

THE DISABILITIES ACT, 2014
(Act 3 of 2014)

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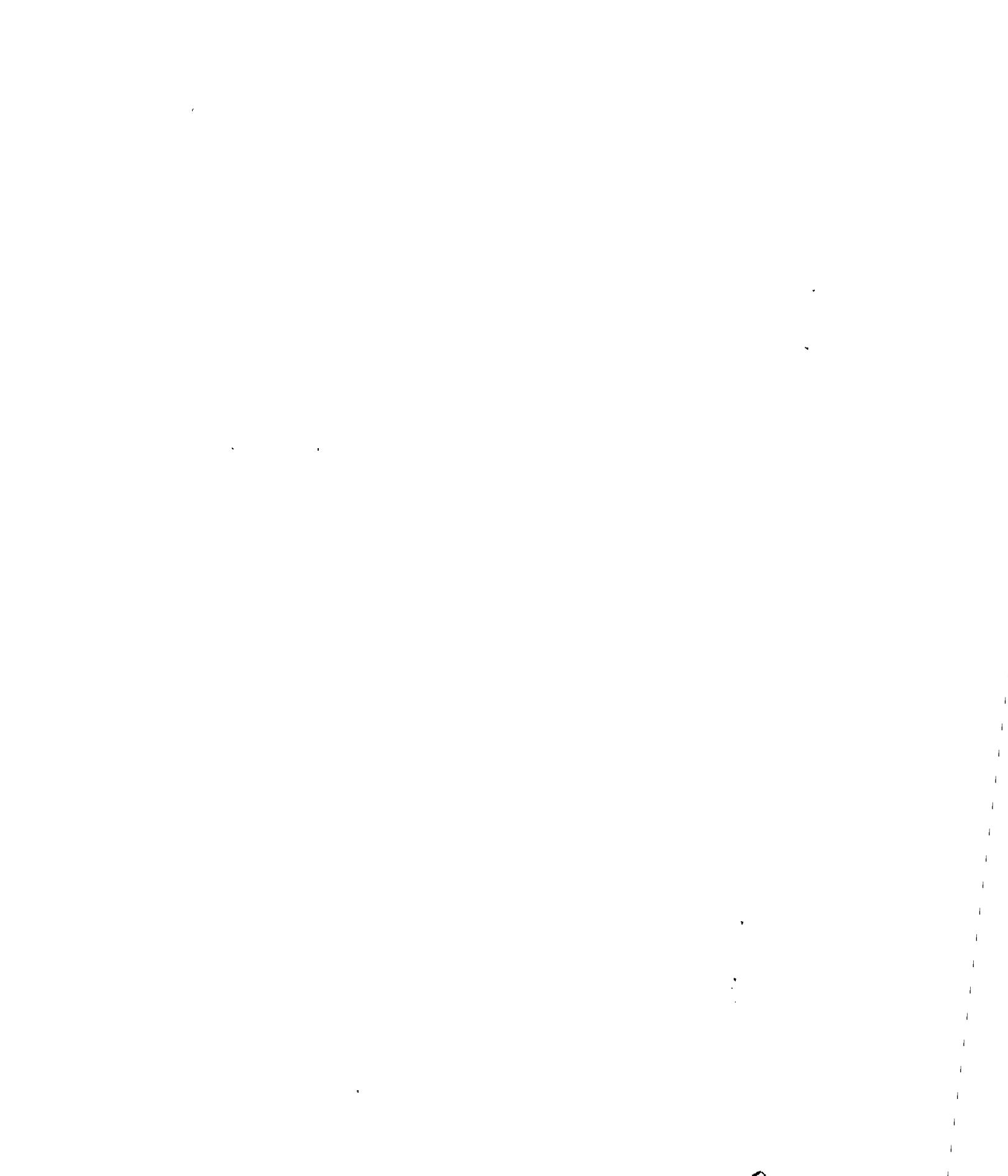
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JAMAICA

NO. 13 - 2014

I assent,

[L.S.]

sgd. P. L. Allen.
Governor-General.
31st October, 2014

AN ACT to Promote, protect and ensure the full and equal enjoyment by persons with disabilities, of privileges, interests, benefits and treatment, on equal basis with others and to establish the Jamaica Council for Persons with Disabilities; and for connected matters.

**The date notified by the Minister
[bringing the Act into operation]**

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

PART I—Preliminary

1. This Act may be cited as the Disabilities Act, 2014, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette* (hereinafter called the “appointed day”).

Short title
and
commencement.

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

“access” includes, in relation to—

- (a) premises, freedom to enter in, approach, communicate with, make use of or manoeuvre within, any premises;
- (b) benefits, freedom to make use of any benefits;
- (c) communication, the capacity to receive and make use of information,

and “accessible” shall be construed accordingly.

“alternative dispute resolution” includes resolution of a dispute by means of settlement negotiations, conciliation, facilitation, mediation or arbitration;

“appointed day” means the day appointed under section 1, for the coming into operation of this Act;

“authorized person” in relation to any act, means a person duly authorized by the Council to act in that behalf;

“benefit” includes the provision of goods, services, facilities, opportunities, situations or advantages;

“Board” or “Board of Management” means the Board of Management established by section 7;

“caregiver” means—

- (a) a parent;
- (b) a legal guardian; or
- (c) any other person,

responsible for caring for the health, financial, physical security and general well-being of a person with a disability;

“chairman” means the chairman of the Board of Management;

“communicate” includes to make use of language, display of text, Braille, large print, audio, accessible multi-media, human reader and other augmentative or alternative modes of communication, oral and aural communication and tactile communication and communication technology and “communication”, shall be construed accordingly;

“complaint” means a complaint made under section 16;

“Council” means the Jamaica Council for Persons with Disabilities;

“Court” means the Supreme Court;

“discrimination” means any distinction, exclusion or restriction, on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of privileges, legal interests, rights, benefits and treatment, in the political, economic, social, cultural, civil, religious, educational or any other field, and includes all forms of discrimination including denial of reasonable arrangements, and “discriminate” shall be construed accordingly.

(2) For the purposes of this Act—

“disproportionate or undue burden” include—

- (a) the nature of the benefit likely to accrue to, or the detriment likely to be suffered by, any person concerned;
- (b) the effect of the disability on a person concerned;
- (c) the financial circumstances of the person concerned who is claiming disproportionate or undue burden; or
- (d) the estimated amount of expenditure or other allocation of resources required by the person concerned who is claiming disproportionate

~~of undue burden and whether it is reasonably~~

proportionate to the benefit likely to accrue;

“employee” means a person who is employed by another person;

“employer” means a person who employs another person;

“employment” includes—

- (a) part-time and temporary employment;
- (b) work performed under a contract of service; and
- (c) work performed under a contract for services,

and “employ” shall be construed accordingly;

“functions” includes powers and duties;

“healthcare provider” means a person or institution whose work it is to identify, prevent, treat, or care for persons with illnesses or disabilities;

“language” includes any spoken language and signed language and other forms of non-spoken language;

“National Building Code” means the National Building Code of Jamaica as prescribed under any enactment and includes any other required standard for the construction of buildings in Jamaica;

“persons with disabilities” or where the context requires “person with a disability” includes a person who has a long-term physical, mental, intellectual or sensory impairment which may hinder his full and effective participation in society, on an equal basis with other persons;

“provider” in relation to—

- (a) goods, means a person who sells those goods;
- (b) services or facilities, means a person who supplies those services or provides those facilities;

“reasonable arrangements” means the necessary and appropriate modification and adjustments not imposing a disproportionate

or undue burden where needed in a particular case, to ensure to a person with a disability, the enjoyment or exercise on an equal basis with others of privileges, interests, benefits and treatment and the facilitation of such privileges, interests, benefits and treatment by the provision of auxiliary aids and services including—

- (a) equipment or devices that alleviate the effects of a disability being experienced by a person;
- (b) the acquisition or modification of such equipment or devices;
- (c) duly qualified interpreters, technologies and effective methods of making aurally delivered and received materials available to a person with a disability; and
- (d) duly qualified readers, taped audio visually recorded texts or other effective methods of making visually delivered and received materials available to a person with a disability;

“Tribunal” means the Disabilities Rights Tribunal established under section 15.

3. The principal objects of this Act are to—

Objects of
Act.

- (a) reinforce and promote recognition and acceptance within Jamaica of the principle that a person with a disability, has the same fundamental rights as any other person in Jamaica;
- (b) promote individual dignity and individual autonomy, including the freedom of choice and independence of a person with a disability;
- (c) ensure full and effective participation and inclusion in the society for persons with disabilities on an equal basis with others;
- (d) prevent or prohibit discrimination against a person with a disability; and



respect for differences and acceptance of persons with disabilities as part of human diversity and humanity.

Invalidity of certain contract terms or other legal agreements.

4. A term in a contract is void, in so far as it purports to—

- require a person to do anything which would contravene any provision of this Act;
- exclude or limit the operation of any provision of this Act;
- prevent any person from filing a claim under this Act; or
- breach other rules, regulations or by-laws applicable under this Act.

PART II—Jamaica Council for Persons with Disabilities

Establishment of Council.

5.—(1) There is established for the purposes of this Act, a body to be called the Jamaica Council for Persons with Disabilities, which shall be a body corporate to which section 28 of the *Interpretation Act* shall apply.

First Schedule.

(2) The provisions of the First Schedule shall have effect as to the constitution of the Council and otherwise in relation thereto.

Functions of the Council.

6.—(1) The Council shall perform such functions as may be necessary to give effect to the objects specified in section 3, and, without prejudice to the generality of the foregoing, such functions shall include—

- advising the Minister on matters pertaining to persons with disabilities, in an effort to promote effective measures for—
 - the prevention of circumstances which cause a disability in persons;
 - the rehabilitation of persons with disabilities;
 - public education concerning disabilities; and
 - improvement in living conditions of persons with disabilities by facilitating their social and economic development;

(b) advising the Minister on—

- (i) current trends, policies and programmes concerning disabilities; and
- (ii) developments internationally, regarding the rights of persons with disabilities with a view to improving the service delivery to, and the status of, persons with disabilities;
- (c) monitoring the operation of such trends, policies and programmes, and reporting to the Minister the results of such monitoring;
- (d) conducting public education programmes about this Act and highlighting the requirements thereunder;
- (e) preparing codes of practice under section 9, for the avoidance of discrimination on the ground of a person's disability;
- (f) on its own initiative, or upon the request of the Minister, making recommendations to the Minister regarding the enforcement of this Act and other national measures for the avoidance of discrimination against persons with disabilities;
- (g) advocating for policies and programmes of the Government to have due regard to the interests of persons with disabilities.

(2) The Council may, for any purpose connected with the performance of its functions—

(a) make recommendations or give other advice to—

- (i) any Minister in relation to any aspect of this Act or proposed amendment to this Act;
- (ii) any Government agency as to the application of this Act or any other law in relation to persons with disabilities;

(b) undertake, arrange for or support (whether financially or otherwise), research or the provision of advice or information;

(c) ~~With the approval of the Minister, impose charges for facilities or services made available by it for any purpose;~~

(d) arrange for authorized persons to enter upon any premises other than a dwelling house, at a reasonable time, for the purposes of carrying out an inspection or enquiry for ensuring compliance with this Act.

(3) The Council shall in carrying out its functions adopt a consultative approach in relation to the community of persons with disabilities and other critical stakeholders.

(4) The Council shall, upon request by the Minister, make recommendations or give other advice under this section on any matter specified in the request.

**Functions,
etc., of the
Board of
Management.**

7.—(1) There is established a Board of Management of the Council which shall, subject to the provisions of this Act, be responsible for determination of the policy of and the general administration of the affairs of the Council.

**Second
Schedule.**

(2) The provisions of the Second Schedule shall have effect as to the constitution of the Board and otherwise in relation thereto.

**Ministerial
directions.**

8. The Minister may, after consultation with the chairman, give to the Council such directions of a general character as to the policy to be followed by the Council in the performance of its functions, as appear to the Minister to be necessary in the public interest, and the Council shall give effect thereto.

**Codes of
practice
prepared by
the Council.**

9. The Council shall—

(a) prepare codes of practice for guidance on matters under this Act; and

(b) review those codes of practice and, where appropriate, make alterations thereto,

and each such code of practice shall be laid on the table of each House of Parliament.

**Exemption
from taxes
and duties.**

10.—(1) The income of the Council shall be exempt from income tax.

(2) Any transfer to or by the Council of any property belonging to it or of any right or interest created in, over or otherwise with respect to, any such property, shall be exempt from transfer tax.

(3) No customs duty, general consumption tax or other similar impost, shall be payable upon any article imported by the Council, where the Council shows to the satisfaction of the Commissioner of Customs, that such articles are required for the use of the Council in the performance of its functions.

(4) The Council shall be exempt from liability to stamp duty in respect of any instrument executed by it or on its behalf.

11. Without prejudice to any other method of recovery, all debts due to the Council may be recovered in a Resident Magistrate's Court as a civil debt, notwithstanding any limitation as to the amount recoverable, under the *Judicature (Resident Magistrates) Act*.

Recovery of debts.

12.—(1) Subject to the provisions of subsection (2), the Council may borrow such sums as may be required by it for meeting any of its obligations or discharging any of its functions.

Borrowing powers.

(2) The power of the Council to borrow shall be, as to the amount, as to the source of borrowing, and as to the terms on which the borrowing may be effected, be exercisable only with the approval of the Minister responsible for finance, and any approval given in any respect for the purposes of this subsection may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

(3) All moneys of the Council not immediately required to be expended for the purpose of meeting any of the obligations or discharging any of the functions of the Council, may be invested in such securities as may be approved by the Minister responsible for finance and the Council may, with the approval of that Minister, sell all or any such securities.

13.—(1) The Council shall maintain a confidential register with the particulars of persons with a disability.

Confidential register.

(1) The register referred to in subsection (1) shall be kept in such form, and all entries, alterations and removals of entries shall be made in such manner, as may be prescribed.

(3) A person whose name is for the time being in the register shall be issued, in the prescribed manner, with a certificate of registration and any other relevant material issued by the Council.

(4) Any person with a disability who immediately prior to the appointed day was—

- (a) duly registered with the body known as the Jamaica Council for Persons with Disabilities;
- (b) by virtue of such registration entitled to benefits,

shall, notwithstanding section 14, be for all intents and purposes duly entitled to be registered under this Act, and entitled, upon providing such information as may be prescribed, to have his name entered in the register.

Registration
of a person
with a
disability.

14. Where—

- (a) a person with a disability desires his name; or
- (b) a caregiver of a person with a disability desires the name of the person with a disability,

to be entered in the register referred to in section 13, that person or the caregiver shall make an application to the Council in the prescribed manner.

PART III—Disabilities Rights Tribunal

Establishment
of Tribunal. 15.—(1) There is established, for the purposes of this Act, a body to be called the Disabilities Rights Tribunal.

Third
Schedule. (2) The provisions of the Third Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

(3) The Tribunal shall sit in such number of divisions as may from time to time be necessary.

(4) A division of the Tribunal shall where the Tribunal proposes to deal with a complaint referred to it under section 16, consist of—

- (a) one member of the Tribunal, who shall be either the chairman or the deputy chairman appointed by the Minister; and

(b) two of the members of the Tribunal selected in the manner specified in Part A of the Third Schedule.

Part A.
Third
Schedule.

(5) Where three of the members are selected under subsection (4) to constitute a division of the Tribunal and the chairman is one of those members, he shall preside over that division, and where the chairman is not one of those members, the deputy chairman shall preside.

(6) Where three members of the Tribunal constitute a division thereof and any one of those members dies, or is incapacitated, or ceases to be a member thereof for any other reason after the division begins to deal with the complaint in relation to which it was constituted, but before it has made its award, another person shall be selected in accordance with Part A of the Third Schedule and thereafter the proceedings shall continue as if they had not been interrupted by reason of such death, incapacity or cessation, unless any party to the complaint requests in writing that the proceedings begin *de novo*.

(7) The validity of the proceedings of a division of the Tribunal shall not be affected by reason that such proceedings are not begun *de novo* after the filling of such vacancy.

16.—(1) A person with a disability who, by reason of any occurrence specified in subsection (2), is aggrieved, or the caregiver of that person (either of whom is referred to in this Part as an “aggrieved person”) may, no later than two years from the date of such occurrence, make a complaint in writing to the Council, and the Council shall act in accordance with the provisions of section 17.

Complaints to
Council.

(2) An aggrieved person may make a complaint for the reason that there has been—

- (a) an act of discrimination carried out against a person with a disability;
- (b) failure by the respondent in the complaint to comply with the codes of practice prepared in accordance with section 9;
- (c) failure or refusal of a person offering any benefit or membership under section 41(1), to ensure that any specified

~~terms and conditions of such benefit or membership are in accordance with section 41(2);~~

(d) any other contravention of any provision of this Act.

(3) Sections 13, 14 and 15 of the *Public Defender (Interim) Act*, shall have effect as regards any complaints made against the Council's operations in furtherance of the Council's duties.

Assistance in relation to complaints.

17.—(1) The Council may provide assistance to an aggrieved person to make a complaint, under section 16, where the Council is of the view that there is a breach of this Act against the aggrieved person.

(2) Assistance under this section does not include assistance with legal representation.

Formal investigations.

18.—(1) The Council—

(a) may conduct a formal investigation for any purpose connected with the performance of its functions under this Act; or
(b) shall conduct a formal investigation, if directed to do so by the Minister.

(2) Subject to subsection (3), the Council may at any time terminate or suspend, as the case may require, the conduct of a formal investigation.

(3) A formal investigation that is conducted pursuant to a direction under subsection (1)(b), may not be terminated or suspended, without the approval of the Minister.

Dispute resolution procedures.

19.—(1) The Tribunal may hear a complaint of an aggrieved person referred to it for settlement, if satisfied that due notice of the hearing was served on every other party to the complaint, notwithstanding that any such party fails to appear before the Tribunal.

(2) The Council shall with respect to a complaint made under section 16—

(a) refer the complaint to the Tribunal for determination; or
(b) with the consent of the parties named in the complaint, refer the complaint for alternative dispute resolution.

(3) After considering a complaint made under section 16, the Tribunal may make such order as it thinks fit, and without prejudice to the generality of the foregoing, may take one or more of the following steps as it considers just and equitable, namely, it may—

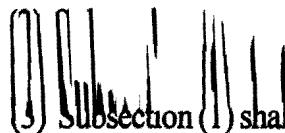
- (a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates;
- (b) make an order—
 - (i) to the effect that the respondent pay compensation in such amount and in such manner as the Tribunal may direct to the complainant;
 - (ii) notwithstanding that a party to the proceedings fails to appear before the Tribunal on the hearing of the complaint;
- (c) order that the respondent take within a specified period, such action as appears to the Tribunal to be reasonable and proportionate in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the complaint relates.

(4) The Tribunal may, at any time, after a complaint is referred, encourage the parties to settle the matter by negotiation or conciliation, and if they so agree, refer the matter back to the Council for such alternative method of dispute resolution.

20. Where a complaint is referred to the Tribunal by the Council for determination under section 19, the Tribunal may at any time after such reference, order that the action in relation to the complaint cease or be reversed or not be carried out from such time as the Tribunal may specify. Interim orders.

21.—(1) The Council shall ensure that appropriate arrangements are made for alternative dispute resolution when required, and include appropriate safeguards to prevent the disclosure of information obtained by alternative dispute resolution providers in connection with the provision of services in pursuance of the arrangements. Alternative dispute resolution.

(2) An employee of the Council shall not provide alternative dispute resolution services in relation to complaints.



Subsection (1) shall not apply to information which is—

- (a) disclosed with the consent of the parties to a dispute;
- (b) not identifiable with a particular dispute or a particular person; or
- (c) reasonably required by the Council for the purpose of monitoring the operation of the arrangements concerned.

(4) Information communicated to an individual or body while providing alternative dispute resolution services in pursuance of any arrangements under this section, is not admissible in evidence in any hearings of the Tribunal, except with the consent of the person who so communicated it.

Assistance in
relation to
Court
proceedings.

22.—(1) This section applies to court proceedings brought by a person with a disability in relation to a decision made by the Tribunal.

(2) Where the individual concerned applies to the Council for assistance in relation to any proceedings to which this section applies, the Council may grant the application on any of the following grounds—

- (a) that it is unreasonable to expect the applicant to deal with the case unaided;
- (b) that there is some other special consideration which makes it appropriate for the Council to provide assistance.

(3) Where the Council grants the application, it may—

- (a) arrange for the provision of legal advice;
- (b) arrange for legal or other representation (which may include any assistance usually given by an attorney-at-law);
- (c) seek to procure the settlement of any dispute;
- (d) provide or arrange for the provision of any other legal assistance which it thinks appropriate.

Recovery of
costs for
providing
legal
assistance.

23.—(1) This section applies where—

- (a) the Council provides legal assistance under section 22, in relation to any proceedings; and

(b) costs are awarded to the Council or any individual in respect of whom the proceedings have been brought.

(2) A sum equal to any expenses incurred by the Council in providing assistance shall be a charge, for the benefit of the Council, on the costs awarded and if the cost awarded is less than expenses incurred by the complainant and the Council, the award shall be apportioned as between the complainant and the Council on a *pari passu* basis in relation thereto.

(3) Notwithstanding subsection (1), this section shall not apply where the costs concerned are payable by virtue of an agreement arrived at, to avoid or bring an end to the proceedings.

PART IV—*Protection from Discrimination*

24. A person with a disability shall be entitled to the enjoyment of privileges, interests, benefits and treatment, whether directly, or through contractual, licensing, or other arrangements.

Equal access to privileges, interests, benefits and treatment.

Protection from discrimination.

25. A person with a disability shall not, by reason of such disability, be subject to any form of discrimination.

PART V—*Education and Training*

26.—(1) An educational or training institution shall not deny a person with a disability from being enrolled at, or attending, the institution, by reason of their disability.

Access to ed training.

(2) An educational or training institution shall provide the support necessary to ensure that, in relation to the institution, a person with a disability—

- (a) has the most reasonable access to the education or training provided;
- (b) has access to facilities in the least restrictive environment and best suited to his individual needs;
- (c) being a student of the institution, is not, in relation to student services provided, placed at a disadvantage; and
- (d) is provided with reasonable arrangement and receives the support required, to effectively facilitate his education.

(1) Each caregiver shall—

- (a) as far as practicable, monitor the circumstances of a person with a disability in their care, in order to ensure that the person is not subjected to discrimination; and
- (b) where necessary, file a complaint with the Council, in relation to a person with a disability subjected to discrimination,

in the provision of education and training.

(4) An educational or training institution shall have regard to the provisions of any applicable code of practice issued by the Council under section 9, and take reasonable steps to comply therewith.

(5) For the purposes of this section, “educational or training institution” means a private institution or public institution which is engaged in the imparting of knowledge or skills.

Examinations and courses.

27. A person who conducts training examinations, in relation to licensing or certification (whether for professional or trade purposes), shall ensure that the examinations for courses offered are conducted in a place, in a manner and with facilities accessible to persons with disabilities.

Alternative arrangements within the education system.

28. The Minister with responsibility for education shall provide reasonable arrangements within the education system, in order to facilitate the education of persons with disabilities.

PART VI—*Employment*

Discrimination against applicants and employees on account of disability.

29.—(1) An employer shall not discriminate against a person with a disability who is otherwise qualified for employment—

- (a) in the terms of employment afforded to that employee;
- (b) in relation to the opportunities afforded to the employee for promotion, transfer, training or the receipt of any other benefit; or
- (c) by dismissing him or subjecting him by virtue of his disability to any other detriment, without reasonable cause.

(2) For the purposes of subsection (1), an employer shall not be regarded as discriminating against an employee where the different treatment is—

- (a) justified in the circumstances; or
- (b) cannot be avoided in the circumstances,

having regard to any reasonable arrangements that may be implemented.

30. Where as a result of any—

- (a) employment arrangement made by or on behalf of an employer; or
- (b) feature of a premises occupied by the employer for the purposes of the relevant employment,

Duty of employer to make adjustments.

an employee who is a person with a disability is likely to be at a disadvantage as a result of such arrangement or feature, that employer shall take steps to make reasonable arrangements in the circumstances to prevent such disadvantage.

31. Where an employee has become disabled whether by virtue of his employment or otherwise and that employee is no longer capable of executing the tasks required by his contract of employment, in so far as there is no disproportionate or undue burden, the employer shall redeploy the employee to a position that—

- (a) is commensurate with the current skills and abilities of the employee; and
- (b) does not result in loss in remuneration and benefits to the employee.

Redeployment of employee.

PART VII—Political Office and Public Life

32. A person with a disability shall not, by reason of such disability, be denied the opportunity to participate in programmes, activities or work that relate to political office, including—

- (a) the opportunity to vote using procedures, facilities, materials and support that are appropriate, accessible and easy to understand and use;

Political office.

- (b) ~~the opportunity~~ to be elected to political office and perform public functions at all levels of government; and
- (c) involvement in the activities and administration of political parties.

Public life.

33. A person with a disability shall not, by reason of such disability, be denied the opportunity to effectively and fully participate in the conduct of public affairs, including—

- (a) participation in civil society;
- (b) forming and joining organizations of persons with disabilities to represent such persons at local, national, regional, and international levels.

Exemption of certain persons.

34. Without limiting the effect of sections 40(2)(f) and 41(4) of the Constitution of Jamaica, the protection under this Part shall not be construed as applying to any person who has a mental disorder within the meaning of the *Mental Health Act*.

PART VIII—*Health Care and Facilities*

Health care providers.

35.—(1) Health care providers shall provide health care, without discrimination on the basis of a disability.

(2) Health care providers, shall adhere to the standards specified in subsection (3) and provide access to general health care services and facilities to persons with disabilities.

(3) Health care providers shall ensure that the following minimum standards are adhered to—

- (a) a person with a disability shall have access to the same range and standard of affordable health services as provided to other persons, including sexual and reproductive health services, and population-based public health programmes;
- (b) a person with a disability shall be provided with the health services required because of that disability, including screening, early detection, treatment, rehabilitation, identification and intervention as appropriate, and services designed to prevent or minimize any further disability;

- (c) subject to the provisions of the *Mental Health Act*, health care to be administered in respect of a person with a disability shall be provided on the basis of free and informed consent; and
- (d) to the extent that resources permit established international standards shall be observed in respect of the care and protection suitable to the individual needs of a person with a disability.

PART IX—*Premises and Housing*

36.—(1) Subject to subsection (3), the owner or the agent of the owner of an existing private premises, who has rented or intends to rent or lease such existing premises, shall, if requested by a person with a disability, make or cause to be made such alterations to that premises or a part thereof, in order to ensure that as far as reasonably practicable the premises is accessible to and usable by a person with a disability.

(2) Subject to subsection (3) the owner or an agent of an existing public or commercial premises shall make alterations thereto, which will cause the premises to be readily accessible and usable by a person with a disability as respects—

- (a) entrances;
- (b) bathrooms;
- (c) telephones;
- (d) drinking fountains (if any); and
- (e) emergency exits (if any).

(3) Subsections (1) and (2) shall not apply where it is demonstrated by the owner or his agent to the satisfaction of the Council that—

- (a) it is structurally impracticable to meet the requirements of this Act; or
- (b) to effect such alterations, would constitute a disproportionate or undue burden.

(4) In this section “existing” in relation to premises means in existence or under construction immediately before the appointed day.

New
premises.

37. In constructing any public or commercial premises, the construction of which began on or after the appointed day, the owner or agent shall ensure that premises being constructed are—

- (a) readily accessible to and usable by a person with a disability;
- (b) built in accordance with the National Building Code; and
- (c) designed in such a way as to make the common areas accessible to and usable by a person with a disability.

Alterations
to leased
premises.

38.—(1) The lessee of a premises who intends to make alterations to the premises in order to meet the requirements of this Act for accessibility to and usability by persons with disabilities, shall, before making such alterations—

- (a) submit a written request in the prescribed manner to the lessor of the premises; and
- (b) receive the written consent of the lessor.

(2) The lessor, who receives a written request pursuant to subsection (1)(a), shall communicate his consent to or refusal thereof in writing, within thirty days of receipt.

(3) The lessor who receives a written request under subsection (1), shall not unreasonably withhold such consent.

(4) Where consent is refused under subsection (2) or unreasonably withheld under subsection (3), the lessee may make a complaint to the Tribunal.

(5) Nothing in this section shall be construed as limiting the obligations imposed under section 36.

Discrimina-
tion in
relation to
premises.

39.—(1) A person authorized (whether as the owner, agent or otherwise) to sell, lease or otherwise dispose of premises, shall not knowingly discriminate against a person with a disability—

- (a) in the terms and conditions on which an offer is made to dispose of the premises;
- (b) by refusing to dispose of the premises;

(c) in any other manner in relation to the disposal of the premises on account of that person's disability.

(2) A person managing a premises or a facility on a premises, shall not discriminate against a person with a disability—

- (a) in the way he permits the person to make use of any benefit or facility on the premises;
- (b) by refusing or deliberately omitting to permit the person to make use of any benefit or facility on the premises;
- (c) by evicting the person on the basis of his disability;
- (d) by subjecting the person to any detriment with respect to the premises; or
- (e) by refusing on the basis of the person's disability, to lease the premises to the person.

(3) Where a person's consent is required for the disposal of tenanted premises, that person shall not discriminate against a person with a disability, by withholding consent for the disposal of the premises.

PART X—Public Passenger Vehicles

40.—(1) The Minister with responsibility for public passenger vehicles shall ensure as far as is practicable, the provision of public passenger vehicles that are accessible to and usable by persons with a disability.

Public passenger vehicles.

(2) In this section “public passenger vehicles” includes any motor vehicle or any other conveyance for transport by road, rail, air or water that provides the general public with a general or special transportation service on a regular or continuing basis.

PART XI—Miscellaneous

41.—(1) Subject to subsection (2), this Act shall not be construed as prohibiting or restricting a person from offering to a person on specified terms and conditions—

Exemptions to terms and conditions of insurance, superannuation, etc.

- (a) an annuity;
- (b) health insurance;
- (c) life insurance;

- (d) ~~insurance~~ against accident or any other type of insurance;
- (e) membership in a superannuation or provident fund; or
- (f) membership in a retirement or provident scheme.

(2) The specified terms and conditions referred to in subsection (1), shall be such as are based upon actuarial or statistical data received from the Statistical Institute of Jamaica or from another reputable source, whether within or outside of Jamaica, on which it is reasonable to rely having regard to the subject matter of the data and other relevant factors.

Service of documents.

42. Any document which may be, or is, required by, or under, this Act to be served on or given to any person shall be deemed to be so served or given if it is delivered by hand or transmitted by such means as may be prescribed to that person or sent to him by registered post to his last known place of business or abode or, in the case of any body or association of persons, if it is delivered or sent to that body or association by such means as may be prescribed or by registered post to that body or association at its registered or principal office.

Limitation of disproportionate or undue burden.

43. Where a person is able to demonstrate to the satisfaction of any court or tribunal that the provision of services to or in relation to a person with a disability (which, but for the provisions of this section, would be required under this Act) would constitute a disproportionate or undue burden, the Government shall facilitate as far as is practicable, the needs of the person with a disability.

Offences.

44. A person who—

- (a) assaults or obstructs an authorized person acting in the performance of his lawful functions under this Act; or
- (b) knowingly gives false or misleading information to the Council or any authorized person acting in the performance of his functions pursuant to this Act,

commits an offence and is liable on summary conviction before a Resident Magistrate, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

45.—(1) A body corporate that commits an offence against this Act is liable on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars.

Offences by bodies corporate.

(2) Every director, manager, secretary or other similar officer concerned with the offence is liable on summary conviction before a Resident Magistrate, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) A director, manager, secretary or other similar officer concerned with the management of a body corporate, shall not be liable for an offence against this Act unless the court is satisfied that the offence was committed with his consent or connivance.

46.—(1) The Minister may make regulations for the purpose of giving effect to the provisions of this Act. Regulations.

(2) Notwithstanding section 29 of the *Interpretation Act*, regulations made under subsection (1) may provide for the imposition of penalties on summary conviction before a Resident Magistrate of a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or of both such fine and imprisonment.

(3) Regulations made under this Act shall be subject to affirmative resolution.

47. The Minister may, by order subject to affirmative resolution, vary any monetary penalty prescribed in this Act. Minister may vary penalty.

48. This Act shall be reviewed by a joint select committee of both Houses of Parliament established for that purpose no later than three years after the appointed day. Review of Act after three years.

49. This Act binds the Crown. Act binds the Crown.

Transitional

50.—(1) In relation to any premises in existence or under construction immediately before the appointed day, during the period specified in subsection (2), no action shall lie against the owner, occupier or operator of the premises for any breach of the provisions of this Act. Existing premises.

(1) The period referred to in subsection (1) is the period commencing with the appointed day and—

- (a) ending twenty-four months from the appointed day; or
- (b) ending with the date of completion of the construction of the premises,

whichever is earlier.

Amendment
to the Legal
Aid Act.

51. The *Legal Aid Act* is amended by inserting next after section 17, the following as section 17A—

“Legal aid
assistance
for persons
with
disabilities.

17A. A person with a disability who intends to enforce an award of the Disabilities Rights Tribunal under the Disabilities Act, shall be entitled to legal aid.”.

FIRST SCHEDULE

(Section 5(2))

*The Jamaica Council for Persons
with Disabilities*

PART A

General

1.—(1) The seal of the Council shall be authenticated by the signatures of the chairman or a member of the Board authorized to act in that behalf and an officer of the Council so authorized.

Authentica-
tion of seal
and
documents.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Council may be signified under the hand of the chairman or any member of the Board authorized to act in that behalf or an officer of the Council so authorized.

PART B

Administration and Finance

2.—(1) The Council shall appoint and employ, at such remuneration and on such terms and conditions as it thinks fit, an Executive Director, a Secretary, and such other officers and employees as the Council deems necessary for the proper carrying out of its functions:

Appointment
of officers and
other
employees.

Provided that—

- (a) no salary in excess of the prescribed rate shall be assigned to any post without the prior approval of the Minister; and
- (b) no appointment shall be made to any post to which salary in excess of the prescribed rate is assigned without the prior approval of the Minister.

(2) For the purposes of sub-paragraph (1), the “prescribed rate” means such rate as the Minister with responsibility for the public service may, by order, prescribe.

(3) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any public officer in the service of the Government to any office within the Council, and any public officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance and in relation to any other rights as a public officer, be treated as continuing in the service of the Government.

pensions,
gratuities and
other retiring
benefits.

3. The Council may, with the approval of the Minister—

- (a) enter into arrangements respecting schemes, whether by way of insurance policies or otherwise; and
- (b) make regulations,

for medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits, relating to employees of the Council and such arrangements or regulations may include provisions for the grant of benefits to the dependants and the legal personal representatives of such employees.

Funds and
resources of
Council.

4.—(1) The funds and resources of the Council shall consist of—

- (a) such sums as may, from time to time, be placed at the disposal of the Council by Parliament;
- (b) all other sums and other property which may, in any manner, become payable to or vested in the Council in respect of any matter incidental to its functions.

(2) The expenses of the Council, including the remuneration of members and employees, shall be paid out of the funds of the Council.

(3) The funds of the Council, except so far as they may be invested or utilized pursuant to this Act, shall be held in a commercial bank that the Council is satisfied is duly licensed to operate in Jamaica.

Accounts and
audit.

5.—(1) The Council shall keep proper accounts and other records in relation to its functions and shall prepare annually a statement of accounts in a form satisfactory to the Minister and conforming to established accounting principles.

(2) The accounts of the Council shall be audited annually by an auditor appointed in each year by the Council with the approval of the Minister.

(3) The Auditor-General shall be entitled at all times to examine the accounts of the Council.

Annual
reports.

6.—(1) The Council shall, within four months after the end of each financial year or within such longer period as the Minister may in special circumstances approve, cause to be made and transmit to the Minister a report dealing generally with the activities of the Council during the preceding financial year.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditor's report thereon to be laid in the House of Representatives and the Senate.

7.—(1) The Council shall, in each financial year, before a date specified by the Minister, submit to the Minister for his approval—
Estimates and operating plan.

- (a) estimates of income and expenditure for the ensuing financial year; and
- (b) an operating plan for that year as to projects to be promoted or sponsored, or both, by the Council, the operational framework within which the Council shall carry out its functions, and such other matters as the Minister may require.

8. The Council shall furnish the Minister with such returns, *Returns, etc.* accounts and other information as he may require with respect to the activities of the Council, and shall afford him facilities for verifying such information in such manner and at such times as he may reasonably require.

SECOND SCHEDULE (Section 5(2))

The Board of Management of the Council

1.—(1) The Board shall consist of such members, not being less than seventeen, as the Minister may, from time to time, appoint and who appear to the Minister to have ability and experience in matters relating to persons with disabilities. *Constitution of the Board.*

(2) A majority of the members of the Board shall be persons who are members or representatives of each of the following groups of persons with disabilities, namely—

- (a) the Deaf;
- (b) the blind and visually impaired;
- (c) the physically disabled; and
- (d) the intellectually disabled community.

2.—(1) The Minister shall appoint a chairman and a deputy chairman from among the members of the Board. *Chairman and deputy chairman.*

(2) In the case of the absence or inability of the chairman to act, the deputy chairman shall exercise the functions of the chairman.

(3) ~~In the case of the absence or inability to act at any meeting of both the chairman and the deputy chairman, the remaining members shall elect one of their number to act as chairman of that meeting.~~

meeting of both the chairman and the deputy chairman, the remaining members shall elect one of their number to act as chairman of that meeting.

Term of office. 3. Subject to the provisions of this Schedule, a member of the Board shall hold office for a period not exceeding three years and each such member shall be eligible for re-appointment.

Acting appointments. 4. The Minister may appoint any person to act in the place of any member of the Board in the case of the absence or inability to act of such member.

Resignation. 5.—(1) Any member of the Board other than the chairman may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument, such member shall cease to be a member of the Board.

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

Revocation of appointments. 6. The Minister may, at any time, revoke the appointment of any member if he considers it expedient to do so by reason of that member's—

- (a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);
- (b) absence without leave as provided under paragraph 8;
- (c) failure to discharge the functions of his office in a competent manner; or
- (d) misbehaviour.

Gazetting of appointments. 7. The names of all members of the Board as first constituted and every change in membership thereof shall be published in the *Gazette*.

8.—(1) The Minister may, on the application of any member of the Board, grant leave of absence to such member. Leave of absence.

(2) The appointment of a member shall be regarded as terminated if, without the grant of leave of absence, that member is absent from three consecutive meetings of the Board.

9.—(1) The Board shall meet at such times as may be necessary or expedient for the transaction of business (but at least six meetings shall be held within each financial year) and such meetings shall be held at such places and times and on such days as the Board shall determine. Procedure and meetings.

(2) The chairman shall, at any time, call a special meeting of the Board to be held within seven days of a written request for the purpose addressed to him by any three members of the Board.

(3) The quorum of the Board shall be seven persons at least two of whom shall be persons referred to under paragraph 1(2).

(4) The decisions of the Board shall be by a majority of votes and, in addition to an original vote, the chairman, deputy chairman or other member acting as chairman at the meeting shall have a casting vote in any case in which the voting is equal.

(5) Minutes of each meeting of the Board shall be kept in proper form.

(6) Subject to the provisions of this Schedule the Board may regulate its own proceedings.

10. A member of the Board who is directly or indirectly interested in any matter which is being dealt with by the Board shall— Disclosure of interest.

- (a) disclose the nature of his interest at a meeting of the Board; and
- (b) not take part in any deliberation or decision of the Board with respect to that matter.

11.—(1) The Board may appoint such committees as it thinks fit, consisting wholly or partly of members of the Board and may delegate to such committees, responsibilities of the Board's functions as it thinks fit. Appointment of committees.

(2) A delegation under sub-paragraph (1), shall not prevent the exercise by the Board of any function so delegated.

REQUERIMENT

tion of
members.

Protection of office.

12. There shall be paid to the Chairman and each member of the Board such remuneration, if any, (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

Protection of members of Board.

14.—(1) No member of the Board shall in the course of the operation of the Board, be personally liable for any act or default of his done or omitted to be done in good faith.

Office of
member not
public office.

15. The office of a member of the Board shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

THIRD SCHEDULE (Sections 15(2),
(3), (4) and (6))

Disabilities Rights Tribunal

PART A

Constitution of the Tribunal.

1.—(1) The Tribunal shall consist of—

- (a) a chairman and a deputy chairman, appointed by the Minister after consultation with stakeholders, each of whom shall be an attorney-at-law with at least seven years experience as such; and
- (b) not less than two other members appointed by the Minister—
 - (i) from a panel supplied to him by organizations who appear to the Minister to represent the disabled

community and which members appear to the Minister to have sufficient knowledge of disability issues; and

- (ii) at least one such member being a person with knowledge or experience in any one or more of the following fields—
 - (A) quantity surveying;
 - (B) building or construction;
 - (C) economics;
 - (D) finance;
 - (E) accounting;
 - (F) human resource management.

(2) Where it appears to the Minister that the Tribunal requires assistance due to a temporary increase in workload, the Minister may appoint, such additional deputy chairmen and members for such period, as he thinks necessary for the purpose of dealing with the temporary increase in the work of the Tribunal, which shall be appointed in the manner provided under sub-paragraph (1).

(3) Members of the Tribunal appointed under this paragraph shall be appointed by the Minister by instrument in writing.

(4) Subject to the provisions of this Schedule the members of the Tribunal referred to in sub-paragraph (1)(a) shall hold office for such period as the Minister may determine, not exceeding five years, and such members shall be eligible for reappointment.

2. Subject to the provisions of this Act, the Tribunal may regulate its own procedure and proceedings as it thinks fit.

The Tribunal may regulate its procedure and proceedings.

3.—(1) If the chairman of the Tribunal is absent or unable to act, the Minister shall appoint a member of the Tribunal to exercise the functions of the chairman.

Acting appointment.

(?) ~~If any other member of the Tribunal is absent or~~

unable to act, the Minister may appoint a person to act temporarily in the place of that member.

Resignation.

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

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

Member shall recuse himself.

5. A member shall recuse himself from a proceeding where he becomes aware of a conflicting interest by his participation in the proceeding.

Revocation of appointments.

6.—(1) Subject to sub-paragraph (2) the Minister may, at any time, revoke the appointment of any member of the Tribunal.

(2) The Minister may revoke the appointment of a member of a Tribunal where the member—

- (a) has failed to discharge his functions competently;
- (b) has committed an act of misconduct involving dishonesty or moral turpitude;
- (c) is unable to act due to physical or mental disability;
- (d) has a conflict of interest in any matter before the Tribunal; or
- (e) is absent without due approval for three consecutive meetings of the Tribunal.

Filling of vacancies.

7. If any vacancy occurs in the membership of the Tribunal such vacancy shall be filled by the appointment of another member in the manner in which, and from the category of persons from which, the previous member was appointed, and the member so appointed shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.

Gazetting of appointments.

8. The names of all members of the Tribunal as first constituted, and every change in the membership thereof, including the appointment of special members, shall be published in the *Gazette*.

9. The Minister shall make such arrangements in relation to the provision and remuneration of employees of the Tribunal as may, from time to time, be necessary.

Employees of Tribunal.

10.—(1) There shall be paid to the members of the Tribunal such remuneration (whether by way of honorarium, salary or fees) and such allowances, as the Minister may determine.

Remuneration and protection of members of Tribunal.

(2) No action, suit or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of any act done *bona fide* in the course of the operations of the Tribunal.

PART B

Proceedings Before Tribunal

11.—(1) The Tribunal shall have power in relation to any function given to it under this Act to—

Powers of the Tribunal.

- (a) summon any person to attend before the Tribunal and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person;
- (b) administer oaths to or take the affirmation of any witness appearing before them.

(2) A summons under this section—

- (a) shall be in the form prescribed in the appendix to this Schedule;
- (b) may be served either personally or by registered post.

12.—(1) Any party to a complaint referred to the Tribunal for settlement, may appear in person before the Tribunal and may be represented—

Appearance before the Tribunal.

- (a) by an attorney-at-law;
- (b) if the party is a corporation, by an officer of the corporation; or
- (c) by any other person whom he wishes to represent him.



The Attorney-General or his representative shall be entitled to appear before the Tribunal whenever he considers it expedient in the public interest to do so.

Tribunal may sit in private.

13.—(1) The Tribunal may sit in private for the purpose of hearing evidence if, in the opinion of the Tribunal the justice of the case so requires.

(2) No evidence given before the Tribunal at a hearing held in private in accordance with the provisions of sub-paragraph (1), shall be disclosed to any person except with the consent of the Tribunal.

(3) Any person who discloses any evidence in contravention of sub-paragraph (2), shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or six months imprisonment or to both such fine and imprisonment.

Duty and privileges of witnesses.

14.—(1) Any person summoned to attend and give evidence or to produce any paper, book, record or document before the Tribunal—

- (a) shall be bound to obey the summons served upon him;**
- (b) shall be entitled, in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or document, to the same rights and privileges as he would have before a court;**
- (c) shall, subject to sub-paragraph (2), be entitled to be paid, from public funds, his expenses, including travelling expenses, at the rates prescribed by the *Witnesses Expenses Act* for witnesses who are entitled to have their expenses paid from public funds.**

(2) The Tribunal may, in any case, disallow the whole or any part of any expenses referred to in sub-paragraph (1)(c) if it thinks fit.

(3) Any person who—

- (a) without sufficient cause, fails or refuses to attend before the Tribunal in obedience to a summons under this Act, or fails or refuses to produce any paper, book, record or document which he is required by such summons to produce;**

- (b) being a witness in attendance before the Tribunal, leaves the Tribunal without the permission of such Tribunal;
- (c) being a witness before the Tribunal, refuses, without sufficient cause, to answer any question put to him by or with the permission of such Tribunal; or
- (d) willfully obstructs or interrupts the proceedings of the Tribunal,

commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or a term of imprisonment not exceeding six months or to both such fine and imprisonment.

15.—(1) Subject to the provisions of sub-paragraph (2), the Tribunal shall, in respect of any complaint referred to it, make its award within sixty days after that complaint was so referred, or if it is impracticable to make the award within that period, the time for making the award may be extended in accordance with sub-paragraph (2), and notice of the extension shall be given forthwith to each of the parties and to the Minister.

Awards of the Tribunal.

(2) The period of sixty days specified in sub-paragraph (1) may be extended by the Tribunal for such further period as the Tribunal may, with the agreement of the parties determine.

(3) The Tribunal shall state in writing the reasons for the award.

(4) An award in respect of any complaint referred to the Tribunal for settlement—

- (a) may be made with retrospective effect from such date, not being earlier than the date on which that matter complained of first arose, as the Tribunal may determine;
- (b) shall specify the date from which it shall have effect;
- (c) shall be, in relation to an award of compensation, reasonable and proportionate in the circumstances of the case;
- (d) shall be final and conclusive and no proceedings shall be brought in any court to impeach the validity thereof, except on a point of law.

(5) In all legal and other proceedings relating to any award, requirement or decision of the Tribunal any document—

- (a) purporting to be a copy of such award, requirement or decision; and
- (b) having endorsed thereon a certificate signed by the chairman of the panel to the effect that such document is a true copy of such award, requirement or decision, as the case may be,

shall be received as *prima facie* evidence without proof being given that—

- (i) the signature to such certificate is that of the chairman of the Tribunal;
- (ii) the Tribunal was entitled to make such award, requirement or decision; or
- (iii) such award, requirement or decision was properly made.

(6) The Tribunal shall award costs that it is satisfied are just and equitable in the circumstances of the case.

Interpretation of award.

16.—(1) If any question arises as to the interpretation of any award of the Tribunal the Minister or any other person to whom the award relates may, apply to the chairman of the Tribunal for an interpretation on such question, and the Tribunal shall decide the matter and give its decision in writing to the Minister and to the persons who applied for the decision.

(2) Any party to the complaint to whom the award relates, shall be entitled to be heard by the Tribunal before its decision is given under paragraph (2).

Enforcement of awards.

17.—(1) If the Court is satisfied on an application by the Tribunal that any person—

- (a) has contravened any of the obligations or prohibition imposed in the order or award;

(b) has failed to comply with any direction of the Tribunal,

the Court may exercise any of the provisions referred to in subparagraph (2).

(2) Pursuant to sub-paragraph (1) the Court may—

(a) order the offending person to pay to the applicant such penalty not exceeding—
(i) one million dollars, in the case of an individual; and
(ii) five million dollars, in the case of a person other than an individual;

(b) grant an injunction restraining the offending person from carrying the conduct in relation to the complaint, made under section 16(2).

(3) In exercising its powers under this paragraph, the Court shall have regard to—

(a) the nature and extent of the default;
(b) the nature and extent of any loss suffered by any person as a result of the default;
(c) the circumstances of the default;
(d) any previous determination against the offending person.

(4) The standard of proof proceeding under this paragraph shall be the standard of proof applicable in civil proceedings.

18. An award of the Tribunal shall be binding on the parties.

Awards by
Tribunal shall
be binding.

19. Any reference in this Schedule to an award of the Tribunal includes a reference to an order or declaration made by the Tribunal.

Meaning of
references to
“award”.

APPENDIX (Paragraph 11(2)(a))*Summons to Witness***To:***(Name of person summoned and his calling and address, if known)*

You are hereby summoned to appear before the Disabilities
Rights Tribunal at _____
(place)

for the hearing of a complaint upon the _____ day of
_____, 20____ at _____ o'clock which has been
referred to the Tribunal.

(if the person summoned is to produce any documents, add):

And you are required to bring with you (*specify papers, books,
records and documents required*).

Therefore fail not at your peril.

Given under the hand of _____ chairman of the
Tribunal this _____ day of _____, 20____.

Passed in the House of Representatives this 22nd day of July, 2014 with ten (10)
amendments.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 10th day of October, 2014 with fourteen (14)
amendments.

FLOYD E. MORRIS
President.

On this 21st day of October, 2014 the House of Representatives agreed to the amendments by the Senate.

MICHAEL A. PEART
Speaker.

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

*sgd. H. E. Cooke
Clerk to the Houses of Parliament.*

