2016 in the Large Conference room of the Department of Labour & Pensions, Midtown Plaza, Elgin Avenue, George Town, Grand Cayman.
2. In reaching this decision, the Tribunal has reviewed and carefully considered the Application, all the evidence before it, including oral evidence by Christine Rae-Smith. Mr Phillips and Ms Solomon for Ms Rae-Smith, and Mr Connolly and Mr McTaggart on behalf of the MLA Offices of Winston Connolly and Roy McTaggart, in addition to the relevant sections of the Labour Law (2011 Revision) (the "Labour Law") and relevant case law.
3. The complaint by Christine Rae-Smith (the "Complainant") is that she was unfairly dismissed by her former employers Mr. Winston Connolly and Mr. Roy McTaggart (together, the "Respondent"). The Respondent wrote to the Complainant by way of letter dated 17 September 2015 stating that her employment was to terminate by reason of redundancy which is a potentially fair reason under section 51(1)(d) of the Labour Law. The Complainant questions the validity of this reason for her termination.

BACKGROUND AND THE LAW

4. The Complainant started working for Winston Connolly and Roy McTaggart in their MLA Constituent Office as their Constituent Liaison Officer/Personal Assistant on the 1 July 2013.
5. Mr. Connolly and the Complainant also went into a Beach cleaning business, Sand KY Ltd, together in 2015 in which the Complainant is the majority shareholder.
6. On the evening of the 6 August 2015, the Complainant was detained by the police for questioning in a matter involving an alleged armed robbery. She was detained until August 10, 2015 and then released.
7. Upon her release the Complainant attempted to contact both Mr. Connolly and Mr. McTaggart but was unable to do so. They did not return her calls. She then emailed them on August 12, 2015, but to date has received no direct communication from them, other than through their attorney Michael Alberga.
8. At a meeting on 25 August 2015 the Complainant met with Mr. Alberga who, the Complainant says, asked her to resign. It was confirmed that a proposal would be put in writing. A Separation Agreement was provided to the Complainant via Mr Phillips on 26 August 2015 which included the following:
 - the Complainant to resign immediately;
 - the Complainant to be paid salary up to 15 August 2015;
 - the Complainant to receive her vacation pay "for three weeks per annum";
 - the Complainant to be paid an ex gratia payment of CI\$1,316.00 which amounted to what she would have received as severance pay;
 - Mr. Connolly to resign as director of Sand KY Ltd. and transfer all of his interest in it to the Complainant.
9. The Recitals to the Separation Agreement stated that "the Employer and Employee have mutually agreed that the Employee's employment will terminate by reason of the Employee's resignation with effect from 15th August 2015."
10. Attached to the Separation Agreement was a promissory note under which the Complainant was to agree to repay to Winston Connolly his investment in Sand KY Ltd. to the sum of CI\$16,000.00 within thirty-six months.
11. The Complainant refused to enter into this agreement. In particular, she did not consider that her personal dealings with Mr. Connolly should be incorporated into any separation agreement dealing with the termination

of employment. Several letters were sent back and forth between the parties and ultimately no settlement was reached.

12. A Termination letter was sent to the Complainant by Mr. Alberga dated 17 September 2015 which stated "we act on behalf of Winston Connolly and Roy McTaggart (the Employers) and bring to your attention that your position has become redundant by reason of the closure of your employers' office." This letter included a cheque for CI\$3,582.64 which, as set out in a statement of compensation attached to it, included the Complainant's salary to 15 August 2015, vacation pay, "ex gratia payment in lieu of severance", plus the additional pension and health alterations up to a termination date of 15 August 2015. No payment for notice was included.
13. The Complainant did not accept this cheque and responded to the Respondent by way of letter dated 21 September 2015 attaching a statement of the compensation that she believed she was entitled to. This included salary to 17 September 2015, one month's notice pay and additional alleged contributions. The total payable to the Complainant by her calculation was CI\$9,004.74.
14. The Complainant stated that she was not aware of any closure of the office which would warrant her employment being redundant. She disputed redundancy as the real reason for her termination and confirmed that she was seeking compensation for unfair dismissal.
15. Mrs. Sandra Solomon, as a witness for the Complainant (the Complainant's mother), confirmed that the Complainant had made efforts to contact the Respondent to enquire as to when she could return to work which were ignored. Mrs. Solomon had also had a discussion with Mr. Alberga in which he had asked that she persuade her daughter to resign.
16. Mr. Phillips, who was present as a witness and to assist the Complainant, reiterated that the Complainant had wanted the Sand KY Ltd. company to be dealt with separately to her termination of employment.
17. Mr. Connolly for the Respondent gave evidence. He confirmed the background to be business venture of Sand KY Ltd. and how this came about.
18. Mr. Connolly explained the incident which he believed to have led to the Complainant's arrest, which involved her dropping Rotary tickets and money to Rainbow Realty. He confirmed that he received a call from police on 6 August 2015 and it was indicated to him that there was suspicion of a robbery at Governors Harbour.
19. Mr. Connolly confirmed that having consulted with Mr. Alberga, he was of the view that he could have simply dismissed the Complainant immediately given the allegations against her and her position. As a personal assistant he said that the Complainant had access to his diary and confidential information. Instead, the decision was made to try to reach a settlement agreement which clearly was unsuccessful. The Complainant challenged Mr. Connolly as to whether she did actually have access to confidential information.
20. Mr. McTaggart in his evidence confirmed that after her arrest he had been advised to avoid all contact with the Complainant by the police, as there may be a situation in which he was required to give evidence. He stated that he had tried to assist with childcare etc. when the Complainant was initially arrested, and also agreed that he had been advised by Mr. Alberga that the Complainant could have been summarily dismissed immediately. He confirmed that the decision was taken however to try to negotiate an exit package with her. This was unsuccessful. He stated that her position was then made redundant, and confirmed no one else has replaced the Complainant and that the office is now closed.
21. In closing, the Complainant confirmed that she simply wanted to be paid what she was owed.

22. Mr. Alberga confirmed that there had been no work done since the arrest of the Complainant and that his clients had been patient, considerate and generous. He stated that the payment offered to the Complainant by the Respondent was accurate and in accordance with the law and the circumstances.

The Law

According to the Respondent, the Complainant's employment was terminated under section 51(1)(d) of the Labour Law which states:

"51(1) Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is –

(d) that the employee was redundant;

and under the circumstances the employer acted reasonably."

OBSERVATIONS AND FINDINGS

Based on the above the Tribunal finds the following facts:

23. The Complainant's employment was terminated on 17 September 2015. It is not possible to back date a termination date in circumstances such as the above, regardless of the reason for termination. The Tribunal could find no evidence that the Complainant had been told or led to believe that her employment had terminated between 6th August 2015 and 17th September 2015.
24. The Tribunal finds that the fact that the statement of compensation attached to the Complainant's termination letter stated "salary up to 15th August 2015" means that redundancy was not the real reason for the Complainant's termination. The Tribunal heard no evidence that as of 15 August 2015 (namely the date of termination put forward by the Respondent) the Respondent was aware that the Complainant's role was redundant. In addition, had the Complainant's termination genuinely been by reason of redundancy she would have been entitled to notice pay, which as per Clause 14 of her contract of employment, would have been 30 days. Notice pay was not included in the statement of compensation attached to the Complainant's termination letter of 17 September 2015.

DECISION

26. Based on the above the Tribunal finds that the Complainant's termination, in the circumstances, was unfair.

ORDER/AWARDS

27. Based on the above decision the Tribunal makes the following awards:

Compensation for unfair dismissal in the sum of CI\$1,316.00.

Severance pay in the sum of CI\$1,316.00

Total: CI\$2,632.00

28. The Tribunal does not have jurisdiction to award notice or any other payments, other than severance and compensation for unfair dismissal.

APPEALS

The Tribunal's decision, enforcement and appeals are governed by sections 75 to 78 of the Labour Law (2011 Revision). Any person aggrieved by this Tribunal decision by virtue of section 78 of the Labour Law may, within 14 days of notification of the decision or service of notice, appeal to the Appeals Tribunal.

K. K. K.

Chairperson
Signed

Dated 3 March 2016

MAR 4 2016 PM 3:56

Our Ref: MLA/acb/M1027-001
Your Ref: 109157
Tel: +1 345 949 0699 ext 221
Email: malberga@traversthorpalberga.com



4th March 2016

By Hand

Department of Labour & Pensions
Cayman Islands Government
2nd Floor Midtown Plaza
273 Elgin Avenue
PO Box 2182
KY1-1105
Grand Cayman

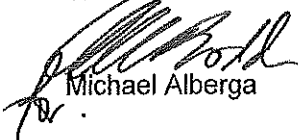
Attention: Kara Connor, Labour Tribunal Secretary

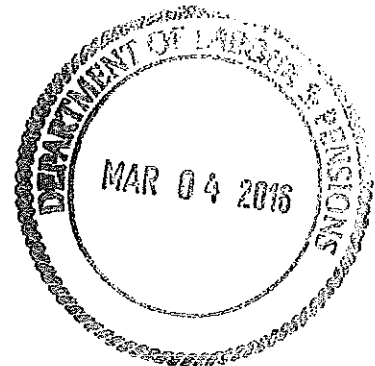
Dear Sirs,

RE Complaint by Former Employee – Christine Rae-Smith

We write further to your letter enclosing the Decision of the Labour Tribunal hearing held on 2nd February 2016 in the matter of Christine Rae Smith v MLA Office of Roy McTaggart and Winston Connolly. We are of the opinion that the Labour Tribunal has misdirected itself on the law in relation to the compensation awarded for unfair dismissal. However, we now enclose herewith a cheque made payable to the Complainant, Christine Rae-Smith, in the sum of CI\$2,632.00 being the sum of the total award in full and final settlement of all claims arising from the Complainant's employment with the Respondents.

Yours faithfully,
TRAVERS THORP ALBERGA


Michael Alberga



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Fax: +1 345 949 8171

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CIBC First Caribbean
International Bank
Main St. Grand Cayman, Cayman Islands

12180



CIS AMOUNT
\$2,632.00

DATE
04 Mar 2016

00/100

**** Two Thousand Six Hundred Thirty Two ****

PAY

Christine Rae-Smith

TO THE
ORDER
OF

Christine Rae-Smith

AUTHORIZED SIGNATURE

DOCUMENT CONTAINS VOID PANTOGRAPH AND MICROPRINT SIGNATURE LINE. MAGNIFY TO VIEW

⑆0⑆12180⑆ ⑆2690⑆010⑆ 68⑆0866⑆1⑆

Connor, Kara

From: Connor, Kara
Sent: Monday, March 07, 2016 9:26 AM
To: malberga@traversthorpalberga.com
Cc: Christine Rae-Smith (christine.rae@live.com); Bodden, Andrea
Subject: Christine Rae Smith v MLA Office of Roy McTaggart & Winston Conolly

Importance: High

Dear Mr. Alberga

I am in receipt of the CIBC First Caribbean International Bank draft 12180 in the amount of \$2,632.00 which settles the Tribunal award for Severance and Compensation for Unfair Dismissal. I note that your letter of 4th March, 2016 states the payment as being the sum of the total award in full and final settlement of all claims arising from the Complainant's employment with the Respondent. Please be advised that Ms. Rae-Smith rejects the assertion that these funds settle all other claims which she had made against the Respondent and although this payment settles the Tribunal's award she intends to take up her other claims such as earned but unpaid wages, notice pay and vacation pay with Labour. You will be aware that these matters are beyond the Tribunal's remit and would be a matter for the Labour Unit.

Regards

Kara Connor

Labour Tribunal Secretary
Department of Labour & Pensions
Direct: 244-4015
Email: kara.connor@gov.ky

7. Any person who is re-employed by the same employer or, where the severance pay required under this Law has not been paid to the employee, by the successor-employer, within thirty days of the termination of his employment, shall not be regarded as a new employee, but his employment shall be regarded as continuous with his earlier period of employment for the purposes of the calculation of his period of probation and of any benefits under this Law.

Re-employment within
thirty days of
termination

8. (1) A new employee may, if mutually agreed in writing between himself and his employer, be employed on probationary terms for an initial period not exceeding six months in duration.

Probation period

(2) At the end of the initial probationary period that period may be extended by mutual agreement for a term not exceeding a further six months, provided that such agreement shall be in writing and signed by both parties thereto.

(3) During his probation period, an employee shall be given reasonable training in the duties of the position for which he was hired, and shall be kept informed of his progress.

(4) At any time during his probation period an employee's employment may be terminated but reasons for such termination shall be given to the employee.

(5) Upon confirmation of employment after a probationary period all earned benefits under this Law shall be deemed to have accrued from the commencement of the probationary period.

9. Where the contract of employment is for a fixed term it shall terminate automatically and without further notice on the expiration of that term unless previously extended by prior agreement, or unless the terms of the contract specify otherwise.

Termination: fixed term
contract

10. (1) Subject to sections 9, 51, 52 and 53, an employer shall give advance notice in writing to the affected employee of an intention to terminate that person's employment-

Termination by notice:
employer's notice

- (a) with respect to an employee within his probation period, at least twenty-four hours notice; and
- (b) with respect to all other employees, notice at least equal to the interval of time between the employee's pay days:

Provided that in no case need the period of notice exceed thirty days unless an employment contract calls for a longer notice period.

days of such request a certificate specifying the dates of his engagement and termination and the type of work on which he was employed.

(3) An employer who furnishes a statement or certificate under subsection (1) or (2) shall be conclusively bound by the contents thereof in any proceeding under this Law concerning the fairness of the dismissal or the employer's liability for severance pay.

(4) An employer who fails to furnish either a statement or certificate under subsection (1) or (2) shall be prohibited from introducing evidence as to any facts which might have been recited in the said statement or certificate in any proceedings under this Law concerning the fairness of the dismissal or the employer's liability for severance pay.

(5) An employer who fails to furnish either a statement or certificate under subsection (1) or (2) commits an offence.

(6) For the avoidance of doubt, the duty to furnish a statement or certificate pursuant to subsection (1) or (2) is discharged on the first occasion an employer furnishes such a statement or certificate.

PART II - Leave

13. This Part applies to every employee who is not a casual employee and who has completed his probation period or any lawful extension thereof. Application of leave provisions

14. (1) Subject to section 15, every employee to whom this Part applies shall be entitled to, and his employer shall give him, earned vacation leave with pay of the number of working days that is necessary if taken in an unbroken period to give him at least the period of earned leave in each twelve month period of employment which is specified in respect of each such period in subsection (3): Vacation leave

Provided that the entitlement to earned vacation leave under this subsection shall only arise when the employee has completed the twelve month period of employment to which it relates.

(2) The proviso to subsection (1) shall not apply where the employer and employee have agreed in writing that the entitlement of earned vacation leave shall accrue proportionately to the employee at the end of each month during each twelve month period of employment.

(3) The minimum entitlement of earned leave referred to in subsection (1) is -

Period of employment	Minimum annual entitlement to
----------------------	-------------------------------

	earned leave in respect of each twelve month period of employment
Not exceeding 4 completed years	2 weeks
Exceeding 4 but not exceeding 10 completed years	3 weeks
Exceeding 10 completed years	4 weeks

The minimum annual entitlement of earned leave shall be in such proportions and at such time as the employer and employee shall agree.

(4) The Governor may, by regulations, prescribe that employers in such industries or businesses as may be specified in the regulations, being industries or businesses which have seasonal employment requirements, shall-

- (a) proportion leave in accordance with the time worked by their employees during each year; and
- (b) require their employees to take their leave during such periods in each year as may be specified in the regulations as being the agreed leave periods for the employer's industry or business.

(5) Earned vacation leave shall be above and beyond and shall not include any public holiday leave as provided for by section 16, any sick leave as provided for by section 17 or any daily or weekly non-work periods as provided for by section 23.

(6) The dates for the taking of earned vacation leave shall be fixed by agreement between employer and employee.

(7) By mutual agreement the employer may advance vacation leave not yet earned.

(8) The earned vacation leave specified in subsection (1) is not a cumulative entitlement and shall be taken annually in an unbroken time period, unless the employer and employee agree otherwise.

(9) An employer shall not compel an employee to forego the taking of earned vacation leave even though he pays or offers to pay in lieu thereof and in addition to the employee's normal wage, the wage the employee would have received had he taken the leave.

(10) Any person whose employment is terminated for any reason shall, subject to paragraph (a) of section 11(2), thereupon receive, in respect of every day of earned vacation leave due him at the time of such termination, a cash sum equal to the remuneration for each such day. Once an employee has completed his probationary period, payment of such a sum in respect of earned vacation leave shall be granted on a pro-rata basis if or when his employment is terminated notwithstanding that he has not completed the twelve month period to which it

relates. Where such remuneration would normally include any thing other than money then the amount due on termination shall include the cash equivalent of such thing, calculated in accordance with paragraph (c) of section 28 (1).

(11) The rate of pay for each day of earned vacation leave shall not be less than the basic daily wage of the employee concerned at the commencement of the vacation leave.

(12) Every employee to whom this Part applies shall, in addition to any entitlement to earned vacation leave, be entitled (during each twelve month period of employment) to a maximum of five days compassionate leave on the occurrence of a death or serious illness in the employee's immediate family provided reasonable evidence of such serious illness or death is provided to the employer; and for the purposes of this entitlement the employee's immediate family means the spouse, parents and children of the employee.

(13) In subsection (12)-

"serious illness" includes any period of a person's admittance to hospital as in-patient, recuperation from such hospitalisation or any period of overseas travel related to such hospitalisation or recuperation.

15. Part-time employees shall earn vacation leave in the ratio that their actual hours of employment bear to the standard work week. Part-time employees

16. (1) If an employee does not work on a public holiday he shall be paid the basic wage he would normally have received for work performed on that day had it not been a public holiday, provided he has worked his scheduled work day immediately before and his scheduled work day immediately after the said public holiday. Public holiday pay

(2) Subject to subsection (3), if an employee does work on a public holiday he shall be paid at double his normal rate of pay for the hours actually worked that day, and where he works less than the full day he shall, in addition, be paid at the normal rate for any hours by which the time actually worked falls short of his normal working day.

(3) For the avoidance of doubt the provisions of subsections (1) and (2) are not cumulative so that where an employee does work on a public holiday it is not necessary to add his entitlement under subsection (2) to the basic wage referred to in subsection (1).

(4) An employee may, by mutual agreement between himself and his employer, take time off in lieu of a public holiday in which case he shall not be paid double pay for working on any such holiday.

(4) The total which may be deducted in any period shall not exceed one-third of the gross money wage of the employee for that pay period, provided that this shall not apply to interest on and repayments of negotiated loans nor to the recovery of money advanced as contemplated in paragraph (b) of subsection (3) provided that the deduction accords with the agreement made at the time of the advance.

30. (1) Wages shall be paid on a regular periodic basis, and no period in respect of which wages earned by an employee are payable shall exceed one month. Periods and time of wage payments

(2) The payment of wages shall be made on ordinary working days only and within ordinary working hours.

31. (1) Any employer who- Offences and employee's rights in respect of wages

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to section 28, 29 or 30;
- (b) makes any deduction from the wages of any employee or receives any payment from any employee contrary to the said sections; or
- (c) otherwise contravenes the said sections, commits an offence.

(2) In addition to the offence under subsection (1), an employee shall be entitled to recover by action in the appropriate Court so much of his wages, exclusive of sums lawfully deducted, as shall not have been actually paid to him together with interest thereon at the rate of ten per cent per annum.

32. (1) Every employer who employs ten or more persons shall keep an accurate work account in respect of each employee, which shall record his time worked (by pay periods), his leave taken (by type), and the basic and other wages paid to him for each pay period. Work accounts

(2) In the case of an employee paid on a piece-work basis the work account shall show the work done instead of the time worked.

(3) An employer to whom subsection (1) applies shall preserve each work account, with respect to each entry therein, for at least two years.

(4) Upon demand by any employee, an employer required to maintain a work account under sub-section (1) in respect of that employee shall make it available to him for inspection.

(5) Any employer who contravenes this section commits an offence.

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC _____ of 20

BETWEEN: CHRISTINE ALISON RAE-SMITH

Plaintiff

AND: (1) WINSTON CONNOLLY
(2) ROY MCTAGGART

First Defendant
Second Defendant

ACKNOWLEDGEMENT OF SERVICE

State Defendant's name and address

The First Defendant
P.O. Box 12001 APO
Grand Cayman KY1-1010
Cayman Islands
c/o 530 North Sound Road
George Town
Grand Cayman
Cayman Islands

The Second Defendant
P.O. Box 2158 GT
Grand Cayman KY1-1105
Cayman Islands
c/o Government Administration Building
5th Floor, George Town
Grand Cayman
Cayman Islands

State whether the Defendants intend to contest the action.

YES

NO

If you do not intend to contest the action, do you want time in which to pay the claim?

YES

NO

If you do intend to contest the action, in whole or in part, you must set out full particulars of your defence overleaf

Service of the Plaintiff is acknowledged accordingly.

Defendant's Signature

DATED this day of 2016

See overleaf