

BELIZE

PROTECTION AGAINST SEXUAL HARASSMENT

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Commencement: 12th August, 1996

PART I Preliminary

Short title.

1. This Act may be cited as the Protection Against Sexual Harassment Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires:-

"accommodation" includes residential and business accommodation;

"complainant" in relation to a complaint, means the person by whom or on whose behalf that complaint is lodged;

"complaint" means a grievance lodged under section 10 or a matter referred to the Court for inquiry as a complaint pursuant to section 11;

"Court" means a court of summary jurisdiction in the judicial district where the complaint arises;

"employee" includes apprentices, persons on probation, full and part-time employees and commission agents;

"employer" includes the Government of Belize, statutory authorities, quasi-government bodies and any other employer;

"employment" includes part-time and temporary employment and work under a contract of services;

"fellow worker" in relation to an employee, means another person who is employed by the employer of that first-mentioned employee;

"functions" includes powers, duties, obligations and rights;

"institution" includes schools, colleges, universities, other places of learning or training, prisons, places of custody for minors and the elderly, and medical and mental institutions;

"Minister" means the Minister for the time being responsible for Human Resources;

"respondent" in relation to a complaint, means the person who is alleged to have done the act to which the complaint relates;

"supervisor" in relation to a person, means a fellow worker who by virtue of his employment is in a position of authority over that first-mentioned person;

"unwelcome sexual advances" means conduct of a sexual nature which is unwelcome, undesirable or offensive to the person to whom that conduct is directed.

2. (2) Any reference in this Act to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

PART II

Forms of Sexual Harassment

Sexual harassment in employment.

3. (1) No employer or supervisor of an employee shall harass sexually an employee so as to make it appear to the employee that the prospects or working conditions of that employee are contingent upon the employee's acceptance of sexual advances or toleration of the sexual advances from the employer or supervisor.

3. (2) A prospective employer shall not harass sexually a person so as to make it appear to that person that -

- (a) an offer of employment to that person; or
- (b) the terms on which employment is offered,

is or are contingent on that person's acceptance of sexual advances or toleration of the sexual suggestions or innuendos from the prospective employer.

3. (3) An employer or employee shall not harass sexually a fellow worker.

3. (4) For the purpose of this section, a person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome

sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature to the other person, and-

- (a) the other person suffers any form of disadvantage in connection with that other person's employment or work or possible employment or possible work; or
- (b) the unwelcome request for sexual favours has the effect of interfering unreasonably with the other person's work performance or when it creates an intimidating, hostile or offensive working environment.

3. (5) In order to determine whether the alleged conduct constitutes sexual harassment in employment, all of the circumstances surrounding the facts that occurred shall be taken into consideration. The determination of the legality of an action shall be based on the findings of each particular case.

Liability of employer for sexual harassment.

4. An employer shall take immediate and appropriate action to correct any act of sexual harassment towards employees in the work place, where the employer, his agents or his supervisors know or are informed of such conduct, and if the employer fails to take immediate and appropriate action to correct the situation, he shall be held responsible therefor, and the aggrieved person may lodge a complaint against him under section 10.

Liability of employer where opportunities granted for sexual favours.

5. Where an employer grants employment opportunities or benefits as a result of a person's submission to sexual harassment and demands of the employer or his agents or his supervisors, the employer shall be held liable for sexual harassment in employment with regard to any other person who was denied such opportunity or benefit because of the refusal of that person to submit to sexual harassment:

Provided that the employer shall be liable for the acts of his agents or supervisors only if he knew or was informed of such acts.

Prohibition on acts adversely affecting employment.

6. No employer shall carry out any action which adversely affects the opportunities, terms and working conditions of an employee who has rejected the employer's practices that are in conflict with the provisions of this Act, or who has instituted proceedings, has given testimony, collaborated or participated in any investigation, procedure or hearing initiated under this Act.

Sexual harassment at institutions.

7. No person who is a member of staff or in a position of authority at an institution shall harass sexually a person who is a student or an inmate or

ward at that institution or is seeking admission to that institution as a student, ward or inmate.

Duty to keep institution free from sexual harassment.

8. (1) It shall be the duty of every person in charge of an institution to keep that institution free from sexual harassment and intimidation and to clearly express a policy against sexual harassment to staff, students, inmates or wards of that institution.

8. (2) For the purpose of this section, sexual harassment constitutes unwelcome verbal or physical conduct of a sexual nature including, but not limited to, the deliberate making of unsolicited gestures or comments, unwelcome sexual advances or requests for sexual favours or the deliberate display of offensive sexually graphic material which is not necessary for institutional purposes.

Sexual harassment in relation to accommodation.

9. No person shall make it reasonably appear to another person that-

- (a) the terms on which the first-mentioned person offers the other person accommodation;
- (b) the first-mentioned person's acceptance of the other person's application for accommodation;
- (c) the time of processing of the other person's application for accommodation, or the order of precedence of the other person on any list of applicants for that accommodation;
- (d) the other person's access or the extent of such access to any benefit connected with the accommodation; or
- (e) the failure to evict the other person or to subject that other person to any other determination in relation to the accommodation;

is or are contingent on that other person's acceptance of sexual advances or toleration of sexual suggestions or innuendos from the first-mentioned person.

PART III Hearing of Complaints

Application to Court.

10. Any person who considers that he is or has been sexually harassed may apply to the Court in writing alleging that he has been sexually harassed within the meaning of section 3, 4, 7 or 9 .

Inquiries by Court.

11. (1) Where a complaint relating to an alleged unlawful act is lodged pursuant to section 10 above, the Court may, subject to subsection (2) below, carry out investigations in relation to the act and endeavour by conciliation, to effect a settlement of the matter to which the act relates.

11. (2) The Court may, for the purposes of investigation, obtain information from any person and make such inquiries as it thinks fit.

(3) The Court -

(a) may endeavour by such means as it considers reasonable to resolve a complaint which is the subject of an inquiry; or

(b) shall take all steps as it considers reasonable to effect an amicable settlement of a complaint and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement by amicable arrangements.

Evidence.

12. (1) The Court may take evidence on oath, affirmation or affidavit and for that purpose the Court may administer an oath or affirmation.

12. (2) The Court may decide not to carry out any investigations or, as the case may be, may decide to discontinue any investigations where -

(a) the Court reasonably believes that the complainant does not wish that the inquiry be made or continued;

(b) a period of more than twelve months has elapsed since the doing of the act and the complaint was not lodged before the expiration of a period of twelve months since the doing of the act; or

(c) the Court is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.

12. (3) Where the Court decides not to carry out or decides to discontinue any investigations in relation to a complaint, it shall give notice in writing to the complainant of that decision and of the reasons therefor within two weeks of making that decision.

Power of Court to obtain information and documents.

13. (1) Where-

(a) any investigations are being conducted by the Court pursuant to section 11; and

(b) the Court has reason to believe that a person is capable of furnishing information (in this section referred to as "relevant documents"), relevant to such investigations,

the Court may, by notice in writing served on that person, require the person, at such place and within such time as are specified in the notice,

(c) to furnish to the Court, by writing signed by the person, such relevant information as is specified in the notice; or

(d) to produce to the Court such relevant documents as are specified in the notice.

13. (2) Where documents are produced to the Court in accordance with a requirement under subsection (1), the Court-

(a) may take possession of, and make copies of, or take extracts from, the documents;

(b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and

(c) during that period, shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Court, to inspect at all reasonable times such documents as that person would be entitled to inspect.

Attendance at inquiry.

14.(1) The Court may, for the purpose of any inquiry, by notice in writing, direct the person referred to in subsection (2) below, to attend at a time and place specified in the notice for the purposes of the inquiry.

14. (2) Directions under subsection (1) above shall be given to-

(a) the complainant;

(b) the respondent; and

(c) any other person who, in the opinion of the Court, is likely to be able to provide information relevant to the inquiry or whose presence is, in the opinion of the Court, likely to be conducive to the settlement of the matter to which the act relates.

14. (3) The Court may, in a notice under subsection (1), require the person notified to produce documents as are specified in the notice.

14. (4) The Court shall give each party to an inquiry a reasonable opportunity to call witnesses or give evidence, examine and cross-examine witnesses and make submissions to the Court.

Right to representation at inquiry.

15. A party to an inquiry may be represented by an attorney-at-law or other person and the Court shall have power to order a party to pay the attorney fees of the other party, where the Court believes that it is just and fair to do so.

Determination by Court.

16. (1) After holding an inquiry the Court may-

- (a) dismiss the complaint; or
- (b) find in favour of the complainant and make anyone or more of the orders set out in subsection (2) below.

16. (2) For the purpose of subsection (1) above, the Court may make anyone or more of the following orders:

- (a) that the respondent has engaged in conduct amounting to sexual harassment and should not repeat or continue such conduct;
- (b) that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
- (c) that an order be made to bind-over the respondent for a period of time, and any repetition of the conduct during his binding over period shall constitute contempt of the court;
- (d) that the respondent desist in continuing the act in question;
- (e) that the respondent should pay to the complainant, damages by way of compensation for any loss or damage suffered by reason of the conduct of the respondent;
- (f) where the complaint relates to sexual harassment by a fellow worker, that the employer concerned should take appropriate action to ensure that the harassment ceases and to report thereon to the Court;
- (g) that it would be inappropriate for any further action to be taken in the matter; or
- (h) make such order or declaration as may be appropriate in relation to the complaint.

The Court may, in the making of a determination under subsection (2) (a) or (2) (f) and (g), also take into consideration injury to the complainant's feelings or humiliation suffered by the complainant.

16. (3) Where the Court makes a determination by way of a declaration for the payment of compensation to a complainant, the sum so payable may be recovered by the complainant in a court of competent jurisdiction as a civil debt.

16. (4) Any respondent who fails to comply with a determination for payment of compensation shall be liable to be proceeded against and punished in like manner as if he were found guilty of contempt of Court.

Inquiry may be held in camera.

17. Subject to section 18 below, an inquiry shall be held in camera unless the Court otherwise directs.

Court may prohibit publication of evidence, etc.

18. The Court may direct that -

- (a) any evidence given before it;
- (b) the contents of any document produced to it; or
- (c) any information that might enable a person who has appeared before the Court to be identified,

shall not be published or shall be published only in such manner, and to such person, as the Court may specify.

PART IV Offences and Penalties

Offences in relation to inquiry.

19. (1) Any person directed, pursuant to section 13(1), to attend an inquiry and who fails without reasonable excuse to do so, commits an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding one month, or to both such fine and term of imprisonment.

19. (2) Any person who, without reasonable excuse, fails or refuses to furnish information or produce documents pursuant to a requirement under section 13 or 14 commits an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding one month, or to both such fine and term of imprisonment.

19. (3) Any person appearing before the Court as witness at an inquiry who-

(a) refuses or fails to be sworn or to make an affirmation; or

(b) refuses or fails to answer any question required to be answered by the Court,

commits an offence and is liable on summary conviction to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding one month, or to both such fine and term of imprisonment.

19. (4) Any person who-

(a) interrupts the proceedings at any inquiry; or

(b) uses insulting language towards the Court when the Court is exercising any powers or performing any functions under this Act; or

(c) publishes anything in contravention of section 18; or

(d) furnishes to the Court any information or makes a statement at an inquiry knowing that the information or statement is false or misleading in a material particular; or

(e) does any other act or thing that would constitute a contempt of the Court,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both such fine and term of imprisonment.

Offence of victimization,

20. (1) Any person who commits an act of victimization against another person commits an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding three months, or to both such fine and term of imprisonment.

20. (2) For the purpose of subsection (1), a person shall be taken to commit an act of victimization against another person where the first-mentioned person subjects, or threatens to subject, the other person to any detriment -

(a) on the ground that the other person-

(i) has made, or proposes to make, a complaint under this Act;

(ii) has brought, or proposes to bring, proceedings under this Act against any person;

(iii) has furnished, or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act;

(iv) has attended, or proposes to attend, an inquiry under this Act or to appear thereat as a witness;

(v) has made an allegation that a person has done an act that is unlawful by virtue of section 3, 4, 7 or 9; or

(b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in anyone of subparagraphs (i) to (v) of paragraph (a) above.

Penalty for making false complaints.

21. Any person who makes any false, vexatious or frivolous complaint against another person for an alleged contravention of any provision of this Act shall be guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

PART V Miscellaneous

Particulars of complaint not to be communicated.

22.(1) Where a complaint has been lodged under section 10, no officer of the Court or any other person, having any official duty or being employed in the administration of this Act shall, unless the Court permits, divulge or communicate to any other person, any particulars of that complaint until-

(a) the Court has commenced an inquiry; or

(b) where the Court decides not to hold an inquiry, or where it discontinues an inquiry under section 12 (2).

22. (2) Nothing in subsection (1) shall prevent disclosure of the particulars of a complaint where such disclosure is required for the purpose of section 20.

Restriction on publication of reports of proceedings held in camera.

23. (1) No person shall publish any report of proceedings under this Act held in camera.

23. (2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both such fine and term of imprisonment.

23. (3) Nothing in this section limits-

(a) the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to judicial proceedings; or

(b) the power of any summary jurisdiction court to punish any contempt to the Court.

Regulations.

24. The Minister may make Regulations for the better carrying out of the provisions of this Act.

Commencement.

25. This Act shall come into force on a day to be appointed by the Minister, by Order published in the Gazette.