

**BERMUDA
1981 : 41**

HUMAN RIGHTS ACT 1981

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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:

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" means a board of inquiry appointed under section 18;

"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);

"the Community" means all persons lawfully residing in Bermuda;

"disability" means the condition of being a disabled person;

"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 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;"

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

"the Minister" means the Minister responsible for Human Rights.

(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;

(iii) of his marital status;

(iiiA) of his disability;

(iv) he was not born in lawful wedlock;

(v) she has or is likely to have a child whether born in lawful wedlock or not;

(vi) (vi) of his religion or beliefs or political opinions;or

(vii) (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, marital status, disability, 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

- (ii) which he cannot show to be justifiable irrespective of the race, place of origin, colour, ancestry, sex, marital status, disability, 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 [title 11 item 1] or the Misuse of Drugs Act 1972 [title 11 item 4] 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.

[Section 2 amended by BR 54/1994 effective 16 December 1994: amended effective by 2000:37 August 24 2000]

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, beliefs or ethnic or national origins.
 - (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
- (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.

Discrimination in disposal of premises

4 (1) No person shall discriminate 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.

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 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) (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) (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 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 defendant") with contravening this section by reason that the defendant 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 defendant shall be guilty of a contravention if it is proved that the defendant did the act of refusal or deliberate omission charged against him, unless the defendant 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.

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 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:

- (f) (f) 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, likelihood of childbirth, religion, belief 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 fulfill 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 ("the employer"), without unreasonable hardship (as defined by rules made under subsection (9D)) to the 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.

(9D) The Minister shall make rules, which shall be subject to the affirmative resolution procedure, defining the expression "unreasonable hardship" for the purposes of subsection (9C) and specifying for those purposes the several circumstances in which the condition of unreasonable hardship does or does not arise.

[Section 6 amended by 1992:87 effective 8 April 1993, by 1998 : 32 effective 13 July 1998; and by 1998 : 39 effective 29 July 1998:37 effective 24 August 2000]

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]

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, whether such harassment is based on race, colour, ethnic or national origins or place of origin.

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

(a) (a) which is vexatious; and

(b) (b) which he knows, or ought reasonably to know, is unwelcome.

[Section 6B inserted by 1995:1 effective 14 February 1995: 37 effective 24 August 2004]

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—

(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, ethnic or national origins, marital status or disability or to the past or present marital status of his parents.

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.

Publication of racial material and racial incitement prohibited

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

- (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 excite 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 excite 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 [*title 10 item 1*];
- (b) the expression "written matter" includes any writing, sign or visible representation.

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]

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).

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

(2) The members of the Commission shall be appointed by the Governor, who shall appoint—

- (a) one of them to be Chairman; 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) The functions conferred upon the Governor by subsections (1) and (2) shall be exercised by him in accordance with the advice of the Premier, who shall consult with the Opposition Leader before tendering that advice.

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

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

[Section 13 amended by 1992:87 effective 8 April 1993: 37 effective 24 August 2000]

Functions of the Commission

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

- (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
- (g) (g) 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.

"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."

Investigation of complaints

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

- (a) any person complains to the Commission 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 Commission has reasonable grounds for believing that any person has contravened any provision of this Act,

the Commission shall have power to investigate, and it shall be the duty of the Commission 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) A complaint made pursuant to subsection (1) need not be in writing, but, when made otherwise than in writing, shall be reduced to writing by the officer of the Commission to whom it is made, and signed by him.

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

(3) The Commission 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 Commission intends to investigate the complaint or the belief.

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

(4) The Commission 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 Commission 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 Commission objects on the ground that he is unsuitable.
- (6) The Commission may, if it 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 Commission exercises a power that it has under this subsection, subsections (1) to (5) shall have effect in relation to the case mutatis mutandis.

(7) A complaint made pursuant to subsection (1) must be made within six months after the alleged contravention took place:

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

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

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

[Section 15 amended by 1992:87 effective 8 April 1993; and by 1995:1 effective 14 February 1995]

Powers of Commission and its officers

16 (1) For the purposes of an investigation under section 15 the Commission 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 therefore 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 Commission or any officer of the Commission to require the production or to take copies or 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 Commission or its 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 Commission 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.

Procedure of Commission

17 Subject to this Act, the Commission shall regulate its own procedure.

References to a board of inquiry

18 (1) Where—

- (a) it appears to the Commission that—
 - (i) it is unlikely in the circumstances to be able to settle the causes of a complaint; or
 - (ii) the Commission has been trying for a period of nine months to settle the causes of a complaint but has been unsuccessful,

and the complaint is not of such a kind or of such gravity as to warrant a prosecution, the Commission shall refer the complaint to the Minister who may, in his discretion, refer it to a board of inquiry appointed under subsection (2).

(1A) Where—

- (a) the Commission refers a complaint to the Minister under subsection (1);
- (b) the Minister appoints a board of inquiry; and
- (c) the complainant applies to the Commission for assistance under this section,

the Commission shall consider the application and may grant it if it considers it fit to do so.

(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 Commission 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 Commission may consider appropriate.

(2) The Minister shall from time to time publish a list of persons from whom he shall select boards of inquiry required for the purposes of subsection (1) and, where he decides to submit a complaint to such a board, he shall appoint one or more persons from such list to be the board; and if he appoints more than one person he shall nominate one of those persons to be the Chairman.

[Section 18 amended by 1995:1 effective 14 February 1995]

Procedure etc. of boards of inquiry

19 Sections 8, 9, 10, 11, 12 and 13 of the Commissions of Inquiry Act 1935 [*title 28 item 19*] shall apply to the hearing of complaints by a board of inquiry.

Powers of boards of inquiry

20 (1) A board of inquiry after hearing a complaint shall decide whether or not any party has contravened this Act, and may either—

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

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; or

- (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 Attorney-General 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 board, not exceeding in the aggregate one thousand dollars.

(2) In any case where a board of inquiry 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 board of inquiry may proceed as provided by subsection (1)(b).

(3) In any case, where a board of inquiry, after hearing a complaint, considers that the complaint is frivolous or vexatious and unjustified, the board 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.

[Section 20 amended by 1995:1 effective 14 February 1995]

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]

Appeal from decision of boards of inquiry

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

(2) Any party to the proceedings before a board of inquiry shall be entitled to be heard on the appeal and the Commission shall likewise, if it 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 board or the Court may substitute its own order for that of the board.

(4) A reference by a board to the Attorney-General 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.

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 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.

[Section 22 amended by 1992:87 effective 8 April 1993; and by 1995:1 effective 14 February 1995]

PART IV

GENERAL

Consent to prosecution

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

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 (1) No member of the Commission or of a board of inquiry shall be required by any court to give evidence relative to information obtained for the purposes of this Act, and no such member shall be a competent witness to give any such evidence.

(2) An officer of the Commission may, if in the opinion of a court or a board of inquiry justice so requires, be required or permitted by the court or the board to give evidence to the court or the board relative to information obtained for the purposes of this Act; and such an officer, when so required or permitted, shall be a competent witness to give such evidence.

[Section 26 replaced by 1993:87 effective 8 April 1993]

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*];
- (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.

Secrecy

30 "Confidentiality"

(1) During an investigation 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 inserted by 2000:37 effective 24 August 2000]

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]

[Amended by:

1988 : 21

1992 : 87

BR 54/1994

1995 : 1

1998 : 32

1998 : 39