

THE SEXUAL HARASSMENT (PROTECTION AND PREVENTION) ACT, 2021

(Act of 2021)

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SCHEDULE

JAMAICA

No. 13 — 2021

I assent,

[L.S.]

Governor-General.

AN ACT to make provision for the prevention of sexual harassment
and for connected matters.

[]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and
with the advice and consent of the Senate and House of Representatives
of Jamaica, and by the authority of the same, as follows:—

PART I—*Preliminary*

1. This Act may be cited as the Sexual Harassment (Protection and
Prevention) Act, 2021, and shall come into operation on a day to be
appointed by the Minister by notice published in the *Gazette*, and
different days may be appointed by the Minister under this section in
respect of different provisions of this Act.

Short title
and
commencement.

Interpretation and application.

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

“accommodation” includes residential and business accommodation;

“client” means a person who conducts business with an employer;

“complainant” means a person who makes a complaint pursuant to the provisions of this Act;

“complaint” means a complaint made pursuant to section 27;

“contractor” means a person who is hired by an employer to perform specific work or provide a specific service for compensation or reward;

“correctional institution” has the meaning assigned to it in section 2 of the Corrections Act;

“Court” means the Parish Court;

“co-worker” in relation to a worker, means another person who is employed by the employer of the worker;

“document” means, in addition to a document in writing, anything in which information of any description is recorded;

“domestic worker” means a worker who performs work in a household on a professional or occupational basis;

“employer” means a person who engages, in any form, a worker;

“employment” includes any form of engagement of a worker;

“hearing” means a hearing conducted by the Tribunal pursuant to Part VI in relation to a complaint;

“institution” includes—

(a) a school, college, university and other place of learning or training;

(b) a correctional institution or lock-up within the meaning of section 2 of the Corrections Act;

- (c) a place of safety within the meaning of section 2 of the Child Care and Protection Act or any other place for the custody of minors;
- (d) a nursing home within the meaning of section 2 of the Nursing Homes Registration Act or any other place for the custody of the elderly;
- (e) a medical facility and psychiatric facility;
- (f) a place for the use of any facility by members of any organization; and
- (g) such other place or facility as the Minister may, by order published in the *Gazette*, designate as an institution for the purpose of this Act;

“psychiatric facility” has the meaning assigned to it in section 2 of the Mental Health Act;

“respondent” in relation to a complaint, means the person who is alleged to have committed the act to which the complaint relates;

“sexual advance” includes any one or more of the following acts, forms of conduct or behaviour, namely—

- (a) physical contact of a sexual nature;
- (b) a demand or request for sex or for favours of a sexual nature;
- (c) the making of sexual suggestions, remarks or innuendos;
- (d) the showing of pornography or the display of images or objects of a sexual nature; and
- (e) any other physical, gestural, verbal, non-verbal or visual conduct of a sexual nature;

*The Sexual Harassment (Protection and
Prevention) Act, 2021*

“sexual harassment” means the making of any unwelcome sexual advance towards a person, by another person, which—

- (a) is regarded as offensive or humiliating by the person towards whom the sexual advance is made; or
- (b) has the effect of—
 - (i) interfering with the work performance of the person to whom the sexual advance is made; or
 - (ii) creating an intimidating, offensive or a hostile work environment,

and references to the term “sexually harass” shall be construed accordingly;

“sexual harassment claim” means a sexual harassment claim made pursuant to section 5 or 6;

“supervisor” in relation to worker, means a co-worker who, by virtue of the co-worker’s employment, is in a position of authority over that worker;

“Tribunal” means the Sexual Harassment Tribunal constituted under Part V;

“worker” means a person who carries out work in any capacity for an employer including work as—

- (a) an employee, whether in the private or public sector;
- (b) a domestic worker;
- (c) a person engaged under a contract for services, or a subcontractor of that person;
- (d) an employee of a person or subcontractor referred to in paragraph (c);
- (e) a person whose service is procured or arranged by a company which is in the business of supplying

workers for other businesses, and who has been assigned to work in the business or undertaking;

- (f) an apprentice, a trainee or an intern;
- (g) a student gaining work experience;
- (h) a volunteer;
- (i) a person of a class prescribed by the Minister for the purposes of this definition, after consultation with the Minister with responsibility for labour.

(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.

(3) In order to determine whether any act, conduct or behaviour constitutes sexual harassment—

- (a) all of the circumstances surrounding the act, conduct or behaviour shall be taken into consideration;
- (b) it shall be considered whether the act, conduct or behaviour constituted a course of conduct or, if not, was a significant single instance sufficiently serious to be so determined; and
- (c) the determination shall be based on the findings in the particular case.

(4) The provisions of this Act shall not apply to a person who is under the age of sixteen years.

(5) For the purposes of section 13(2), a person is a fit and proper person if—

- (a) the person—
 - (i) has not been convicted of an offence involving fraud, dishonesty or moral turpitude or, of an offence listed in the Second Schedule of the Proceeds of Crime Act or an offence that is similar to any such offence in another jurisdiction;

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- (ii) is not a bankrupt, within the meaning of the Insolvency Act; and
 - (iii) is in compliance with any tax and other statutory requirements imposed on the person;
- (b) the employment record of the person or any other information does not give the Minister reasonable cause to believe that the person carried out any act involving dishonesty or impropriety that will interfere with the ability of the person to fulfil his or her functions; and
- (c) the person is, in the opinion of the Minister—
- (i) a person of sound probity and is able to exercise competence, diligence and sound judgment in the fulfilling of their functions;
 - (ii) a person who possesses the knowledge, skills and experience which are necessary for the intended functions to be carried out by that person; and
 - (iii) a person whose appointment will not raise an issue of conflict of interest or undue influence.

PART II—Prevention of Sexual Harassment

Duty to ensure environment free of sexual harassment.

3.—(1) An employer shall make every reasonable effort to ensure that the workers employed by the employer are not sexually harassed in the course of their employment.

(2) A person who is in charge of an institution shall make every reasonable effort to ensure that the students, residents, wards, inmates, patients or members, as the case may be, of that institution, are not sexually harassed.

Duty of employer and person in charge of institution to issue policy statement.

4.—(1) Every employer—

- (a) shall, in relation to the business or undertaking of the employer, issue a policy statement in writing concerning the prevention of sexual harassment in the business or undertaking and the protection of the workers in the business or undertaking from sexual harassment; and

(b) shall take such steps as are reasonably required to bring the policy statement mentioned in paragraph (a) to the attention of the workers employed by the employer.

(2) Every person in charge of an institution—

(a) shall, in relation to that institution, issue a policy statement concerning the prevention of sexual harassment at the institution and the protection of the students, residents, wards, inmates, patients or members, as the case may be, of that institution from sexual harassment; and

(b) shall take such steps as are reasonably required to bring the policy statement mentioned in paragraph (a) to the attention of the students, residents, wards, inmates, patients or members, as the case may be, of that institution.

(3) The policy statement required under this section shall be in accordance with the Sexual Harassment Framework Document set out in the First Schedule and shall include the following—

(a) a definition of sexual harassment which is consistent with the provisions of this Act;

(b) a statement to the effect that—

(i) workers;

(ii) clients;

(iii) students, residents, wards, inmates, patients or members, as the case may be, at or of the institution,

are entitled to an environment that is free of sexual harassment;

(c) a statement to the effect that disciplinary measures, as are appropriate, shall be taken against any person under the direction of the employer, or the person in charge of the institution, who subjects any worker, client, student, resident, ward, inmate, patient or member, as the case may be, to sexual harassment and that due process shall be exercised in this regard;

- (d) the internal mechanisms and procedures that are available to a worker, client, a student, a resident, a ward, an inmate, a patient or a member, as the case may be, for the making of any complaint relating to sexual harassment and the resolution and settlement of the complaints;
- (e) a statement explaining the disciplinary measures that may be taken in respect of sexual harassment;
- (f) a statement to the effect that the employer, or person in charge of the institution, shall not disclose any information relating to a complainant or the circumstances of a complaint to any person, except where the disclosure is necessary for the purposes of investigating the complaint or taking disciplinary action in relation to the complaint;
- (g) a statement informing the workers, clients, students, residents, wards, inmates, patients or members, as the case may be, of their right to seek redress from the Tribunal under this Act; and
- (h) subject to section 27(5), a statement to the effect that a complainant shall exhaust all internal mechanisms and procedures that are available to the complainant before making a complaint to the Tribunal.

(4) Within twelve months from the date of commencement of this Act, every employer and person in charge of an institution shall ensure that the policy statement required under this section is prepared and shall take such steps as are reasonably required to bring the policy to the attention of each worker, client, student, resident, ward, inmate, patient or member, as the case may require.

(5) An employer or a person in charge of an institution who discloses any information relating to a complainant or the circumstances of a complaint, in contravention of subsection 3(f) shall be liable for such disclosure and a complainant who is aggrieved by such disclosure may make a complaint in respect thereof to the Tribunal.

(6) The Minister may, by order, amend the First Schedule.

(7) The Minister may, by Order, subject to affirmative resolution, exempt any employer from the provisions of subsection (1).

5.—(1) Where a worker alleges that he or she has been sexually harassed by another worker or a client, that worker may lodge a sexual harassment claim, in writing, with the employer.

Procedure for lodging sexual harassment claim and duty of employer.

(2) Where a sexual harassment claim is lodged with an employer under subsection (1), the employer shall—

- (a) in the case where the sexual harassment claim is made against a worker, notify the worker in writing, whether by electronic means or otherwise, within two days of receipt of the sexual harassment claim;
- (b) in the case where the sexual harassment claim is made against a client, take such action as he or she considers appropriate in the circumstances, to bring the matter to the attention of the client; and
- (c) commence an investigation into the particulars of the sexual harassment claim, within fourteen days of the sexual harassment claim being lodged and complete the investigation without delay.

(3) An employer who fails to take the required action under subsection (2) shall be liable for the failure to act, and a worker who is aggrieved by the failure of the employer so to act, may make a complaint in respect thereof to the Tribunal.

6.—(1) Where a student, resident, inmate, ward, patient or member, as the case may be, alleges that he or she has been sexually harassed by—

Procedure for lodging sexual harassment claim and duty of person in charge of an institution.

- (a) a person who is a member of staff or in a position of authority at an institution; or
- (b) by one of his or her peers at an institution,

such student, resident, inmate, ward, patient or member, as the case may be, may lodge a sexual harassment claim, in writing, with the person in charge of the institution.

(2) Where a sexual harassment claim is lodged with a person in charge of an institution under subsection (1), the person in charge of the institution shall—

- (a) as the case may require, within two days of receipt of the sexual harassment claim, notify the person who is a member of staff or in a position of authority or the student, resident, inmate, ward, patient or member, who is the subject of the sexual harassment claim, in writing, whether by electronic means or otherwise, of the sexual harassment claim; and
- (b) commence an investigation into the particulars of the sexual harassment claim, within fourteen days of the sexual harassment claim being lodged and complete the investigation without delay.

(3) A person in charge of an institution who fails to take the required action under subsection (2) shall be liable for failure to act and a student, resident, ward, inmate, patient or member, as the case may be, who is aggrieved by the failure of the person in charge of the institution to take action, may make a complaint in respect thereof to the Tribunal.

Making of complaint against employer or person in charge of an institution.

7. Notwithstanding the provisions of section 27(4), where an allegation of sexual harassment is made against an employer or a person who is in charge of an institution, the worker, client or student, resident, ward, inmate, patient or member, as the case may be, who alleges that he or she has been sexually harassed, may make a complaint directly to the Tribunal.

Maintaining of register.

8.—(1) An employer and person in charge of an institution shall maintain or cause to be maintained, a register containing the following information in respect of every sexual harassment claim lodged pursuant to section 5 or 6—

- (a) the name of the parties to the sexual harassment claim;
- (b) the particulars of the sexual harassment claim;
- (c) the date of which the sexual harassment claim was lodged;
- (d) the finding of a sexual harassment claim;
- (e) any action taken by the employer or person in charge of an institution in relation to the sexual harassment claim;

- (f) such other particulars relating to the sexual harassment claim as may be prescribed.

(2) An employer and person in charge of an institution shall ensure that the information contained in the register is kept in a secure manner and that the confidentiality of the information is preserved, and shall—

- (a) take all necessary and appropriate measures to protect the information contained in the register from unauthorized access, unauthorized use and unauthorized disclosure; and
- (b) ensure that any person who has access to the register adheres to the measures referred to in paragraph (a), at all times.

(3) No person shall disclose information which is recorded in the register, in relation to a sexual harassment claim, unless the disclosure is made with lawful authority.

(4) Pursuant to subsection (3), a disclosure is made with lawful authority only if, and to the extent that—

- (a) the disclosure is made to a party to the sexual harassment claim upon their request;
- (b) the disclosure is made to the Tribunal, where a complaint is made to the Tribunal pursuant to section 27;
- (c) the disclosure is made for the purposes of, and is necessary for, the discharge of any functions under this Act or any other relevant enactment;
- (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under or by virtue of this Act or otherwise.

(5) A person who knowingly or recklessly discloses information kept in a register in contravention of subsection (3) commits an offence and shall, on summary conviction in a Parish Court be liable to a fine not exceeding five hundred thousand dollars or in default of payment thereof to a term of imprisonment not exceeding one month.

(6) The information in the register shall be kept for a period of eight years.

PART III—*Forms of Sexual Harassment and Related Prohibited Conduct*

Sexual harassment by an employer, supervisor or co-worker.

9.—(1) An employer or a supervisor shall not sexually harass a worker.

(2) An employer or supervisor shall not make it appear to a worker that—

- (a) the prospects or working conditions of that worker are contingent upon the worker's acceptance or tolerance of sexual advances from the employer or supervisor; or
- (b) the worker will suffer any form of disadvantage in connection with employment unless the worker accepts or is tolerant of sexual advances from the employer or supervisor.

(3) A worker shall not sexually harass a co-worker.

(4) A client shall not sexually harass a worker.

(5) A worker shall not sexually harass a client.

(6) A worker shall not sexually harass a supervisor.

(7) A worker shall not sexually harass an employer.

(8) A prospective employer shall not sexually harass a person who is seeking employment.

(9) A prospective employer shall not make it appear to a person seeking employment that—

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

is contingent on that person's acceptance of, or submission to, sexual advances from the prospective employer.

(10) An employer shall not take any action which adversely affects the opportunities, terms and working conditions of a worker who has lodged a sexual harassment claim or made a complaint under this Act, or who has given testimony or otherwise participated in any investigation, procedure or hearing initiated under this Act.

10.—(1) A person who is a member of staff or in a position of authority at an institution shall not sexually harass a person who is a student, a resident, a ward, an inmate, a patient or a member, as the case may be, at or of the institution or who is seeking admission to the institution.

Sexual harassment at an institution.

(2) A person who is a member of staff or in a position of authority at an institution shall not make it appear to any other person that any preferential treatment or other advantage at the institution is contingent upon the other person's acceptance of or submission to sexual advances from the first mentioned person.

(3) A person who is a member of staff or in a position of authority at an institution shall not take any action which adversely affects the facilities or other opportunities available to a student, a resident, a ward, an inmate, a patient or a member, as the case may be, at or of the institution who has instituted proceedings by way of a claim under this Act, or who has given testimony or otherwise participated in any investigation, procedure or hearing initiated under this Act.

(4) A student, resident, ward, inmate, patient or a member of an institution shall not sexually harass one of his or her peers.

11.—(1) A person shall not sexually harass another person in the course of providing or offering to provide, (whether as principal or agent) accommodation to that other person.

Sexual harassment in relation to accommodation.

(2) A person shall not, in the course of providing or offering to provide, (whether as principal or agent) accommodation to another person, make it appear to the other person that—

- (a) any term or condition upon which the first mentioned person offers the other person accommodation;

- (b) any preferential treatment or advantage in relation to the acceptance and processing of an application for accommodation;
- (c) any advantage in relation to the pricing of, or the access or the extent of access to any benefit connected with, the accommodation; or
- (d) the failure to evict the other person or to subject that other person to any detrimental treatment in relation to the accommodation,

is contingent upon the other person's acceptance of or submission to sexual advances from the first mentioned person.

PART IV—*Designation of Authorized Officer*

Designation
of authorized
officers, etc.

12.—(1) The Minister with responsibility for gender affairs may designate persons being field officers attached to the Bureau of Gender Affairs, as authorized officers for the purposes of—

- (a) ensuring the proper observance and compliance with the provisions of sections 3 and 4; and
- (b) carrying out, at the request of the Tribunal, an investigation into a complaint made to the Tribunal in accordance with the provisions of this Act.”

(2) A person designated as an authorized officer shall undergo the requisite training to assist them in the carrying out of their functions under this Act.

(3) An authorized officer shall be furnished with a certificate of designation.

(4) An authorized officer in performing any functions or exercising any powers under this section, shall produce the certificate of designation.

(5) An authorized officer may—

- (a) in relation to the exercise of the functions of the authorized officer under subsection (1)(a)—
 - (i) with a warrant, enter any place of employment or institution in order to ascertain whether the

provisions of sections 3 and 4 are being complied with; and

- (ii) inspect and take copies of documents or other information or require any person at the place of employment or institution, to provide such information as may be reasonably required, for the enforcement of the provisions of this Act;
- (b) in relation to the exercise of the functions of the authorized officer under subsection (1)(b), and by written notice—
- (i) require an employer or a person in charge of an institution to disclose any document or information which has or may have a bearing on an investigation that is being conducted in relation to a complaint;
 - (ii) require any person to furnish any information disclosed that may be relevant to an investigation that is being conducted in relation to a complaint;
 - (iii) specify the time within which the employer, or the person in charge of the institution or such other person specified under sub-paragraph (ii) shall furnish any information disclosed in the notice; and
 - (iv) require any person to—
 - (A) attend at such time and place as may be specified in the notice;
 - (B) give such evidence as the authorized officer considers necessary; and
 - (C) produce any document or exhibit in the possession or control of the person which has or may have a bearing on the investigation.”.

(6) A person served with a notice under subsection (5) shall not be compelled to give evidence or produce any document which the

person would not be compelled to give in evidence, or produce in any proceedings before a court.

(7) A person who—

- (a) willfully obstructs or assaults an authorized officer in the exercise of any function or power under this Act;
- (b) fails to comply with a lawful request made by an authorized officer, or
- (c) fails to comply with a notice under subsection 5(b),

commits an offence and shall be liable on summary conviction in a Parish Court to a fine not exceeding one million or to imprisonment for a term not exceeding twelve months.

(8) An authorized officer, on finding that an employer or person in charge of an institution is not in compliance with any of the provisions of sections 3 or 4, may issue a direction setting out the terms of compliance, and the time (not being more than thirty days) within which the employer or person in charge of the institution shall comply with the direction.

(9) An employer or person in charge of an institution who fails to comply with a direction issued under subsection (8), commits an offence and shall on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars.

PART V—*Sexual Harassment Tribunal*

Establish-
ment and
constitution
of Tribunal.

13.—(1) There is hereby established, the Sexual Harassment Tribunal which shall, subject to subsection (3), consist of fourteen members appointed by the Minister as follows—

- (a) four members who shall be attorneys-at-law, who have each practised for at least ten years;
- (b) four members who shall be trained and certified mediators who have each practised for at least two years;
- (c) the other members who shall be selected from among persons who appear to the Minister responsible for gender affairs, after consultation with the Minister responsible for Justice

and the Minister responsible for labour and social security, to be qualified as having had the experience of, and shown capacity in, matters relating to worker representation, gender affairs, mental health, employer representation and labour relations.

(2) A person shall not be appointed as a member of the Tribunal unless the person satisfies the fit and proper eligibility requirements specified under section 2(5).

(3) Pursuant to subsection (1), at least one half of the total members appointed to the Tribunal shall be female.

(4) The members of the Tribunal shall, on their appointment, take the oath of office set out in the Second Schedule.

14.—(1) The Minister shall appoint a chairperson and two deputy chairpersons from amongst the members of the Tribunal who are attorneys-at-law.

(2) In the absence or inability of the chairperson to act in any sitting of the Tribunal, one of the deputy chairpersons shall act as the chairperson at that sitting.

15. Subject to the provisions of this Part, the Tribunal shall have jurisdiction to—

(a) hear and determine—

- (i) a complaint made by a worker that the worker's employer has failed to act in accordance with section 5(2);
- (ii) a complaint instituted by a student, a resident, a ward, an inmate, a patient or a member, as the case may be, of an institution, that the person in charge of the institution has failed to act in accordance with section 6(2);
- (iii) a complaint made by a person pursuant to section 4(5), 5(3), 6(3), 7, 9, 10, 11 or 27(1)(d); and

Second
Schedule.

Appointment
of
chairperson
and deputy
chairperson
of the
Tribunal.

Jurisdiction
of Tribunal
to hear
complaints.

(b) make any of the awards specified under section 36.

Hearing
panel of
Tribunal.

16.—(1) A complaint made to the Tribunal pursuant to section 15 shall be heard and determined by a panel consisting of three members of the Tribunal.

(2) The chairperson or a deputy chairperson appointed pursuant to section 14(1) may chair a panel constituted under subsection (1).

(3) In appointing a panel pursuant to subsection (1), the chairperson of the Tribunal shall, at all times, ensure that both genders constitute the membership of the panel.

(4) In assigning members of the Tribunal to the panel, the chairperson of the Tribunal shall take into consideration the necessary experience and expertise that are necessary to enable the panel to determine the issues raised in any matter before it.

Disclosure of
interest in
relation to
matter before
the Tribunal.

17.—(1) A member of the Tribunal who in any way, whether directly or indirectly, has an interest in any matter that is brought before the Tribunal shall—

- (a) by notice, declare the nature of the interest on the first opportunity at which it is practicable for the member to do so; and
- (b) not take part in any deliberations or decisions of the Tribunal with respect to that matter.

(2) A notice given by a member at a hearing of the Tribunal to the effect that the member is interested in any matter before the Tribunal shall, for the purposes of subsection (1), be a sufficient disclosure of the member's interest in relation to the matter.

(3) A member need not attend in person at a hearing of the Tribunal in order to make a disclosure which the member is required to make under this section if the member takes reasonable steps to ensure that the disclosure is made by notice which is taken into consideration and read at the hearing.

(4) Where the Minister is satisfied that a member of the Tribunal is unable to carry out the duties as a member properly and

effectively because of any conflict of interest or potential conflict of interest in a matter before the Tribunal, the Minister shall replace that member or direct that member to abstain from taking part in any proceedings relating to any matter affected by the member's conflict of interest or potential conflict of interest.

18. The members of the Tribunal shall, subject to the provisions of this Part, hold office for a period not exceeding three years, and shall be eligible for re-appointment.

Tenure of office.

19. The Minister may appoint any person to act in the place of the chairperson of the Tribunal or any other member of the Tribunal in the case of the absence, inability or refusal of the chairperson or other member to act, so however that, such appointment shall be made in the same manner and from among the category of persons as would be required in the case of the original appointment.

Acting appointments.

20.—(1) Any member of the Tribunal, other than the chairperson, may at any time resign from the office as member by instrument in writing addressed to the Minister and transmitted through the chairperson, and from the date of the receipt by the Minister of the instrument, that member shall cease to be a member of the Tribunal.

Resignation.

(2) The chairperson may at any time resign from the office as chairperson by instrument in writing addressed to the Minister and the resignation shall take effect as from the date of receipt by the Minister of that instrument.

21. A person shall not become or continue to be a member of the Tribunal, if the person—

Disqualification.

- (a) is suffering from a mental disorder within the meaning of the Mental Health Act, becomes of unsound mind or becomes permanently unable to perform the functions as a member of the Tribunal by reason of ill health; or
- (b) does not or no longer satisfies the fit and proper eligibility requirements under section 2(5).

22. The Minister may revoke the appointment of any member of the Tribunal for the inability of the member to discharge the functions as a

Revocation of appointment.

member of the Tribunal, whether arising from infirmity of body or mind, dereliction of duty, misbehaviour or for any of the circumstances arising under section 21.

Filling of vacancies.

23. If any vacancy occurs in the membership of the Tribunal, such vacancy shall be filled by the appointment of a person who shall, subject to the provisions of this Part, hold office for the remainder of the period for which the previous member was appointed, so however, that the appointment shall be made in the same manner and from the same category and gender of persons as the appointment of the previous member.

Publication of membership.

24. The names of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*.

Remuneration of members.

25. There shall be paid to the chairperson and other members of the Tribunal, in respect of each hearing or sitting, a remuneration, whether by way of honorarium, salary or fees, and such allowances as may be determined by the Minister responsible for the public service.

Staff of Tribunal.

26.—(1) The Tribunal shall be provided with a secretary and with such additional staff as may be deemed necessary to assist the Tribunal in the performance of its functions.

(2) The secretary of the Tribunal shall be responsible for—

- (a) keeping a record of the proceedings of the Tribunal;
- (b) keeping in safe custody the documents of the Tribunal;
- (c) recording statements of witnesses called before the Tribunal; and
- (d) performing such other duties as the Tribunal may require.

PART VI—*Procedure for Making Complaints, Investigations and Hearing by Tribunal*

Making of complaint.

27.—(1) A person who alleges that—

- (a) an employer or person who is in charge of an institution has failed to comply with section 3(1) or (2);

- (b) a contravention of section 5(2), 6(2), 7, 9, 10 or 11 has been committed against the person;
- (c) an employer or a person in charge of an institution has disclosed information in contravention of section 4(5); or
- (d) he or she is aggrieved by or not satisfied with the findings of the employer or a person who is in charge of an institution, as the case may be, pursuant to a sexual harassment claim made under section 5 or 6,

may make a complaint, in writing, in the prescribed manner to the Tribunal, setting out the details of the alleged contravention.

(2) A complaint shall be made—

- (a) in the case of subsection (1)(b), within a period of six years from the date of the alleged contravention, or in the case of a course of conduct of series of alleged acts, within a period of six years from the date of the last alleged act; and
- (b) in the case of subsection (1)(a), (c) or (d), within the period of twelve months from the date of the alleged contravention.

(3) Notwithstanding subsection (2)(a), the Tribunal may, in circumstances which it considers to be exceptional, grant leave for a complaint to be made after the period specified thereunder.

(4) Subject to subsection (5), a person shall, before making a complaint under subsection (1)(b), exhaust the use of any internal mechanisms and procedures that are available to the person, as provided for in the policy statement issued by an employer or a person in charge of an institution, as the case may be, in accordance with this section.

(5) The Tribunal may grant leave to a person to make a complaint to the Tribunal in the circumstances provided in subsection (6), notwithstanding that subsection (4) has not been complied with.

(6) The circumstances referred to in subsection (5) are that the Tribunal is satisfied that the person has—

- (a) shown cause as to why the person reasonably believes that the person's rights may be prejudiced if the person were to comply with subsection (4); or

- (b) provided evidence to show that no internal mechanisms or procedures, or no adequate internal mechanisms and procedures have been made available to the person as is required under section 4(3)(d).

Confidentiality. **28.—**(1) Every person having an official duty under this Act, or being employed or otherwise concerned in the administration of this Act, shall regard and deal with as secret and confidential, all information and all other matters relating to any issue before the Tribunal.

(2) The obligation as to secrecy and confidentiality imposed under subsection (1), shall continue to apply to a person despite the person having ceased to have an official duty, be employed or otherwise concerned in the administration of this Act.

Referral of complaint for investigation. **29.** Where the Tribunal receives a complaint pursuant to section 27, the Tribunal shall refer the complaint to an authorized officer who shall conduct an investigation into the complaint pursuant to the functions of the authorized officer under section 12(1)(b) and shall, upon completion of an investigation, submit a report of the findings to the Tribunal.

Lack of grounds for making of complaint. **30.** Pursuant to a report submitted under section 29, where the Tribunal finds that there is no evidence of sexual harassment or the complaint is frivolous or vexatious, the Tribunal shall, in writing, inform—

- (a) the complainant; and
 (b) any person against whom the complaint was made,

of the facts and reasons for its finding and the Tribunal shall take no further action in relation to the complaint.

Procedures to apply in relation to a hearing conducted by Tribunal. **31.—**(1) The following procedures shall apply in relation to a hearing conducted by the Tribunal—

- (a) notice of the time and place at which the hearing is to be held shall be given to the parties in relation to the complaint, and the notice shall be of not less than ten days;
 (b) a record of the evidence adduced before the Tribunal shall be made, dated and signed by the members;
 (c) documents produced as exhibits before the Tribunal shall be marked, dated and initialled by the chairperson and shall be attached to the file of the hearing; and

- (d) in the absence of any party duly notified to attend, the matter, which is the subject of the complaint may be decided by the Tribunal *ex parte*.

(2) The Tribunal shall not conduct a hearing or shall discontinue a hearing, if the Tribunal receives notice that the complainant does not wish the hearing to be held or to be continued.

(3) The Tribunal—

- (a) may endeavour, by any means that it considers reasonable, to resolve a complaint which is the subject of a hearing under this section; or
- (b) shall take steps that it considers reasonable, to effect an amicable settlement of the complaint, and for this purpose may adjourn a hearing at any stage to enable the parties to negotiate with a view to settlement by amicable arrangements.

32. The Tribunal may take evidence on oath or affirmation for the purpose of the hearing.

Evidence
before
Tribunal.

33.—(1) The Tribunal may, for the purpose of a hearing, by notice in writing, direct any person specified in subsection (2), to attend at a time and place specified in the notice for the purposes of the hearing.

Attendance
at hearing.

(2) Directions under subsection (1) may be given to—

- (a) the complainant;
- (b) the respondent; and
- (c) any other person who, in the opinion of the Tribunal, is likely to be able to provide information relevant to the hearing or whose presence is, in the opinion of the Tribunal, likely to be conducive to the settlement of the matter to which the complaint relates.

(3) The Tribunal may in a notice under subsection (1), require the person to produce any document specified in the notice.

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

Right to representation.

34. A party to a hearing may be represented by an attorney-at-law or any other person, or may elect to be self-represented.

Tribunal may prohibit publication of evidence, etc.

35.—(1) In the interest of the administration of justice, public safety, the safety of the parties, public order or public morality, the Tribunal conducting a hearing in the exercise of its jurisdiction under this Act may direct that—

- (a) the name, identity, and address of any person shall be protected in the manner specified by the Tribunal;
- (b) in relation to a witness called or appearing before the Tribunal, the name, identity, and address of the witness and such other particulars concerning the witness, as in the opinion of the Tribunal shall be kept confidential, shall not be published; or
- (c) no particulars of a complaint shall be published without the prior written approval of the Tribunal.

(2) A person shall not publish any information in contravention of a direction under subsection (1).

Findings of the Tribunal.

36.—(1) After conducting a hearing, the Tribunal may—

- (a) dismiss the complaint;
- (b) rule in favour of the complainant and make a determination, which may include any one or more of the following findings—
 - (i) that the respondent has engaged in conduct that amounts to sexual harassment, and that the respondent shall not repeat or continue such conduct;
 - (ii) that the respondent shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
 - (iii) that the respondent pays to the complainant, by way of compensation for any loss or damage suffered by reason of the conduct of the respondent, an amount not exceeding nine

hundred thousand dollars, as may be determined by the Tribunal;

- (iv) that the employer concerned should take such action, within such time, as the Tribunal may direct to ensure that the conduct referred to in subparagraph (i) ceases, and to report to the Tribunal on the action taken;
- (v) that it would be inappropriate for any further action to be taken on the matter.

(2) The Tribunal may, in making an award under subsection (1)(b)(iii), take into consideration, injury to the complainant's feelings and any humiliation, mental or emotional distress suffered by the complainant.

(3) Where the Tribunal makes an award by way of a direction for the payment of compensation to the complainant, the sum so payable may be recovered by the complainant summarily in the Court, as a civil debt.

37. A decision or an award of the Tribunal shall be binding on the complainant and the respondent appearing before the Tribunal and shall take effect from such date as may be specified in the order, having regard to the circumstances of the case. Effect of award.

38. Any person who is dissatisfied with any decision or award of the Tribunal may appeal to the Supreme Court. Appeal.

PART VII—*Offences and Penalties*

39.—(1) Any person directed, pursuant to the provisions of this Act, to attend a hearing of the Tribunal and who fails without reasonable excuse to do so, commits an offence and shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars or, in default of payment thereof, to a term of imprisonment not exceeding three months. Offences in relation to attendance at hearing.

(2) Any person who, without reasonable excuse, fails or refuses to furnish information or produce documents under the provisions of

this Act, commits an offence and shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars or, in default of payment thereof, to a term of imprisonment not exceeding three months.

(3) Any person appearing before the Tribunal as a witness at a hearing, 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 Tribunal,

commits an offence and shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars or, in default of payment thereof, to a term of imprisonment not exceeding three months.

(4) A person who—

- (a) interrupts the proceedings at a hearing of the Tribunal;
- (b) uses insulting language towards the Tribunal when the Tribunal is exercising any powers or performing any functions under this Act,

commits an offence and shall on summary conviction in a Parish Court, be liable to a fine not exceeding five hundred thousand dollars or, in default of payment thereof, to a term of imprisonment not exceeding one month.

(5) A person who—

- (a) publishes anything in contravention of section 35;
- (b) permits, divulges or communicates any particulars of a complaint in contravention of section 28;
- (c) furnishes to the Tribunal any information or makes a statement at a hearing, knowing that the information or statement is false or misleading in a material particular,

commits an offence and shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars, or, in default of

payment thereof, to a term of imprisonment not exceeding twelve months.

40.—(1) A person commits an offence if that person (hereinafter referred to as the first-mentioned person) subjects, or threatens to subject, another person (hereinafter referred to as the other person) to any adverse action—

Offence of adverse action.

(a) on the ground that the other person—

- (i) has made, or proposes to make, a complaint under this Act;
- (ii) 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; or
- (iii) has attended, or proposes to attend, a hearing under this Act, or to appear thereat as a witness; 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 any one of subparagraphs (i) to (iii) of paragraph (a).

(2) A person who contravenes subsection (1) commits an offence and shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months.

41.—(1) A person who knowingly makes a false sexual harassment claim or a false complaint commits an offence.

Offence of making false complaint, etc.

(2) A person who contravenes subsection (1) commits an offence and shall, on summary conviction in a Parish Court, be liable to a fine not exceeding one million dollars or, in default of payment thereof, to imprisonment for a term not exceeding three months.

PART VIII—*Miscellaneous*

Regulations. **42.**—(1) The Minister may make regulations for the better carrying out of the provisions of this Act.

(2) Regulations made under subsection (1) shall be subject to affirmative resolution.

Tribunal may regulate its procedures and proceedings.

43.—(1) Subject to the provisions of this Act, the Tribunal may regulate its procedures and proceedings as it thinks fit, and may prescribe forms to be used in connection with complaints brought under this Act.

(2) The rules of the Tribunal as first constituted and all amendments made thereafter, shall be published in the *Gazette*.

Review of Act.

44.—(1) This Act shall be reviewed from time to time by a committee of both Houses of Parliament appointed for that purpose.

(2) The first such review shall be conducted not later than eighteen months after the date of commencement of this Act.

Power of Minister to amend monetary penalties.

45. The Minister may, by order published in the *Gazette*, subject to affirmative resolution, amend any monetary penalty prescribed by or under this Act.

Act binds the Crown.

46. This Act binds the Crown.

FIRST SCHEDULE

(Section 4(3))

Sexual Harassment Workplace Policy

The physical, emotional and mental health and safety of all students/faculty/staff, members/private contractors contracted by, or on behalf of [insert name of organization], or other third parties conducting business with the [insert name of organization] and interacting with its students/employees, etc. is of paramount importance. [Insert name of organization] prohibits sexual harassment and this policy was established to address any occurrence of sexual harassment at the [insert name of organization].

International Agreements and Policy Linkages

International Protocols and Conventions to which the country is committed which upholds sexual harassment as a form of violence, a human rights issue, and an obstacle to development.

The **International Labour Organization (ILO)** has formally recognized sexual harassment at the workplace as being harmful. Sexual harassment, the International Labour Office pointed out, is a violation of the fundamental rights of workers, and it constitutes a health and safety hazard, is an issue of discrimination, an unacceptable working condition and a form of violence, usually against female workers. In its Convention No. 111 on Discrimination in Employment and Occupation, the ILO cites issues of health and safety to employee welfare and workplace productivity, as they are affected by sexual harassment.

The proposed Sexual Harassment (Protection and Prevention) Act, 2021 is also intended to facilitate redress for women and men in the workplace, educational institutions and in situations of accommodation.

The **National Policy for Gender Equality (NPGE)** approved by Cabinet in 2011 promotes the objective and goal of sustainable behaviour change and an environment where females and males at all stages of the life cycle can enjoy their full human rights and develop their full potential as citizens. The policy also mandates the Ministry of Culture, Gender, Entertainment & Sport and other entities to create mechanisms for persons to report and have redress for labour issues involving sexual harassment.

The **Gender Sector Plan of the Vision 2030 National Development Plan** finalized in 2010 specifically identifies sexual harassment as a deterrent to national development. The plan identifies the absence of sexual harassment policy and legislation as a weakness in the economy and education, and stipulates the development of sexual harassment policies in the workplace as an output indicator of the Plan.

Organization's Zero Tolerance Commitment to Sexual Harassment

[Insert name of Organization] is committed to ensuring that men and women are able to work in an environment free of sexual harassment, where safety is ensured, and human dignity is valued and protected. [Insert name

of Organization] takes a zero-tolerance approach towards sexual harassment and is committed to ensuring that its environment is free of any such behaviour that constitutes sexual harassment.

Definition of Sexual Harassment

Sexual Harassment shall be defined as any conduct, act or behaviour that constitutes unwanted and unwelcome conduct of a sexual nature by one person toward another. It is recommended that the definition as prescribed by the Sexual Harassment (Protection and Prevention) Act, 2021 is used for the organisation's policy.

Forms of Sexual Harassment

The various forms of sexual harassment include:

Physical harassment—unwanted pinching, patting, touching, kissing, groping, and hugging which has clear sexual undertones.

Verbal harassment—unwelcomed comments on appearance/physical attributes private/personal life, sexually suggestive or explicit jokes, insults and 'put-downs' based on a person's sex. It is important to note that often times, harassers hide behind the argument that comments are "compliments". This does not mean that the behaviour is acceptable.

Non-verbal/Gestural harassment—sexually suggestive gestures eg. winks, licking of lips, gestures with hands, fingers, legs.

Psychological/Emotional Harassment—consists of persistent proposals and unwelcome requests, unwanted invitations to go out on dates, insults, taunts or innuendos of a sexual nature.

Written/graphic/visual/audio harassment—via internet communication (including electronic messages and attachments), letters, land line telephone, cellular telephones, distribution and display of pornographic materials (visual and audio), obscene and sexually explicit language.

Quid Pro Quo: This form of sexual harassment is recognized where harassers use a position of power and authority to negotiate job benefits (employment, re-employment, continued employment, individual favourable compensation, terms, conditions, promotions, privileges). This also applies to public goods (social services, security, social benefits, natural resources), socially and economically valued goods (housing, school admission, scholarships, security) which are conditional on an exchange of sex or physical contact, and refusal leads to failure to access any of the above.

Stalking/Cyber Stalking—Obsessively following, besetting, contacting and watching a person, either in person or using the internet, telephone, mail, and other media, which is motivated by what the perpetrator believes are feelings of desire and love, constitute sexual harassment.

Voyeurism ("Peeping Tom")—The act of watching, taping, recording, photographing a person without their knowledge, in a clandestine manner or

otherwise, while the person uses or inhabits a space where they have an expectation of privacy such as their domicile, a public bathroom, changing room etc., is a sexually harassing act.

Intimidation/Bully/Retaliation—Persons often use non-sexual behaviour to accommodate sexual harassment. Therefore any act of intimidation meant to prevent someone from reporting sexually harassing behaviour or to punish someone for reporting sexually harassing behaviour must be considered as a type of sexual harassment.

NB: Acts or comments of a sexual nature, not intended to harass, can constitute sexual harassment if another person feels uncomfortable with such subjects. Claiming to not understand or failing to know that an act is harassing, does not mean that it is not in fact, sexual harassment.

Toxic Environment—A combination of the above, can create a toxic and oppressive environment for the direct target but also for other persons who are not targeted. Even if a person is not the direct target of sexual harassment but is made uncomfortable and is offended by the creation of a toxic environment, they should be able to make a report of sexual harassment.

Such behaviour is not tolerated and [insert name of organization] shall take reasonable steps to prevent sexual harassment.

This policy shall be effective as of [insert date here].

Responsibility

The following roles and responsibilities will apply under this policy:

[State the role and Responsibility of]

- Management
- Employee
- Human Resource Department
- Welfare Officer/Committee
- Anti-Sexual Harassment Dispute Settlement Committee

Internal Mechanisms

Reporting Procedure

Persons who, understanding the definition of sexual harassment as outlined above, wish to bring forth a claim of sexual harassment against individual/ individuals affiliated with [insert name of organization] may do so by:

- (1) Documenting the incident/incidents/conditions in writing.
- (2) Make a report, in writing, to a designated responsible officer.

Once such a report is made, it is the responsibility of the organization and the Responsible Officer to pursue and investigate the claim.

Welfare Officer/Committee

[Insert name of organization] has designated the following person(s) as an officer/officers responsible for accepting and/or preparing reports of sexual harassment.

If the Welfare Officer determines that there is merit to the claim, the Officer may proceed to carry out the set of actions which are in keeping with the internal provisions to treat with the issue. If a mutually agreed upon resolution is achieved, it shall be documented and consensus achieved regarding the treatment of the claim, to the relevant records of the organization (*i.e.* human resource files, academic records, *etc.*)

If a mutually agreed upon resolution is not achieved or if the Responsible Officer deems it necessary, the report shall be referred to the Sexual Harassment Tribunal which has oversight for sexual harassment matters. The Tribunal shall take all reasonable steps necessary to evaluate the claim of sexual harassment and make a determination of liability or lack thereof of the accused harasser(s).

Anti-Sexual Harassment Dispute Settlement Committee

[Outline how complaints will be dealt with by the Committee]

Protection Against Retaliation

The act of bullying, intimidation and threats which are meant to accommodate sexual harassment or retaliate against an individual/ individuals who have made a claim of sexual harassment shall be treated as acts of sexual harassment and shall be treated accordingly. Reference can be made to the Sexual Harassment (Protection and Prevention) Act, 2021.

False Claims

Person/persons, who is/are found to wilfully and knowingly bring forth a false claim of sexual harassment against another individual, shall be liable for a breach of the sexual harassment policy and shall be reprimanded accordingly.

Liability for Harassment/Sanctions

A person/persons who are found to be in breach of this policy shall be found liable for sexual harassment and reprimanded accordingly. To the extent that [insert name of organization] failed to enforce this policy it shall be in breach of the policy.

Confidentiality

All claims of sexual harassment shall be documented and thoroughly archived for the purposes of monitoring and evaluation. However, [insert name of organization] will endeavour to protect the privacy of all parties involved throughout the course of the investigation. If an individual/individuals are found to be in breach of said policy, the expectation of privacy shall be relaxed to the extent that it is legally permitted.

Legislation

Under present Jamaican law, the Sexual Harassment (Protection & Prevention) Act, 2021 should be used as the instructive legislative framework for this policy and redress for sexual harassment cases shall be applied as outlined in the Act.”

SECOND SCHEDULE

(Section 13(4))

Oath of Office for Members of Tribunal

I _____ do swear (affirm) that as a member of the Tribunal, I will, at all times and in all things, do equal justice to all persons and discharge the duties of my office according to law and to the best of my knowledge and ability without fear, favour or affection.

Passed in the House of Representatives this 13th day of July 2021 with ten (10) amendments.

M. DALRYMPLE PHILIBERT, CD, MP
Speaker.

Passed in the Senate with twenty-three (23) amendments this 1st day of October, 2021 .

THOMAS TAVARES-FINSON, OJ, CD, QC, JP
President.

On the 12th day of October, 2021 the House of Representatives agreed to the amendments made by the Senate.

M. DALRYMPLE PHILIBERT, CD, MP
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.