



Republic of Trinidad and Tobago



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LETTER TO EDITOR

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The debate surrounding the alleged nightclub incident

The Equal Opportunity Commission (EOC) has noted that an alleged incident at a nightclub has sparked a debate not just on the alleged incident in question but on issues of sex, gender and human rights in general.

Pursuant to the mandate of the EOC which is stipulated in the Equal Opportunity Act, Chapter 22:03 (the Act), the following are frequently asked questions on the said topic and respective guidelines to same:

Q 1. As a State entity, can the EOC deal with issues of discrimination in the private sector?

A. Yes, the EOC can address complaints of discrimination that are lodged against entities and/ or individuals of the State and the private sector.

Q 2. Is it correct to state that the EOC only deals with issues of employment?

A. No, it is incorrect to state that the EOC can only address employment issues. Whilst complaints of employment make up the majority of complaints received by the EOC, the Commission can address several types of complaints.

Q 3. What types of complaints can the EOC investigate?

A. The EOC can investigate complaints of:

I. discrimination by **status**;

II. discrimination by **victimisation**

Which must fall under one of the four categories

- 1) employment,
- 2) education,
- 3) the provision of accommodation and
- 4) the provision of goods and services

III. **Offensive Behaviour** (which does **not** have to fall under one of the four categories)

Q 4. What category would this alleged nightclub issue fall under?

A. The issue would fall under the category of **the provision of goods and services**. Section 17(2) of the Act provides examples of goods and services which include:

- 1) access to and use of any place, which members of the public or a section of the public are permitted to enter;
- 2) accommodation in a hotel, guest house or another similar establishment;
- 3) facilities by way of banking or insurance or for grants, loans, credit or finance;
- 4) facilities for entertainment, recreation or refreshment;
- 5) facilities for transport or travel;
- 6) the services of any profession or trade, or any statutory authority or municipal authority.

Q 5. Should establishments have the right to implement dress codes?

A. Yes, establishments do have the right to establish dress codes that are suitable to the particular setting. Dress codes are usually implemented for several reasons, such as to maintain a particular corporate image or for health and safety reasons. The key to implementing a dress code is to take an even-handed approach and to consider the protected characteristics of humans such as their race, sex, religion etc.

Q 6. Can the EOC investigate matters of discrimination based on sexual orientation?

A. As stated earlier, a complaint of **discrimination by status** under one of the four categories can be lodged with the EOC. “Sexual Orientation” is **not** a status ground. There are seven protected status grounds under the Act which include:

- 1) sex;
- 2) race;
- 3) ethnicity;
- 4) disability;
- 5) origin (including geographical origin);
- 6) marital status; and
- 7) religion.

Under the Act “sex” does not include sexual preference or sexual orientation.

Part of the EOC’s mandate is to keep the Act under review and a recommendation has been made to amend the Act to include sexual orientation as a protected status ground.

Q 7. Is the issue of dress code a sex or gender issue?

A. A dress code can apply to both sex and gender issues. Sex would relate to the biological makeup of a person that would deem them “male” or “female”. However, gender, generally refers to the social attributes and opportunities associated with being male and female and the relationships between women and men. Therefore, the specific issue of how a male or female should dress is an issue of gender.

Q 8. What advice can the EOC give to businesses on entry requirements to their establishments?

A. Matters of alleged discrimination are dealt with on a case by case basis, based on the facts received by the EOC.

The EOC is available to meet with organisations (free of charge) to provide guidance in developing anti-discriminatory policies and the implementation of same.

Based on the Act:

- I. an establishment has a right to develop and implement a dress code once there is no disparity based on the seven status grounds (race, ethnicity, religion, sex, origin, disability or marital status);
- II. the terms and conditions of admission should not be different based on a person's race, ethnicity, religion, sex, origin, disability or marital status;
- III. an organisation would be expected to make reasonable accommodation for persons with disabilities for example, if a female is unable to wear a particular type of footwear due to a disability, a flexible approach should be taken in implementing the code;
- IV. whether a patron is refused or allowed entry to an establishment, the terms on which a patron is able to access an establishment and how a patron is treated by an establishment (customer service) are all matters that the EOC can address and;
- V. an establishment can be liable for the action or inaction of its members of staff.

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