

Conciliation – a viable alternative to court



THE Equal Opportunity Commission offers conciliation to all parties involved in the complaints process.

At these sessions, the commission's conciliator/mediator acts as a neutral third party and facilitates discussions between the participants.

There are instances when the solution can be as simple as the respondent acknowledging that there was wrongdoing on their part, apologising for the act and undertaking to be mindful in future. Earnest and open conversations may seem simple but can often lead to meaningful redress.

When a person lodges a complaint of discrimination at the Equal Opportunity Commission, the commission receives, investigates and as far as possible, conciliates the matter.

In accordance with the Equal Opportunity Act Chap 22:03, if the commission finds that the subject matter can be resolved by conciliation, it is obligated to take all reasonable steps to

do so.

Conciliation is a voluntary process, where the parties involved agree to attempt to resolve their dispute by meaningful discussions. It is a form of alternative dispute resolution to find an amicable solution, instead of going to court.

It aligns with the overriding objective of the Civil Proceedings Rules, which seeks, among other things, to resolve matters quickly while saving expense.

This service is free of charge and all discussions are confidential. Also, the process is flexible and allows all parties to

agree on dates and times that are convenient to attend conciliation, as compared to a court date, where the parties must appear at a specified date and time.

The conciliation process:

- 1) Complainant and respondent are invited to separate pre-conciliation meetings.
- 2) Both complainant and respondent attend scheduled conciliation sessions. The conciliation session is held in private.
- 3) A section 35 Notice is is-

sued to the respondent to attend conciliation. It should be made clear that if a respondent does not comply with a section 35 Notice to attend conciliation, a summary complaint can be laid under section 36 of the Equal Opportunity Act and the respondent could be summoned to the Magistrates Court.

If the party does not have a reasonable justification for not responding to the Notice, the party can be convicted and sentenced: In the case of an individual to a fine of \$1,000 per day or in the case of a body corporate to a fine of \$5,000 per day for each and every day that the party has failed and/or refused to comply.

4) If the matter is resolved by conciliation, an agreement would be drawn up with the input of the complainant and respondent. After they have signed the agreement, it would be registered with the Equal Opportunity Tribunal, which has all the powers of a high

court. This agreement then becomes a court order and any part breaching the agreement can be held in contempt of court.

5) If the matter was not resolved, the complainant has the decision to withdraw the matter or request that the matter be referred to the Equal Opportunity Tribunal for adjudication.

It is important to note that evidence of anything said or done during conciliation proceedings at the commission is not admissible in proceedings before the tribunal.

Even though the commission and the tribunal were established by the Equal Opportunity Act Chap 22:03, with mandates to enforce that act, both are separate and independent from each other and perform distinct functions.

Once a matter is referred to the tribunal, it is no longer the responsibility of the commission