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IMPACT JUSTICE

MODEL SEXUAL HARASSMENT BILL

11 July 2017



EXPLANATORY MEMORANDUM

The Bill for consideration, the *Sexual Harassment Bill*, would seek to provide for the prevention of sexual harassment, the introduction of remedies in circumstances where a person makes a sexual harassment complaint and for related matters.

Part 1, clauses 1 and 2, would contain preliminary provisions. **Clause 1** of the Bill would provide for the short title and commencement. **Clause 2**, the interpretation clause, would set out the definitions of various words and terms used throughout the Bill. Of particular note are the definitions of “complainant”, “respondent”, “employer”, “employee” and “institution”.

Part 2, clauses 3 to 19, would deal with acts that would constitute sexual harassment and the various persons falling within the scope of the Act.

Clause 3 would set out the circumstances to be satisfied in order for an act of sexual harassment to be constituted and it identifies the types of conduct that would amount to sexual harassment. The conduct includes making sexual advances, sexual comments about a person in his or her sight and hearing or sexual gestures that are unwelcome to the person and providing a person with unwelcome sexual images or graphics.

Clause 4 would prohibit a person who supplies goods, services or facilities for the benefit of the public or a section of the public from subjecting the intended recipient of those goods, services or facilities to sexual harassment.

Clause 5 would prohibit a landlord from sexually harassing a tenant in the course of providing, or offering to provide, (whether as principal or agent) accommodation to the tenant, and a tenant from sexually harassing a landlord in the course of receiving accommodation from the landlord.

Clause 6 would prohibit a person from sexually harassing another person in the course of transactions relating to —

- (a) the disposing of, or offering to dispose of, [real or personal/movable or immovable] property to that other person;
- (b) the acquiring, or offering to acquire, [real or personal/movable or immovable] property from that other person; or
- (c) the giving of a licence or consent for the disposal of an interest in [real or personal/movable or immovable] property.

Clause 7 would prohibit a person who, or an employee of an educational authority which, provides facilities for vocational training in order to assist another person to become fit for employment, from subjecting that person to sexual harassment.



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TO JUSTICE IN THE
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Canada

No. [] of 20[]

Model Sexual Harassment Bill

3

Clause 8 would prohibit a member of a body which is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for, or facilitates the practise of a profession, the carrying on of a trade or the engaging in an occupation, from subjecting to sexual harassment a person who applies for such an authorisation or qualification.

Clause 9 would prohibit a member of an association from sexually harassing another member of that association or a person seeking to become a member of that association.

Clause 10 would prohibit a member of an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession, trade or activity for the purposes of which the organisation exists, from subjecting to sexual harassment any person who —

- (a) is a member of that organisation; or
- (b) has applied for membership of that organisation.

Clause 11 would prohibit a person who operates an employment agency or a member of staff of an employment agency from sexually harassing another person in the course of providing or offering to provide any of the agency's services to that other person.

Clause 12 would impose an obligation on every employer to issue a policy statement concerning sexual harassment in the workplace. It stipulates that the policy statement should include —

- (a) a definition of sexual harassment that is in accordance with section 3 of this Act;
- (b) information indicating —
 - (i) that every employee is entitled to employment free from sexual harassment;
 - (ii) how the employer will deal with the sexual harassment of his or her employee where it is directed towards a fellow employee or a third party;
 - (iii) that the employer will take disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects any employee or third party to sexual harassment;
 - (iv) how complaints of sexual harassment may be brought to the attention of the employer; and
 - (v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures.



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Canada

No. [] of 20[]

Model Sexual Harassment Bill

4

Clause 13 would prohibit an employer and employee, a commission agent, a partner in a partnership or any workplace participant from committing an act of sexual harassment.

Clause 14 would require an employer to take appropriate action on becoming aware, reasonably suspicious or informed of an act of sexual harassment which —

- (a) is directed to an employee or any person with whom the employer has contracted to facilitate the operations of the place of employment; and
- (b) occurs during the course of employment.

Clause 15 would make an employer liable for an act of sexual harassment committed by his or her agent, supervisor and employee, if it is proven that —

- (a) the conduct occurred during the course of employment; and
- (b) the employer knew, ought reasonably to have known or was informed of the commission of such conduct and on becoming aware, suspicious or informed, failed to take reasonable steps to prevent the continuation of the conduct.

Clause 16 would require a person who is in charge of an institution to —

- (a) issue a policy statement in accordance with this Act for the prevention of sexual harassment and the protection of an inmate, a [child], ward or patient of that institution;
- (b) take steps that are reasonably required to bring the policy statement referred to in paragraph (a) to the attention of the [employees], inmates, [children], wards, patients and any other persons at the institution; and
- (c) make every reasonable effort to ensure that an inmate, a [child], ward, patient or third party is not sexually harassed at the institution or on the premises of the institution.

Clause 17 would require a person who is in charge of an adult educational institution or the relevant educational authority to —

- (a) issue a policy in accordance with this Act for the prevention of sexual harassment and the protection of [an employee], a member of staff, student and third party; and
- (b) take steps that are reasonably required to bring the policy statement referred to in paragraph (a) to the attention of all [employees], members of staff and students.



Clause 18 would prohibit a person from victimising or imposing a detriment on a person who —

- (a) has made, or proposes to make, a complaint under the Act;
- (b) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any document to a person exercising or performing any power or function under the Act;
- (c) proposes to provide evidence or testimony as a witness in proceedings under this Act; or
- (d) has made in good faith an allegation that a person has engaged in conduct prohibited under this Act.

Clause 19 would prohibit a person from inducing or attempting to induce another person to engage in sexual harassment.

Part 3, clauses 20 to 30, would provide for the procedure to be followed when complaints are made under the Act.

Clause 20 would provide for a person to seek redress by making a complaint to the [Commission / Commissioner / Ombudsman] if the person —

- (a) believes that he or she is being, or has been, subjected to sexual harassment; or
- (b) has reasonable grounds for believing that another person is engaging or has engaged in sexual harassment contrary to this Act.

After investigating the complaint, the [Commission / Commissioner / Ombudsman] would, as it / he or she thinks fit, be able to discontinue the matter or seek to settle the matter by conciliation or mediation. Where the matter cannot be settled by conciliation or mediation, the complainant, or the [Commission / Commissioner / Ombudsman] with the consent and on behalf of the complainant, would be able to initiate proceedings before the [Tribunal / Court].

Clause 21 would provide that the conciliator, mediator or [Tribunal / Court] may decide against commencing a hearing or discontinue a hearing where he, she or it is satisfied that the complainant does not wish that the proceedings be commenced or continued, or that the complaint is frivolous, misconceived, lacking in substance or vexatious.

Clause 22 would set out the procedure for the hearing of sexual harassment complaints.

Clause 23 would provide for the orders to be made after the [Tribunal / Court] is satisfied that the complainant's allegations are substantiated or that the complaint is frivolous or vexatious. These orders include requesting —

- (a) that the respondent not repeat or continue the sexual harassment;



- (b) that the respondent perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant; or
- (c) that the respondent pay damages to the complainant by way of compensation not exceeding [\$50,000/fifty thousand dollars] for any loss or damage suffered by reason of the conduct of the respondent.

Clause 24 would prohibit a person from making a false complaint against another person for an alleged contravention of any provision of the Act.

Clause 25 would permit the complainant and respondent at any stage after the filing of a sexual harassment complaint and before the commencement of a hearing to enter into an agreement to settle a sexual harassment complaint.

Clause 26 would stipulate that a person who has an official duty to administer this Act shall not, either directly or indirectly —

- (a) divulge or communicate to any person, any information relating to the affairs of another person acquired as a result of his [or her] office for the purposes of this Act;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person given for the purposes of this Act.

Clause 27 would prohibit the publication of any report of the proceedings of the Court unless leave of the Court is granted.

Clause 28 would permit a person aggrieved by a decision of or any power exercised by the Court to appeal to the [Court of Appeal/ [Judge in Chambers] against that decision or exercise of power.

Part 4 would contain **clauses 29 to 32**, which provides for miscellaneous matters such as the standard of proof and the making of Regulations.

Clause 29 would provide that a question of fact arising in any proceedings under the Act, other than criminal proceedings, shall be decided on a balance of probabilities.

Clause 30 would empower the Minister to make Regulations for the effective implementation of the Act.

Clause 31 would specify that the Act binds the [Crown/State].

[**Clause 32** would provide for transitional provisions for the effective implementation of the Act].



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No. [] of 20[]

Model Sexual Harassment Bill

7

MODEL SEXUAL HARASSMENT BILL

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2

PROTECTION AGAINST SEXUAL HARASSMENT

3. Commission of an act of sexual harassment
4. Goods, services and facilities
5. Provision of accommodation
6. [Real or personal/Movable or immovable] property
7. Vocational training body
8. Qualifying body
9. Association
10. Organisation
11. Employment agency
12. Sexual harassment policy statement and contents
13. Sexual harassment in employment, partnerships, etc.
14. Employer's duty to employee
15. Liability of employer
16. Institution
17. Educational institution
18. Victimisation (as a result of a complaint)
19. Pressure to engage in sexual harassment



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CARIBBEAN

Funded by the
Government
of Canada

Canada

No. [] of 20[]

Model Sexual Harassment Bill

8

PART 3

PROCEDURE FOR HEARING COMPLAINTS

20. Complaint
21. Discontinuation of hearing
22. Hearing of complaint
23. Findings of [Tribunal /Court]
24. False complaint prohibited
25. Agreement
26. Confidentiality
27. Publication of [Tribunal / Court] proceedings
28. Appeal

PART 4

MISCELLANEOUS

29. Standard of proof
30. Regulations
31. Law binding on [Crown/State]
- [32. Transitional provisions]

Schedule 1: Sexual Harassment Policy Statement

[Schedule 2: Transitional Amendments]



IMPROVED ACCESS
TO JUSTICE IN THE
CARIBBEAN

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Government
of Canada

Canada

No. [] of 20[]

Model Sexual Harassment Bill

9

MODEL SEXUAL HARASSMENT BILL

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BILL

ENTITLED

AN ACT TO PROVIDE FOR THE PREVENTION OF SEXUAL HARASSMENT AND FOR CONNECTED MATTERS.

ENACTED by the [] of the [].

PART 1

PRELIMINARY

Short Title and Commencement

1. (1) This Act may be cited as the Sexual Harassment Act, 20 [].

(2) This Act shall come into force on a date appointed by the [Minister] by [Order/Notice] published in the *Gazette*.

Interpretation

2. In this Act —

“**accommodation**” includes residential and business accommodation;

[“**association**” includes a group of persons associated together for social, literary, cultural, political, religious, sporting, athletic or for any other lawful purpose];

[“**authorisation or qualification**” includes recognition, registration, enrolment, approval and certification];

“**care giver**” includes a person who provides child care services and elderly care services;



[“Commission” means the [Human Rights Commission / Equal Opportunity Commission] established under the [relevant] Act;

[“**commission agent**” means a person who does work for another person as the agent of that other person and who is remunerated, whether in whole or in part, by commission];

[“Commissioner”] means the [Complaints Commissioner / Human Rights Commissioner] appointed under the [relevant] Act;

“**complainant**” means the person by whom or on whose behalf an allegation of sexual harassment is made under section 20;

“**complaint**” means an allegation of sexual harassment made under section 20;

[“**Court**” means [the High Court] and includes a Judge or Master sitting in Chambers];

“**domestic work**” includes the provision of elderly care services, child care services, baby sitting services and household work;

“**domestic worker**” means a person who is employed to do domestic work, for remuneration whether in cash or kind, either directly or through an employment agency, on a temporary or a permanent, part time or full time basis;

“**educational authority**” means a body responsible for the administration of an educational institution or provision of vocational training;

“**educational institution**” includes a school, college, university or other institution at which education or training is provided to a student;

“**employee**” —

(a) means a person who offers his or her services under a contract of employment, whether that contract is written, oral or implied or full time or part time, with an employer, and

(b) includes —

(i) a managerial employee and a supervisor;

(ii) a dependent contractor;

(iii) an apprentice, an intern or a trainee;

(iv) a person on probation;



- (v) a part time or full time employee or a casual worker;
- (vi) a domestic worker;
- (vii) a temporary worker or seasonal employee;
- (viii) a person who is remunerated by commission whether in whole or in part, where that person is not an independent contractor; or
- (ix) where appropriate, a former or prospective employee;

“**employer**” includes any person, undertaking, firm, corporation, company, the State, public body or body of persons, who or which —

- (a) employs any person under a contract of employment, whether written, oral or implied or full time or part time;
- (b) engages or supervises an employee; or
- (c) are the heirs, successors, agents, representatives or assigns of the person, undertaking, firm, corporation, company, the State, public body or body of persons; or
- (d) where appropriate, is a former or prospective employer;

“**employment agency**” means any person who, whether for payment or not, assists another person to find employment or other work or assists an employer to find employees;

“**employment**” includes —

- (a) part time employment, temporary employment and performance of work under apprenticeship;
- (b) performance of work under a contract of service or a contract for services;
- (c) engagement as a commission agent;
- (d) engagement as a dependent contractor; and
- (e) any other form of engagement of a person,

and “employed” shall be construed accordingly;

“**facilities**” includes any place —

- (a) at which a member of the public or a section of the public is permitted to enter; or
- (b) which provides —



- (i) accommodation as a hotel, a guest house, boarding house or other similar establishment;
 - (ii) banking, insurance, grants, loans, credit or other finance services;
 - (iii) education;
 - (iv) entertainment, recreation, food or refreshment;
 - (v) transport or travel services;
 - (vi) child care services;
 - (vii) health or social services;
 - (viii) sporting activities; and
 - (ix) religious activities;
- (c) accommodating any profession or trade;

“institution” includes —

- (a) [a child care service within the meaning of the [Children (Care and Adoption) Act]/a place for the custody of minors such as a boarding home; a group home; a foster home; a residential care; a training centre or training/industrial school; an assessment centre and a children’s home];
- (b) a nursing home or other place for the custody of the elderly and differently-abled;
- (c) a prison or correctional facility;
- (d) a medical facility or psychiatric or wellness facility; and
- (e) any other place or facility the Minister may, by Order published in the *Gazette*, designate as an institution for the purposes of this Act;

[“landlord” —

- (a) means a person who grants to another person the right or a licence to use a house, building, apartment, condominium or other premises for residential or business purposes, under an agreement, whether oral, written or implied; and
- (b) includes —
 - (i) an agent or a personal or legal representative of, or any other person acting on behalf of, a landlord;
 - (ii) a person to whom a landlord assigns an agreement;



- (iii) a trustee in bankruptcy, liquidator, receiver or committee appointed by any court or under any law in respect of the property of a landlord;
- (iv) the purchaser at a judicial sale of the premises of a landlord;
- (v) a chargee of the premises of a landlord who acquires title or who enters into possession of the premises, and the assignees of that chargee; or
- (vi) any person who becomes the owner of property on which the premises are situated, or that consists of premises, with respect to which at the time the person becomes the owner there are subsisting tenancy agreements;]

“Minister” means the Minister to whom responsibility for [social services/ issues relating to sexual harassment] is assigned;

[“Ombudsman” means the Ombudsman appointed under the [relevant] Act;]

“place” includes a ship, aircraft, vehicle or a private or public place;

“public body” means —

- (a) the Office of the [Governor /Governor-General/President];
- (b) the Parliament;
- (c) the Judiciary;
- (d) a Ministry or a department or division of a Ministry;
- (e) the [Nevis Island Legislature/Tobago House of Assembly], or a division of the [Nevis Island Legislature/Tobago House of Assembly];
- (f) a [Local Authority/City Council/Municipal Corporation] established under the [Local Authority/City Council/ Municipal Corporations] Act;
- (g) [a [Regional Health Authority] established under the [Regional Health Authorities Act];]
- (h) a statutory body, responsibility for which is assigned to a Minister of Government;
- (i) a State-controlled enterprise;
- (j) a Service Commission established under the Constitution or other written law; or
- (k) a body corporate or unincorporated entity —
 - (i) in relation to any function which it exercises on behalf of the State; or



- (ii) which is established by virtue of the [Governor's/Governor General's/President's] prerogative, by a Minister of Government in his or her capacity as such or by another public body or public authority; or
- (l) a body corporate or unincorporated entity in relation to any function, project, scheme or arrangement which involves the use by it, of public money;

“relationship status” means a person’s status or condition of being any of the following —

- (a) single;
- (b) married;
- (c) married but living separately and apart from his or her spouse;
- (d) divorced;
- (e) widowed; or
- (f) a person who, although not married to another person—
 - (i) is living with that other person in an intimate or cohabitational relationship and in the same household; or
 - (ii) is in a visiting relationship with that other person;

“respondent” in relation to a complaint, means the person who is alleged to have engaged in sexual harassment;

“services” includes —

- (a) services relating to —
 - (i) banking, insurance and the provision of grants, loans, credit or finance or other services;
 - (ii) entertainment, recreation, food, refreshment, clothes and household items;
 - (iii) services relating to transport or travel;
 - (iv) health and social services; and
 - (v) domestic work;
- (b) services of the kind provided by the members of any profession or trade;

“State-controlled enterprise” means—



- (a) a company incorporated under the laws of [the State] which is owned or controlled by the State;
- (b) a company incorporated under the laws of [the State] which is owned or controlled by a company referred to in paragraph (a); or
- (c) a body corporate or unincorporated entity which is supported, directly or indirectly, by public money and over which the State, a statutory body or a company referred to in paragraph (a) or (b) is in a position to exercise control directly or indirectly;

“**supervisor**” in relation to a person, means a fellow employee who by virtue of the fellow employee’s employment is in a position of authority over that person;

[“**tenant**” means in relation to any premises that is the subject of a tenancy agreement with a landlord, the grantee of a tenancy of the premises under the agreement, and where appropriate, includes —

- (a) a prospective tenant;
- (b) a former tenant;
- (c) a lawful successor in title of a tenant to the premises;
- (d) the personal representative of a deceased tenant; and
- (e) an agent of a tenant;]

“**third party**” means any person who by virtue of his or her professional or social relationship with or in connection to or association with another person could potentially be exposed to sexual harassment during the course of employment or on the premises of that other person;

[“**tribunal**” includes a labour tribunal, a gender equality tribunal or other tribunal established to address disputes arising from employment or under this Act;]

“**workplace**” means a place at which a workplace participant works or otherwise carries out functions in connection with being a workplace participant; and

“**workplace participant**” includes any of the following —

- (a) an employer or employee;
- (b) a commission agent or contract worker;
- (c) a partner in a partnership;
- (d) a volunteer; and



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Canada

No. [] of 20[]

Model Sexual Harassment Bill

16

[(e) a third party].



PART 2

PROTECTION AGAINST SEXUAL HARASSMENT

Commission of an act of sexual harassment

3. (1) A person commits an act of sexual harassment against another person if, having regard to —

- (a) all the circumstances referred to in subsection (2); and
- (b) the effect upon that other person against whom the conduct described in subsection (3) is alleged to have been committed,

it is reasonable for that other person to conclude that the conduct was directed towards him or her and was calculated to —

- (i) offend, humiliate, disrespect or degrade him or her;
- (ii) intimidate, threaten or compel him or her by putting him or her in fear of being placed at a disadvantage or prejudiced if he or she does not submit to the sexual harassment; or
- (iii) create a hostile environment for him or her, or violate his or her dignity.

(2) For the purposes of subsection (1) (a), the circumstances to be taken into account include but are not limited to the following —

- (a) the sex, age, relationship status, sexual preference, religious belief, colour, race, national or ethnic origin of the person who has alleged sexual harassment;
- (b) the relationship between the person alleging sexual harassment and the person who is alleged to have made the advance or request or who engaged in the conduct;
- (c) any disability of the person alleging sexual harassment; or
- (d) any other relevant circumstance.

(3) The conduct referred to in subsection (1)(b) includes conduct which involves —

- (a) making an unwelcome —
 - (i) sexual comment to a person;



- (ii) sexual comment about a person within his or her hearing;
- (iii) sexual innuendos to a person;
- (iv) sexual gesture to a person;
- (v) sexual contact with a person;
- (vi) sexual advance towards a person; or
- (vii) request for sexual favours from a person;
- (b) providing a person with unwelcome —
 - (i) sexual images or graphics; or
 - (ii) audio of a sexual nature;
- (c) transmitting unwelcome electronic messages of a sexual nature to a person;
- (d) exposing a third party to any of the conduct described in paragraphs (a) to (c);
- (e) making it appear to the person seeking employment that—
 - (i) the offer of employment to that person; or
 - (ii) the terms on which employment is offered,are contingent on that person's acceptance of or submission to sexual advances from the prospective employer;
- (f) making it appear to a co-employee that the prospects or working conditions of that co-employee are contingent upon the co-employee's acceptance or tolerance of sexual advances [from the person or his or her employer or supervisor];
- (g) making it appear to another person that preferential treatment or other advantage would only be provided to that person upon that person's acceptance of or submission to sexual advances [from the first mentioned person];
- (h) engaging in conduct of a sexual nature knowing that there is a likelihood that the person whom that conduct is intended to affect will become aware of the conduct; or
- (i) directly or indirectly engaging in any other form of unwelcome conduct of a sexual nature.



(4) Any conduct described in subsection (3) shall constitute sexual harassment irrespective of —

- (a) the method used to convey the conduct; or
- (b) whether the conduct was committed on a single occasion.

(5) In this section “conduct of a sexual nature” includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

Goods, services and facilities

4. (1) A person shall not sexually harass another person or a third party in the course of providing, or offering to provide, goods, services or facilities.

(2) A person shall not sexually harass another person or a third party in the course of seeking or receiving goods, services or facilities.

Provision of accommodation

5. (1) A landlord shall not sexually harass a tenant in the course of providing, or offering to provide, (whether as principal or agent) accommodation to the tenant.

(2) A tenant shall not sexually harass a landlord in the course of receiving accommodation from the landlord.

[Real or personal/Movable or immovable] property

6. A person shall not sexually harass another person in the course of transactions with that other person in relation to —

- (a) disposing of, or offering to dispose of, [real or personal/movable or immovable] property to that other person;
- (b) acquiring, or offering to acquire, [real or personal/movable or immovable] property from that other person; or
- (c) giving a licence or consent for the disposal of an estate or interest in [real or personal/movable or immovable] property.



[Vocational Training Body]

7. A person who, or an employee of an educational authority which, provides facilities for vocational training in order to assist another person to become fit for employment, shall not subject that person to sexual harassment.]

[Qualifying Body]

8. A member or an employee of an authority or of a body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in an occupation, shall not subject to sexual harassment a person who applies for such an authorisation or qualification.]

[Association]

9. A member of an association shall not sexually harass another member of that association or a person seeking to become a member of that association.]

[Organisation]

10. A member of an organisation of workers, an organisation of employers, or any other organisation whose members carry on a particular profession, trade or activity for the purposes of which the organisation exists, shall not subject to sexual harassment any person who —

- (a) is a member of that organisation;
- (b) has applied for membership of that organisation; or
- (c) is a third party.]

[Employment agency]

11. A person who operates an employment agency or an employee of an employment agency shall not sexually harass another person in the course of providing or offering to provide any of the agency's services to that other person.]



Sexual harassment policy statement and contents

- 12.** (1) Every employer shall —
- (a) issue a policy statement in writing concerning the prevention of sexual harassment and the protection of an employee or third party in the workplace; and
 - (b) take steps that are reasonably required to bring the policy statement referred to in paragraph (a) to the attention of all employees.
- (2) A policy statement required under subsection (1) shall include —
- (a) a definition of sexual harassment that is in accordance with section 3;
 - (b) information indicating —
 - (i) that an employee is entitled to employment in an environment that is free from sexual harassment;
 - (ii) how the employer will deal with the sexual harassment of his or her employee where it is directed towards a fellow employee or a third party;
 - (iii) that the employer will take disciplinary measures as the employer considers appropriate against any person under the employer's direction who subjects any employee or third party to sexual harassment and explaining the disciplinary measures that may be taken in respect of sexual harassment;
 - (iv) how a complaint of sexual harassment may be brought to the attention of the employer; and the internal mechanisms and procedures that are available to an employee for the making of any complaint relating to sexual harassment and the resolution and settlement of the complaint;
 - (v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where the disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation to the complaint.
 - (vi) that the employee has a right to seek redress through conciliation or mediation or from the [Tribunal / Court], under this Act; and



- (vii) that a person who alleges an act of sexual harassment has been committed against him or her shall exhaust all internal mechanisms and procedures including conciliation or mediation that are available to the person, before instituting proceedings before the [Tribunal / Court].
- (3) An employer may adopt the sexual harassment policy statement set out in Schedule 1.

Sexual harassment in employment, partnership etc.

- 13.** (1) An employer shall not sexually harass —
- (a) his or her employee;
 - (b) a person who is seeking to become his or her employee; or
 - (c) a third party.
- (2) An employee shall not sexually harass —
- (a) a fellow employee;
 - (b) a person who is seeking employment with the same employer;
 - (c) his or her employer; or
 - (d) a third party.
- (3) A person shall not sexually harass —
- (a) a commission agent or contract worker of the person; or
 - (b) a person who is seeking to become a commission agent or contract worker of the person.
- (4) A commission agent or contract worker shall not sexually harass a fellow commission agent or fellow contract worker.
- (5) A partner in a partnership shall not sexually harass another partner, or a person who is seeking to become a partner, in the same partnership.
- (6) A workplace participant shall not sexually harass another workplace participant at a workplace.



Employer's duty to employee

14. (1) An employer shall make every reasonable effort to ensure that an employee and a third party is not sexually harassed during the course of employment or on the employer's premises.

(2) An employer who becomes aware, reasonably suspects or is informed of the commission of an act of sexual harassment which —

- (a) is directed towards an employee, a third party or any person with whom the employer has contracted to facilitate the operations of the place of employment; and
- (b) occurs during the course of employment or on the employer's premises,

shall take immediate and appropriate action to prevent the continuation of the conduct and deal with the sexual harassment.

(3) An employee, a third party or any person with whom the employer has contracted to facilitate the operations of the place of employment who is aggrieved by the failure of an employer to act in accordance with subsection (2), may seek to resolve his or her grievance through conciliation or mediation or by instituting proceedings before [the Tribunal / Court].

Liability for an act of sexual harassment

15. An employer is liable for an act of sexual harassment committed by his or her agent, supervisor and employee only if it is proven that —

- (a) the act of sexual harassment occurred during the course of employment;
- (b) the employer knew, ought reasonably to have known or was informed of the commission of the act of sexual harassment; and
- (c) on becoming aware, suspicious or informed of the act of sexual harassment, failed to take immediate and appropriate steps to prevent the continuation of the conduct.

Institution

16. (1) A person who is in charge of an institution shall —



- (a) issue a policy statement in accordance with this Act for the prevention of sexual harassment and the protection of an inmate, a child, ward or patient of that institution;
- (b) take steps that are reasonably required to bring the policy statement referred to in paragraph (a) to the attention of the employees, inmates, children, wards, patients and any other person at the institution; and
- (c) make every reasonable effort to ensure that an inmate, a child, ward, patient or third party is not sexually harassed at the institution or on the premises of the institution.

(2) A person who is in charge of an institution may adopt the sexual harassment policy statement set out in Schedule 1.

(3) A person in charge of an institution and an employee of an institution shall not sexually harass a person who —

- (a) is an inmate, child, ward or patient or third party at the institution or
- (b) is seeking admission to the institution.

(4) A person in charge of an institution who becomes aware, reasonably suspects or is informed of the commission of an act of sexual harassment which is directed towards an inmate, child, ward or patient or third party at the institution shall take immediate and appropriate action to prevent the continuation of the conduct and deal with the sexual harassment.

(5) A person who is aggrieved by the failure of a person in charge of an institution to act in accordance with subsection (4) may seek to resolve his or her grievance by lodging a complaint with the [Commission / Commissioner / Ombudsman] under Part 3.

Educational institution

17. (1) A person who is in charge of an educational institution or the relevant educational authority shall —

- (a) issue a policy in accordance with this Act for the prevention of sexual harassment and the protection of [an employee], a member of staff, student and third party; and
- (b) take steps that are reasonably required to bring the policy statement referred to in paragraph (a) to the attention of all employees, members of staff and students.



(2) A person who is in charge of an educational institution, an employee or member of staff of an educational institution shall not sexually harass —

- (a) [another employee] or member of staff of that educational institution;
- (b) a person who is a student at that educational institution;
- (c) a person who is seeking to become a student at that educational institution;
or
- (d) a third party.

(3) A student at an educational institution shall not sexually harass —

- (a) another student (or a person seeking to become a student) at that educational institution;
- (b) [an employee] or member of staff of that educational institution; or
- (c) a third party.

(4) A person (the first person) who is a member of the staff of an educational institution (the first educational institution) shall not sexually harass a person who is a student at another educational institution if the sexual harassment occurs in connection with the first person being a member of staff of the first educational institution.

(5) A person (the first person) who is a student at an educational institution (the first educational institution) shall not sexually harass —

- (a) a person who is a student at another educational institution;
- (b) a member of the staff of another educational institution; or
- (c) a third party,

if the sexual harassment occurs in connection with the first person being a student at the first educational institution.

(6) A person who is in charge of an educational institution may adopt the sexual harassment policy statement set out in Schedule 1.



Victimisation as a result of a complaint

18. (1) A person shall not victimise another person by subjecting or threatening to subject another person to any detriment —

(a) on the ground that the second-mentioned 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 document to a person exercising or performing any power or function under this Act;
- (iii) proposes to provide evidence or testimony as a witness in proceedings under this Act; or
- (iv) has made in good faith an allegation that a person has engaged in conduct prohibited under this Act; or

(b) on the ground that the first-mentioned person believes that the second-mentioned person has done, or proposes to do, an act or thing referred to in paragraph (a) (i) to (iv).

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [\$5000/five thousand dollars] or to imprisonment for a term not exceeding [12 months/one year] or both.

Pressure to engage in sexual harassment

19. (1) A person shall not induce or attempt to induce another person to engage in sexual harassment by —

- (a) providing or offering to provide that other person with any benefit; or
- (b) subjecting or threatening to subject that other person to any detriment.

(2) An act falls within subsection (1) if it is made in such a manner that the person in question is likely to hear it or hear of it.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [\$5000/five thousand dollars] or imprisonment for term not exceeding [12 months/one year] or to both.



PART 3
PROCEDURE FOR HEARING COMPLAINTS

Complaint

20. (1) A person who alleges that —

- (a) he or she is being, or has been, sexually harassed or subjected to sexual harassment; or
- (b) another person is engaging or has engaged in sexual harassment contrary to this Act,

may lodge a written complaint with [the Commission / Commissioner / Ombudsman] setting out the details of the alleged sexual harassment.

(2) Subject to subsections (10), (11) and (12), a complaint referred to in subsection (1) shall be lodged within a period of [eighteen/18] months from the date of the alleged act of sexual harassment to which the complaint relates and in the case of a series of acts of sexual harassment, within a period of [eighteen/18] months from the date of the last alleged act of sexual harassment.

(3) [The Commission / Commissioner / Ombudsman] shall investigate each complaint lodged with it / him or her.

(4) Where, upon investigating a complaint, [the Commission / Commissioner / Ombudsman] finds that there is no evidence of sexual harassment, it / he or she shall inform the complainant in writing and shall give its reasons therefor, and no further action shall be taken by [the Commission / Commissioner / Ombudsman].

(5) If the complainant and the respondent agree to settle the complaint by recourse to conciliation or mediation, the complainant and the respondent shall agree on the conciliator or mediator, as the case may be. .

(6) Proceedings of the conciliation or mediation and positions taken by the complainant and the respondent during those proceedings shall be confidential and without prejudice to the rights of the complainant and the respondent in further proceedings, and evidence of anything said or done in the course of those proceedings is not admissible in proceedings before [the Tribunal / Court].



(7) Where a complaint has been settled by conciliation or mediation, the settlement shall be embodied in a written agreement and registered with [the Tribunal / Court] and, upon registration, the agreement shall be deemed to be an order of [the Tribunal / Court].

(8) If the complainant and the respondent cannot settle the complaint by conciliation or mediation, the complainant, or [the Commission / Commissioner / Ombudsman] with the consent and on behalf of the complainant, may initiate proceedings before [the Tribunal / Court].

(9) Subject to this section, the [Tribunal / Court] may hear a complaint made by an employee that his or her employer has failed to act in accordance with section 14(1).

(10) The [Commission / Commissioner / Ombudsman] may accept a complaint lodged after expiration of the period referred to in subsection (2) if it / he or she —

- (a) considers the reasons for the delay to be reasonable; and
- (b) is satisfied that the complainant initiated action pursuant to subsection (11) within the period stated in subsection (2).

(11) A person, before lodging a complaint under subsection (1), shall exhaust the use of any internal mechanisms and procedures that are made available to the person, as provided for in the policy statement issued by the employer or the person in charge of the institution, in accordance with section 12.

(12) Notwithstanding subsections (10) and (11), [the Commission / Commissioner / Ombudsman] may accept a complaint lodged after the expiration of the period referred to in subsection (2) if it / he or she is satisfied that the complainant has —

- (a) shown cause as to why the complainant reasonably believes that the complainant's rights may be prejudiced if the complainant complies with subsection (11); or
- (b) provided evidence to show that internal mechanisms and procedures, or adequate internal mechanisms and procedures, have not been made available to the person as is required under section 12.



Discontinuation of complaint

21. [The Commission / Commissioner / Ombudsman], a conciliator, a mediator or the [Tribunal / Court] may decide against commencing proceedings, or may discontinue proceedings, in relation to a complaint, where he, she or it, as the case may be, is satisfied that—

- (a) the complainant does not wish that the proceedings be commenced or continued; or
- (b) the complaint is frivolous, misconceived, lacking in substance or vexatious.

Hearing of complaint

22. (1) Where the [Tribunal / Court] decides to hear and determine a complaint, the [Tribunal / Court] shall give a written notice of the complaint and the date, time and place of the hearing to the parties to the complaint.

- (2) In hearing a complaint under this Act —
 - (a) the [Tribunal / Court] may request the production of documents or any other information or thing from any person who the [Tribunal / Court] has reasonable grounds to believe can assist in determining whether an act of sexual harassment has been committed;
 - (b) the [Court / Tribunal] may—
 - (i) issue summonses to compel the attendance of witnesses at the hearing; and
 - (ii) examine witnesses on oath, affirmation or otherwise at the hearing.



- (3) A person commits an offence, who —
- (a) fails without reasonable excuse to comply with a requirement of [the Tribunal / Court] or a summons under subsection (2);
 - (b) destroys or alters, or causes to be destroyed or altered, any document, or other matter or thing required to be produced under subsection (2); or
 - (c) furnishes to the [Commission / Commissioner / Ombudsman], a conciliator or mediator, or the [Tribunal / Court] any information, or makes a statement at an inquiry, knowing that the information or statement is false or misleading.

(4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding [five thousand dollars/\$5000] or imprisonment for a term not exceeding [12 months/one year] or both.

Findings of [Tribunal / Court]

23. (1) Where after a hearing under section 22, the [Tribunal / Court] finds that —

- (a) the complainant's allegations are substantiated; or
- (b) the complaint is frivolous, misconceived, lacking in substance or vexatious,

it shall make an appropriate award or order specified in subsection (2).

(2) The [Tribunal / Court], pursuant to subsection (1), may —

- (a) dismiss the complaint;
- (b) order that the complainant pay the costs incurred by the [Tribunal / Court] and those of the respondent; or
- (c) find in favour of the complainant and make any one or more of the following awards or orders —
 - (i) that the respondent has engaged in conduct amounting to a contravention of a provision of Part 2 and shall not repeat or continue the sexual harassment;
 - (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 shall pay damages to the complainant by way of compensation for any loss or damage suffered by reason of the conduct of the respondent;
- (iv) that where the complaint relates to sexual harassment by a fellow employee, that the employer shall take appropriate action to ensure that the sexual harassment ceases, and to report to the [Tribunal / Court] on the action taken;
- (v) that the respondent pay the legal fees and any other costs of the complainant;
- (vi) that it would be inappropriate for any further action to be taken in the matter; or
- (vii) any other award, order, direction or declaration as may be appropriate having regard to all circumstances surrounding the complaint.

(3) The [Court / Tribunal] may, in the making of an award under subsection (1) (b), take into consideration injury to the complainant's feelings, or humiliation suffered by the complainant.

(4) Where the [Tribunal / Court] 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 a Resident Magistrate's Court, without limit of amount, as a civil debt.

(5) A person who fails to comply with [an order of the Court / an award of the Tribunal] made under this section commits an offence and is liable on summary conviction to a fine not exceeding [\$5000/five thousand dollars] or imprisonment for a term not exceeding [12 months/one year] or both.

[False complaint prohibited]

24. A person shall not make any false complaint against another person for an alleged contravention of any provision of this Act.]



Agreement

25. (1) If, at any stage after the filing of a sexual harassment complaint and before the commencement of a hearing by the [Tribunal / Court], an agreement is made between the complainant and respondent, they shall notify the [Tribunal / Court], in writing, of the terms of the agreement and the [Tribunal / Court] may permit the complaint to be resolved in accordance with the terms of the agreement and request that the complainant, in writing, confirm his or her withdrawal of the complaint.

(2) In this section “agreement” includes a conciliation or a mediation agreement.

Confidentiality

26. (1) Subject to subsections (3) and (4), a person who has an official duty to administer this Act shall not, either directly or indirectly —

- (a) divulge or communicate to any person, any information relating to the affairs of another person acquired by that person as a result of his or her office for the purposes of this Act;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person given for the purposes of this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [\$5000/five thousand dollars] or imprisonment for a term not exceeding [12 months/one year] or both.

(3) Subsection (1) shall not prevent a person from being required, for the purposes of or under any enactment, to divulge or communicate information, or to produce a document, that is required or permitted by that enactment to be divulged, communicated or produced.

(4) This section shall not prohibit a person from —

- (a) making a record of information for the purposes of exercising a function under this Act or any other law in force in []; or
- (b) divulging or communicating information, or producing a document that is required or permitted by any law to be divulged, communicated or produced, if the information is divulged or communicated, or the document is produced, for the purposes of or under that law.



- (5) A defendant bears the burden of proof in relation to a matter in subsection (3).
- (6) In this section, “produce” includes permit access to.

Publication of proceedings

- 27.** (1) Subject to subsection (2), a person shall not publish —
- (a) a report of any proceedings of the Tribunal/ Court under this Act unless he or she is first granted [permission of the Tribunal / leave of the Court]; or
 - (b) a conciliation or mediation agreement without the consent of the other party to the agreement.

[(2) The Tribunal / Court may direct that —

- (a) any evidence given before it;
- (b) the contents of any document produced to it; or
- (c) any information that might enable a person who has appeared before it to be identified,

shall not be published or shall be published only in such manner, and to such person, as the Tribunal / Court may specify.]

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding [\$2000/two thousand dollars] or to imprisonment for a term not exceeding [6/six] months or both.

[A Member State may include a general penal provision at this point regarding an employer, educational institution or any other institution who/that fails to have a sexual harassment policy]



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No. [] of 20[]

Model Sexual Harassment Bill

34

Appeal

28.

(1) A person aggrieved by a decision of or any power exercised by the [Tribunal / Court] may, within [28/twenty-eight] days of the decision, appeal to the [Court of Appeal] against that decision in such form and manner as may be provided by rules of court.

(2) The [Court of Appeal] may make such order in relation to an appeal under subsection (1) as [it] thinks fit.

PART 4

MISCELLANEOUS

Standard of proof

29. A question of fact arising in any proceedings under this Act, other than criminal proceedings, shall be decided on a balance of probabilities.

Regulations

30. The Minister may make Regulations for the effective implementation of this Act.

Law binding on [Crown/State]

31. This Act binds the [Crown/State].

[Transitional Amendments]

32. The provisions of the enactments specified in the first column of Schedule 2 are amended in the manner specified respectively in relation to them in the second column of Schedule 2.]



SCHEDULE 1

(Sections 12, 16, 17)

Sexual Harassment Policy

1 Purpose

- 1.1 It is the policy of [] to provide an environment free from harassment of any kind and for any reason, whether because of sex, age, relationship status, sexual preference, religious belief, colour, race, creed, national or ethnic origin, disability, or any other factor or relevant circumstance.
- 1.2 An employee and any third party or person on the premises of [] is entitled to work, provide services or be in an environment free of sexual harassment.
- 1.3 Sexual harassment violates an individual's fundamental rights and personal dignity, it is unlawful, and will not be tolerated by [].
- 1.4 When [] determines that an allegation of sexual harassment is credible, it will take prompt and appropriate corrective action.

2. Definition

- 2.1 Sexual harassment is unwanted or unwelcomed sexual attention of an offensive nature made by a person who knows, or reasonably should know, that the attention is unwanted or unwelcomed and the person to whom it is made may conclude that the conduct was intended to —
 - (i) offend, humiliate, disrespect or degrade him or her;
 - (ii) intimidate, threaten or compel him or her by putting him or her in fear of being placed at a disadvantage or prejudiced if he or she does not submit to the sexual harassment; or
 - (iii) create a hostile environment for him or her, or violate his or her dignity.
- 2.2 Sexual harassment encompasses a wide range of inappropriate conduct or acts, under the law but in addition to the conduct or acts



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No. [] of 20[]

Model Sexual Harassment Bill

36

prohibited under the law other examples of specifically prohibited conduct by [] include —

- (a) promising, directly or indirectly, a person a reward if the person complies with a request of a sexual nature;
- (b) threatening, directly or indirectly, to retaliate against a person if the person refuses to comply with a request of a sexual nature;
- (c) denying, directly or indirectly, a person an opportunity if the person refuses to comply with a request of a sexual nature;
- (d) engaging in sexually suggestive physical contact or touching or grabbing of another person in a way that is unwelcome;
- (e) repeatedly standing too close to or brushing up against a person;
- (f) engaging in explicit language, sexually suggestive gestures, or indecent exposure;
- (g) making sexual or romantic advances toward a person and persisting despite the person's rejection of the advances;
- (h) sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via e-mail or other electronic means;
- (i) verbal abuse of a sexual nature;
- (j) repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated he or she is not interested (A [Supervisor/Director/Manager] in particular should be careful not to pressure an employee or third party on the premises of [] to socialise);
- (k) giving gifts or leaving objects that are sexually suggestive;
- (l) [repeatedly making sexually suggestive gestures];
- (m) making or posting sexually demeaning or offensive pictures, cartoons or other materials in the workplace;
- (n) off-duty, unwelcome conduct of a sexual nature that affects the [work/school] environment;



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No. [] of 20[]

Model Sexual Harassment Bill

37

(o) deliberately creating an overall offensive environment, including use of vulgar language, displaying, storing, or transmitting sexually explicit photographs or other materials, and the telling of sexual stories.

2.3 Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own may not be sexually harassing.

2.4 Certain behaviours, such as conditioning promotions, awards, grades, training or other benefits upon acceptance of unwelcome actions of a sexual nature, are always wrong and prohibited by [].

2.5 An [employee/a ward/inmate] is prohibited from harassing another [employee/ ward/ inmate] or third party whether or not the incidents of harassment occur on [] property and whether or not the incidents occur during [working] hours.

2.6 The victim can be of the same sex as the harasser. The harasser can be a [Supervisor/Director/Manager], another [employee, or a non-employee/ ward/ inmate] or third party who has a business relationship with [] or may be on the premises of [].

2.7 Although sexual harassment typically involves a person in a greater position of authority as the harasser, a person in a position of lesser or equal authority may also be found responsible for engaging in prohibited sexual harassment.

2.8 Consensual sexual or romantic relationships between [employees] are deemed unwise and are strongly discouraged by [] in particular if one [employee] has supervisory authority over the other [employee].

3 [Employees'/Students/ Wards/ Inmates] Rights and Responsibilities under this Policy

3.1 All incidents of sexual harassment or inappropriate sexual conduct should be reported by an employee or third party regardless of their seriousness.

3.2 If an [employee/a student/ ward/ inmate] or a third party believes that he or she has been subjected to sexual harassment or any



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No. [] of 20[]

Model Sexual Harassment Bill

38

unwanted or unwelcome sexual comment, conduct, innuendo, gesture, contact, advance or attention by anyone (e.g., a co-worker or other person), he or she should—

1. make his or her unease and/or disapproval directly and immediately known to the alleged harasser orally or in writing that such conduct is unwelcome and offensive and must stop; and
2. report the incident immediately to the [Supervisor/Director/Manager/Dean]. If the [Supervisor/Director/Manager/Dean] is responsible for the sexual harassment, report the conduct to the [Assistant Supervisor/Assistant Director/Assistant Manager/ Assistant Dean/President/Board].
- 3.3 If the person does not wish to communicate directly with the offending person, or if such communication has been ineffective, the person is encouraged to report the unwelcome conduct as soon as possible to a responsible [Department] official. It is usually most effective, although it is not required, that the official be within the person's supervisory chain. Responsible Department officials include first-or second-line supervisors, the offending person's supervisor, the management officers, the [Director/Manager/Executive Director] or [Assistant Director Assistant Manager/ Assistant Supervisor or President/Board].
- 3.4 A person should feel free to raise concerns and make a report without fear of reprimand.
- 3.5 Alleging harassment without following the reporting procedures may be considered evidence of a malicious intent on the part of the complainant.
- 3.6 The privacy of the complainant and of the person accused of sexual harassment must be maintained and all information must be kept strictly confidential.
- 3.7 A person shall not retaliate against or victimise an employee or third party for filing a complaint of sexual harassment or for cooperating in an investigation of a sexual harassment complaint;



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No. [] of 20[]

Model Sexual Harassment Bill

39

3.8 The employee shall not make a false complaint of sexual harassment.

4. [Employer's] Responsibilities under this Policy

4.1 If [] receives an allegation of sexual harassment, or has reason to believe sexual harassment is occurring, it will take the necessary steps to ensure that the matter is promptly investigated and addressed.

4.2 If the allegation is determined to be credible, [] will take immediate and effective measures to end the unwelcome behaviour.

4.3 [] is committed to take action if it learns of possible sexual harassment, even if the individual does not wish to file a formal complaint.

4.4 All complaints will be promptly and carefully investigated by the administration, and all employees are assured they will be free of any and all reprisal or retaliation from filing such complaints.

4.5 An administrative investigation will include interviews with all relevant persons, including the complainant, the accused and other potential witnesses. In determining whether an alleged conduct constitutes sexual harassment, the record as a whole and the totality of the circumstances, such as the nature of sexual advances and the context in which the alleged incidents occurred will be examined. A determination of appropriate action will be made from the facts, on a case-by-case basis.

4.6 The administration will review the finding with the complainant at the conclusion of its investigation. If the investigation reveals that the complaint appears to be valid, immediate and appropriate corrective action, up to and including discharge, will be taken to stop the harassment and prevent its reoccurrence. If the validity of the complaint cannot be determined, immediate and appropriate action will be taken to assure all parties are reacquainted with the sexual harassment policy and to avoid sexual harassment in the future.

Any finding can be appealed to the [] using the existing [grievance/disciplinary] policy.



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No. [] of 20[]

Model Sexual Harassment Bill

40

- 4.7 If a complaint involves a member of the administration, then a written request should be made to the [Chairman of the Board] to establish a [Committee] to investigate the complaint.
- 4.8 Prevention is the best tool for the elimination of sexual harassment. [] and the administration express strong disapproval of any acts that can be construed as an act of sexual harassment of any [person/employee] or third party on the premises of []. (This includes inappropriate jokes, displays of posters, etc.)

5. Resolution

- 5.1 An employee often can stop or prevent sexual harassment by immediately and directly expressing his or her disapproval of an individual's sexually oriented attention or conduct. In many cases, an informal warning by the [Director/Manager] to an alleged harasser, combined with appropriate follow-up supervision and monitoring of the employee's behaviour might be sufficient to prevent or stop sexual harassment. If the employee is uncomfortable addressing the [Director], the [Board] may be approached directly.
- 5.2 If this approach does not stop the sexual harassment, a thorough and impartial investigation of all complaints will be conducted in a timely and appropriate manner. The investigation will be conducted by the [Director, Manager/ Executive Director/ Assistant Director, or the employee's immediate supervisor].
- 5.3 An [employee] of [] who has been found to have sexually harassed another [employee], third party or visitor/patron of [] will be subject to disciplinary action up to and including termination.
- 5.4 An employer who has made a false complaint of sexual harassment shall be subject to disciplinary action up to and including termination.

6. Confidentiality

- 6.1 All inquiries, complaints and investigations are treated with confidentiality. Information is revealed strictly on a need-to-know



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No. [] of 20[]

Model Sexual Harassment Bill

41

basis. However, the identity of the complainant usually is revealed to the accused and witnesses.

- 6.2 An [employee], a third party or other individual contacted in connection with a complaint will be counselled that any information pertaining to the complaint must be held in confidence.



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Canada

No. [] of 20[]

Model Sexual Harassment Bill

42

SCHEDULE 2

Transitional Provisions

(To be confirmed by each Member State)

Enactment

Amendment

Passed in the [Parliament/House of Assembly/House of Representatives/National
Assembly] this day of 20[]

Speaker/Clerk.

[Passed in the Senate this day of 20[]

President.