

Vital Complaint Provisions in the Act Part II: Lodging a complaint after six months

ON OCTOBER 17, we examined some of the vital provisions in the Equal Opportunity Act Chap 22:03 that govern how the commission handles complaints.

Recall that the act prohibits discrimination in the areas of employment, education, the provision of goods and services, and the provision of accommodation, where someone has been subjected to differential and less-favourable treatment because of any one of seven personal and inherent characteristics known as status grounds; these are their race, their ethnicity, their sex, their religion, their origin, their marital status, and any disability they may have.

The act provides for a mechanism by which members of the public who have been subjected to this discrimination can lodge complaints with the commission.

In the previous article, we noted that a complaint must be lodged within six months from the date of the alleged act of discrimination, but the commission can accept a complaint outside of this window only in “exceptional circumstances.”

If you lodge your complaint within six months, then you are within time and there is nothing more to consider. However, if you find yourself outside of the six-month window, you are required to show “exceptional circumstances” before the commission can treat with it.

WHAT DOES THIS MEAN?

The act does not define what are exceptional circumstances. Around the same time that the act was passed in 1999, Parliament passed another piece of legislation, the Judicial Review Act [Chap 7:08] in 2000.

This act also provided that an application for judicial review must be filed in a specified time (three months) but said that the court can receive a claim outside of this deadline if there is “good reason.”



This is significant because both these acts were drafted around the same time, but the drafters chose to use different language in stating what was the criteria for accepting claims filed out of time.

Therefore, they must have intended two different things. Put very simply, the criteria of “good reason” in judicial review claims is not the same as “exceptional circumstances” in equal opportunity complaints.

Exceptional circumstances must be more than just “good reason” as “exceptional” connotes a higher threshold than “good.” It must refer to something unique and peculiar. For example, in South Africa, section. 60(11)(a) of their Criminal Procedure Act required a person accused of murder who was seeking bail to show on a balance of probabilities that exceptional circumstances existed which required their release in the interests of justice.

The court was asked to interpret what this meant in the 2010 case of Mazibuko & Another v The State. Judge Rall said, “It seems to me that “exceptional” can firstly denote the rarity of something (ie the infrequency with which something occurs) as in “It is exceptional to find a nocturnal animal walking around during the day.”

Secondly, it can denote the extent or degree to which a quality or characteristic is present, as in ...”The musician has exceptional talent.” The two meanings are however interlinked. Once again...”the more talented a musician

is, the more unusual or rare that musician would be.”

CONSIDER THE REASONS

In treating with a complaint lodged outside of the six-month period, one should consider the length of the delay and the reason given. The length and reason must be considered together, as what may justify a delay of one week, may not justify a delay of nine months.

Consequently, the length of the delay must be seen as a sliding scale, where the longer the delay, the more “exceptional” the reasons should be.

For example, illness or injury may give rise to exceptional circumstances. However, a relatively non-threatening condition such as the Chikungunya Virus can perhaps explain a delay of three weeks, for longer delays the complainant would need to point to more serious or acute conditions.

For a delay of six months, they would need to point to a serious injury that required extensive hospitalisation and treatment (eg heart attack, stroke). One must look at the nature of the exceptional event and how damaging were its effects. Using bad weather as an example, one night of heavy rain cannot justify a delay of four months.

Additionally, one must balance this with the relative ease of lodging complaints with the commission.

A complainant does not have to attend the commission’s offices in person during working hours; they can lodge a complaint using our website, www.equalopportunity.gov.tt at any time of the day or night.

For more information people can consult our website. Additionally, people can request training and sensitisation sessions from the EOC, which are provided free of charge.

Send an email to communications@eoc.gov.tt