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THE EQUAL OPPORTUNITY BILL, 2007

Explanatory Note

(These notes form no part of the Bill, but are intended only to indicate its general purport)

The Bill seeks to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different sex, colour, race, origin, including geographical origin, religion, marital status or ability and to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal. The Act, for which this is the Bill, would be inconsistent with sections 4 and 5 of the Constitution and, therefore, is required to be passed by a special majority of three-fifths of the members of each House.

In the Bill there are certain preliminary provisions in Part I with respect to the short title, commencement of the proposed legislation, inconsistency with sections 4 and 5 of the Constitution and the definition of certain expressions used therein. Of note in clause 4 is the definition of "Minister" which means the Minister to whom responsibility for equal opportunity is assigned. "Race" is defined to cover colour, ethnic origin or mixed race. "Sex" expressly excludes sexual preference or orientation and the "status" of a person refers to his or her sex, race, origin, including geographical origin, religion, marital status or disability.

Part II of the Bill provides for the types of discrimination, which are prohibited under the proposed Act. According to clause 5, the proposed Act only applies to discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation. Further, such discrimination must be either (a) discrimination on the ground of status; or (b) discrimination by victimisation, as defined in clauses 6 and 7 respectively.

Part III of the Bill makes special provisions with respect to discrimination in the field of employment. By clauses 8, 9, 10 and 11 respectively, discriminating against an applicant for a job, an employee or a trainee or prospective trainee is prohibited.

Under clause 11, the provisions of the Act shall not apply in a case where being of a particular sex is a genuine occupational qualification. Examples of such cases are given in sub-clause (2) of that clause. Similarly, under clause 12 the provisions of the Act shall not apply in a case where a person of a particular religion needs to be employed in a religious shop. Likewise, employment in the case of domestic services, family business and private companies, up to three persons, is excluded from the ambit of the Act, under clause 13.

Under clause 14, the provisions of the Act do not apply to an employer in relation to the employment of a disabled person where the latter is unable to carry out the requirements of the job; the employer would be subject to unjustifiable hardship; or the risk of injury would arise.

Part IV of the Bill would prohibit, with certain exceptions, discrimination against students and prospective students of educational institutions and against members of the public who seek, or avail themselves of, goods, facilities, services or accommodation to which members of the public have access. Clause 19 would provide an exception in cases of unjustifiable hardship.

Part V of the Bill stipulates that the Bill does not apply to competitive sporting events, the granting of privileges to women in connection with pregnancy and childbirth, the membership of single-sex clubs and voluntary non-profit bodies, the conferring of charitable benefits on persons of a particular status, insurance risks and the operations of religious organisations.

Part VI of the Bill provides for the establishment of the Equal Opportunity Commission. The Commission would comprise five Commissioners appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. Commissioners would be qualified and have experience in law, industrial relations, sociology or administration and the membership would reflect a balance of race and gender. The Commission would, *inter alia*, work towards the elimination of discrimination, promote equality of opportunity and good relations between persons of different status generally, review the working of the proposed Act and receive, investigate and, as far as possible, conciliate allegations of discrimination. Clause 31 would make it an offence for a person to submit to the Commission a frivolous and vexatious complaint.

Part VII of the Bill provides for the lodging of complaints alleging discrimination with the Commission, the investigation of those complaints and conciliation of the parties to those complaints. By clause 40, where a complaint is settled by conciliation, the settlement would be embodied in a written agreement and registered with the Tribunal, which is established under Part VIII of the Bill. Where the Commission is unable to settle a complaint by conciliation, the Commission would, under section 41, prepare and publish a report on the investigation for public inspection and, if the complaint is still not resolved, initiate proceedings before the Tribunal with the consent and on behalf of the complainant.

Part VIII of the Bill establishes the Equal Opportunity Tribunal comprising a Chairman and two lay-assessors. The Chairman would be equal in status to a judge of the High Court. The lay-assessors will be appointed by the President where they are suitably qualified. The Tribunal would be a superior court of record and would have the power to hear and determine complaints referred to it by the

Commission and to make such declarations, orders and awards as it thinks fit and to summon persons to attend before it. Section 52 in particular, provides for the appeal from a decision of the Tribunal to the Court of Appeal on a point of law, and with leave on a point of fact.

Finally, Part IX provides for the submission to Parliament of annual reports prepared by the Commission, for the offence of the non-disclosure of information concerning the affairs of persons acquired by the members of the Commission or the Tribunal or members of their staff in the course of duty and for the withdrawal of a member of the Commission or the Tribunal in the case of a conflict of interest in a matter before him. Clause 59 would provide for the Act for which this is the Bill to bind the State. Clause 60 would repeal the Equal Opportunity Act, 2000 (Act No. 69 of 2000).

BILL

AN ACT to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal and for other related matters.

[,2007]

Preamble

WHEREAS it is enacted by subsection (1) of section 54 of the Constitution that Parliament may alter any of the provisions thereof:

And whereas it is provided by subsection (2) of the said section 54 that insofar as it alters certain provisions of the Constitution a Bill for an Act of Parliament under the said section 54 shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House:

And whereas, it is intended by this Act to alter the Constitution.

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the Equal Opportunity Act, 2007.

Commencement

2. This Act comes into force on such date as is fixed by the President by Proclamation.

**Act inconsistent
with the
Constitution**

3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation

4. In this Act –

“Commission” means the Equal Opportunity Commission established under section 27(1);

“Commissioner” means a person appointed under section 27(1);

“disability” means –

- (a) total or partial loss of a bodily function;
- (b) total or partial loss of a part of the body;
- (c) malfunction of a part of the body including a mental or psychological disease or disorder; or
- (d) malformation or disfigurement of part of the body;

“employment” means employment under a contract of service or apprenticeship or a contract personally to execute any work or labour and includes the employment of an independent contractor;

“ethnicity” in relation to a group of people means the origin, characteristics, classification and distinctive cultural or aesthetic traditions of that group of people;

“family” means parents, brothers, sisters and other lineal antecedents and descendants, uncles, aunts and cousins;

“family business” means an enterprise owned or controlled by the members of a family;

“man” means a male person of any age;

“marital status” means the status or condition of being –

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced; or
- (e) widowed;

“Minister” means the Minister to whom the responsibility for equal opportunity is assigned;

“notice” means a notice in writing;

“place of public worship” means a church, mandir, temple, mosque or other similar building or temporary structure in which religious activities are conducted whether permanently, intermittently or temporarily;

“private company” means a company any of whose issued shares or debentures are not part of a distribution to the public and which is incorporated under the Companies Act;

“race” in relation to a person, means a group of persons of common ethnic origin, colour or of mixed race;

“Registrar” means the Registrar of the Tribunal appointed under section 43;

“relevant law” means any written law dealing with the subject matter of discrimination;

“religious shop” means a commercial enterprise that trades predominantly in religious items;

“sex” excludes sexual preference or orientation;

“State” includes –

- (a) Government Ministries;

- (b) Municipal Corporations;
- (c) Statutory Authorities;
- (d) Enterprises owned or controlled by or on behalf of the State or which received funding from the State of more than two thirds of its total income in any one year;
- (e) Service Commissions; and
- (f) The Tobago House of Assembly;

“status” in relation to a person, means –

- (a) the sex;
- (b) the race;
- (c) the ethnicity;
- (d) the origin, including geographical origin;
- (e) the religion;
- (f) the marital status; or
- (g) any disability of that person;

“Tribunal” means the Equal Opportunity Tribunal established under section 43;

“woman” means a female person of any age.

PART II

DISCRIMINATION TO WHICH THE ACT APPLIES

**Application to
discrimination
limited**

5. This Act applies to discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation, if the discrimination is –

- (a) discrimination on the ground of status as defined in section 6; or
- (b) discrimination by victimization as defined in section 7.

Discrimination

6. For the purpose of this Act, a person (“the discriminator”) discriminates against another person (“the aggrieved person”) on the grounds of status if, by reason of -

- (a) the status of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the status of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the status of the aggrieved person,

the discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status.

Discrimination by victimization

7.(1) A person (“the discriminator”) discriminates by victimization against another person (“the person victimized”) in any circumstances relevant for the purpose of this Act if he treats the person victimized less favourably than in those circumstances he treats or would treat other persons, and does so by reason that the person victimized has –

- (a) brought proceedings against the discriminator or any other person under this Act, or any relevant law;
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act, or any relevant law;
- (c) otherwise done anything under or by reference to this Act, or any relevant law, in relation to the discriminator or any other person; or
- (d) alleged that the discriminator or any other person has committed an act, which (whether or not the

allegation so states) would amount to a contravention of this Act, or any relevant law, or by reason that the discriminator knows the person victimized intends to do any of those things referred to in paragraphs (a) to (d), or suspects the person victimized has done, or intends to do, any of them.

(2) Subsection (1) does not apply to treatment of a person by reason of any allegation made by him, if the allegation was false and not made in good faith.

PART III DISCRIMINATION IN EMPLOYMENT

**Discrimination
against
applicants**

8. An employer or a prospective employer shall not discriminate against a person -

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in the terms or conditions on which employment is offered; or
- (c) by refusing or deliberately omitting to offer employment.

**Discrimination
against
employees**

9. An employer shall not discriminate against a person employed by him -

- (a) in the terms or conditions of employment that the employer affords the person;
- (b) in the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment, or by refusing or

deliberately omitting to afford the person access to them; or

- (c) by dismissing the person or subjecting the person to any other detriment.

Vocational training

10. A person shall not discriminate against another person where that other person is seeking or undergoing training for any employment -

- (a) in the terms or conditions on which that other person is afforded access to any training course or other facilities concerned with such training; or
- (b) by terminating that other person's training or subjecting that other person to any detriment during the course of training.

Exception: Genuine occupational qualification

11.(1) Sections 8 to 9 shall not apply in respect of discrimination on the grounds of sex in a case where being of a particular sex is a genuine occupational qualification for employment, promotion, transfer or training.

(2) Without limiting the generality of subsection (1), being of a particular sex is a genuine occupational qualification if -

- (a) the duties relating to the employment can be performed only by a person having physical attributes (excluding physical strength or stamina) which only a person of a particular sex possesses;
- (b) the duties relating to the employment or training involve participation in a dramatic performance or other entertainment in a capacity for which a person of a particular sex is required for reasons

- of authenticity;
 - (c) the duties relating to the employment or training involve participation as an artist's photographic or exhibition model in the production of a work of art, visual image or sequence of visual images for which a person of a particular sex is required for reasons of authenticity;
 - (d) the duties relating to the employment or training need to be performed by a person of a particular sex to preserve decency or privacy;
 - (e) the nature of the establishment, or the part of it within which the work is done, requires the employment to be held by a person of a particular sex; or
 - (f) the person employed or being trained provides or is to provide persons of a particular sex with personal services concerning their welfare, education or health or similar personal services, and those services can most effectively be provided by a person of that particular sex.
- (3) Sections 8 to 10 shall not apply in a case where -
- (a) the duties relating to the employment or training involve participation in a dramatic performance or other entertainment in a capacity for which a person of a particular race is required for reasons of authenticity;
 - (b) the duties relating to the employment or training involve participation as an artist's photographic or exhibition model in the production of a work or art, visual image or sequence of visual images for

which a person of a particular race is required for reasons of authenticity.

**Exception:
Religious shop**

12. Sections 8 to 10 shall not apply in respect of discrimination on the ground of religion in a case where being of a particular religion is a necessary qualification for employment in a religious shop.

**Exception:
Domestic
services and
family business**

13. Sections 8 to 10 shall not apply-

- (a) to domestic or personal services in or in relation to the home of the employer; or
- (b) to or in relation to a family business or private company where three persons or less are employed.

**Exception:
Inherent
requirements,
unjustifiable
hardship, risk**

14. Sections 8 to 10 shall not apply to the employment of a person with a disability if -

- (a) taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of disability –
 - (i) would be unable to carry out the inherent requirements of the particular employment; or
 - (ii) would, in order to carry out those requirements, require services or facilities that are not required by persons without a

disability and the provision of which would impose an unjustifiable hardship on the employer;

- (b) because of the nature of the disability and the environment in which the person works or is to work or the nature of the work performed or to be performed, there is or likely to be –
 - (i) a risk that the person will injure others, and it is not reasonable in all the circumstances to take that risk; or
 - (ii) a substantial risk that the person will injure himself.

PART IV

DISCRIMINATION IN OTHER FIELDS

**Education:
Discrimination
against
applicants and
students**

15.(1) Subject to any agreement or practice between the State and any educational establishment, Board or other institution, an educational establishment shall not discriminate against a person –

- (a) by refusing or failing to accept that person's application for admission as a student; or
- (b) in the terms and conditions on which it admits him as a student.

(2) An educational establishment shall not discriminate against a student -

- (a) by denying or limiting the student's access to any benefits, facilities or services provided by the educational establishment; or
- (b) by expelling the student or subjecting the student to any other detriment.

**Exception:
Single-sex
educational
establishment**

16. Section 15 shall not apply to the non-admission of students of a particular sex by an educational establishment which admits students of one sex only or which would be taken to admit students of one sex only if there were disregarded students 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.

**Discrimination
re: Provision of
goods and
services**

17.(1) Any person concerned with the provision (whether or not for payment) of goods, facilities and services to the public or a section of the public shall not discriminate against a person who seeks to obtain those goods, facilities and services –

- (a) by refusing to supply the goods, provide the facilities or perform the services;
- (b) in the terms on which he supplies the goods, provides the facilities or performs the services.

(2) The following are examples of the facilities and services mentioned in subsection (1):

- (a) access to and use of any place which members of the public or a section of the public are permitted to enter;
- (b) accommodation in a hotel, guest house or other similar establishment;
- (c) facilities by way of banking or insurance or for grants, loans, credit or finance;
- (d) facilities for entertainment, recreation or refreshment;
- (e) facilities for transport or travel;

(f) the services of any profession or trade, or any statutory authority or municipal authority.

(3) Nothing in this section applies to the provision of services the nature of which is such that they can only be provided to members of one sex.

**Discrimination
re:
Accommodation**

18.(1) A person shall not discriminate against another person –

- (a) in the terms on which he offers the person accommodation;
- (b) by refusing an application of the other person for accommodation; or
- (c) by deferring an application for the other person, or according him a lower order of precedence on any list of applicants, for that accommodation.

(2) A person shall not discriminate against another person for whom accommodation has been provided -

- (a) by denying him access, or limiting his access, to any benefit connected with the accommodation; or
- (b) by evicting him, or subjecting him to any other detriment.

(3) Nothing in this section applies to -

- (a) the provision by a person of accommodation in any premises if that person or a relative of his resides, and intends to continue to reside, on the premises;
- (b) the provision by a person of accommodation where the premises comprise not more than three units available for lease;
- (c) the accommodation in any hostel or other similar

institution established wholly for the welfare of the person of a particular status;

- (d) accommodation provided by a religious body; and
- (e) shared accommodation which for reasons of privacy or decency or because of the nature of the sanitary facilities should be used by one sex only.

Unjustifiable hardship

19.(1) For the purpose of this Act, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including –

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any person concerned;
- (b) the effect of the disability of a person concerned; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

(2) Section 15 does not render it unlawful to refuse or fail to accept a person's application for admission as a student at an educational establishment where the person, if admissible as a student, would require services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational establishment.

(3) Sections 17 and 18 do not render it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services, or making facilities available, would impose unjustifiable hardship on the person who provides the goods and services or makes the facilities available.

PART V
NON-APPLICATION OF ACT

Sports **20.** Nothing in this Act, shall, in relation to any sport, game or other activity of a competitive nature where the physical strength, stamina or physique of the average woman puts her at a disadvantage to the average man, prohibit any act related to the participation of a person as a competitor in events involving that activity which are not confined to competitors of one sex.

Privileges in connection with pregnancy or childbirth **21.** It is not a contravention of this Act for a person to grant to a woman rights or privileges in connection with pregnancy or childbirth.

Membership of a club **22.** It is not a contravention of this Act for the membership of a club to be available to persons of one sex only.

Voluntary bodies **23.** Where a body is established and its activities are carried on otherwise than for profit, it is not a contravention of this Act to restrict -

- (a) the membership of that body; or
- (b) the provision of benefits, facilities or services,

to a person of a particular sex or marital status.

Charities **24.** This Act does not -

- (a) affect a provision of a deed, will or other instrument, whether made before or after the commencement of this Act, that confers charitable benefits or enables charitable benefits to be

conferred on persons of a particular status; or

(b) prohibit an act which is done in order to give effect to such a provision.

Insurance

25. Nothing in this Act prohibits the treatment of a person in relation to an annuity, life insurance policy, accident insurance policy, or similar matter involving the assessment of risk, where the treatment

-

- (a) was affected by reference to actuarial or other data from a source on which it was reasonable to rely; and
- (b) was reasonable having regard to the data and any other relevant factors.

Exemption for religious bodies

26. This Act shall not apply to -

- (a) the ordination or appointment of priests, ministers of religion or members of a religious order;
- (b) the training or education of persons seeking ordination or appointment of priests, ministers of religion or members of a religious order; or
- (c) the employment of persons in any school, college or institution under the direction or control of such a body being employment of persons in a manner that conforms with the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

PART VI
THE EQUAL OPPORTUNITY COMMISSION

**Establishment
and composition
of the
Commission**

27.(1) There is established a body to be known as the Equal Opportunity Commission which shall comprise five Commissioners including a Chairman and a Vice-Chairman.

(2) The Commissioners shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

(3) A Commissioner shall be a person with training and experience in the field of the law, industrial relations, sociology or administration and who has served in either of these fields for a period of not less than ten years or who has served in a combination of these fields for a period which in the aggregate is not less than ten years.

(4) The membership of the Commission shall reflect, as far as possible, a balance of race and gender.

(5) There shall be a panel of advisers to the Commission comprising representatives of every principal religion in Trinidad and Tobago.

(6) The Minister shall appoint the panel of advisers referred to in subsection (5).

**Functions of the
Commission**

28.(1) The functions of the Commission are to -

- (a) work towards the elimination of discrimination;
- (b) promote equality of opportunity and good relations between persons of different status generally;
- (c) keep under review the working of this Act and

any relevant law and, when so required by the Minister, or otherwise thinks it necessary, draw up and submit to the Minister proposals for amending them;

- (d) receive, investigate and, as far as possible, conciliate allegations of discrimination;
- (e) develop, conduct and foster research and educational programmes and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status;
- (f) prepare and publish appropriate guidelines for the avoidance of discrimination; and
- (g) do any other thing conducive or incidental to the carrying out of its functions.

(2) The Commission shall whenever considering a complaint of discrimination on the grounds of religion consult with and consider the opinions of the panel in making its decision.

Tenure of Commissioners

29.(1) Subject to subsection (2), a Commissioner shall be appointed for a period not exceeding three years, but is eligible for re-appointment.

(2) The appointment of a Commissioner shall be terminated by the President after consultation with the Prime Minister and Leader of the Opposition if -

- (a) he becomes bankrupt;
- (b) he is nominated, elected or appointed to any other office of emolument; or
- (c) he is incapable, for whatever reason, of performing his duties and functions under this

Act.

(3) A Commissioner may, by letter in writing addressed to the President, resign from the office of Commissioner.

Schedule 1

(4) A Commissioner shall, before entering upon the duties of his office, take the oath or make the affirmation as set out in Schedule 1.

(5) A Commissioner shall be paid such salary and other allowances as may be recommended from time to time by the Salaries Review Commission and approved by the Minister to whom responsibility for finance is assigned.

**Officers and staff
of the
Commission**

30. The Commission may appoint such officers and other staff to assist in the performance of its functions.

Offence

31. A person who submits to the Commission a frivolous and vexatious complaint commits an offence and is liable, on summary conviction, to a fine of one hundred thousand dollars and to imprisonment for two years.

**PART VII
COMPLAINTS**

**Lodging a
complaint**

32.(1) A person who alleges that some other person has discriminated against him or has contravened section 6 or 7 in relation to him may lodge a written complaint with the Commission setting out the details of the alleged act of discrimination.

(2) A complaint under subsection (1) shall be lodged with the Commission within six months from the date of the alleged act of discrimination.

(3) Notwithstanding subsection (2), the Commission, in

exceptional circumstances, may accept a complaint which is lodged more than six months after the date of the alleged act of discrimination.

Persons with a disability

33.(1) A person who because of a disability is unable to lodge a written complaint under this Act may authorize another person to act on his behalf in relation to the complaint, and the person so authorized shall have the same powers in relation to the lodgement of the complaint as he would have if he were the person on whose behalf he acts.

(2) An authority under subsection (1) may be given –

- (a) in writing; or
- (b) in such other manner as the Commission approves.

Investigation

34. The Commission shall investigate each complaint lodged with it.

Notice

35. The Commission may by notice in writing -

- (a) require any person to furnish such information as may be described in the notice;
- (b) specify the time within which the required information is to be furnish; and
- (c) require the person to attend at such time and place specified in the notice and to give oral evidence about and produce all documents in his possession or control relating to any matter specified in the notice.

No grounds for complaint

36. Where upon investigating a complaint the Commission

finds that there is no evidence of discrimination it shall inform the complainant in writing and shall give its reasons therefor, whereupon no further action shall be taken by the Commission.

Conciliation

37.(1) Where the Commission finds that the subject matter of the complaint may be resolved by conciliation, it shall make all reasonable endeavours to resolve the matter in accordance with subsection (2).

(2) The Commission may by notice require the following persons to attend the conciliation:

- (a) the complainant;
- (b) the person who is alleged to have committed the act of discrimination which is the subject matter of the complaint;
- (c) any other person who -
 - (i) is likely to be able to provide information relevant to the proceedings of the conciliation; or
 - (ii) whose presence at the proceedings is likely to assist in the settlement of the matter,

and the Commission may in the said notice require any person so invited to produce such documents at the conciliation as are specified in the notice.

Failure to comply with conciliation notice

38. A person who, without reasonable excuse, refuses or fails to comply with any requirement of a notice under sections 35 and 37(2), is liable on summary conviction -

- (a) in the case of an individual, to a fine of one thousand dollars; or

(b) in the case of a body corporate, to a fine of five thousand dollars,
for every day that the individual or body corporate refuses or fails to comply with any requirement of a notice.

Conciliation to be held in private

39. The conciliation shall be held in private and, subject to this Act, shall be conducted in such manner as the Commission thinks fit.

Registration of conciliation agreement

40. Where a complaint has been settled by conciliation, the settlement shall be embodied in a written agreement and registered with the Tribunal and, upon registration, the agreement shall be deemed to be an order of the Tribunal.

Power of Commission to publish report and initiate proceedings before Tribunal

41.(1) Where the Commission is of the opinion that the subject matter of a complaint cannot be resolved by conciliation or it has attempted to resolve the matter by conciliation but has not been successful in that attempt, the Commission shall -

- (a) prepare a report relating to the investigation with its recommendations;
- (b) send a copy of the report to the parties to the complaint;
- (c) publish the report; and
- (d) make the report available for inspection by the public.

(2) Where the subject matter referred to in subsection (1) remains unresolved and the Commission has fulfilled the requirements set out in subsection 1(a) to (d), the Commission shall, with the consent and on behalf of the complainant, initiate proceedings before the Tribunal.

**Non-admissibility
of evidence in
conciliation
proceedings**

42. Evidence of anything said or done in the course of conciliation proceedings under this Part is not admissible in proceedings before the Tribunal.

PART VIII

THE EQUAL OPPORTUNITY TRIBUNAL

**Establishment
and jurisdiction
of Tribunal**

43.(1) For the purpose of this Act, there is hereby established an Equal Opportunity Tribunal which shall be a superior court of record and shall have, in addition to the jurisdiction and powers conferred on it by this Act, all the powers inherent in such a court.

(2) The Tribunal shall consist of a Judge of classification equal to that of a High Court Judge, who shall be the Chairman, and two lay-assessors as may be appointed under or pursuant to section 42.

(3) The Tribunal shall have an official seal which shall be judicially noticed in all courts.

(4) The Tribunal shall have jurisdiction to -

- (a) hear and determine complaints referred to it by the Commission;
- (b) require persons to attend before it for the purpose of giving evidence and producing documents; and
- (c) make such declarations, orders and awards of compensation as it thinks fit.

(5) There shall be appointed for the purpose of assisting the Tribunal in the performance of its functions a Registrar and such other officers and staff as the President thinks fit.

Appointments

44.(1) The Chairman shall be appointed by the President acting in accordance with the advice of the Judicial and Legal Services Commission.

(2) Sections 104 to 107 of the Constitution shall apply to the appointment of the Chairman.

(3) The lay-assessors shall be appointed by the President from among such persons as appear to the President to be qualified by virtue of their knowledge of or experience in law, religion, race relations, gender affairs, employment issues, education, culture, economics, social welfare or human rights and who have served in either of those fields for a period of not less than ten years or who has served in a combination of these fields which in the aggregate is not less than ten years.

(4) The lay-assessors shall assist the Chairman in arriving at a decision in proceedings before the Tribunal.

(5) The lay-assessors shall hold office for such term, not less than three years, as may be determined by the President at the time of their appointment, and are eligible for re-appointment.

(6) Where a decision of the lay-assessors is in conflict with that of the Chairman, the decision of the Chairman prevails.

(7) Notwithstanding that his term of office has expired, a lay-assessor may, with the permission of the President acting on the advice of the Chairman, continue in office for such a period after the expiry of his term as may be necessary to do anything in relation to the completion of proceedings that were commenced before the Tribunal before his term of office expired.

(8) The President, on the recommendation of the Chairman, may terminate the appointment of a lay-assessor if -

(a) he becomes bankrupt;

- (b) he misbehaves in office;
- (c) he is nominated, elected or appointed to any other office of emolument;
- (d) he is involved in a matter of interest which appears to the Chairman to be incompatible with the function of lay-assessors; or
- (e) he is incapable, for whatever reason, of performing his duties and functions under this Act.

(9) Where a lay-assessor is ill, or otherwise unable to act, or where his office is vacant, the President may appoint a temporary member to act in the stead of such lay-assessor during his illness, or incapacity, or until the office is filled, as the case may be.

(10) No defect in the qualification or appointment of a lay-assessor shall vitiate any proceedings thereof.

(11) A lay-assessor may, by instrument in writing addressed to the President, resign from his office.

Conditions of service of Chairman and lay-assessors

45.(1) There shall be paid to the Chairman the same salary and allowances as a Judge of the High Court, and such other allowances as the President may determine; and the said salary and allowance shall be a charge on the Consolidated Fund.

(2) The conditions of service of a Judge of the High Court shall also apply to the Chairman.

(3) The Chairman shall be afforded a pension equivalent to that of a Judge of the High Court.

(4) Such other conditions of service shall be applicable to the lay-assessors as may be prescribed by Order of the President.

(5) A lay-assessor shall be paid such salary and other allowances as may be recommended from time to time by the

Salaries Review Commission and approved by the Minister to whom responsibility for Finance is assigned.

(6) The salary, remuneration, allowances and the other conditions of service of the Chairman and of the lay-assessors shall not be altered to their disadvantage after their appointment and during their tenure of office.

Chap. 23:52

(7) The offices of Chairman and lay-assessor of the Tribunal are pensionable offices for the purposes of the Pensions Act.

Schedule 2

(8) The lay-assessors shall, before entering upon the duties of their office, take the oath or make the affirmation set out in Schedule 2.

Procedure of Tribunal

46.(1) The jurisdiction of the Tribunal and powers of the Tribunal may be exercised by the Chairman and at least one lay-assessor.

(2) The Chairman shall preside at all sittings of the Tribunal.

(3) Unless rules made under this section otherwise provide, fourteen clear days' notice shall be given to the complainant and to the respondent of the date fixed for the hearing of a matter by the Tribunal.

(4) The complainant and the respondent may appear before the Tribunal in person or be represented by their attorney-at-law.

(5) A summons signed by the Registrar of the Tribunal shall have the same force and effect as any formal process capable of being issued in any action taken in the High Court for enforcing the attendance of witnesses and compelling the production of documents.

(6) With the consent of the complainant and the respondent, the Tribunal may order that written submissions be filed in addition to and in place of an oral hearing.

(7) The decision of the Tribunal in any proceedings shall be

made by the Chairman and shall be delivered by him.

(8) The Tribunal may, subject to the approval of the President, make Rules not inconsistent with this Act governing the carrying on of the business of the Tribunal and the practice and procedure in connection with appeals, including the regulating of any matters relating to cost of proceedings before the Tribunal; but no such Rule shall have effect until it has been published in the *Gazette*.

(9) Where in any written law there is conferred on the Tribunal jurisdiction which was previously exercised by another court, Tribunal, authority or person (hereinafter called “the former Tribunal”), then subject to any Rules made under this section -

- (a) the procedure which governed the exercise of the jurisdiction by the former Tribunal shall continue, *mutatis mutandis*, to govern such exercise by the Tribunal;
- (b) the decisions of the Tribunal in relation to such exercise are enforceable in the same way as those of the former Tribunal;
- (c) the effect of things done in or for the purpose of that jurisdiction by the former Tribunal is preserved.

Other procedure

47.(1) The Tribunal, as respects the attendance and examination of witnesses, the production and inspection of documents, the enforcement of its orders, the entry on inspection of the property, and other matters necessary or proper for the due exercise of its jurisdiction, shall have all such powers, rights and privileges as are vested in the High Court of Justice on the occasion of an action.

(2) Where the Tribunal exercises its powers to summon a

person to give information under subsection (1), the Tribunal may direct that all or any part of the proceedings in the matter before it, as it may consider proper, be thereafter conducted *in camera*, and in any such case it may enjoin the parties or any of them and any member of the public and officers of the Tribunal from disclosing any such information given in their presence and hearing.

(3) A summons signed by the Registrar shall be equivalent to any formal process issuable in any action taken in the High Court for enforcing the attendance of witnesses and compelling the production of documents.

(4) The Tribunal may require evidence or argument to be presented in writing and may decide the matters upon which it will hear oral evidence or argument.

**Additional
powers
of Tribunal**

48. In addition to the powers conferred on it under the foregoing provisions of this Part, the Tribunal may -

- (a) proceed to hear and determine a matter before it in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;
- (b) order any person -
 - (i) who in the opinion of the Tribunal may be affected by an order or award; or
 - (ii) who in any other case the Tribunal considers it just to be joined as a party, to be joined as a party to the proceedings under consideration on such terms and conditions as may be prescribed by rules made by the Tribunal;
- (c) generally give all such directions and do all such things as are necessary or expedient for the

expedious and just hearing and determination of the complaint or any other matter before it.

Conciliation

49. In any matter before the Tribunal, the Chairman shall make all such suggestions and do all such things as appear to be right and proper for reconciling the parties.

Recovery of compensation, damages or fines

50.(1) On the expiration of the time fixed for compliance with an order or award for the payment of compensation, damages or fines, the amount thereof shall become due and payable and is recoverable in the manner provided by this section.

(2) Compensation, damages or fines are, upon a certificate issued by the Registrar stating that the amounts specified therein are due and payable under an order or award of the Tribunal recoverable-

- (a) summarily as a civil debt; or
- (b) in the manner provided in subsection (3),

by the person for whose benefit the order or award for such compensation or damages was made or, in the case of an order for a fine, by the Registrar and the certificate of the Registrar under this subsection is conclusive evidence of the matters specified therein.

(3) Upon the filing of a certificate issued under subsection (2) in the Registry of the High Court of Justice, the order or award shall as from the date of filing be of the same force and effect and proceedings may be taken thereon and the order or award may be enforced as if it had been a judgment originally obtained or entered upon the date of filing in the High Court of Justice.

(4) The High Court of Justice shall have the same control and jurisdiction over the order or award as it has over the judgements

given by itself but in so far as it relates to execution.

(5) All costs and charges incurred under this section shall be recoverable in like manner as if included in the certificate.

(6) All fines recoverable by the Registrar under this section shall be paid into the Consolidated Fund.

**Effective date
of Order**

51. An order or award in any matter referred to the Tribunal for determination may be made operative from such date as the Tribunal may consider fair and just having regard to all the circumstances of the case.

Appeal

52.(1) Subject to subsection (2), the hearing and determination of any proceedings before the Tribunal, and an order or award or any finding or decision of the Tribunal in any matter (including an order or award) -

(a) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever; and

(b) shall not be subject to prohibition, mandamus or injunction in any Tribunal on any account whatever.

(2) Subject to this Act, any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other:

(a) that the Tribunal has no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Tribunal has been formally taken at some time during the progress of the matter before the making of the

order or award;

- (b) that the Tribunal has exceeded its jurisdiction in the matter;
- (c) that the order or award has been obtained by fraud;
- (d) that any finding or decision of the Tribunal in any matter is erroneous in point of law;
- (e) that the Tribunal has erred on a question of fact saved that no appeal shall lie except by leave of the Court of Appeal sitting in full court; or
- (f) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(3) On hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power -

- (a) if it appears to the Court of Appeal that a new hearing should be held to set aside the order or award appealed against and order that a new hearing be held; or
- (b) to order a new hearing on any question without interfering with the finding or decision upon any other question,

and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(4) The Court of Appeal may in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

(5) A decision of the Court of Appeal in respect of an appeal from an order or award of the Tribunal shall be final.

On whom order or award to be binding

- 53.** An order or award of the Tribunal shall be binding on -
- (a) all parties who appear or are represented before the Tribunal; and
 - (b) all persons who have been summoned to appear as parties, whether they have appeared or not.

**Rules of Court
Chap. 4:01**

54. The Rules Committee under the Supreme Court of Judicature Act may, subject to provisions of this Act, make Rules governing appeals to the Court of Appeal.

PART IX GENERAL

Commission's report

55. The Commission shall within three months after the end of each calendar year submit to the Minister a report of its operations during that year.

Report to be laid in Parliament

56. The Minister shall cause the report of the Commission to be laid in Parliament.

**Offence :
Non-disclosure of information**

57.(1) It shall be an offence for any member of the Commission, or the Tribunal, or the Registrar, or any member of the staff assisting the Commission, or the Tribunal, either directly or indirectly, except in the performance of a duty under this Act, to make a record of, or divulge or communicate to any person, any information concerning the affairs of any person acquired by him by reason of his office or employment under this Act.

(2) A person who commits an offence under subsection (1) is

liable on summary conviction to a fine of five thousand dollars.

**Conflict of
interest**

58.(1) Where a member of the Commission or the Tribunal has any actual or reasonably perceived interest in a complaint, he shall disclose the nature of such interest at the first practicable opportunity and shall not deal with the complaint.

(2) If a member of the Commission or the Tribunal has dealt with a complaint before such interest has been identified or disclosed, the investigation by the Commission or the proceedings before the Tribunal, as the case may be, relating to such complaint shall be null and void.

(3) Where a situation arises under subsection (2), the Minister shall appoint a fit and suitable person to act for the member of the Commission or the Tribunal, as the case may be, to deal with the complaint de novo.

**Act binds the
State**

59. This Act binds the State.

**Repealed
Act No. 69 of
2000**

60. The Equal Opportunity Act, 2000 is repealed.

SCHEDULE 1

[Section 29(4)]

Oath (Or Affirmation) of Office for Commissioners

I, A. B., having been appointed as a Commissioner of the Equal Opportunity Commission do swear by (solemnly affirm) that I will bear true faith and allegiance to Trinidad and Tobago and will uphold the Constitution and the law, and I will conscientiously, impartially and to the best of my knowledge, judgement and ability discharge the functions of my office and do right to all manner of people after the laws and usages of Trinidad and Tobago without fear or favour, affection or ill-will.

SCHEDULE 2

[Section 45(8)]

Oath (Or Affirmation) of Office for Lay-assessors of the Tribunal

I, A. B., having been appointed as a Lay-assessor of the Equal Opportunity Tribunal do swear by (solemnly affirm) that I will bear true faith and allegiance to Trinidad and Tobago and will uphold the Constitution and the law, and I will conscientiously, impartially and to the best of my knowledge, judgement and ability discharge the functions of my office and do right to all manner of people after the laws and usages of Trinidad and Tobago without fear or favour, affection or ill-will.

