



BERMUDA

HUMAN RIGHTS ACT 1981

1981 : 41

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SCHEDULE 1 UNREASONABLE HARDSHIP

WHEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the World and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations:

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AND WHEREAS the European Convention on Human Rights¹ applies to Bermuda²:

AND WHEREAS the Constitution of Bermuda enshrines the fundamental rights and freedoms of every person whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedom of others and for the public interest:

AND WHEREAS these rights and freedoms have been confirmed by a number of enactments of the Legislature:

AND WHEREAS it is expedient to make better provision to affirm these rights and freedoms and to protect the rights of all members of the Community—

[words of enactment omitted]

PART I PRELIMINARY

Short title and commencement

1 This Act may be cited as the Human Rights Act 1981.

[commencement omitted] [this Act was brought into operation on 21 May 1982]

Interpretation

2 (1) In this Act—

“Bermudian” means a person having a connection with Bermuda recognized by the law relating to Immigration for the time being in force;

“board of inquiry”*[repealed by 2012 : 1 s. 2]*

“class of persons” means a class of persons defined by reference to any one or more of the criteria specified in sub-paragraphs (i) to (vi) inclusive of section 2(2)(a);

“Commission” means the Human Rights Commission as appointed under section 13 of the Act, together with the public officers referred to in section 13(4) of the Act;

“Commissioner” means a Commissioner appointed to the Commission under section 13B of the Act;

“the Community” means all persons lawfully residing in Bermuda;

“disability” means the condition of being a disabled person;

“disabled person” means a person who has any degree of physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect or illness, including diabetes, epilepsy, acquired immune deficiency

1 Rome, 4 November 1950; Treaty Series 71 (1953) UK Command Paper #8969

2 by declaration of the United Kingdom under Article 63 of the Convention

syndrome, human immunodeficiency virus, paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog, wheelchair or other remedial appliance or device;

“Executive Officer” means the Executive Officer appointed under section 13 of the Act;

“he” includes “she” and vice versa, and cognate expressions shall be construed accordingly;

“the Minister” means the Minister responsible for human affairs.

“Selection and Appointment Committee” means the Selection and Appointment Committee appointed under section 13A of the Act;

“tribunal” means a tribunal established under section 17A of the Act.

(2) For the purposes of this Act a person shall be deemed to discriminate against another person—

- (a) if he treats him less favourably than he treats or would treat other persons generally or refuses or deliberately omits to enter into any contract or arrangement with him on the like terms and the like circumstances as in the case of other persons generally or deliberately treats him differently to other persons because—
 - (i) of his race, place of origin, colour, or ethnic or national origins;
 - (ii) of his sex or sexual orientation;
 - (iii) of his marital status;
 - (iiiA) of his disability;
 - (iv) of his family status;
 - (v) *[repealed by 2013 : 18 s. 2]*
 - (vi) of his religion or beliefs or political opinions; or
 - (vii) of his criminal record, except where there are valid reasons relevant to the nature of the particular offence for which he is convicted that would justify the difference in treatment.
- (b) if he applies to that other person a condition which he applies or would apply equally to other persons generally but—
 - (i) which is such that the proportion of persons of the same race, place of origin, colour, ethnic or national origins, sex, sexual orientation, marital status, disability, family status, religion, beliefs or political opinions as that other who can comply with it is considerably smaller than the proportion of persons not of that description who can do so; and

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- (ii) which he cannot show to be justifiable irrespective of the race, place of origin, colour, ethnic or national origins, sex, sexual orientation, marital status, disability, family status, religion, beliefs or political opinions of the person to whom it is applied; and
- (iii) which operates to the detriment of that other person because he cannot comply with it.

(3) For the avoidance of doubt it is hereby declared that the rights conferred by this Act on any disabled person do not in any way restrict any right or duty that any other person or any authority has under the Public Health Act 1949 or the Misuse of Drugs Act 1972 to perform any function conferred or imposed by either of those Acts upon the last mentioned person or that authority in relation to that disabled person.

(4) The right to no less favourable treatment because of sex includes the right to no less favourable treatment because a woman is or may become pregnant.

[Section 2 amended by BR 54/1994 effective 16 December 1994; in subsection (1) "disabled person" substituted, and subsections (2)(a) and (b) amended, by 2000:37 s.2 effective 24 August 2000; Section 2 subsection (1) "the Minister" amended by BR 5 / 2011 para. 5 effective 25 February 2011; Section 2 subsection (1) "Commission", "Commissioner", "Executive Officer", "Selection and Appointment Committee", and "tribunal" inserted, and "board of inquiry" deleted by 2012 : 1 s. 2 effective 26 October 2012; Section 2 subsection (1) "tribunal", subsections (2)(a) and (2)(b) amended and subsection (4) inserted by 2013 : 18 s. 2 effective 8 August 2013]

PART II

UNLAWFUL DISCRIMINATION

Discrimination in notices prohibited

3 (1) No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons in any of the ways set out in section 2(2).

(2) Subsection (1) shall not apply to—

- (a) the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one sex; or
 - (b) the display or publication by or on behalf of an organization that—
 - (i) is composed exclusively or primarily of persons having the same political opinions, religion, beliefs or ethnic or national origins or place of origin; and
 - (ii) is not operated for private profit,
- of a notice, sign, symbol, emblem or other representation indicating a purpose or membership qualification of the organization; or

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- (c) the display or publication of a form of application or an advertisement with respect to a limitation, specification or preference based on a *bona fide* occupational qualification, if the notice, sign, symbol, emblem or other representation is not derogatory or offensive in its nature.

[Section 3(2)(b)(i) amended by 2000:37 s.3 effective 24 August 2000]

Discrimination in disposal of premises

4 (1) No person shall discriminate based on age or in any of the ways set out in section 2(2) against any person—

- (a) who is seeking to acquire any accommodation, premises or other land, by refusing or deliberately omitting to dispose of it to him, or failing to dispose of it to him;
- (b) who is occupying any accommodation, premises or other land; or
- (c) who is in need of any accommodation, premises or other land, in respect of any list of persons in need of it.

(2) The prohibition in subsection (1) in respect of sex shall not apply to premises where the whole occupancy is *bona fide* restricted to individuals who are of the same sex.

(3) For the purposes of this section a person shall be deemed to be seeking to acquire accommodation, premises or other land if he is seeking to buy, lease, rent or lodge in such accommodation, premises or land whether it be for the purpose of a dwelling, or a business or trade or any other purpose.

(4) Subsection (1) shall not apply to the letting—

- (a) of housing accommodation in a building which contains such accommodation for not more than three families living independently, if the owner or members of his family occupy one such accommodation;
- (b) of all the rooms in a single housing accommodation to individuals of the same sex; or
- (c) of a room or rooms in a single housing accommodation by the owner or occupier thereof, if he or members of his family reside in such accommodation.

[Section 4 subsection (1) amended by 2013 : 18 s. 3 effective 8 August 2013]

Discrimination against Bermudians in disposal of premises

4A (1) It shall be unlawful for any person to discriminate against a Bermudian who is seeking to acquire any accommodation, premises or other land, by refusing or deliberately omitting to dispose of it to him, or failing to dispose of it to him on the like terms and conditions upon which he would dispose of it to a non-Bermudian:

Provided that it shall not be unlawful for an employer to provide or offer to provide residential accommodation to any employee who is a non-Bermudian if the provision of

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such accommodation is a *bona fide* and reasonable employment consideration for the category of employment of that employee.

(2) It shall be unlawful for any person to advertise before the public an intention to discriminate against Bermudians in regard to the disposal of any accommodation, premises or other land.

(3) It shall be unlawful for any person to instruct an employee, agent or other person acting on his behalf to discriminate or to advertise in contravention of subsection (1) or (2) as the case may be.

(4) Any conveyance, lease, licence, contract or other legal instrument which is entered into in contravention of subsection (1) shall be null and void.

Provision of goods, facilities and services

5 (1) No person shall discriminate against any other person due to age or in any of the ways set out in section 2(2) in the supply of any goods, facilities or services, whether on payment or otherwise, where such person is seeking to obtain or use those goods, facilities or services, by refusing or deliberately omitting to provide him with any of them or to provide him with goods, services or facilities of the like quality, in the like manner and on the like terms in and on which the former normally makes them available to other members of the public.

(2) The facilities and services referred to in subsection (1) include, but are not limited to the following namely—

access to and use of any place which members of the public are permitted to enter;

accommodation in a hotel, a temporary boarding house or other similar establishment;

facilities by way of banking or insurance or for grants, loans, credit or finance;

facilities for education, instruction or training;

facilities for entertainment, recreation or refreshment;

facilities for transport or travel;

the services of any business, profession or trade or local or other public authority.

(3) Unlawful discrimination shall not be deemed to have taken place in contravention of this section by reason only of the refusal of an educational establishment to admit a pupil because of his sex, if that educational establishment is one which admits pupils of one sex only or which would be taken to admit pupils of one sex only if there were disregarded pupils of the opposite sex—

(a) whose admission is exceptional; or

(b) whose numbers are comparatively small and whose admission is confined to particular courses of instruction or teaching classes.

(3A) Where a disabled person (“the complainant”) charges another person (“the respondent”) with contravening this section by reason that the respondent discriminated against the complainant by an act of refusal or deliberate omission in relation to the

provision of a facility or service sought by the complainant, the respondent shall be guilty of a contravention if it is proved that the respondent did the act of refusal or deliberate omission charged against him, unless the respondent proves that his doing of the act was reasonable or excusable in all the circumstances.

(4) For the avoidance of doubt, it is hereby declared that nothing in this section shall be deemed to prevent the giving of preference to a Bermudian in respect of particular facilities by way of banking or for grants of loans, credit or finance.

(5) For the purposes of this section, a person shall not be taken to discriminate on the basis of age solely by offering goods, facilities or services to persons over the age of 65 free of charge, at a discount or on more favourable terms than the same goods, facilities or services are offered to persons under that age.

[Section 5 subsection (3A) amended by 2006:10 s.2 effective 26 May 2006; subsection (1) amended and subsection (5) inserted by 2013 : 18 s. 4 effective 8 August 2013]

Employers not to discriminate

6 (1) Subject to subsection (6) no person shall discriminate against any person in any of the ways set out in section 2(2) by—

- (a) refusing to refer or to recruit any person or class of persons (as defined in section 2) for employment;
- (b) dismissing, demoting or refusing to employ or continue to employ any person;
- (bb) paying one employee at a rate of pay less than the rate of pay paid to another employee employed by him for substantially the same work, the performance of which requires equal education, skill, experience, effort and responsibility and which is performed under the same or substantially similar working conditions, except where the payments are made pursuant to—
 - (i) a seniority system;
 - (ii) a merit system; or
 - (iii) a system that measures earnings by quantity or quality of production or performance;
- (c) refusing to train, promote or transfer an employee;
- (d) subjecting an employee to probation or apprenticeship, or enlarging a period of probation or apprenticeship;
- (e) establishing or maintaining any employment classification or category that by its description or operation excludes any person or class of persons (as defined in section 2) from employment or continued employment;
- (f) maintaining separate lines of progression for advancement in employment or separate seniority lists, in either case based upon criteria specified in

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section 2(2)(a), where the maintenance will adversely affect any employee;
or

- (g) providing in respect of any employee any special term or condition of employment:

Provided that nothing in this subsection shall render unlawful the maintenance of fixed quotas by reference to sex in regard to the employment of persons in the Bermuda Regiment, the Bermuda Police, the Prisons service or in regard to the employment of persons in a hospital to care for persons suffering from mental disorder.

(2) No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any words, symbol or other representation indicating directly or indirectly the existence of discrimination in any of the ways set out in section 2(2) in respect of any limitation, specification or preference for a position or employment:

Provided that nothing in this subsection shall be taken to prevent or interfere with any *bona fide* news report published in any book, magazine, newspaper or on the radio or television.

(3) No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position or employment for or on behalf of an employer—

- (a) that contains any words, symbol or other representation; or
- (b) that is under a classification or heading,

indicating directly or indirectly any discrimination against any person in any of the ways set out in section 2(2) in respect of any limitation, specification or preference for the position or employment.

(4) No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any discriminatory limitation, specification, or preference or that requires an applicant for employment to furnish any information concerning any of the matters set out in section 2:

Provided that the provisions of this subsection do not extend to—

- (a) any official application form or questionnaire used by, or any oral inquiry made by or on behalf of, any department of the Government or Government Board for the purpose of administering provisions of law which relate to immigration or labour or the collection of statistics; or
- (b) any inquiry made, by or on behalf of a person proposing to employ another person who is not at the time resident in Bermuda, concerning the latter's sex or marital status or the number of his dependent children.

(5) No employment agency shall discriminate against any person in any of the ways set out in section 2(2) in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant or applicants to an employer or anyone acting on his behalf.

(6) The provisions of subsections (1) to (5) inclusive of this section relating to any discrimination, limitation, specification or preference for a position or employment based on sex, marital status, family status, religion, beliefs or political opinions, or any advertisement or inquiry in connection therewith, do not apply where a particular sex or marital status, religion, belief or political opinion, or availability at any particular time, as the case may be, is a *bona fide* and material occupational qualification and a *bona fide* and reasonable employment consideration for that position or employment.

(7) Nothing contained in this Part shall in relation to any employment, sport, game or other activity where physical strength, stamina or physique puts the average woman at a disadvantage compared with the average man, render unlawful any act related to the participation of a person in events involving that activity which are confined to persons of one sex only:

Provided that this subsection shall not authorize any discrimination to be applied to a woman in relation to the exercise of any function ancillary to any such activity as aforesaid for the discharge of which function strength, stamina or physique is not a relevant factor.

(8) The provisions of this section relating to limitation or preference in employment do not apply to an exclusively religious, philanthropic, educational, fraternal or social organization that is not operated for private profit, or to any organization that is operated primarily to foster the welfare of a religious or ethnic group and that is not operated for private profit, where in any such case any of the characteristics set out in section 2(2) are a *bona fide* and material occupational qualification and a *bona fide* and reasonable employment consideration.

(9) For the avoidance of doubt it is hereby declared that the provisions of this section relating to limitation of or preference in employment shall not apply in respect of any person who on his own behalf or on behalf of any other person seeks to give preference to the employment of a Bermudian or who *bona fide* for reasons of national security takes into account the nationality of any person when selecting any person for employment.

(9A) For the avoidance of doubt it is hereby declared that nothing in this section confers upon any person any right to employment.

(9B) For the avoidance of doubt it is hereby declared that nothing in this section confers upon any person any right to be given, or to be retained in, any employment for which he is not qualified or which he is not able to perform or of which he is unable to fulfil a *bona fide* occupational requirement, or any right to be trained, promoted, considered or otherwise howsoever treated in or in relation to employment if his qualifications or abilities do not warrant such training, promotion, consideration or treatment.

(9C) Notwithstanding subsections (9A) and (9B), a disabled person shall not be considered disqualified for an employment by reason of his disability if it is possible for the employer, or prospective employer, to modify the circumstances of the employment so as to eliminate the effects of the disabled person's disability in relation to the employment, without causing unreasonable hardship to the employer, or prospective employer.

(9D) For the purpose of subsection (9C), "unreasonable hardship" shall be construed in accordance with Schedule 1.

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(9E) The Minister may give general directions of a policy nature to the Human Rights Commission, relating to the application and interpretation of Schedule 1, and the Human Rights Commission shall give effect to any such directions.

(10) *[Deleted by 2000:37]*

[Section 6 amended by 1992:87 effective 8 April 1993, by 1998:32 effective 13 July 1998; by 1998:39 effective 29 July 1998; subsections (1) and (6) amended, and (10) deleted, by 2000:37 s.4 effective 24 August 2000; subsections (9C) and (9D) replaced, and (9E) added by 2011 : 34 s. 2 effective 3 December 2011; subsection 6 amended by 2013 : 18 s. 5 effective 8 August 2013]

Special programmes

6A (1) Notwithstanding the provisions of this Part, the Commission may, upon conditions or limitations and subject to revocation or suspension, approve in writing any special plan or programme, by the Government or by any agency thereof or by any person, where such plan or programme—

- (a) is designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity; or
- (b) is designed to increase the employment of members of a group or class of persons because of the race, colour, ethnic or national origins or place of origin of the members of the group or class.

(2) For the purposes of subsection (1), an application for the approval of the Commission must be in writing and must be supported by such information, if any, as the Commission may require.

[Section 6A inserted by 1995:1 effective 14 February 1995; subsection (1)(b) amended by 2000:37 s.5 effective 24 August 2000]

Employers, etc., not to harass employee

6B (1) No person who is an employee shall be harassed in the work place by the employer or agent of the employer or by another employee on the basis of any ground referred to in section 2(2)(a)(i) to (vii).

(2) For the purposes of subsection (1) a person harasses another person if he persistently engages in comment or conduct towards that other person—

- (a) which is vexatious; and
- (b) which he knows, or ought reasonably to know, is unwelcome.

[Section 6B inserted by 1995:1 effective 14 February 1995; subsection (1) amended, and (2) added, by 2000:37 s.6 effective 24 August 2000; subsection (1) substituted by 2006:10 s.3 effective 26 May 2006]

Organizations not to discriminate

7 (1) Subject to subsection (3) no organization, nor any employee, agent or person concerned with the affairs of an organization, shall discriminate in any of the ways set out in section 2(2) against a person—

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- (a) who is not a member of the organization, by refusing or deliberately omitting to admit him to membership of the organization on the like terms as govern consideration of other persons applying for membership;
- (b) who is a member of the organization, by refusing or deliberately omitting to accord him the same benefits as are accorded to other members thereof, or to take the like action on his behalf as is taken on behalf of other members, or by expelling him from the organization.

(2) For the purpose of this section, “organization” means any organized body of persons, whether constituted under the authority of any provision of law or otherwise, including clubs, societies, organizations of employers or workers, organizations concerned with the carrying on of trades, businesses, professions, or occupations and organizations concerned with political, religious, philanthropic, cultural, charitable, social or recreational objectives or activities.

(3) A club, society or other organization, the main purposes of which relate to religious, cultural, social, sporting or political activities shall only be deemed to discriminate against another person if the discrimination relates to that person’s race, place of origin, colour, sex, or sexual orientation, ethnic or national origins, family status or marital status or disability or to the past or present marital status of his parents.

[Section 7(3) amended by 2000:37 s.7 effective 24 August 2000; subsection (3) amended by 2013 : 18 s. 6 effective 8 August 2013]

Discrimination etc. prohibited for taking part in proceedings under Act

8 No person shall—

- (a) refuse to employ or to continue to employ any person;
- (b) threaten to dismiss or demote or threaten to penalize in any other way any person in regard to his employment or any term or condition thereof;
- (c) treat prejudicially any person in regard to his employment or any term or condition thereof; or
- (d) intimidate or coerce or impose any pecuniary or other penalty upon any person,

in order to prevent any other person from making a complaint or disclosure or from testifying or participating in any other way in a proceeding under this Act, or with a view to penalizing any person for having made such a complaint or disclosure or for having testified or participated as aforesaid.

[Section 8(b) amended by 2000:37 s.8 effective 24 August 2000]

Publication of racial material and racial incitement prohibited

8A (1) No person shall, with intent to incite or promote ill will or hostility against any section of the public distinguished by colour, race or ethnic or national origins—

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- (a) publish or display before the public, or cause to be published or displayed before the public, written matter which is threatening, abusive or insulting; or
- (b) use in any public place or at any public meeting words which are threatening, abusive or insulting,

being matter or words likely to incite or promote ill will or hostility against that section on grounds of colour, race or ethnic or national origins.

(2) No person shall, with intent to incite another to commit a breach of the peace, or having reason to believe that a breach of the peace is likely to ensue, do any act calculated to incite or promote ill will or hostility against any section of the public distinguished by colour, race or ethnic or national origins.

(3) In this section—

- (a) the expressions “public meeting” and “public place” respectively have the same meaning as in the Public Order Act 1963 ;
- (b) the expression “written matter” includes any writing, sign or visible representation; and
- (c) the expression “publish or display” includes publishing or displaying by way of recorded telephone discussions, internet, e-mails recorded in print or recorded on the internet, radio, television or any other electronic medium or communication device.

[Section 8A amended by 2000:37 s.9 effective 24 August 2000; subsection (3) amended by 2013 : 18 s. 7 effective 8 August 2013]

Sexual harassment prohibited

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.

(2) A person who occupies accommodation has a right to freedom from sexual harassment by the landlord, or by an agent of the landlord, or by an occupant of the same building.

(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 employer, 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.

(4) For the purposes of this section, a person harasses another sexually if he engages in sexual comment or sexual conduct towards that other which is vexatious and which he knows, or ought reasonably to know, is unwelcome.

[Section 9 amended by 1992:87 effective 8 April 1993; subsections (3) and (4) amended by 2000:37 s.10 effective 24 August 2000]

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Discriminatory covenants to be of no effect

10 (1) Any legal instrument which provides for discrimination against any person in any of the ways set out in section 2(2) in regard to the benefit of any property whether real or personal accruing to or passing to or being enjoyed by any person or class of persons either directly or indirectly, shall be of no effect in so far as it purports to prohibit or restrict the benefit in the property from so accruing or passing or being enjoyed.

(2) Any legal instrument which purports to discriminate against any person in any of the ways set out in section 2(2) in the disposition of any property to any person or class of persons either directly or indirectly shall be of no effect in so far as it purports so to prohibit or restrict the disposition of the property.

(3) Any legal instrument which purports to discriminate against any person in any of the ways set out in section 2(2) in the appointment, or power of appointment, to any office or to perform any function in relation to the management, control or disposition of any property, or benefit therein, to any person or class of persons, either directly or indirectly, shall be of no effect in so far as it purports so to prohibit or restrict the appointment or power of appointment.

(4) Where the effect of any legal instrument is curtailed by this section, the legal instrument of which it forms part shall not be void or unenforceable, but shall be read and construed as though there was no unlawful discrimination.

(5) For the purposes of this section, “benefit” in relation to any property, means any estate, interest, right, privilege or other benefit in the property or the use or disposition of the proceeds thereof, whether or not such benefit is enforceable at law or in equity.

(6) For the purpose of this section “legal instrument” means any instrument, other than an Act or statutory instrument, which relates in any way to the disposition of any property owned beneficially by a Bermudian or by any other person ordinarily resident in Bermuda or any estate, interest or other right therein; and includes the constitution or empowering instrument of any organization or body formed or incorporated for the purpose of administering or giving effect to a trust of any nature affecting any such property.

(7) Nothing in this section shall be deemed to prevent any disposition of property, real or personal, any appointment or any grant of a power of appointment by a person to any person or category of person whether born in lawful wedlock or not as mentioned in cases 1 to 7 in section 5(1) of the Succession Act 1974 [*title 26 item 1*], or in trust for any religious purpose or to any particular church or other religious organization.

(8) For the avoidance of doubt it is hereby declared that nothing in this section shall apply to any discrimination in the disposition of property, real or personal, resulting from any provision of the law requiring the disposition of such property to be to a Bermudian.

Provisions of law which purport to sanction discriminatory covenants

11 Subject to section 10(8), any provision of law which purports to sanction any legal instrument the effect of which is curtailed by section 10 shall be read and construed with such modification and adaptation as may be necessary to enable such legal instrument to be read and construed in the manner provided for in section 10(4).

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Validity and revision of contracts

12 (1) Without prejudice to section 10, a contract or term in a contract which contravenes any provision in this Part shall not be void or unenforceable by reason only of the contravention, but may be rectified in accordance with the following provisions of this section.

(2) On an application under this section to rectify a contract or term in a contract the court may, if it appears to the court feasible to do so without affecting the rights of persons who are not parties to the contract, make such order as it thinks just in all the circumstances rectifying the contract or term so as to secure that, as from the date of the order, it does not contravene this Part, and any party to the contract, whether or not a party to the application, shall be bound by the order accordingly.

(3) Any reference in this section to a party to a contract shall, where the rights of that party are for the time being vested in any other person, be construed as a reference to that other person.

PART III

HUMAN RIGHTS COMMISSION

The Human Rights Commission

13 (1) There shall be a body of Human Rights Commissioners consisting of not less than five nor more than 12 persons (in this Act referred to as "Commissioners") who shall be appointed for such terms not exceeding three years at a time as may be specified in their respective letters of appointment.

(1A) One third of the persons appointed under subsection (1) may have the following qualifications—

- (a) in possession of a legal qualification; and
- (b) knowledge of human rights law.

(2) The Commissioners shall be appointed by the Selection and Appointment Committee, who shall appoint—

- (a) one of them to be Chairman having qualifications in accordance with subsection (1A) and a member of the Bermuda Bar in good standing; and
- (b) another to be Deputy Chairman with the duty to act as Chairman in the Chairman's absence:

Provided that in the absence of both the Chairman and the Deputy Chairman from a meeting the members present shall elect one of themselves to preside as chairman at that meeting.

(2A) *[Deleted by 2012 : 1 s. 3]*

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(3) The Governor acting upon the recommendation of the Public Service Commission shall appoint the Executive Officer to the Commission. The person so appointed shall be the Commission's secretary and his office shall be a public office.

(4) The staff of the Commission shall be public officers.

(5) The expenses of the Commission shall be met out of funds to be appropriated annually by the Legislature.

(6) At a meeting of the Commission five members constitute a quorum.

[Section 13 amended by 1992:87 effective 8 April 1993; subsection (6) added by 2000:37 s.11 effective 24 August 2000; Section 13 amended by 2012 : 1 s. 3 effective 26 October 2012]

Composition of Selection and Appointment Committee

13A (1) There shall be a Selection and Appointment Committee, appointed under this Act, consisting of five members in total, comprised of the—

- (a) head of the Selection and Appointment Committee;
- (b) one representative recommended by the Premier;
- (c) one representative recommended by the Leader of the Opposition; and
- (d) two representatives from the general public appointed by the head of the Selection and Appointment Committee.

(2) The Minister shall, from time to time, select the head of the Selection and Appointment Committee.

[Section 13A inserted by 2012 : 1 s. 4 effective 26 October 2012]

Function of the Selection and Appointment Committee

13B (1) The function of the Selection and Appointment Committee shall be to—

- (a) invite applications from the general public, through advertisement and direct invitation, to serve on the Human Rights Commission as Commissioners; and
- (b) review all applications, interview applicants, and appoint members to serve as Commissioners.

(2) The criteria for the selection of Commissioners shall be prescribed by the Minister, in consultation with the Executive Officer and the department responsible for Human Rights.

[Section 13B inserted by 2012 : 1 s. 4 effective 26 October 2012]

Functions of the Commission

14 The Commission shall be responsible to the Minister for the administration of this Act and shall—

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- (a) encourage an understanding of the fundamental rights and freedoms of the individual guaranteed by Chapter 1 of the Constitution [*title 2 item 1*] and of the principle that all members of the Community are of equal dignity, have equal rights and have an obligation to respect the dignity and rights of each other;
- (b) promote an understanding of, acceptance of and compliance with this Act;
- (c) develop, conduct, research and arrange educational programmes designed to eliminate discriminatory practices;
- (d) encourage organizations within the Community and individual persons to carry on activities which will attract all members of the Community whatsoever;
- (e) encourage and co-ordinate any activities which seek to forward the principle that every member of the Community is of equal dignity and has equal rights; and
- (f) in accordance with this Act, use its good offices for the conciliation and settlement of any complaints or grievances arising out of acts of unlawful discrimination and, where in its opinion such good offices are inappropriate, institute prosecutions for contraventions of this Act.

Disclosure of information to CURE

14A [*Repealed by 2010 : 33 s. 5.*]

[*Section 14A repealed by 2010 : 33 s. 5 effective 5 July 2010*]

Guidelines

14B (1) The Commission may prepare and, with the prior approval of the Minister, publish guidelines for the information of the public in relation to any matter relevant to its functions under section 14.

(2) Before publishing guidelines under subsection (1), the Commission may consult any organization it considers to have an interest in the matter.

(3) The guidelines do not have the force of law but may be received as evidence of the matters set out in them.

[*Section 14B inserted by 2000:37 s.12 effective 24 August 2000*]

Additional functions relating to racial equality

14C (1) The Commission shall—

- (a) promote equality of opportunity and good relations between persons of different racial groups;
- (b) work towards the elimination of racial discrimination and institutional racial discrimination; and

- (c) establish and maintain in such form as it considers appropriate, a register of employers from the information or data received from the Director of Statistics under subsection (2)(b).
- (2) The Commission may—
 - (a) issue codes of practice containing practical guidance for—
 - (i) the elimination of racial discrimination in the field of employment; and
 - (ii) the promotion of equality of opportunity in that field between persons of different racial groups; and
 - (b) request in writing from the Director of Statistics any information or data which the Commission requires to carry out its functions under this section.
- (3) For the purposes of this section, “racial group” means a group of persons defined by reference to colour, race, place of origin, ethnic origins or ancestry; and references to a person’s racial group refer to any racial group into which the person falls.
- (4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group for the purposes of this Act.
- (5) A person practices institutional racial discrimination if he maintains policies, or engages in practices or procedures, which are intended to, or likely to result in, hardship or economic disadvantage to one racial group as against another.
- (6) A comparison of the case of a person of a particular racial group with that of a person not of that group shall be such that the relevant circumstances in the one case are the same, or are not materially different, in the other.

[Section 14C inserted by 2010 : 33 s. 6 effective 5 July 2010]

Codes of practice

- 14D (1) When the Commission proposes to issue a code of practice under section 14C(2)(a), it shall prepare and publish a draft of that code, shall consider any representations made to it about the draft and may modify the draft accordingly.
- (2) The Commission shall not, without the prior written approval of the Minister, publish a draft code of practice.
- (3) In the course of preparing any draft code of practice for eventual publication under subsection (1), the Commission shall consult with such organisations or associations of organisations representative of employers or of workers as appear to the Commission to be appropriate.
- (4) The Commission shall transmit the draft code of practice to the Minister who shall if he approves of it, lay it before both Houses of the Legislature.
- (5) A draft code of practice may be approved by resolution of each House of the Legislature and such resolution may be with or without modification of the draft code of practice.

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(6) Where a draft code of practice has been approved by both Houses of the Legislature, the Commission shall issue the draft code of practice with such modifications, if any, as may have been approved and the code shall come into effect on such day as the Minister may by order appoint.

(7) The Commission may from time to time revise the whole or any part of a code of practice issued under this section and issue that revised code, and subsections (1) to (6) shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code of practice.

(8) A failure on the part of any person to observe any provision of a code of practice shall not of itself render him liable to any proceedings; but in any proceedings before a board of inquiry or a court, any code of practice issued under this section shall be admissible in evidence and if any provision of such a code appears to the board of inquiry or the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(9) Without prejudice to section 14C(2)(a), a code of practice issued under this section may, with the approval of the Minister, include such practical guidance as to what steps it is reasonably practicable for employers to take for the purpose of preventing at the workplace acts made unlawful by this Act.

[Section 14D inserted by 2010 : 33 s.6 effective 5 July 2010]

Information from Director of Statistics

14E (1) The Director of Statistics shall comply with a request made under section 14C(2)(b) where he is satisfied that the information requested by the Commission—

- (a) is information that the Commission reasonably requires to discharge its functions under section 14C; and
- (b) is not contrary to any provision of the Statistics Act 2002.

(2) The information or data supplied by the Director of Statistics under subsection (1) shall, subject to the Statistics Act 2002, be in such form or classification as may be specified in the request made under subsection (1).

[Section 14E inserted by 2010 : 33 s. 6 effective 5 July 2010]

Information from employers

14F (1) The Commission may in addition to whatever information is supplied by the Director of Statistics, on giving reasonable notice, require employers to furnish such information about employees and applicants for employment as the Commission may reasonably require to discharge its functions under section 14C.

(2) Every employer required by the Commission to furnish it with information under subsection (1), shall furnish such information in such form and within such period as the Commission may specify.

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(3) Notwithstanding section 6(4), an employee shall, when requested so to do, furnish to his employer such information as is reasonably required to enable the employer to comply with this section.

(4) In this section, “information” includes information about pay, remuneration and emoluments.

[Section 14F inserted by 2010 : 33 s. 6 effective 5 July 2010]

Regulations

14G (1) The Minister may, after consultation with the Commission, make regulations—

- (a) prescribing the information that the Commission may reasonably require from employers under section 14F;
- (b) requiring that information to be given separately by reference to different descriptions or classes of employment; and
- (c) generally for giving effect to the provisions of sections 14C to 14F.

(2) The affirmative resolution procedure applies to regulations made by the Minister under subsection (1).

[Section 14G inserted by 2010 : 33 s. 6 effective 5 July 2010]

Making a complaint

14H (1) A complaint to the Commission—

- (a) shall be made by the person aggrieved, but may be made on his behalf by a member of his family or other suitable person if the person from whom the complaint might have been made is unable to act for himself;
- (b) may be made orally, electronically or in writing; and
- (c) shall be made within six months after the alleged contravention takes place:

Provided that the Executive Officer may entertain a complaint up to two years after an alleged contravention if he is satisfied that there are good reasons for the delay and that no one will be prejudiced by the delay.

(2) Where a complaint is made to the Commission, it shall record—

- (a) the complainant's name and contact information;
- (b) the subject matter of the complaint; and
- (c) the date when the complaint was made.

[Section 14H inserted by 2012 : 1 s. 5 effective 26 October 2012]

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Preliminary inquiries

14I For the purpose of determining whether to undertake an investigation, the Commission may conduct such preliminary inquiries as it considers appropriate.

[Section 14I inserted by 2012 : 1 s. 6 effective 26 October 2012]

Mediation

14J (1) The Office of the Human Rights Commission may offer parties mediation or conciliation under this section if, having regard to all of the circumstances of the case, the conciliation or mediation is suitable in such circumstances.

(2) The Office of the Human Rights Commission may authorise any person, deemed fit by the Commission, as mediator in any mediation.

(3) Anything said or admitted during the mediation and any document prepared for the purposes of such mediation—

- (a) shall not be admissible in evidence in any subsequent investigation of the complaint that is the subject of the investigation unless the person who said or admitted the thing, or to whom the documents relate, consents to its admission; and
- (b) shall not be admissible in evidence against any person in any court or at any inquiry or in any other proceedings,

and no evidence in respect of the mediation may be given against any person.

[Section 14J inserted by 2013 : 18 s. 8 effective 8 August 2013]

Investigation of complaints

15 (1) Subject to the following provisions of this Part where—

- (a) any person complains to the Executive Officer upon grounds which appear to be genuine that he has suffered unlawful discrimination by reason of any alleged contravention of this Act; or
- (b) the Executive Officer has reasonable grounds for believing that any person has contravened any provision of this Act,

the Executive Officer shall have power to investigate, and it shall be the duty of the Executive Officer as soon as is reasonably possible to investigate and—

- (c) endeavour to settle the causes of the complaint; or
 - (d) endeavor to cause the contravention to cease,
- as the case may be.

(1A) *[Repealed by 2012 : 1 s. 7]*

(2) The Executive Officer shall, before commencing an investigation under subsection (1), comply with the requirements of subsections (3), (4) and (5).

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(3) The Executive Officer shall give notice in writing of the complaint or belief, as the case may be, to the person or organization against whom the complaint was made or in relation to whom the belief arose, and the notice shall state that the Executive Officer intends to investigate the complaint or the belief.

(3A) Where pursuant to subsection (3) the Executive Officer gives notice to any person or organization that he believes that that person or organization has contravened any provision of the Act, the notice shall specify the grounds for that belief.

(4) The Executive Officer shall determine the terms of reference for any investigation carried out pursuant to this section.

(5) Where the terms of reference of the investigation relate to the activities of persons named in them or to the activities of any employer or organization under Part II of this Act, the Executive Officer shall offer such person, employer or organization so named an opportunity of making oral or written representations with regard to it (or both oral and written representations if it thinks fit); and a person, employer or organization so named who avails himself of an opportunity under this subsection of making oral or written representations may be represented—

(a) by a barrister and attorney; or

(b) by some other person of his choice, not being a person to whom the Executive Officer objects on the ground that he is unsuitable.

(6) The Executive Officer may, if he thinks fit—

(a) from time to time revise the terms of reference of an investigation; or

(b) unless a person affected by a complaint objects, consolidate two or more complaints;

and, when the Executive Officer exercises a power that he has under this subsection, subsections (1) to (5) shall have effect in relation to the case *mutatis mutandis*.

(7) *[Repealed by 2012 : 1 s. 7]*

(8) If, in the opinion of the Executive Officer, a complaint is without merit, the Executive Officer may dismiss the complaint at any stage of the proceedings after he has given the complainant an opportunity to be heard.

(9) In any case where it is made to appear to the Executive Officer that a complaint which he is investigating is also under active investigation by some other department or agency of the Government, the Executive Officer may suspend or discontinue his own investigation into that complaint.

(10) At any stage a complainant may withdraw a complaint made pursuant to subsection (1).

[Section 15 amended by 1992:87 effective 8 April 1993; by 1995:1 effective 14 February 1995; subsection (5) amended by 2000:37 s.13 effective 24 August 2000; Section 15 amended by 2012 : 1 s. 7 effective 26 October 2012]

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Decision not to investigate

15A (1) The Executive Officer may decide not to investigate a complaint if he is satisfied that—

- (a) the law or existing administrative procedure provides a remedy adequate in the circumstances for the complainant and, if the complainant has not availed himself of the remedy, there is no reasonable justification for the failure to do so; or
 - (b) the complaint is frivolous, vexatious or not made in good faith.
- (2) The Executive Officer may decide not to further investigate a complaint if—
- (a) the complainant has abandoned the complaint—
 - (i) by failing to advise the Office of the Human Rights Commission of a current address or a telephone number at which the Office of the Human Rights Commission can contact him; or
 - (ii) by failing to respond after a reasonable number of attempts by the Office of the Human Rights Commission to contact him;
 - (b) the complainant withdraws the complaint under section 15(10); or
 - (c) the complaint is settled or is successfully dealt with by mediation.

(3) Where the Executive Officer decides not to investigate or further investigate a complaint, he shall notify the complainant and the respondent of his decision in writing.

(4) The Executive Officer may indicate with notification under subsection (3) any other recourse that may be available to the complainant in writing.

[Section 15A inserted by 2012 : 1 s. 8 effective 26 October 2012]

Powers to collect evidence

16 (1) For the purposes of an investigation under section 15 the Executive Officer may, subject to any just claim of privilege, request from the person or organization against whom a complaint has been made the production for inspection and examination of employment applications, payrolls, records, documents, writings and papers that are relevant to the investigation and an officer of the Commission acting as such may either—

- (a) take copies or extracts at the premises where they are produced for inspection or examination; or
- (b) upon giving a receipt therefor remove them for the purpose of making copies or extracts; but in that case the officer shall permit the person in charge of the same to accompany him while the copies or extract are being made, and shall, whether that person accompanies him or not, return the same to the premises from which they were removed as soon as possible and in any case within forty-eight hours:

Provided that nothing in this subsection shall be taken to authorize the Executive Officer or any officer of the Commission to require the production or to take copies or

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extracts of anything in the possession of any department of the Government except with the prior permission of the Minister charged with responsibility for the administration of that department.

(2) Where a judge or magistrate is satisfied, upon an application by an officer of the Commission, that there is reasonable ground for believing that it is necessary to enter any premises or to make any inspection for purposes relevant to an inquiry under this Act, the judge or magistrate may issue an order authorizing an officer of the Commission to enter and view such premises and make such inspection for such purposes, but every such entry and viewing shall be made between sunrise and sunset unless the judge or magistrate by the order authorizes the officer to make such entry and viewing at night. No such order shall be issued unless the Executive Officer or his officer has made a genuine effort to secure compliance with a request under section 16(1) by conciliation, and the party resisting the request has been given notice and opportunity to appear before the judge or magistrate to oppose the application. Bank records may be inspected under this section only in accordance with the order of a judge.

(3) Any person who refuses to obey the order of a judge or magistrate issued under subsection (2) shall be guilty of an offence and liable to the penalties set out in section 22.

(4) Any person who hinders, obstructs, molests or interferes with the Executive Officer or an officer of the Commission in the lawful exercise of a power or the lawful performance of a duty under this Act shall be guilty of an offence and liable to the penalties set out in section 22.

[Section 16 amended by 2012 : 1 s. 9 effective 26 October 2012; headnote amended by 2013 : 18 s. 9 effective 8 August 2013]

Tribunal

17A There is established a Tribunal which, subject to the provisions of this Act, shall be responsible for hearing complaints.

[Section 17A inserted by 2013 : 18 s. 10 effective 8 August 2013]

Procedure of Commission

17 *[Repealed by 2012 : 1 s. 10]*

[Section 17 repealed by 2012 : 1 s. 10 effective 26 October 2012]

References to a tribunal

18 (1) Where—

(a) it appears to the Executive Officer that—

(i) it is unlikely in the circumstances to be able to settle the causes of a complaint; or

(ii) the Executive Officer has been trying for a period of nine months to settle the causes of a complaint but has been unsuccessful,

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and the complaint is not of such a kind or of such gravity as to warrant a prosecution, the Executive Officer shall refer the complaint to a tribunal.

(1A) Where—

- (a) the Executive Officer refers a complaint to a tribunal; and
- (b) the complainant applies to the Office of the Human Rights Commission for financial assistance under this section,

the department responsible for Human Rights shall consider the application and may grant it if it considers it fit to do so.

(c) *[repealed by 2012 : 1 s. 11]*

(1B) Assistance granted under subsection (1A) shall be on the ground that it would be unreasonable, having regard to the complexity of the case or the complainant's position in relation to the person against whom the complaint is made or another person involved or any other matter, to expect the complainant to deal with the case unaided.

(1C) Assistance by the Executive Officer under this section may include—

- (a) giving advice;
- (b) arranging for the giving of advice or assistance by an attorney;
- (c) arranging for representation by any person; and
- (d) any other form of assistance which the Office of the Human Rights Commission may consider appropriate.

(2) *[Repealed by 2012 : 1 s. 11]*

[Section 18 amended by 1995:1 effective 14 February 1995; Section 18 amended by 2012 : 1 s. 11 effective 26 October 2012; Section 18 subsection (1C)(d) amended by 2013 : 18 s. 11 effective 8 August 2013]

Procedure of tribunals

19 Sections 8, 9, 10, 11, 12 and 13 of the Commissions of Inquiry Act 1935 shall apply to the hearing of complaints by a tribunal.

[Section 19 repealed and replaced by 2012 : 1 s. 12 effective 26 October 2012]

Powers of tribunals

20 (1) A tribunal after hearing a complaint shall decide whether or not any party has contravened this Act, and may do any one or more of the following—

- (a) order any party who has contravened this Act to do any act or thing that, in the opinion of the tribunal, constitutes a full compliance with such provision and to rectify any injury caused to the complainant by the contravention and to make financial restitution therefor;

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Provided that financial restitution shall not be ordered for any loss which might have been avoided if the complainant had taken reasonable steps to avoid it;

- (b) if it is satisfied that an offence has been committed and that any order that it may make under paragraph (a) will not be complied with, refer the complaint to the Director of Public Prosecutions with a view to a prosecution; and, additionally or alternatively;
- (c) order any party to the dispute to pay any other party or the Commission costs of the proceedings before the tribunal, not exceeding in the aggregate \$1000.

(2) In any case where a tribunal exercises its powers under subsection (1)(a) but the party against whom the order was made refuses or neglects to comply with the whole or any part of it, then upon application by the Commission or by any party aggrieved by the non-compliance, the tribunal may proceed as provided by subsection (1)(b).

(3) In any case, where a tribunal, after hearing a complaint, considers that the complaint is frivolous or vexatious and unjustified, the tribunal may order the complainant to pay compensation to the person against whom the complaint was made, not exceeding the reasonable costs of that person incurred in defending himself against the complaint.

(4) For the avoidance of doubt it is hereby declared that restitution in relation to a contravention of any provision of this Act includes financial restitution for injury to feelings.

(5) In any proceedings before the tribunal under this Act or otherwise, an interested party may, with leave of the tribunal, amend its terms of reference or add parties to an application on any terms and conditions that the tribunal considers appropriate.

(6) The Tribunal may dismiss a complaint at any stage of the proceedings.

[Section 20 amended by 1995:1 effective 14 February 1995; subsection (1)(b) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; Section 20 repealed and replaced by 2012 : 1 s. 13 effective 26 October 2012; Section 20 amended by 1995:1 effective 14 February 1995; subsection (1)(b) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; Section 20 repealed and replaced by 2012 : 1 s. 13 effective 26 October 2012; Section 20 subsection (6) repealed and replaced by 2013 : 18 s. 12 effective 8 August 2013]

Claims under Part II

20A (1) A claim by any person ("the claimant") that another person ("the respondent") has committed an act of discrimination against the claimant which is made unlawful by virtue of Part II may be made the subject of civil proceedings in like manner as any other claim in tort.

(2) For the avoidance of doubt it is hereby declared that damages in respect of an unlawful act of discrimination may include compensation for injury to feelings whether or not they include compensation under any other head.

[Section 20A inserted by 1995:1 effective 14 February 1995]

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Enforcement of order of tribunal

20B (1) An order of a tribunal made under section 20 shall be made an order of the Supreme Court and is enforceable in the same manner as an order of that Court.

(2) To make an order of a tribunal an order of the Supreme Court, a certified copy of the order must be filed with the Registrar of the Court, and from the time of filing, the order of the tribunal becomes an order of the Court.

[Section 20B inserted by 2012 : 1 s. 14 effective 26 October 2012]

Appeal from decision of tribunal

21 (1) Any party against whom an order has been made by a tribunal may, subject to this section, appeal to the Supreme Court.

(2) Any party to the proceedings before a tribunal shall be entitled to be heard on the appeal and the Executive Officer shall likewise, if he so wishes, be entitled to be heard.

(3) An appeal under this section may be made on questions of law or fact or both and the Court may affirm or reverse the decision or order of the tribunal or the Court may substitute its own order for that of the tribunal.

(4) A reference by a tribunal to the Director of Public Prosecutions shall not be deemed to be an order subject to appeal.

(5) The Chief Justice shall have the same power to make rules in respect of appeals under this section as he has under section 62 of the Supreme Court Act 1905 *[title 8 item 1]*.

(6) Section 6 of the Statutory Instruments Act 1977 *[title 1 item 3]* shall not apply to rules made under subsection (5) unless they impose fees, in which case the rules imposing fees shall be subject to affirmative resolution procedure.

[Section 21 subsection (4) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; Section 21 amended by 2012 : 1 s. 15 effective 26 October 2012]

Offences and penalties

22 (1) Any person who—

- (a) wilfully and unlawfully discriminates against a person contrary to any provision of Part II; or
- (b) aids, counsels or procures any other person to discriminate against a person contrary to any provision of Part II; or
- (c) wilfully infringes, or wilfully does, directly or indirectly, any thing that infringes, a right that a person has under Part II; or
- (d) wilfully contravenes any other requirement of Part II,

commits an offence:

Provided that it shall be a defence for any person charged with an offence under this subsection to prove that he acted in reliance upon a statement made to him by some

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other person to the effect that, by reason of any provision of this Act, it would not be unlawful for him so to act, and that it was reasonable in the circumstances for him to have relied upon the statement so made.

(2) Where a person is found guilty of an offence under subsection (1)—

Punishment on summary conviction:

- (i) for a first offence, a fine of \$5,000;
- (ii) for a second or subsequent offence, imprisonment for three years or a fine of \$15,000, or both such fine and imprisonment.

(3) Any person who—

- (a) commits any act declared by any provision of Part III to be an offence;
- (b) contravenes any provision of an order made upon him by a board of inquiry under Part III,

commits an offence:

Punishment on summary conviction:

- (i) if an individual, a fine of \$5,000; or
- (ii) if a corporation, trade union, employers' organization or employment agency, a fine of \$25,000.

(4) An employer who—

- (a) without reasonable excuse, fails to furnish information required under section 14F; or
- (b) knowingly provides false information,

commits an offence, and is liable on conviction by a court of summary jurisdiction to a fine not exceeding \$5,000.

(5) An employee who—

- (a) without reasonable excuse, fails to provide information in accordance with section 14F(3); or
- (b) knowingly provides false information,

commits an offence, and is liable on conviction by a court of summary jurisdiction to a fine not exceeding \$500.

[Section 22 amended by 1992:87 effective 8 April 1993; and by 1995:1 effective 14 February 1995; Section 22 amended by 2010 : 33 s. 7 effective 5 July 2010]

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PART IV GENERAL

Consent to prosecution

23 No prosecution for an offence under this Act shall be instituted by any person other than the Director of Public Prosecutions without the consent in writing of the Director of Public Prosecutions.

[Section 23 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Style of prosecutions

24 A prosecution for an offence under this Act may be instituted against a trade union or employers' organization in the name of the union or organization, and any act or thing done or omitted by an officer, official or agent of a trade union or employers' organization within the scope of his authority to act on behalf of the trade union or employers' organization shall be deemed to be an act or thing done or omitted by the trade union or employers' organization.

Injunction proceedings

25 (1) Where a person has been convicted of a contravention of this Act, the Attorney-General, after consultation with the Commission, may apply by way of originating summons to the Supreme Court for an order prohibiting such person from repeating or continuing such contravention.

(2) The Court in its discretion may make such an order and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court.

Evidence

26 No Commissioner, public officer, or any representative of the Commission, shall be required by any court to give evidence in civil proceedings relative to information obtained for the purposes of this Act, and they shall not be competent witnesses to give any such evidence.

[Section 26 replaced by 1993:87 effective 8 April 1993; Section 26 repealed and replaced by 2012 : 1 s. 16 effective 26 October 2012]

Irregularity in proceedings

27 No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

Avoidance of doubt provisions

28 For the avoidance of doubt it is hereby declared that—

- (a) the provisions of this Act are in addition to and not in derogation of Part I of the Constitution [title 2 item 1];

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- (b) nothing in this Act shall be deemed to authorize or permit any person to commit an offence against the Criminal Code [*title 8 item 31*] or any other provision of law in force in Bermuda; and
- (c) any preference shown by a person for the members of his immediate family or his relations of the degree of first cousin or closer shall not be regarded as an act of unlawful discrimination for the purposes of this Act.

Power of Supreme Court

29 (1) In any proceedings before the Supreme Court under this Act or otherwise it may declare any provision of law to be inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless such provision expressly declares that it operates notwithstanding this Act.

(2) The Supreme Court shall not make any declaration under subsection (1) without first hearing the Attorney-General or the Director of Public Prosecutions.

[Section 29 subsection (2) amended by 1999:8 s.3 & Sch 2 effective 1 April 1999]

Confidentiality

30 (1) Every member, officer and servant of the Commission shall preserve confidentiality with respect to all matters relating to the affairs of any person that may come to their knowledge in the course of their functions.

(2) Any member, officer or servant of the Commission who—

- (a) communicates any matter; or
- (b) suffers or permits any unauthorized person to have access to any books, papers or records relating to any person,

in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of \$1000 or imprisonment for 6 months, or both.

(3) Without prejudice to subsections (1) and (2), the Commission may disclose to any Government Department or agency or to the public generally any information the Commission considers relevant to increase public awareness and understanding of issues related to human rights.

(4) The Commission shall not disclose information under subsection (3) relating to any allegation of sexual harassment or identifying the persons involved in any such allegation.

(5) Nothing in this section shall be construed to prevent the Commission from disclosing non-identifying statistical and educational data.

[Section 30 repealed and replaced by 2000:37 s.14 effective 24 August 2000; Section 30 subsection (1) amended by 2010 : 33 s. 8 effective 5 July 2010]

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Annual report

30A (1) The Commission shall as soon as may be and in any case not later than six months after the end of each calendar year make a report to the Minister on the activities of the Commission.

(2) The Minister shall as soon as may be after receiving the Commission's annual report lay it before both Houses of the Legislature.

[Section 30A inserted by 1992:87 effective 8 April 1993]

Primacy of this Act

30B (1) Where a statutory provision purports to require or authorize conduct that is a contravention of anything in Part II, this Act prevails unless the statutory provision specifically provides that the statutory provision is to have effect notwithstanding this Act.

(2) Subsection (1) does not apply to a statutory provision enacted or made before 1st January 1993 until 1st January 1995.

[Section 30B inserted by 1992:87 effective 8 April 1993]

Application to Crown etc

31 (1) This Act applies—

- (a) to an act done by a person in the course of service of the Crown—
 - (i) in a civil capacity in respect of the Government of Bermuda; or
 - (ii) in a military capacity in Bermuda; or
- (b) to an act done on behalf of the Crown by a statutory body, or a person holding a statutory office,

as it applies to an act done by a private person.

(2) A reference in this Act to employment applies to—

- (a) service of the Crown in a civil capacity in respect of the Government of Bermuda; or
- (b) service of the Crown in a military capacity in Bermuda; or
- (c) service on behalf of the Crown for purposes of a statutory body or purposes of a person holding a statutory office,

as it applies to employment by a private person; and for that purpose a reference express or implied to a contract of employment includes a reference to the terms of service.

(3) In this section, “statutory” means set up by or in pursuance of a statutory provision.

[Section 31 replaced by 1992:87 effective 8 April 1993]

Repeals

32 *[omitted]*

SCHEDULE 1

(section 6(9D))

UNREASONABLE HARDSHIP

Meaning of “unreasonable hardship”

1 For the purpose of section 6(9C) and in this Schedule, “unreasonable hardship” arises in circumstances where modification of a disabled person’s employment or prospective employment to eliminate or reduce the effects of the disabled person’s disability would be unreasonably—

- (a) costly;
- (b) disruptive; or
- (c) extensive,

or where making such a modification would unreasonably alter the nature or operation of the employer’s business.

Meaning of “modification”

2 In this Schedule, “modification” means a change to any aspect of a person’s employment (including the work itself, the place of work, apparatus or facilities) so as to enable the disabled person to carry out the employment.

Determining the existence of unreasonable hardship

3 For the avoidance of doubt the determination as to whether a modification would impose unreasonable hardship, on an employer, the modification shall be considered on a case-by-case basis, taking the following factors into account—

- (a) factor 1 is the composition of the workplace; that is the overall size of the employer’s workplace with respect to the—
 - (i) number of employees;
 - (ii) structure of the workforce;
 - (iii) number of specialized jobs performed by employees;
 - (iv) number and type of facilities;
 - (v) employer’s turnover;
- (b) factor 2 is the financial implications, concerning the employer’s workplace, with respect to—
 - (i) the nature and cost of the modification, and the cost of the modification shall be considered unreasonable where the cost is so high that it affects the survival of the employer’s business. Such factors shall be quantifiable and may include cost factors such as—
 - (A) capital and operating costs; and

- (B) subject to subparagraph (a), the costs of restructuring (what may be an unreasonable cost for a small employer may not be unreasonable for a larger employer and if the modification to be made also requires the employer to fundamentally change the type of business that it does, this may also be unreasonable);
- (ii) the type of operation of the employer, including the—
 - (A) structure and functions of the workforce;
 - (B) geographical distance between the main place of employment and an alternative regional place of employment; and
 - (C) administrative or fiscal relationship of the facility involved in making the modification to employment;
- (iii) the availability of alternative funding (such as grants of monetary gifts received from charitable organizations) that can be applied to the modification;
- (c) factor 3 is the impact on safety, concerning the employer's workplace, with respect to the impact on the safety of—
 - (i) the disabled employee; and
 - (ii) the general public.

Determining the existence of unreasonable hardship- allowances

4 (1) An employer does not, however, have to eliminate or relocate an essential function (such as a fundamental duty of the employee's job). This allowance is granted because an employee with a disability, who is unable to perform essential functions of a job (with or without reasonable adjustments), is not a qualified employee. Further, an employer is not required to lower production standards, whether qualitative or quantitative, that are applied uniformly to employees with or without disabilities. An employer may, however, have to provide reasonable adjustments to enable an employee with a disability to meet the production standards.

(2) For the avoidance of doubt it shall be unreasonable for the providers of public services that affect public safety, to make an adjustment to the provision of public services when—

- (a) to do so would cause their operational staffing levels to fall below 90% operational efficiency; or
- (b) the provider of public services is experiencing an existing staffing shortage below 90% operational efficiency.

(3) For the purpose of subparagraph (2), the “providers of public services that affect public safety” means the—

- (a) Bermuda Fire and Rescue Service;
- (b) Bermuda Police Service; and

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(c) Department of Corrections.

[Schedule 1 inserted by 2011 : 34 s. 3 effective 3 December 2011]

[Assent Date: 7 July 1981]

[Amended by:

1988 : 21

1992 : 87

1995 : 1

1998 : 32

1998 : 39

BR 54 / 1998

1999 : 8

1999 : 50

2000 : 37

2006 : 10

2010 : 33

BR 5 / 2011

2011 : 34

2012 : 1

2013 : 18]