

Gender Equality Tribunal

established under the Gender Equality Law, 2011

Annual Report 2012/13

14th October 2013
George Town, Grand Cayman

INTRODUCTION

The *Gender Equality Law, 2011* (“the Law”) came into effect on 31st January 2012 and seeks to eliminate direct and indirect discrimination in employment, training and recruitment on the basis of sex, marital status, pregnancy and gender. The Law also requires that employers pay equal remuneration to male and female employees who perform work of equal value and aims to protect against discrimination in other related 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 and work-related contexts.

The Gender Equality Tribunal (“the Tribunal”) is established under section 23 of the Law to hear and determine discrimination complaints. The Tribunal is currently made up of five members appointed by the Governor in Cabinet on 31st January 2012 for a two-year term. As required by the Law, the Chairperson is an attorney-at-law and the four other members have relevant experience and qualifications in gender, social development, human rights, labour and related fields. The current members are–

- Sheridan Brooks-Hurst, Chairperson
- Karie Bergstrom
- Shaun Cockle
- André Ebanks
- Tammy Ebanks



In hearing and determining discrimination complaints, the Tribunal acts independently and shall not be subjected 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. The Tribunal will also adhere to the rules of natural justice and procedural fairness in all of its operations. The Tribunal receives administrative and secretarial support from the Ministry responsible for Gender Affairs.

This Annual Report is presented to the Honourable Minister for Education, Employment and Gender Affairs and provides a summary of the Gender Equality Tribunal’s operations during the period 1st July 2012 through 30th June 2013, including general activities and discrimination complaints received. It also sets out the expected scope of the Tribunal’s operations for the upcoming financial year.

GENERAL ACTIVITIES

The Tribunal met six (6) times during the year to discuss matters relevant to the operation of the Gender Equality Law and handling of discrimination complaints. The Tribunal produced a complaint form during the previous year and this year focused on ways to further assist the general public and parties to discrimination complaints in understanding the Tribunal's remit and the complaint process.

Members are committed to ensuring they remain unbiased. The Tribunal decided that in order to ensure members are independent and are perceived as independent and unbiased in the hearing and determining of complaints, members will not provide public education efforts on the Law. However, the Ministry responsible for Gender Affairs will continue to carry out public education and awareness activities pertaining to the Law and Tribunal. As necessary, the appointed Secretary to the Tribunal also provides procedural assistance and answers general inquiries from members of the public and parties to discrimination complaints. Throughout the year, in addition to correspondence in relation to on-going complaints, the Secretary dealt with fifteen (15) inquiries relating to complaints to the Tribunal and seven (7) additional inquiries relating to the Law more generally.

Frequently Asked Questions

In July 2012 the Tribunal released a list of "Frequently Asked Questions" about the Gender Equality Law. These questions and answers are posted online at www.genderequality.gov.ky and will assist members of the public, employers and parties to discrimination complaints in understanding some key provisions of the Law and procedures for filing a complaint or responding to an allegation that has been made.

Policies and Procedures

The Law contains certain basic provisions for filing, hearing and determining discrimination complaints but does not detail exactly how the process will work in practice. Section 33 of the Law therefore gives the Tribunal the discretion to adopt such procedures as it considers appropriate in the circumstances to determine a particular complaint. The Tribunal's comprehensive Policies and Procedures manual was finalised on 5th December 2012 and updated to reflect minor clarifications on 13th May 2013. The full document is available online at www.genderequality.gov.ky or from the Secretary to the Tribunal.

The manual first sets out a brief background to the Law, defines specific terms, and gives an overview of application, exceptions and offenses before describing the composition of the Tribunal and its general operating procedures. It then describes the detailed procedures for filing a complaint, the pre-hearing process, hearings, and determinations. The Tribunal chose to generally adopt a written pre-hearing process where both parties are expected to provide and exchange representations and evidence in advance of an oral hearing being convened. The manual will also guide the Tribunal in the exercise of its powers under the Law and in decision-making processes, confidentiality requirements and other relevant matters.

DISCRIMINATION COMPLAINTS

Three (3) discrimination complaints were received by the Tribunal during the financial year. Two (2) had been closed and one (1) remained in progress as of 30th June 2013.

GET/1201

The first discrimination complaint was received 13th December 2012 and alleged the complainant had been dismissed from her job due to pregnancy. Following the pre-hearing stage where both parties submitted written representations and evidence, the Tribunal was convened on 16th May 2013 for an oral hearing. The Tribunal found that the complainant's allegation was (a) unsubstantiated, and (b) neither frivolous nor vexatious. There was no award of costs in the matter.

GET/1301

The second discrimination complaint was received 6th March 2013 and alleged the complainant had been denied or limited access to opportunities for advancement and to other benefits, facilities or services associated with her employment on the basis of pregnancy. The written pre-hearing stage was still in progress at the end of the year and the oral hearing began on 9th September 2013.

GET/1302

The third discrimination complaint was received 8th March 2013 and alleged the complainant had been discriminated against in the creation, classification or abolition of a job and in relation to being denied or having limited access to opportunities for advancement, promotion, transfer and training on the basis of gender. During the written pre-hearing stage the complaint was withdrawn on 18th April 2013.

Determinations

Once a complaint has been heard and determined the Tribunal will communicate its determination, the reasons for that determination and any directions and/or orders to both parties in writing within twenty-eight (28) days of the hearing.

The Tribunal will also endeavour to publish a brief, summarised version of each determination for public access. The Summary Determination for complaint GET/1201 is available online at www.genderequality.gov.ky.

LOOKING FORWARD

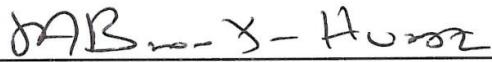
The Tribunal expects to hear and determine discrimination complaint GET/1301 during the upcoming year and handle any additional complaints submitted under the Law in accordance with its Policies and Procedures. As is to be expected, the work of the Tribunal is quite unpredictable at this stage and will be largely dependent on the number and complexity of complaints that are received.


The Tribunal has identified certain amendments that may be required to the Gender Equality Law in order to provide further clarity on the submission and determination of discrimination complaints. With additional practical experience, the Tribunal may also further refine its Policies and Procedures and examine the Gender Equality Law in more detail to consider areas where it may be enhanced.

Summary Determinations will continue to be published to enhance the transparency of the Tribunal's operations. These documents will not identify any party, witness or other individual and all information received by the Tribunal will continue to be maintained in accordance with the confidentiality provisions in the Gender Equality Law and in the Tribunal's Policies and Procedures.

Members of the Tribunal all remain committed to the objectives of the Gender Equality Law and to providing their time and expertise to carry out the Tribunal's functions effectively.

Dated this 14th day of October 2013.


SHERIDAN BROOKS-HURST, CHAIRPERSON


KARIE BERGSTROM, MEMBER


ANDRÉ EBANKS, MEMBER


SHAUN COCKLE (MEMBER)


TAMMY EBANKS, MEMBER