

EOC's Sex and Prejudice Series Continues with Great Success.

The television programme, 'Sex and Prejudice' has been solidified as one of the Equal Opportunity Commission's (EOC) successful educational programmes. On the second Tuesday of each month, viewers can expect to see a panel of qualified and expert activists and advocates discuss sex and gender issues in relation to discrimination and inequality and proffer solutions to these issues.

EOC's Chairman Ian Roach said, "This is part of the EOC's joint advocacy efforts with stakeholders from different sectors to amplify their calls to end all forms of discrimination and build a more inclusive society. We are happy to offer and share this platform with our partners to bring about positive change."

The second episode of the six-part series, which was aired on TTT on Tuesday 10 May, brought together a distinguished panel to discuss sexual harassment as a form of sex discrimination.

Speaking on the programme, panellist and Director of the Legal Services Unit at the EOC, Haran Ramkaransingh, said, "the recent sexual harassment appeal won by the EOC, and Rishi PersadMaharaj, means that persons who may have experienced sexual harassment can lodge a complaint with the Commission and receive redress." He further advised that people should first lodge a complaint with their employers before seeking recourse at the



MS TERESA WHITE
Chief Shared Services Officer
ANSA McAL Group of Companies

MR HARAN RAMKARANSINGH
Director, Legal Services EOC

EOC, as employees should have an avenue to complain or make a report within their organisations. It is therefore also incumbent upon the employer to have a proper working grievance policy.

Emphasizing the role of employers in managing sexual harassment, Ms. Teresa White, Chief Shared Services Officer at the ANSA McAL Group of Companies stated, "responsible employers in Trinidad and Tobago have had to be a little ahead of their time. Now, ideally speaking, in liberal democracies, the legal system sets ethical tones and sets what's right and what's wrong. But I am afraid that our



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legislation has not really defined that, so progressive employers who know that the socio-psychic health of their employees is critical for any sort of industrious or productive effort, have to go a little bit further."

“The work of the Institute has long been rooted in calling for comprehensive sex education and teaching consent.”

She also shared that throughout her tenure at ANSA McAL, they have made voluntary decisions to create strong policies against sexual harassment and against discrimination on the grounds of status, but ideally speaking adopting a sexual harassment policy should not be left in a voluntary system because people may be left behind.

Lecturer at the Institute for Gender and Development Studies (IGDS), University of the West Indies and Director of CAISO: Sex and Gender Justice, Dr. Angelique Nixon stated, “this is a vital and important conversation to be having for the EOC, who I know has long advocated for sexual harassment policies and sexual harassment legislation. I think civil society organizations, as well as the IGDS, have long called for clear policies, implementation of policies and safety for people who experience sexual harassment, a part of that work has to do with how we talk about sex and sexuality.

The work of the Institute has long been rooted in calling for comprehensive sex education and teaching consent.”

Dr. Nixon strongly emphasized the need to engage with young people to work towards transforming our culture, society, institutions, workplaces and everywhere we exist; a sentiment echoed by the EOC.

She further pointed out that globally and within Trinidad and Tobago, women, the LGBTQI+ community and anyone transgressing

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gender norms, experience a disproportionate and adverse amount of sexual harassment. If we want to see a change, we need to address this form of sex and gender-based violence as well as discrimination because our cultural acceptance of it allows it to fester and continue.

If you have been discriminated against, you can lodge a complaint at the EOC on our website.

www.equalopportunity.gov.tt or via e-mail: complaints@eoc.gov.tt.

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Court of Appeal rules:

Sexual harassment can be covered by EOA provisions

DEREK ACHONG

terminated his relationship with the manager was... did not sexually harass female... have easily...

Sexual harassment as a form of sex-based discrimination

enth Circuit said in Henson v City of Dundee, (1982) 682 F.2d 897, at page 902:

ON APRIL 14, the Court of Ap-

EOC gets court OK

Sexual harassment ruled as discrimination

WITH Thursday's Appeal Court

which has referred... (Tri

Chairman of the Equal Opportunity Commission (EOC) Ian Roach says, "The commission have resumed handing of sexual harassment cases." Roach was commenting on a ruling by the Court of Appeal on Thursday 14th April 2022, which held that the Equal Opportunity Act covered sexual harassment as a form of sex discrimination.

The EOC had appealed the decision of Equal Opportunity Tribunal chairman Donna Prowell-Raphael to throw out a sexual harassment complaint referred to the tribunal by the EOC. The complaint was initially lodged by ex-worker of the Banquet and Conference Centre Ltd (BCCL) at the Cascadia Hotel, who claimed he was sexually harassed by the company's head of operations.

"This is the reason the courts exist. It provides critical clarification when there is a difference in interpretation of the law," Roach said. Roach added, "We at the EOC are very happy with this outcome but more importantly, this is a win for all women



Equal Opportunity Commission welcomes sexual harassment ruling, aims to resume hearing cases

and men who are victims of sexual harassment, especially in the workplace.

Also commenting on the court's ruling was the EOC's director of Legal Affairs, Haran Ramkaransingh who said, "This is a significant moment.

The Equal Opportunity Act fills legislative gaps to protect persons based on their inherent characteristics".

"Prior to the Act, sexual harassment could only be reported as a criminal offence at the TTPS, if the person was touched. However, 'the Act' covers a range of unwelcomed sexual behaviours; verbal, non-verbal or physical contact including unwelcomed touching or grabbing, sexual gestures, suggestive body movements toward a person, asking for sexual favours, insults with sexual comments and so on," he added.

If you have been sexually harassed at your job, at an educational institution or while trying to access goods and services or accommodation, you can lodge a complaint at the EOC.

EOC Staff Receive Health and Safety Training

Staff at the Equal Opportunity Commission (EOC) are now more equipped to handle a range of emergencies and to proactively approach health and safety at the office.

A workshop entitled, “Acting Together to Build a Positive Safety and Health Culture” was conducted with staff to commemorate World Day for Health and Safety, which is observed on 28 April every year.

Staff joined the hybrid workshop both virtually and at the Commission’s offices, where they received in-house training through engaging strategies for the recently launched Health and Safety Policy for the organisation. It was a collaboration between organisation’s Social Events Committee and the Health and Safety Committee (H&SC).

Using presentations, live demonstrations and an interactive video created and produced by H&SC members, staff learned about the different types of hazards and its required response and evacuation procedures. Staff also received first-hand knowledge to identify and control the health, safety and wellness risks arising from our work activities and environments to prevent accidents or injury.

What they were able to learn and absorb from the workshop was put to the test using trivia games and situational analysis, which staff particularly enjoyed.

Ms. Christine Cole, Chairperson of the H&SC said, “for any Health and Safety policy to be effective, staff must be trained. Knowing the details of this policy is particularly important because it could mean the difference between life and death. Staff were extremely receptive to the workshop and based on the responses in the trivia portion, we could tell that they had indeed learnt a lot.”

“we really just want to strive to eliminate any foreseeable hazards through effective administration, adequate supervision, regular instructions and the provision of relevant information to staff.”

Ms. Cole also took the opportunity to thank the Commission for seeing the value in implementing the policy and to members of the H&SC for their dedication and support working on the policy and the workshop.

Ms. Lorelei Wong, Emergency Coordinator for the H&SC said, “we really just want to strive to eliminate any foreseeable hazards through effective administration, adequate supervision, regular instructions and the provision of relevant information to staff.”


She affirmed that the primary objective of the H&SC is to prevent work related incidents, accidents, injury to persons and loss or damage to physical assets. In fulfilling this commitment to protect both human resource and property, the EOC will provide and maintain a safe and healthy working environment, in accordance with industry standards and in compliance with OSHA 2004.


The International Labour Organization (ILO) estimates that some 2.3 million women and men around the world succumb to work-related accidents or diseases every year; this corresponds to over 6000 deaths every single day.

Worldwide, there are around 340 million occupational accidents and 160 million victims of work-related illnesses annually.



Facebook page: @EOCTT 

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YouTube: Equal Opportunity Commission TT 

Website: www.equalopportunity.gov.tt

Weekly column: Online Newsday

All employees protected by Act.

The Equal Opportunity Act (EOA) protects all types of employees whether they are full-time, part-time, casual, temporary, permanent, associate professionals, or on-the-job trainees.

Ms. Lorelei Wong, Legal Officer I was presenting at a public education session with Toyota Trinidad and Tobago Limited (TTTL), when she shared this tidbit with participating staff members. The Equal Opportunity Commission (EOC/Commission) offers training and public education sessions to organisations that aims to create or deepen inclusivity in the workplace. These sessions are free of charge.

According to the EOA, "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.

Ms. Wong said that employment in the Act includes all stages of employment and any person who is seeking employment can lodge a complaint with the Commission if they believe that they have been discriminated against during the recruitment process.

She informed the participants that in order to deter discriminatory practices, employers should develop an unambiguous written workplace policy explaining that discrimination in any form will not be tolerated. For example, an effective equal opportunity policy would set out in clear and simple terms of what is and is not acceptable workplace behaviour. Also, such a policy will allow staff to be cognisant of their rights and responsibilities thereby reducing the risk of employer's liability for acts of discrimination in the workplace.

In addition, Ms. Wong emphasized that the workplace policy must address reasonable adjustments for persons with disabilities by providing special equipment and assistance without the im-

sition of any undue financial hardship to the organisation.

Furthermore, she strongly encouraged employers to consider developing a separate sexual harassment policy as acts of sexual harassment in the workplace have become more prevalent and public in recent years. This policy can provide guidance on dealing with cases of sexual harassment and affords the employer the opportunity to put into place, effective measures to prevent harassment in the first instance, and to minimise the risks, if it does arise. Should employers need assistance developing or reviewing their sexual harassment policies, the EOC can provide these services free of charge.

It is imperative for an organisation's workplace policy to be comprehensive to cover potential, current, and even past employees. Further, the policy must be accessible to all staff members, and it should cover the organisations' legal obligations. These policies should always be kept under review and employers should ensure that both current and new staff are sensitised on its contents.

The virtual education session took place on Tuesday 19th April with sixteen (16) members of staff from the TTTL. To request a virtual session, send an email: communications@eoc.gov.tt.

ABOUT THE EOA

The act is concerned with discrimination in four broad categories – employment, education, provision of goods and services, and provision of accommodation – where someone has suffered less-favourable treatment:

- Because of their status, that is, because of one of the following personal characteristics: race, ethnicity, religion, sex, marital status, origin or disability;
- Or by way of victimisation, that is, in retaliation for doing certain actions that are protected under the act. For example, lodging a complaint with the commission or giving evidence in support of someone who has lodged a complaint. The act also applies to a third category of conduct known as "offensive behaviour."

EOC presents at inclusivity conference



Dr. Gabrielle Hosein
Vice Chair of the
Equal Opportunity Commission

Dr. Gabrielle Hosein, Vice Chair of the Equal Opportunity Commission (EOC) presented on behalf of the EOC at the Diversity, Equity and Inclusion Conference, which was hosted by PrideTT.

Attendees were educated on the EOC, its mandate and work and on the recent judgement that clarified that sexual harassment is a form of sex discrimination.

Dr. Hosein said, “regardless of your sexual orientation, you have a right to go to the EOC if you are experiencing discrimination based on sex through an experience of sexual harassment. I think that this is excellent. We have made cracks in the heteronormative legislative family that exists in Trinidad and Tobago, and these are all important breadcrumbs in us creating that path to ultimately having real equality protected by law”.

She explained to an audience of high commissioners, PrideTT officials, government officials and the business community that while the Equal Opportunity Act does not cover gender or sexual orientation as status grounds, the EOC works with different bodies to promote equality for all. For example, the Commission implemented a model LGBTI+ workplace policy in collaboration with CAISO and other partners. Adopting such workplace policies not only protects people in the LGBTI+ community but it creates a more equal environment.

Research has shown that employees who work in inclusive workplaces report greater job satisfaction, regardless of their sexual orientation; and LGBTI employees tend to be healthier, more productive and have better relationships with other employees.

PrideTT’s Diversity, Equity and Inclusion conference in commemoration of International Day Against Homophobia, Transphobia and Biphobia was held on Tuesday 17th May 2022 at the Hyatt Regency Hotel. PrideTT is dedicated to the transformation and empowerment of the LGBTI+ community in Trinidad and Tobago

Inclusivity Training: Sexual Harassment

One of the major teachings coming out of the latest inclusivity trainings by the EOC is that employees may decide to lodge their sexual harassment grievances to their employer through either a formal or an informal procedure.

Lorelei Wong, Legal Officer at the EOC educated eighty-one (81) members of staff at the Ministry of Works and Transport (MOWT), on the options that should be available to staff.

According to the EOC's Guidelines on Sexual Harassment in the Workplace, informal procedures emphasise a forward-looking settlement of the conflict, confidentiality and reconciliation, while avoiding questions of liability and compensation. On the other hand, formal procedures focus on proving whether there is sufficient evidence provided to substantiate the allegations of sexual harassment.

This usually involves an investigation into the matter and a report stipulating the outcome of the investigation and any recommended course of action.

Ms Wong explained that in the informal procedure it was sufficient for the victim of sexual harassment to have a discussion with the offender explaining why his/her conduct is not welcomed. Further, the victim may seek confidential advice on possible solutions from a supervisor or an officer trained to deal with sexual harassment issues in the workplace."

In contrast, she pointed out that a formal procedure involves a private interview with the victim to gather the

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Ms. Lorelei Wong
Legal Officer I

detailed allegations made against the alleged harasser and also provides an opportunity for the alleged harasser to respond and defend himself/herself against the allegations. If there is a dispute of fact, employers should take statements from witnesses and collect other evidence during the investigation. After the investigation is completed, there must be a finding on

whether the complaint is substantiated. Subsequently, employers must prepare a written report documenting the investigation process, evidence, findings, and recommended outcome(s). Ms. Wong emphasized that it is extremely crucial that employers investigate the allegations made thoroughly and maintain transparency during the investigation process.

Staff members of MOWT were grateful to learn about sexual harassment, its various forms and the different types of grievance procedures. Ms. Alana Augustus, Senior Human Resource Officer MOWT said that the sensitisation session set a great foundation for the HR Division to build upon as they are currently preparing a draft sexual harassment policy within the Ministry. To request a free inclusivity session for your organisation, send an email to: communications@eoc.gov.tt.

EOC publishes a column every **Monday on page 14 of the Newsday**. In case you missed it here is our column that was published on Monday 18th April

Sexual Harassment as a form of sex-based discrimination

On Thursday 14th April 2022, the Court of Appeal comprising the Honourable Justices Yorke-Soo Hon, Bereaux and Moosai, handed down a long-awaited judgment in Civil Appeal P407& P408/2019 filed by the Equal Opportunity Commission ('EOC') and Rishi Persad-Maharaj against Cascadia Hotel Ltd. The Equal Opportunity Act Chap 22:03 (the 'EOA') prohibits discrimination in four broad categories, one of which is employment, where that discrimination is based on certain personal and inherent characteristics, one of which is sex. In November 2015, Rishi lodged a complaint with the EOC in which he alleged that during his employment with BCCL, a company affiliated with Cascadia, he was subjected to sexual harassment from a senior manager. It was not resolved, and the EOC referred the complaint to the Equal Opportunity Tribunal. In November 2019, the Tribunal ruled among other things, that sexual harassment did not fall within sex discrimination, and therefore they had no jurisdiction to treat with the matter. Both the EOC and Rishi appealed to the Court of Appeal. In an unanimous decision they have clarified that sexual harassment can be sex discrimination where someone has suffered a detriment because of their sex

This aspect of their judgment aligns with the position that the EOC had since May 2018 when it published **'Guidelines on Sexual Harassment in the Workplace'** (which is available for free available for download on its website). The EOC's rationale was summarised at para 1.3.2 on pages 12 to 13, as follows:



“Under the EOA, sexual harassment is encompassed as unlawful sex discrimination against a man or woman in the category of employment, in the way that the employer dismissed him/her OR subjected him/her to a detriment due to his/her sex. Sexual harassment is interpreted as a form of sex-based discrimination given that the complainant's sex is one of the motivating factors for the treatment he/she received.”

In other words, the person suffered a detriment because of their sex; using Rishi's allegations as an example, if he were female, he would not have suffered the same type of harassment from the manager. The same rationale would apply to a female employee being harassed by a male supervisor: there may be other reasons as well, but one of the reasons why the female employee is suffering this detriment is because she is female.

It is perhaps simpler to adopt what the US Court of Appeals for the Eleventh Circuit said in *Henson v. City of Dundee*, (1982) 682 F.2d 897, at page 902:

“Sexual harassment which creates a hostile or offensive environment for members of one sex is every bit the arbitrary barrier to sexual equality at the workplace that racial harassment is to racial equality. Surely, a requirement

that a man or woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a living can be as demeaning and disconcerting as the harshest of racial epithets.”

There is a common misconception that sexual harassment occurs only in the context of a male supervisor harassing a female employee, but as the Rishi situation illustrates, it can be a female harassing a male; moreover, the Court of Appeal expressly left open the possibility that the harasser and victim could be of the same sex. In fact, in 1998, the US Supreme Court in *Oncale v Sundowner* unanimously held that same-sex harassment was sex discrimination in employment, for the same reason, that is, that the victim suffered a detriment in employment based on their sex.

In subsequent articles, the EOC will treat with various aspects of sexual harassment, but interested persons can consult the Guidelines on the website. Additionally, persons can request training and sensitisation sessions from the EOC on this topic and other aspects of discrimination, which are provided free of charge.

Monday 25th April

Sexual Harassment in the world of work

IN OUR column of April 18, we dealt with the recent judgment in the Equal Opportunity Commission and Rishi Persad-Maharaj vs Cascadia Hotel Ltd case where the Court of Appeal recognised that sexual harassment can be a form of sex-based discrimination in employment that is prohibited by the Equal Opportunity Act Chap 22:03 and we said that we will treat with various aspects of this topic in further articles.

Today we will consider what constitutes sexual harassment. This topic is covered in greater detail in our Guidelines on Sexual Harassment in the Workplace which, as we noted before, is available for free download on our website.

The Australian Human Rights Commission stated that sexual harassment is an unwelcome sexual advance, an unwelcome request for sexual favours or other unwelcome conduct of a sexual nature that makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances.

Unwanted conduct is defined as any behaviour that is not requested or wanted by the victim and that is considered inappropriate. Whether it was “reasonable” for the victim to believe that he/she was sexually harassed would depend on the context in which “it occurred”, for example:

- * the frequency of the occurrence;
- * the seriousness and extent of the intimidation;
- * the form of its manifestation; and
- * whether a hostile and offensive working environment was created for the victim.

People typically speak of sexual ha-



...rassment “in the workplace” but we prefer to say sexual harassment “in the world of work” as many times the actions may not happen in the confines of the office. For example, it can happen:

- *While driving in a vehicle.
- *While at lunch in a restaurant.
- *While having drinks in a bar.
- *While on a trip to a conference, retreat, or presentation.

What is decisive in classifying behaviour as sexual harassment is not the location, but the unwelcome nature of the behaviour. So, for example, the vehicle does not have to be a company vehicle, in the same way the restaurant, bar or hotel is not likely going to be owned or managed by the company. The person must feel intimidated in the context of their employment.

On the other hand, interaction which is based on mutual consent is not sexual harassment. Sexual harassment does not refer to occasional compliments that are socially and culturally acceptable and appropriate. The literature recognises two forms of harassment:

1. Quid pro quo: This is a Latin expression and literally means something for something. This is where the perpetrator attempts to influence the process of employment, terms or conditions of employment or other benefit of an employee or job applicant in exchange for sexual favours.

For example, the perpetrator asks for sexual favours in exchange for a promotion, employment opportunity, be-

ing sent abroad on a conference or some benefit. Normally, this happens in the context of a vertical power relationship, that is, the perpetrator is the manager or supervisor and is in a position of power or influence over the victim so as to be able to offer these benefits.

2. Hostile work environment: This occurs when unwelcome comments or conduct based on sex unreasonably interfere with employees’ work performance or create an intimidating, hostile or offensive work environment. Unlike quid pro quo, there need not be a sexual intent towards the victim.

Sexual harassment can encompass a range of behaviours and practices of a sexual nature, including, for example:

- (I) Requesting sexual favours as a condition of being hired or promoted.
- (ii) Physical harassment such as sexual violence or unwelcome physical contact.
- (iii) Verbal harassment such as offensive and sexually suggestive jokes and comments.
- (iv) Non-verbal harassment such as suggestive gestures of a sexual nature and sexually suggestive body language.
- (v) Written or graphic harassment such as displaying sexually explicit photographs and pornographic materials.
- (vi) Psychological harassment such as repeated unwanted proposals and taunts of a sexual nature.

For more information people can consult our guidelines. Additionally, people can request training and sensitisation sessions from the EOC on this topic and other aspects of discrimination, which are provided free of charge

Monday 2nd May

From Russia with Love: Discrimination based on a person origin

ON APRIL 26, the All England Tennis Club, the organiser of Wimbledon, announced that it will ban players from Russia and Belarus from participating in the 2022 tournament, which is due to start on June 27, as a response to Russia's invasion of Ukraine, and to Belarus's support of same.

The Russian and Belarus teams have been banned from participating in the Davis Cup, which is a tennis tournament where national teams compete. However, at Wimbledon, and all other Open tennis events (eg, US Open, French Open) players compete as individuals, and not as country representatives. Wimbledon's decision effectively penalises private individuals, for no reason other than the land where they were born. Without commenting on the merits of this decision or the geopolitical factors behind it, it provides a useful opportunity to discuss discrimination based on origin.

The Equal Opportunity Act (EOA) Chap 22:03 prohibits discrimination in four broad categories – employment, education, the provision of goods and services and the provision of accommodation – where that discrimination is tied to certain personal and inherent characteristics known as status grounds. Currently the EOA protects seven status grounds: race, ethnicity, religion, sex, marital status, disability and origin.

What does origin mean? The act says that origin includes geographical origin. Therefore treating with someone adversely because of the geographical



area where they come from would be discrimination based on origin.

Firstly, geographical origin encompasses more than national origin. The United States Civil Rights Act of 1964, Title VII section 703, prohibits discrimination on a number of grounds, one of which is “national origin.” The US courts have interpreted this to mean discrimination based on the nation-state or part of the world from where a person or their family originates. For example, this would encompass discrimination against people who are of Mexican origin (origin from a country) or are of Middle Eastern descent (origin from a part of the world).

In this American view, there is some overlap between national origin and race and ethnicity: national origin discrimination is often shown through bias against people because they or their family are from another country, they have a name, accent or manner of speech associated with a group that originates in another country, or because they follow customs and cultural practices associated with a group from another country.

The commission has taken the position that whereas national origin invites one to look at national, subnational or supranational entities, geographical origin simply requires one to look at any geographical area, whether it is a

national area, a municipal area, or any area within a nation-state.

Put simply, if someone is being discriminated against because they are from a borough, a town, a district or for that matter any area, then they are being discriminated against because of their geographical origin. This would include, for example, where someone is not hired for a job because they are from a certain village, town or any geographical part of Trinidad and Tobago, or where an employer says that they prefer to promote or offer benefits to people from this area over that area.

Secondly, the EOA provides that origin includes geographical origin; therefore, origin is wider than geography, there must be other aspects to it. The online Cambridge dictionary defines origin as “the beginning or cause of something; the thing from which something comes or the place where it began.” People do not originate only from geographical locations, they also originate from ancestry, parentage, or social class. For example, it would be discrimination based on origin to refuse to hire someone or to terminate them because of who their parents or grandparents were.

Whereas one cannot change their ancestry and parentage, social scientists will argue that social class in post-colonial TT is not as rigid and there is great room for mobility. The extent to which it can ground a claim of origin discrimination is perhaps something that will have to be decided by the courts, but it is possible that it could be done.

In the forthcoming weeks we will continue our discussion of sexual harassment as a form of sex-based discrimination.

Monday 9th May

Sexual harassment and the employer

THIS IS our third article on sexual harassment following the recent judgment of the Court of Appeal in Equal Opportunity Commission and Rishi Persad-Maharaj vs Cascadia Hotel Ltd. On April 18 we spoke about the judgment and on April 25 we spoke about sexual harassment in the world of work. Today we will consider sexual harassment from the employer's perspective: why should it be taken seriously and what can be done to prevent it. These topics are covered in greater detail in our Guidelines on Sexual Harassment in the Workplace which, as we noted before, is available for free download on our website.

Firstly, why should it be taken seriously? It is tempting for employers to see sexual harassment as an inter-personal issue, but this is ill-advised for the following reasons:

* Sexual harassment claims can have financial consequences for the employer, if the victim takes legal action and the employer has to pay compensation and legal costs. The victim can, for example, lodge a complaint with the commission or, through a trade union, report a trade dispute to the Minister of Labour. The employer may be held liable for the wrongful acts of the employee who committed the harassment (that is, vicarious liability) and for failing to provide a safe system of work for the employee who was the victim (that is, liability under the OSH Act).

* Sexual harassment impacts employee health and motivation and leads to lower productivity. Employees who are the victims of harassment see the workplace as toxic and hostile and become less committed. When they are on the job, they will try to avoid interactions with the harasser, and if this cannot be avoided, they stay away from the job as much as possible and eventually leave the job.

“Sexual harassment claims can have financial consequences for the employer, if the victim takes legal action and the employer has to pay compensation and legal costs”



* Sexual harassment negatively affects the employer's brand and image. Customers and stakeholders who become aware that the employer tolerates this harassment would less likely want to do business there, and the better qualified candidates would less likely want to work there.

Secondly, what then should the employer do? The employer should look at mechanisms:

- (I) To prevent sexual harassment from occurring; and
- (ii) To respond appropriately to cases when it does happen.

We will deal with corrective actions in a future article, but it must be remembered that the best deterrence is a robust response. An offender is more likely to offend if he or she does not think that the employer will take the appropriate action to treat with a complaint. In those circumstances, the training and policies discussed below will be of little value. The preventive actions that an employer can take are:

1. Training: The employer should train all employees, managers and agents on what workplace sexual harassment is and how they will respond to reports of same.

2. Reporting procedure: The employer should have clear, easy-to-follow procedures to report complaints of sexual harassment. In larger organisations it may suffice to say: send an e-mail to human resources.

3. Complaints/grievance procedure: After it is reported, the employer should have procedures for treating with the complaint of sexual harassment. Complaints/grievance procedures may differ according to the employer's size and available resources. This will be discussed in the future article on corrective measures.

While it is important that the employers have these policies and procedures, they must go on to communicate these to the employees so that they are aware of same. In larger organisations they can be posted onto the staff intranet. New employees should be made aware of them as part of their orientation in the same way the employer educates new people on HSE matters, and existing employees should be periodically retrained on them, in the same way the employer conducts periodic fire drills.

For more information people can consult our guidelines. Additionally, people can request training and sensitisation sessions from the EOC on this topic and other aspects of discrimination, which are provided free of charge.

Monday 16th May

Reasonable accommodation:

Role of the employer

IN OUR past publications we addressed reasonable accommodation and the process of requesting accommodation in the workplace. The question you may be thinking is, “What happens next?”

If an employee has verbally made a request for reasonable accommodation, it is best practice for the employer to draft a letter, memorandum, or e-mail confirming the request. It may also be beneficial to have the employee submit the request in writing or complete a required form and submit it to human resources.

It is pragmatic to have a paper trail of this information if a dispute arises as to whether or when the request was made. Should the grievance escalate to litigation before a court or tribunal, these documents may be entered into evidence during the legal proceedings. The request is the initial step to allow both the employer and the employee to engage in open discussion regarding the employee’s disability and determine how the disability has or will affect their duties daily.

The employer may then request that the employee furnish a medical certificate from a board-certified doctor highlighting and explaining the type and nature of the disability, stating the recommendations deemed fit to assist the employee in executing their work responsibilities.

After this, the employer can better understand the employee’s needs. Bear in mind that while the employee may be entitled to reasonable accommodation, what is given may not necessarily be their preferred means. The employer need not provide the employee with their specific request but should ensure that effective accommoda-



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tion is provided. The employer gets to choose which means of accommodation to implement.

However, there are limitations on the onus of an employer to provide accommodation to an employee with a disability. Under the Equal Opportunity Act, the employer may not be required to provide any accommodation if it imposes an undue financial hardship on the organisation.

Undue financial hardship refers to any “significant difficulty or expense” when contemplated in tandem with several factors.

These include the nature of the benefit or detriment likely to accrue or be suffered by any person concerned; the effect of the disability of a person concerned; and the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship. Other factors include the size, resources,

nature and structure of the employer’s enterprise.

Undue hardship is dependent on a case-by-case basis. Predominantly, a larger organisation with more substantial resources would be expected to make accommodations compelling a more tremendous effort or expense than a smaller employer with fewer or limited resources.

If an employer is faced with a request that subjects the organisation to undue hardship, they ought to attempt to identify and render other means of accommodation that will not pose such a hardship. Another consideration, if undue hardship exists, is the option for the person with the disability to finance a portion of the expenditures and disbursements for the provision of the accommodation.

If you believe you have been unfairly denied reasonable accommodation in the workplace, whether it is due to your employer not acknowledging your request, your employer offered you an accommodation that was ineffectual, or your employer made claims that no accommodation was available without undue hardship, you can lodge a complaint with the commission by visiting our website at

www.equalopportunity.gov.tt

Monday 23rd May

Towards living together in peace

ON MAY 16, United Nation member states celebrated International Day of Living Together in Peace. The day is observed to regularly mobilise the efforts of the international community to promote peace, tolerance, inclusion, understanding and solidarity in order to build a sustainable world of peace, solidarity and harmony.

If we had to encapsulate the vision of the Equal Opportunity Commission (EOC), it would be just that. Simply put, we are working towards living together in peace. The vision of the EOC is “a society which is free from discrimination and prejudice, where human rights and diversity are respected, and where there is equality of opportunity for all.”

To live together in peace, we have to be united in our diversity and treat others with dignity and respect, simply because we are all humans who have the right to live without our status having any bearing on the opportunities that we access. This has to be a proactive and participatory process by all. Individuals, families, communities, NGOs, faith leaders, government bodies and all other relevant actors must practise and teach those around us to respect human rights and the fundamental freedoms for all; without distinction as to their race, ethnicity, sex, religion, marital status, origin or disability.

The EOC and its role as the leading state advocate on equality is a critical institution in the road map to the ideal of peace. According to section 27 of the Equal Opportunity Act, the mandate of



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the EOC is to work towards the elimination of discrimination and promote equality of opportunity and good relations between people of different status generally. The functions listed in this section are designed to address discrimination at all stages: discrimination that exists and prevention.

The commission receives, investigates and conciliates complaints of discrimination lodged by members of the public. It is both a deterrent and proactive mechanism used to dissuade those who may be so inclined from discriminating against another and to provide redress for victims of discrimination. Further, the act established the Equal Opportunity Tribunal, which is independent from the commission, treats with cases as a superior court of record. This means that the tribunal has jurisdiction and powers similar to that of a High Court and can compensate victims of discrimination and make appropriate orders against defendants. The commission also proactively promotes equality through its public education initiatives. The act specifies that the EOC is re-

quired to develop, conduct and foster research and educational programmes and to prepare and publish appropriate guidelines for the avoidance of discrimination.

Some of the current public education initiatives of the commission include this weekly column in the *Newsday* and, among other projects, a monthly television programme entitled *Sex and Prejudice*, which brings together an expert panel to discuss various sex and gender issues and offer solutions. The EOC also publishes guidelines for employers on disability and sexual harassment in the workplace, etc. All guidelines are available on the EOC’s website: www.equalopportunity.gov.tt

Another function of the commission is “to 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.”

We can all agree that while the act is a progressive piece of legislation, it is a work in progress. This particular function, when implemented in a timely manner, will ensure that the act remains relevant and evolves to meet the needs of society

Monday 31st May

Happy Indian Arrival Day

TODAY, we celebrate the arrival of the first indentured labourers from India as a new labour force.

The passengers aboard the *Fatel Razack* brought to our shores, a rich culture that added to the unique blend of races and religions in our ethnically diverse population, helping to mould the identity of our nation before we were independent and before we knew what that identity would look like.

East Indians have contributed and influenced the development of our nation together with all other races and ethnicities that call Trinidad and Tobago home. Our nation is built on the backs of many ancestors, reinforcing our core and reminding us that as a nation, there is strength in unity.

We are very fortunate that as one people, we reflect the phenomenal beauty of diversity and a profound sense of inclusion living side by side, totally involved in the culture and life of each other as human beings living under the umbrella of Trinidad and Tobago.

Not only does it matter where we came from but, more so, that we have created and continue to create an envious paradise on this earth, not yet perfect but full of promise, an ever-evolving work in progress championed by our multiracial, multi-ethnic, multi-religious people seeking to achieve a nation that is wholesome, equitable and empowered by its diverse human capabilities.

As part of this work in progress, the Equal Opportunity Commission plays a crucial role in the development of our national identity as the state body mandated to eliminate discrimination and promote equality.



The commission's mandate is to serve as a helm that steers our nation's ship safely to the ideal of equality of opportunity for all. However, the evolution of our society will determine just how choppy the waters will be in getting to that destination.

Through its public education efforts, the commission raises awareness on the issues that still exist in our country and provide tools and solution-based support. We provide guidance, but more importantly, we empower people to use education to promote respect for different races and cultures.

This includes self-awareness, talking to their circles and teaching through positive actions. The commission also provides a redress mechanism for those who have been discriminated against. They can lodge a complaint at the commission, which the commission will receive, investigate and conciliate. All of its services up until conciliation are free of charge.

As we celebrate Indian Arrival Day as one of the significant moments in our nationhood, there is a lot to be proud of and thankful for, in the contributions made by this culturally-rich segment of our people, for which we are better off. And as we get ready to celebrate the maturity of 60 years of independence from a shared colonial past, we must imagine a bright future when we will be able to reflect upon

our colonial history as the catalyst that made our nation great.

We must stand strong together as one people with our common humanity the glue that seals our faith and prosperity as a nation. The Equal Opportunity Commission wishes Trinidad and Tobago a Happy Indian Arrival Day.