

Gender Equality Tribunal

established under the Gender Equality Law, 2011

Policies and Procedures

31 January 2014

TABLE OF CONTENTS

INTRODUCTION	1 - 3
Background.....	1
Interpretation.....	1 - 2
Gender Discrimination.....	3
Application	3
Exceptions	3
Offences Related to Discrimination	3
COMPOSITION OF THE TRIBUNAL	4
Membership	4
Tenure	4
Remuneration	4
GENERAL OPERATING PROCEDURES	5 - 6
Independence	5
Natural Justice	5
Procedural Fairness.....	6
Quorum and Decisions.....	6
Powers of the Tribunal	6
COMPLAINT-FILING PROCEDURES	7 - 10
Filing a Complaint	7
Timelines for Submission	7 - 8
Submission of Complaints by Third Parties	8
Incomplete Complaints.....	8
Potential Exceptions	8 - 9
Receipt of Complaints.....	9
Agreement between Parties	9
Withdrawal of Complaints	9
Re-Submission of Complaints	9 - 10
PRE-HEARING PROCEDURES	11 - 14
Written Submissions	11 - 13
Identifying Witnesses	13
Notice of Hearing & Summoning Witnesses.....	14
Rescheduling a Hearing.....	14

HEARING PROCEDURES	15 - 19
Declaration of Interest.....	15
Setting	15
Right to Appear	15 - 16
Complaint Bundles.....	16
Call to Order and Oaths or Affirmations	16 - 17
Oral Submissions.....	17 - 18
Adjournments.....	19
Offences	19
Record of Proceedings.....	19
DECISIONS OF THE TRIBUNAL	20 - 24
Refusal and Acceptance of Complaints.....	20
Hearing Decisions.....	20 - 21
Substantiated Complaints	21
Frivolous or Vexatious Complaints.....	21
Incorrect Complaints	21
Offences	22
Appeals.....	22
Publication of Decisions	22
Protection from Liability.....	22 - 23
Records Management.....	23
Confidentiality	23
Referral of Offences.....	23 - 24

INTRODUCTION

This document is intended to provide general information on the structure, role and functions of the Gender Equality Tribunal (“the Tribunal”) and to set forth the basic procedures for individuals to submit a discrimination complaint and for the Tribunal to handle such complaints.

This document is not an authoritative reference or complete in every detail and does not have legislative authority. Reference should be made to the *Gender Equality Law, 2011* (“the Law”) for the official text and legal provisions.

Questions regarding any aspect of this document or requests for additional information on the operation of the Tribunal should be directed to the Secretary to the Tribunal.

This document will be reviewed from time to time and may be revised to ensure adherence to all applicable legislative provisions and the proper functioning of the Tribunal. The most recent version will be posted online at www.genderequality.gov.ky and may be made available in another form upon request to the Secretary to the Tribunal.

Background

The *Gender Equality Law, 2011* came into effect on 31st January 2012. The Law seeks to eliminate discrimination on the basis of sex, gender, marital status and pregnancy in employment, training and recruitment and to promote the payment of equal remuneration to male and female employees who perform work of equal value. It also aims to protect against discrimination in other areas such as access to goods, services and facilities; job advertisements, application forms and interviews; professional partnerships, qualifying and vocational training bodies, and employment agencies; and sexual harassment in the workplace.

Gender equality refers to the right of women and men to have the same opportunities for the achievement of important goals in society such as education, employment and income and to contribute to political, social, and cultural development at all levels.

Promising equal pay, equal opportunity, and freedom from discrimination and harassment in the workplace to all persons – whether they are men, women, married, single, divorced, widowed or pregnant – gender equality in essence promotes the equitable and respectable advancement of men and women together. As such it is considered a highly desirable objective for organisations and governments around the world that are seeking to establish and consolidate socio-economic structures that will facilitate development.

Interpretation

In these policies and procedures,

“affidavit” means a written statement of facts voluntarily made under an oath or affirmation administered by a Justice of the Peace or Notary Public for use as evidence;

“Chairperson” means the Chairperson of the Tribunal;

“complainant” means the person filing a complaint;

“complaint” means a complaint filed with the Tribunal under the Law;

“disclose” means divulge, communicate, provide or otherwise permit access to;

“employee” means any individual who enters into or works under or stands ready to enter into or work under a contract of employment with an employer whether the contract be oral or written, express or implied; and the term includes a person whose services have been interrupted by a suspension of work during a period of leave or temporary lay-off;

“employer” means any person who has entered into or stands ready to enter into a contract of employment with an employee, and includes any agent, representative or manager of such person who is placed in authority over an employee;

“evidence” means any information used to determine or demonstrate the truth of a statement or support a position on a complaint under the Law and includes written or oral statements and recollections, electronic or paper documents or files, drawings, maps, photographs, audio or video recordings, and any other matter or thing;

“gender” means the cultural, economic, social, and political characteristics, roles and opportunities through which women and men are socially constructed and valued;

“hearing” means a proceeding of the Tribunal to consider a complaint;

“the Law” means the *Gender Equality Law, 2011*;

“marital status” means the state or condition of being single, married, married but living separately and apart from one’s spouse, divorced, or widowed, and includes the status of a man and woman who, although not married to each other, are living with each other in the same household as husband and wife;

“member” means a member of the Tribunal;

“party” means the complainant or respondent;

“representative” means an attorney-at-law or any other person designated by the complainant or respondent, who in the opinion of the Tribunal is competent to assist that person in the presentation of or response to a complaint;

“respondent” means the person against whom a complaint has been filed;

“Secretary” means the Secretary to the Tribunal;

“Tribunal” means the Gender Equality Tribunal; and

“witness” means an individual called to give evidence in a hearing and may include a party to the hearing.

See also section 2 of the Law

Gender Discrimination

A person discriminates against another by reducing or removing his or her right to equal opportunity or treatment in the workplace or in relation to the provision of goods, services and facilities because of sex, marital status, pregnancy or any characteristic based on gender. Any act that directly or indirectly results in discrimination will be regarded as such whether the person responsible intended to discriminate.

See also Part 2 of the Law

Application

The Law only applies to acts which occurred on or after 31st January 2012, when the Law came into effect. The Law prohibits discrimination in various areas, including–

- employment and recruitment for employment;
- sexual harassment in the workplace or in connection with work or recruitment;
- unequal remuneration;
- professional partnerships;
- qualifying bodies and vocational training bodies;
- employment agencies;
- the provision of goods, services and facilities; and
- advertisements.

See also Part 2 of the Law

Exceptions

There are limited exceptions to the provisions of the Law. These include genuine occupational qualifications, provisions relating to charitable benefits, some activities of religious bodies, recruitment and selection for employment in a private household, and special measures made by Order of the Governor to promote equality of opportunity in employment. Other laws which permit discrimination are also not affected by the Law.

Complaints regarding discrimination which may fall into these categories of exception may be filed with the Tribunal under these policies and procedures for consideration. The burden of proving the exception lies with the respondent claiming the exception.

See also sections 4(3), 5, 6 and 39 and Part 3 of the Law

Offences Related to Discrimination

The pressure to discriminate, including through bribery, and being threatened with victimisation are offences under the Law. It is an offence to threaten someone or subject someone to any detriment if he or she has made a good faith allegation that a person has committed discrimination under the Law, has complained or may complain to the Tribunal and/or has provided or may provide information relating to a complaint. These are not matters for the Tribunal. Upon conviction in Summary Court an offender is liable to a fine of up to CI\$5,000.

See also Part 4 of the Law

COMPOSITION OF THE TRIBUNAL

The Gender Equality Tribunal is established under section 23 of the *Gender Equality Law, 2011* to hear and determine discrimination complaints submitted under the Law.

See also sections 23 and 24 of the Law

Membership

The Tribunal is made up of five members appointed by Cabinet. The Chairperson is an attorney-at-law and the four other members have experience and qualifications in gender, social development, human rights, labour or related fields.

The current members are–

- Sheridan Brooks-Hurst, Chairperson
- Karie Bergstrom
- Vaughan Carter
- Nick Dunne
- Tammy Ebanks

The Tribunal receives administrative and secretarial support through the Ministry of Education, Employment and Gender Affairs.

See also sections 26 and 27 of the Law

Tenure

Members are appointed at the pleasure of Cabinet for a set term, which may be renewed upon expiry. Persons may be disqualified from being members or have their appointment revoked at any time under specific circumstances laid out in the Law.

Members may resign at any time by giving thirty (30) days' notice in writing. The Chairperson may resign by notice to Cabinet and all other members may resign by notice to Cabinet through the Chairperson.

See also sections 26, 27, 29, 30 and 31 of the Law

Remuneration

Members are paid remuneration as determined by the Cabinet.

The Chairperson shall receive CI\$125.00 and members shall receive CI\$100.00 for every hearing or meeting attended.

See also section 32 of the Law

GENERAL OPERATING PROCEDURES

The Tribunal functions in an independent, semi-judicial capacity to determine questions of law and fact and its decisions may have a direct impact on the rights or legitimate expectations of the parties involved.

Members will act in the public interest at all times and the Tribunal will comply with all laws and adhere to the principles of natural justice and procedural fairness.

The *Cayman Islands Constitution Order 2009* Bill of Rights, Freedoms and Responsibilities confirms or creates certain responsibilities of the government, including all public officials and also including tribunals in specified instances, and corresponding rights of every person against the government. This includes the right to a fair hearing provided in section 7.

The Bill of Rights, Freedoms and Responsibilities also guarantees the responsibility of the government for lawful administrative action. Section 19 requires that all decisions and acts of the Tribunal must be lawful, rational, proportionate and procedurally fair.

See also Part 5 of the Law

Independence

In hearing and determining complaints, the Tribunal shall not be subject to the direction or control of any other person. Members shall act in the public interest to carry out the purposes of the Law and not based on personal or business interests.

See also section 25 of the Law

Natural Justice

The rules of natural justice are the minimum standards of fair decision-making imposed on the Tribunal and consist of the right to a fair hearing and the rule against bias.

The Right to a Fair Hearing

All individuals have the right to a fair hearing. This first rule of natural justice requires that an individual not be penalised by a decision affecting his or her rights or legitimate expectations unless he or she has been given prior notice of the case against him or her and a fair opportunity to answer it.

A hearing will only be considered fair if the parties have full information on the allegations and response and have had the opportunity to present their own cases and have representation.

The Rule Against Bias

A hearing must be presided over and heard by an impartial and unbiased panel. Members should not have any material interest in the outcome of the proceedings and should not demonstrate bias or be suspected of bias or potential bias toward a party or his or her position.

A member's conduct before or during the hearing should not in any way suggest that prior to its commencement he or she had already irrevocably decided the outcome.

See also section 26(7) of the Law

Procedural Fairness

The Tribunal will ensure that individuals are treated fairly in all instances. This includes ensuring that all individuals have the right to be treated with respect and dignity, that their privacy is protected and that they understand all of the policies and procedures of the Tribunal and how to participate in decisions that affect them.

See also section 26(7) of the Law

Quorum and Decisions

A hearing or meeting of the Tribunal shall be properly constituted if there is a quorum of at least three members present and participating in the meeting or hearing.

Five (5) or three (3) members will sit at a hearing for the avoidance of an equal vote in considering a complaint.

The Chairperson will preside over every meeting or hearing of the Tribunal. In the absence of the Chairperson another member qualified under the Law will be appointed to act as Chairperson for the duration of the meeting or hearing.

A decision of the Tribunal shall be by simple majority of the members present at a properly constituted hearing or meeting of the Tribunal.

A decision taken at a hearing or meeting is not invalidated if there is a vacancy in membership.

See also sections 26, 31(2) and 33(4) of the Law

Powers of the Tribunal

For the purpose of discharging its functions under the Law, the Tribunal shall, as is reasonably required, have the power to—

- compel the production of documents or any other matter or thing from any person the Tribunal has reasonable grounds to believe is discriminating on the grounds of the Law and/or breaching any provision of the Law;
- issue summonses to compel the attendance of witnesses at the hearing; and
- examine witnesses on oath, affirmation or otherwise, at the hearing.

A summons issued by the Tribunal shall be signed by the Chairperson.

See also section 34(4) and 34(5) of the Law

COMPLAINT-FILING PROCEDURES

A person who has reasonable grounds for believing that another person is engaging or has engaged in discrimination contrary to the Law may file a complaint with the Tribunal.

The Tribunal may adopt such procedures it considers appropriate in the circumstances to determine a particular complaint.

See also section 33 of the Law

Filing a Complaint

All complaints must be filed in the form approved by the Tribunal. The complaint form is posted online at www.genderequality.gov.ky and available in hard copy from the Government Administration Building, 133 Elgin Avenue, George Town.

A duly completed complaint form must include all of the required particulars—

- the complainant's name and contact details;
- the employer's name and contact details (if the complaint made against an employer);
- the respondent's name and contact details;
- the grounds of discrimination, i.e. sex, marital status, pregnancy and/or gender;
- the nature and details of the complaint;
- any supporting evidence;
- details of any previous reports of the complaint; and
- the name and contact details of any chosen representative.

A complaint may also include supporting evidence by way of attachments or enclosures. If the complainant does not have access to specific supporting evidence, he or she may provide information about how that evidence can be obtained when filing the complaint.

Complaints may be submitted electronically to get@gov.ky.

Complaints may also be hand delivered or sent by registered mail or courier to:

Secretary to the Gender Equality Tribunal
Ministry of Education, Employment and Gender Affairs
Government Administration Building Box 108
133 Elgin Avenue
Grand Cayman KY1-9000

See also section 33(1) of the Law

Timelines for Submission

Complaints must be made within six months from the date of the alleged discriminatory act or acts. If the alleged discriminatory acts were ongoing and occurred over a period of time, the complaint should be made within six months from the date of the last alleged discriminatory act that forms part of the complaint details and/or supporting evidence.

In order to comply with the timelines for submission, the complaint must arrive before the close of business on the last day of the time period allowed by the Law.

If a complaint is made out of time, the complainant should provide a reason for the delay in submitting the complaint. The Tribunal has the discretion to accept the complaint if it is satisfied that the reasons for the delay are reasonable. If a complaint is not accepted out of time, it will not be recorded and the complainant will be notified in writing.

See also section 33(3) of the Law

Submission of Complaints by Third Parties

Where a complaint is made by a person other than the individual who is alleged to be the victim of the discrimination, the Tribunal shall refuse to deal with the complaint unless the alleged victim consents to the submission of the complaint in writing. The consent of the alleged victim must be submitted at the same time the complaint is filed.

See also sections 34(1) and 33(4) of the Law

Incomplete Complaints

If a complaint is filed without all of the required particulars, the Secretary shall, within three (3) working days, send written notice to the complainant listing the additional information that is required prior to the expiry of the legal timeline in order to record the complaint.

Following this written notice and a reasonable amount of time for the complainant to submit the remaining information, if the complaint form still has not been duly completed and the submission still does not contain the required particulars to be considered, the Tribunal may not accept the complaint and it will not be recorded.

See also section 33(1) and 33(4) of the Law

Potential Exceptions

If a complaint obviously relates to an act or acts which are not covered by the Law or fall into a category of exception, the Tribunal may give the complainant written notice of the relevant provisions before the complaint is recorded. However, the notice will clearly state that it does not constitute legal advice or instruct the complainant in any way.

Following such notice, the complainant may choose to withdraw or proceed with the complaint. He or she does not need to prove that the alleged act or acts do not fall under an exception in the Law before the complaint is recorded. In all cases, the burden of proving any exception lies with the respondent who is claiming the exception.

If the complainant indicates his or her intention to proceed with the complaint or does not respond to the notice in the timeframe provided, the complaint will be recorded and considered in accordance with the Law and these policies and procedures.

Whether or not the Tribunal gives the complainant such notice, it may still find following a hearing that a complaint is incorrect in its allegations or suspicions because the alleged act or

acts are found to not constitute discrimination within the meaning of the Law or are found to be acts to which the Law does not apply or which the Law does not affect.

The Tribunal and its members will not be liable in damages for anything done or omitted in the discharge or purported discharge of the functions, responsibilities, powers and duties under the Law unless it is shown that the act or omission was in bad faith. This protection includes providing or not providing a complainant with notice of any relevant provisions regarding the application of the Law or exceptions under the Law.

See also sections 4(3), 5, 6, 38 and 39 and Part 3 of the Law

Receipt of Complaints

On receiving a complaint in the approved form with all of the required particulars, the Tribunal shall record the details of the complaint and assign a unique complaint number.

See also section 33(2) of the Law

Agreement between Parties

At any stage after the filing of a complaint and before the commencement of a hearing, if an agreement is made by the parties they shall immediately notify the Tribunal, in writing, of the terms of the agreement.

The Tribunal will send written acknowledgement of the notice of an agreement and consider the complaint withdrawn. The complaint will be administratively closed and the Tribunal will take no further action on the matter.

If the parties come to an agreement after the commencement of a hearing, the Tribunal will note the terms of the agreement but make no comment or opinion on the agreement.

See also section 36 of the Law

Withdrawal of Complaints

For any reason and at any stage after the filing of a complaint but before the issuance of the Notice of Hearing, a complainant may withdraw his or her complaint by written notice to the Tribunal. The notice need not include reasons for the withdrawal.

The Tribunal will send written acknowledgement of a notice of withdrawal, notify the respondent of the withdrawal, administratively close the complaint and take no further action on the matter.

See also section 33(4) of the Law

Re-Submission of Complaints

Where a complaint before the Tribunal is initially refused, not accepted or withdrawn due to—

- the complaint being submitted by a third party without the alleged victim's consent;
- an incomplete submission without all of the required particulars to be considered;
- an agreement between the parties; or

- withdrawal by the complainant.

the complainant must file a new complaint form and include, if relevant, evidence of the alleged victim's consent and/or any required particulars that were not included in the initial complaint in order to have the complaint considered by the Tribunal.

If a complaint is submitted out of time in these circumstances, the complainant should include reasons for the delay and why the complaint–

- was previously submitted by the third party without the alleged victim's consent and if the complainant has the alleged victim's consent for the new complaint; or
- is being re-submitted despite withdrawal following an agreement between the parties, including any breach of the terms of the agreement or other outcome; or
- was initially withdrawn by the complainant and why he or she has chosen to re-submit the complaint.

A complainant may not re-submit a complaint if it has already been heard and determined by the Tribunal or if it has been dismissed because it was made out of time and the Tribunal used its discretion to not accept the complaint.

These policies and procedures apply whether the complaint being filed is the same as or substantially similar to a complaint previously submitted by the same person.

See also section 33(4) of the Law

PRE-HEARING PROCEDURES

The Tribunal may adopt such procedures it considers appropriate in the circumstances to determine a particular complaint. Before convening a hearing, the Tribunal may receive written representations from all parties regarding the allegations in the complaint.

See also sections 24, 33 and 34 of the Law

Written Submissions

The Tribunal may receive and accept evidence and other information whether or not such evidence would be admissible in a court of law.

Within three (3) working days of receiving a complaint, the Tribunal shall provide the complainant and the respondent with a copy of the signed record of the complaint, including any supporting evidence that was submitted when the complaint was filed.

The record will be accompanied by a statement setting out the procedures that will be followed respecting the complaint and the rights of the complainant and respondent, including the right to designate representatives if they have not already done so.

With the exception of the initial complaint filed with the Tribunal, a party may choose to not make any written submissions if he or she does not have a representative.

Initial Submissions

The record of the complaint, including any accompanying information or evidence, will serve as the complainant's initial submission.

The respondent will be given the opportunity to submit written representations in response to the allegations within twenty-eight (28) days of receiving the signed record of the complaint. This initial submission may be accompanied by any supporting evidence.

Production of Evidence

For the purpose of discharging its functions under the Law, the Tribunal shall, as is reasonably required, have the power to compel the production of evidence from any person the Tribunal has reasonable grounds to believe is committing gender discrimination or breaching any other provision of the Law.

If the Tribunal considers it necessary to properly hear and determine the complaint, the Chairperson may send written notice requiring any such person to produce specified evidence in accordance with the powers of the Tribunal under the Law. Any such notice will be signed by the Chairperson and include a deadline for production of the evidence.

Reply Submissions

Both parties will be given the opportunity to review and consider initial submissions and any evidence compelled to be produced by the Tribunal. Within twenty-eight (28) days of receiving the last of the information to be considered, each party may reply to the other party's initial submission and/or on the basis of any new evidence. If there is no new evidence for the respondent to consider he or she need not make a reply submission.

A reply submission must not raise any new issues or contain any new facts, except in response to facts or issues raised in the other party's initial submission or by any new evidence, whether compelled to be produced by the Tribunal or otherwise obtained.

A party may choose not to make a reply submission if he or she feels that his or her position was clearly stated in the initial submission and there is no need to respond to any issues or facts raised by the other party's initial submission or to any new evidence. If a party chooses to not make a reply submission he or she should inform the Tribunal in writing on or before the deadline for reply submissions.

***In Camera* Submissions**

The Tribunal will have the discretion to not accept any written representations or evidence *in camera*, that is privately for the consideration of the Tribunal only. In general, all submissions and evidence will be exchanged between the parties to ensure that the Tribunal adheres to the principles of natural justice and procedural fairness.

If a party submits any information or evidence with the request that it be kept confidential and/or not shared with the other party, the Tribunal will consider the request and inform the submitting party of its decision in writing as soon as possible.

If the Tribunal decides not to accept the submission, information or evidence or part thereof *in camera*, the submitting party will be given the opportunity to withdraw, amend or consent to disclosure of the submission, information or evidence or part thereof. If the party does not respond, the submission, information or evidence will be withdrawn. Any submission, information or evidence or part thereof that has been withdrawn will not form part of the complaint record and will not be considered at hearing or in connection with any decision of the Tribunal or any other function under the Law.

Affidavits

If a party wishes to submit another person's written statement as evidence that statement should generally be provided through an affidavit. A party is not required to submit his or her own statement as evidence in affidavit form but may choose to do so.

Any affidavit prepared for the purpose of a complaint under the Law must be sworn before a Justice of the Peace or Notary Public, who may be appointed in any jurisdiction.

Hearsay

It is generally not appropriate for parties to submit statements or affidavits that include or are based on hearsay evidence, which is evidence given by one person about what another person said. Wherever possible, the person with direct knowledge of the facts, or who made the statements, should be the one to attest to those facts or statements.

Format of Submissions

Parties should include their name and the unique complaint number assigned by the Tribunal with all submissions and evidence presented to the Tribunal prior to a hearing.

Written submissions should be succinct and divided into numbered paragraphs for ease of reference in reply submissions and/or during a hearing. If supporting evidence is included it would be helpful for the party to include a table listing all individual pieces of evidence on separate lines to ensure all evidence is properly received and recorded.

Receipt and Exchange of Submissions

Submissions must be sent directly to the Secretary and not sent or copied to the Chairperson or any other member or any other party or any other party's representative. At no time prior to a hearing should any party, representative or witness communicate directly or indirectly with any member regarding a complaint under the Law, either verbally or in writing.

Submissions may be sent electronically to get@gov.ky.

Submissions may also be hand delivered or sent by registered mail or courier to:

Secretary to the Gender Equality Tribunal
Ministry of Education, Employment and Gender Affairs
Government Administration Building Box 108
133 Elgin Avenue
Grand Cayman KY1-9000

In order to comply with the relevant timelines, submissions must arrive before the close of business on the last day of the time period set out in these policies and procedures.

Upon receipt, the Tribunal will record all submissions and evidence and stamp each submission and each piece of evidence as a record of the Tribunal with the date of receipt and unique complaint number. The Tribunal will then provide each party with the records of the other party's submission and any evidence relating to the complaint submitted to the Tribunal by any other person.

Extensions of Time

The Tribunal has the discretion to extend any timeline set out for submissions if there is reasonable cause. Any party may request an extension of time in writing, setting out the reasons for the request and the additional length of time requested.

If an extension of time for submissions is granted by the Tribunal, it will automatically extend to all other relevant parties. The Tribunal will inform all parties in writing of any extension and the new deadline for submissions as soon as the decision is made.

See also sections 33(2), 33(4) and 34(4)(a) of the Law

Identifying Witnesses

Within three (3) working days of receiving the final submissions and/or notice that parties will not make any further submissions, the Tribunal will request in writing that the parties submit a list of witnesses that may present evidence to support their positions, if any. This list should include the full name and contact details of each potential witness.

If any potential witness has refused, not yet agreed or will not agree to appear at the hearing, the party must also note this fact, provide reasons why this person should nevertheless be summoned as a witness and provide a physical address for service of process.

The Tribunal will review the lists of proposed witnesses and also consider whether any additional individuals should be called as witnesses at the hearing.

See also section 33(4) of the Law

Notice of Hearing & Summoning Witnesses

Once all submissions and evidence have been received by the Tribunal and exchanged between the parties, the Tribunal will schedule a hearing to consider the complaint.

The Tribunal shall give written notice of the date, time and place of the hearing to all parties and their designated representatives, if any. Parties are responsible for making the necessary arrangements with any proposed witnesses to be available and prepared for the hearing.

The notice will be accompanied by a statement setting out the procedures that will be followed respecting the hearing and the rights of the complainant and respondent, including the right of each party to appear in person and to have their legal representative, if any, appear in person.

The Tribunal may also issue summonses, signed by the Chairperson, to compel the attendance of any witnesses at the hearing. A summons that has been issued at the request of a party will be prepared by the Tribunal and sent to the relevant party. That party will be required to serve the named individual with the summons and a copy of the complaint in accordance with the instructions of the Tribunal.

The notice of hearing will be given a minimum of thirty (30) days prior to the date of the hearing. Witness summonses, if any, must be served by the relevant parties a minimum of ten (10) days prior to the date of the hearing.

See also section 34(3) and 34(4)(b) of the Law

Rescheduling a Hearing

Where reasonable in all circumstances, the Tribunal may reschedule a hearing.

Either party may also request in writing that a hearing be rescheduled at least two (2) working days prior to the scheduled hearing. Such a request should be accompanied by a statement of reasons. The Tribunal has the discretion to reschedule the hearing, taking into account whether it would be reasonable in all circumstances.

If the Tribunal reschedules a hearing, the written notice of hearing will be amended and sent to all parties and their designated representatives as soon as possible.

See also section 33(4) of the Law

HEARING PROCEDURES

The Tribunal may adopt such procedures it considers appropriate in the circumstances to determine a particular complaint. Following the pre-hearing process, the Tribunal may convene a hearing to hear and determine a complaint under the Law.

See also sections 24, 33 and 34 of the Law

Declaration of Interest

A member who is in any way, either directly or indirectly, interested in a matter before the Tribunal shall declare the nature of his or her interest to the Tribunal at the first instance where it is practicable to do so. Where possible, the interest should be declared before the commencement of the hearing.

Where a member declares an interest, the Tribunal shall determine whether or not the member's interest in the matter is material. If the interest is determined to be material, the member shall not sit to hear that particular matter.

If the interest is not determined to be material, if the effect is unclear or for the avoidance of even the appearance of a material interest or bias, the member may nevertheless excuse himself or herself from the relevant proceedings. The Tribunal may also decide that it would not be in the public interest for a member to sit to hear a particular matter and request that the member excuse himself or herself from the relevant proceedings.

See also sections 26(7) and 28 of the Law

Setting

The hearing shall take place in a neutral setting, usually a conference room in the Government Administration Building at 133 Elgin Avenue, George Town.

The room should be private and set up with a table, chairs for all attendees and any equipment required for the hearing. The Tribunal should have a copy of the Law and any other laws relevant to the complaint being heard available for reference.

See also section 33(4) of the Law

Right to Appear

A party to a matter before the Tribunal is entitled to appear at the hearing in person and also to have his or her legal representative present. A party may also choose to have his or her legal representative present at a hearing instead of appearing in person.

Attendance at and participation in the hearing by persons other than the parties and their legal representatives will be at the discretion of the Tribunal.

Parties must submit written notice of their intention to be present at the hearing and/or the intention of their representative (if any) to be present at least two (2) working days prior to the scheduled hearing.

If any party, representative or witness fails to attend the hearing, the Tribunal may nevertheless hear any other party, representative and/or witness attending, and may proceed to consider the case on the basis of the complaint, any written submissions, the hearing and any additional written representations made by the party failing to attend.

See also section 34(7) of the Law

Complaint Bundles

Parties or their representatives may present any evidence not already submitted and/or the required number of properly indexed and paginated complaint bundles to the Secretary at least ten (10) working days before the date of the scheduled hearing.

Members will receive complaint bundles in advance of the hearing. At the commencement of the hearing each party or representative present may receive a bundle or bundles that will include the complaint and supporting evidence filed with the Tribunal, any additional written submissions and all other information and evidence submitted to the Tribunal prior to the commencement of the hearing, including evidence compelled to be produced by the Tribunal in the proper exercise of its powers. Any correspondence should be arranged in date order.

See also section 33(4) of the Law

Call to Order and Oaths or Affirmations

The Chairperson will call the hearing to order, setting out the hearing procedures and ground rules that include but are not limited to—

- All persons must be treated respectfully at all times;
- Both parties may have a representative present;
- Both parties will have the right to present evidence, give testimony, call witnesses and to cross examine witnesses;
- The Tribunal may also examine witnesses or parties;
- All oral testimony or evidence will be given under oath or affirmation;
- The complainant will present his or her case first and will also have the right to reply after the respondent has presented his or her case;
- A party or representative may request an adjournment at any time during the hearing, which may be granted at the discretion of the Tribunal;
- The hearing may be closed to the press and the public at the discretion of the Tribunal;
- All information and evidence presented at the hearing will be kept in confidence in accordance with the law and the Tribunal's policies and procedures;
- Parties will not be permitted to use personal recording devices. An official record of the hearing will be kept by the Tribunal; and
- The Tribunal will make a decision on the complaint within twenty-eight (28) days of the conclusion of the hearing and will communicate the decision and the reasons for that decision in writing to both parties and their representatives.

The Chairperson will then ask each party to, as he or she may choose, swear an oath on the Holy Bible or affirm as follows:

Oath:

I (full name of individual) do solemnly swear that the testimony I am about to give in the matter now being heard, shall be the truth, the whole truth and nothing but the truth, so help me God.

Affirmation:

I (full name of individual) do solemnly, sincerely and truly declare and affirm that the testimony I am about to give in the matter now being heard, shall be the truth, the whole truth and nothing but the truth.

See also section 33(4) of the Law

Oral Submissions

The Tribunal may receive and accept evidence and other information whether or not such evidence would be admissible in a court of law.

Typically, the order of case presentation will be as follows:

1. Opening submission by the complainant.
2. Complainant's witness or witnesses, if any.
3. Opening submission by the respondent.
4. Respondent's witness or witnesses, if any.
5. Closing submission by the complainant.
6. Closing submission by the respondent.

Opening Submissions

An opening submission is not evidence, but rather a brief overview of the party's position on the main issues and an overview of the evidence. An opening submission usually concludes with a statement of the decision and any directions the party would like the Tribunal to make at the end of the hearing.

Witnesses

Witnesses give evidence in a proceeding and may be examined by either party, directly or through a representative, or by the Tribunal, who will ask relevant questions of the witness. This is done to establish the basis of a complaint and/or response. Before giving evidence, each witness will first be asked by the Chairperson to swear an oath on the Holy Bible or make an affirmation regarding the truth of his or her evidence.

No party, representative or member should ask leading questions to a party or witness giving evidence in the proceedings. If a leading question has been asked any other party, representative or member may object and ask that the question be re-phrased.

A leading question suggests the answer, for example, "The Human Resources Manager was present at the meeting, wasn't he/she?" An example of a non-leading question would be "Who was present at the meeting?" Non-leading questions usually begin with who, what, where, why, why or how. These questions allow the witness to tell the story.

Examination in chief

The witness will first be examined in chief by the complainant or respondent who called the witness to give evidence following his or her opening submission. In the absence of a representative, it is good practice for the Chairperson to begin by asking pertinent questions of the witness and then asking the witness to state his or her evidence.

Cross-examination

The witness may then be cross-examined by the other party. Cross-examination is not meant to be a repetition of the evidence. Rather, it is intended to bring into question the truthfulness or veracity of evidence given by the witness. Cross-examination attacks the credibility of the witness or party and is intended to prove inconsistencies or untruths in the evidence or complaint.

No party or representative shall demean, abuse or assault a witness during cross-examination. Any other party, representative or member may object to the treatment of a witness during cross-examination and request that the Tribunal make directions to ensure that the witness is not demeaned, abused or assaulted.

Re-examination

If the witness is cross-examined he or she may then be re-examined by the party which called him or her to give evidence. The purpose of re-examination is to clarify matters that may have been produced as misleading or untrue after cross-examination. Re-examination should strictly be limited to points raised in cross-examination and may not include any new evidence.

Admission of documents

Documents may be admitted as evidence during examination of a witness through the party presenting evidence.

Documents may be rejected by the Tribunal if it is determined that the document should reasonably have been presented as evidence in the filing of the complaint or in a written submission prior to the hearing; if the purpose of admitting the document during hearing is to disadvantage the other party; or if admitting the document would otherwise be against the principles of natural justice and procedural fairness.

Hearsay evidence

It is generally not appropriate for witnesses to give evidence that includes or is based entirely on hearsay, which is the report of what another individual said. Wherever possible, the individual with direct knowledge of the facts, or who made the statements, should be the one to attest to those facts or statements.

Closing Submissions

After the conclusion of evidence by both parties the Tribunal will offer both parties an opportunity to make closing submissions. A closing submission is generally a brief presentation of the party's position and may include the evidence that was presented, reasons why the Tribunal should find in the party's favour and any decision and/or directions that the party hopes the Tribunal will make. Closing submissions are not an opportunity for parties to present new or additional evidence.

See also section 33(4) of the Law

Adjournments

Adjournments may be sought by either party or by the Tribunal after a hearing has commenced. An adjournment may be requested during oral submissions for a variety of reasons, including new, unanticipated evidence introduced by either party, unavailable witnesses, to consider the potential interest of a member, or personal emergencies.

In these circumstances the Tribunal must consider whether an adjournment is appropriate in all circumstances, giving consideration to the rights and position of both parties, the responsibilities of the Tribunal and the rules of natural justice and procedural fairness.

If a hearing is adjourned, it will be reconvened at the earliest convenience of the Tribunal and all parties to minimise delays in considering the complaint.

See also section 33(4) of the Law

Offences

Any person commits an offence if he or she—

- fails without reasonable excuse to comply with a requirement or summons issued by the Tribunal;
- destroys or alters, or causes to be destroyed or altered, any document or any other matter or thing required to be produced to the Tribunal; or
- hinders, obstructs, prevents or interferes with the Tribunal in the exercise of a power under the Law.

Upon conviction in Summary Court an offender is liable to a fine of up to CI\$5,000.

See also section 34(6) of the Law

Record of Proceedings

All hearings will be recorded using a digital audio recorder. The Tribunal shall keep an official record of the hearing, which will only be disclosed to parties at the discretion of the Tribunal, at which time a typed verbatim transcript of the proceedings may be provided.

Members may take notes during the hearing to highlight questions for follow-up later on in the proceedings and to aid in the decision making process after the proceedings have concluded. These notes form part of the Tribunal's official record of the hearing.

All records will be treated in a confidential manner as outlined by the Law and in these policies and procedures.

See also sections 33(4) and 37 of the Law

DECISIONS OF THE TRIBUNAL

The Tribunal may refuse a complaint or not accept a complaint on procedural grounds during a meeting and shall convene a hearing to consider any complaint that has been duly recorded and not subsequently withdrawn by the complainant and administratively closed.

See also sections 24, 33(4) and 34 of the Law

Refusal and Acceptance of Complaints

A complaint will be refused if the complaint was submitted by a third party without the consent of the alleged victim.

Complaints may also not be accepted on the following grounds—

- The complaint form has not been duly completed and the submission does not contain the required particulars to be considered; and/or
- The complaint was made out of time and the Tribunal used its discretion to not accept the complaint.

Complaints may be refused or not accepted during a meeting of the Tribunal upon presentation of the relevant matters. If a complaint is refused or not accepted it will not be recorded, the respondent will not be notified, a hearing will not be scheduled to consider the complaint, a decision will not be made on the matter and no directions will be issued.

The Tribunal shall notify the complainant, including a third party complainant, in writing of the decision to refuse or not accept a complaint, including an explanation of reasons and citing applicable provisions of the Law. No further action will be taken on the matter.

See also sections 33(1), 33(3), 33(4) and 34(2) of the Law

Hearing Decisions

If a complaint proceeds to hearing, the Tribunal shall make a decision on the complaint within twenty-eight (28) days of the conclusion of the hearing.

After a hearing, the Tribunal may find that a complaint is—

- substantiated;
- frivolous or vexatious; or
- incorrect in its allegations or suspicions.

Hearing decisions will be based only on evidence presented at hearing, including any written submissions and evidence received during the pre-hearing stage and included in complaint bundles, even if that evidence was not presented, referenced or addressed directly during the hearing. The Tribunal shall notify both parties of its findings in writing.

The decision notice will include a summary of the complaint and the evidence, a statement of reasons for the decision, citing any applicable provisions of the Law, and directions for any action required to be taken by any party or any other person. Such notice will also include the right of appeal to the Grand Court provided for in the Law.

Except where the direction is required to safeguard the physical or mental health or safety of any party or any other person, timelines for compliance set out in any directions of the Tribunal, including payment of compensation, will be a minimum of twenty-eight (28) days following written notice of the decision to allow for expiration of the time allowed under the Law for submission of an appeal to the Grand Court.

See also sections 35(1), 35(2) and 40 of the Law

Substantiated Complaints

If the Tribunal is satisfied that it has received and heard sufficient evidence to support or prove the truth of the complainant's allegations or suspicions, the Tribunal shall find that the complaint is substantiated.

If a complaint is substantiated, the Tribunal shall issue directions requiring the respondent to stop the discrimination and take remedial action within a specific time period or requiring the respondent to pay compensation to any person aggrieved by the discrimination. Directions may include an order for an employer to redress a contravention by reinstating an aggrieved person if the employer and aggrieved person agree to such an order.

If a respondent is required to pay compensation to an aggrieved person, the award may be made in any amount up to CI\$20,000 and will include a specific time period for payment. The Tribunal may also make an award for costs.

See also section 35(1)(a) and 35(2) of the Law

Frivolous or Vexatious Complaints

If a complaint is found to be frivolous or vexatious, the Tribunal shall order the complainant to pay the cost incurred by the Tribunal and the respondent.

See also section 35(1)(b) of the Law

Incorrect Complaints

If a complaint is found to be incorrect in its allegations or suspicions, the Tribunal shall order the complainant to pay the cost incurred by the Tribunal and the respondent.

A complaint may be found to be incorrect in its allegations or suspicions if the alleged act or acts are disproved and/or the alleged act or acts are proved but found to not constitute discrimination within the meaning of the Law or to be acts to which the Law does not apply or which the Law does not affect.

Where an act is claimed to be excepted under the Law, the onus of proving the exception is on the respondent claiming the exception.

The Tribunal shall notify the complainant and the respondent of this decision in writing, citing any applicable provision or provisions in the Law.

See also sections 35(1)(b), 4(3), 5 and 6 and Part 3 of the Law

Offences

A person who fails to comply with a direction of the Tribunal given pursuant to findings following a hearing commits an offence. Upon conviction in Summary Court, an offender is liable to a fine of up to CI\$5,000.

See also section 35(3) of the Law

Appeals

A person aggrieved by a decision of the Tribunal may, within twenty-eight (28) days of the decision, appeal to the Grand Court against that decision.

Rule 3(3) of Order 55 of the Grand Court Rules (1995 Revision) made under the *Grand Court Law (1995 Revision)* (“the Grand Court Rules”) provides that the bringing of an appeal to the Grand Court by way of re-hearing does not automatically result in a stay of proceedings on the order, determination, award or other decision against which the appeal is brought.

However, either party may seek - from the Tribunal or from the Grand Court - a stay on an order, determination, award or other decision made by the Tribunal if that party has brought or will bring an appeal to the Grand Court by way of re-hearing.

A stay of proceedings ordered by the Tribunal will expire after a period determined by the Tribunal, generally two months, unless extended upon application of the appellant or otherwise at the discretion of the Tribunal.

Order 53 of the Grand Court Rules makes provisions for judicial review of a decision made by the Tribunal, including circumstances in which a stay of proceedings on the order, determination, award or other decision to which the application relates may be ordered by the Grand Court.

See also section 40 of the Law

Publication of Decisions

Following notice of a decision made on a complaint under the Law, the Tribunal will produce a brief summary of the complaint and decision for publication.

This summary will not identify any party, witness or other individual, including by way of information which may reasonably be used to identify any party, witness or other individual.

The full decision of the Tribunal with names and other identifying information redacted may also be provided to the general public.

Protection from Liability

A member shall not be liable in damages for anything done or omitted in the discharge or purported discharge of his or her functions, responsibilities, powers and duties under the Law unless it is shown that the act or omission was in bad faith.

The Government indemnifies members against all such claims, damages, costs, charges or expenses.

See also section 38 of the Law

Records Management

Paper copies of each complaint under the Law, all accompanying information from both the complainant and respondent and the official records of hearings shall be maintained by the Secretary in a locked and secure filing system at all times. Notes made by members during a hearing do not form part of the Tribunal's official record of the hearing.

Electronic files will be maintained in a protected folder on a secure server and access will be limited to the Secretary, the Senior Policy Officer for Gender Affairs and the Chief Officer of the Ministry of Education, Employment and Gender Affairs.

All records of the Tribunal shall be maintained in accordance with the National Archive and Public Records Law, 2007 and disposed of at such time and in such manner as approved in the relevant disposal schedule.

Confidentiality

All persons, including members and the Secretary, shall keep information relating to discrimination complaints and the affairs of any other person or persons confidential.

No one shall, either directly or indirectly, disclose or make use of any such information that was acquired because of his or her office for the purposes of the Law or in his or her employment by the Cayman Islands Government, including in or to a court.

Any person who contravenes the provisions of confidentiality outlined in section 37(1) of the Law commits an offence. Upon conviction in Summary Court an offender is liable to a fine of up to CI\$5,000.

Restrictions on disclosure do not apply if disclosure is necessary for the purposes of any law. Persons are also not prohibited from making a record of information for the purposes of exercising a function under the Law or any other law in the Cayman Islands.

The burden of evidence lies with a defendant to prove that making a record or disclosing information was done for the purposes of the Law or any other law.

See also section 37 of the Law

Referral of Offences

If the Tribunal receives evidence during a hearing, or at any other time, that an offence has or may have been committed under the Law, the Tribunal will refer the matter to the relevant authorities.

Offences under the Law include–

- An employer knowingly or recklessly making a statement to an employment agency that an action that constitutes discrimination would not be unlawful;
- Indirectly or directly pressuring a person to discriminate through any offer or threat;
- Victimising a person who has made or may make a complaint under the Law, who has produced or may produce information or evidence relevant to a complaint or who has made a good faith allegation of discrimination;
- Failing to comply with a requirement or summons of the Tribunal;
- Destroying or altering evidence compelled to be produced by the Tribunal;
- Hindering, obstructing, preventing or interfering with the Tribunal in the exercise of its powers under the Law;
- Failing to comply with a direction of the Tribunal given after a hearing; and
- Breach of confidence by a member, including disclosing or making use of information acquired because of his or her office.

For more information or clarification on these policies and procedures, please contact the Secretary as below.

Prepared by:

Aubrey Bodden
Secretary to the Gender Equality Tribunal
Ministry of Education, Employment and Gender Affairs

Government Administration Building Box 108
133 Elgin Avenue, George Town
Grand Cayman KY1-9000
CAYMAN ISLANDS

Tel: (345) 244-3226
Fax: (345) 949-9343
E-mail: get@gov.ky
Website: www.genderequality.gov.ky

31st January 2014