

The Law Reform Commission
Sexual Harassment Consultation Bill

The Law Reform Commission (“LRC”), in keeping with its law reform agenda, is seeking to examine the legislative issues that touch and concern sexual harassment conduct in the Cayman Islands. In this regard, stakeholders and the general public are invited to provide comments on the draft Sexual Harassment Bill, 2012 formulated by the LRC.

Sexual harassment refers to unwanted and unwelcome conduct of a sexual nature engaged in by a person who directs that conduct to another person. The essential characteristic of the definition is that the conduct is unwelcomed and the sentiments are not reciprocated by the recipient.

Issues surrounding sexual harassment conduct formed the basis of discussions undertaken by the Young Business and Professional Women’s Club (“YBPW”) which established a Taskforce in 2005 to investigate, assess and provide legislative recommendations, to the then Government, that would facilitate the protection of persons from sexual harassment and stalking in the Cayman Islands. A report was prepared by the YBPW in which the prevalence of sexual harassment was highlighted and it concluded that sexual harassment is a serious problem in the Islands requiring legislative intervention.

In responding to the sexual harassment issue and in an effort to protect human dignity and ensure the right of individuals to a safe and non-threatening environment, the Cayman Islands Government enacted the Gender Equality Law, 2011. This Law however deals only with sexual harassment as it relates to gender discrimination within employment and occupational contexts. More recently and through the auspices of the Portfolio of the Civil Service a committee has been established to formulate a sexual harassment policy. A draft of that policy is currently the subject of deliberations by the committee.

Cultural perceptions, attitudes and justifications for sexual harassment, in the view of the LRC, have contributed to a failure to understand and adequately respond to the problem. Consequently, many persons do not know how to report sexual harassment or from whom to seek assistance. As a result, the problem is usually ignored and not enough is done to address it primarily because there is no comprehensive legislation or policy to respond to the issues.

Whilst a majority of the victims of sexual harassment conduct are women, men also suffer from sexual harassment by women and it is possible for sexual harassment to occur between members of the same gender. Therefore, legislation which requires a sexual harassment policy and provides for appropriate remedies needs to be formulated in a manner which addresses both male and female victims regardless of the gender of the perpetrator or aggressor.

The issue of sexual harassment has long been recognised internationally and in recent years has been increasingly viewed as a major international human rights problem. Several developed countries have already enacted legislation to deal with sexual harassment and many of their educational institutions have crafted sexual harassment policies and codes of conduct to address the problem.

Regionally, the CARICOM Secretariat has developed model sexual harassment legislation. The model has been adopted by a number of Caribbean jurisdictions. Therefore, by

introducing a comprehensive sexual harassment policy and equally comprehensive legislation for the benefit of the Islands, we would be acting in a manner consistent with regional and international legislative trends.

The Gender Equality Law, though a positive development, is restrictive in nature and does present limitations in light of the broader spectre of the sexual harassment issue. The LRC is of the view that there is a need for legislation which mandates the formulation of a sexual harassment policy and expands the contexts in which the conduct can occur to include, among other things, educational and other institutions, associations and accommodations.

Indications are that some organisations and institutions in the Islands have in place a code or a policy to combat sexual harassment conduct. However, without a national sexual harassment policy or legislation requiring the formulation of such a policy, there appears to be no obligation on the part of organisations or institutions to put policies in place or where policies exist, to enforce those policies. It seems necessary therefore to address a sexual harassment policy on a holistic statutory basis.

In advancing this process and having had the benefit of reviewing the report prepared by the Young Business and Professional Women's Club Taskforce, the LRC has prepared for consideration a draft Sexual Harassment Bill, 2012.

The provisions of the Bill are informed by several legislative precedents including the Australian Sex Discrimination Act, 1984, the Bahamian Sexual Offences and Domestic Violence Act, 2006, the CARICOM Model Law on Sexual Harassment, the Belizean Sexual Harassment Act, 2000, the California Civil Code, the Canadian Labour Code and the Sex Discrimination Act, 1975 of the United Kingdom.

The Sexual Harassment Bill, 2012 contains legislative proposals which-

- (i) identify the types of conduct that may constitute sexual harassment;
- (ii) require the formulation of policies dealing with sexual harassment conduct in a number of professional relationship settings;
- (iii) provide for the establishment of a Sexual Harassment Tribunal to deal with complaints of sexual harassment conduct; and
- (iv) introduce protective remedies for victims or potential victims who have been or might be exposed to sexual harassment conduct within different interpersonal relationships.

The Law Reform Commission is seeking your comments on the provisions of the Sexual Harassment Bill.

Unless marked to the contrary, the LRC will assume that comments received are not confidential, and that respondents consent to our quoting from, or referring to, their comments and attributing their comments to them, and to the release or publication of their submissions.

Requests for confidentiality or anonymity will be respected to the extent permitted by the Freedom of Information Law, 2007.

Submissions should be forwarded in writing by post or hand no later than 27th September, 2012 to the Director of the Law Reform Commission, Ground Floor – dms House, 20 Genesis Close, George Town, Grand Cayman, P.O. Box 907, Grand Cayman KY1-1103 or emailed to cheryl.neblett@gov.ky.