

2024-12-09

### **OBJECTS AND REASONS**

This Bill would provide

- (a)* certain rights to persons with disabilities;
- (b)* for the promotion and protection of full equal enjoyment of rights;
- (c)* for the elimination of discrimination on the basis of disability;
- (d)* for the welfare and rehabilitation of persons with disabilities; and
- (e)* for related matters.

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*Disability Rights Tribunal*



## **BARBADOS**

A Bill entitled

An Act to provide certain rights to persons living with disabilities, for the promotion and protection of full equal enjoyment of rights, for the elimination of discrimination on the basis of disability, for the welfare and rehabilitation of persons with disabilities and to provide for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Rights of Persons with Disabilities Act, 2024*.

**Interpretation**

2. In this Act,

“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 such benefits;
- (c) communication, the capacity to receive and make use of information;

“alternative dispute resolution” means the resolution of a dispute by means of negotiation, conciliation, facilitation, mediation or arbitration;

“assessment” means an evaluation, undertaken by a designated state agency, institution or person suitably qualified to conduct assessments to be used to determine the nature and extent of a person’s physical, mental, intellectual, developmental or sensory impairment;

“assistive or adaptive devices and services” means implements, tools and specialized services, including the services of qualified technicians and tutors for persons with learning disabilities, interpreters for persons with hearing impairments and qualified teachers for persons with visual impairments, provided to persons with disabilities to assist them in education, employment or activities of daily living;

“Barbados National Building Code” means the Building Code issued as Standard BNS SPI: Parts 1–18: 2013, and declared as a voluntary standard by the Barbados National Standards Institute on 5<sup>th</sup> September, 2013;

“child” means a person under the age of 18;

“care giver” means any person who provides assistance, care and support to a person with disabilities;

“communication” includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain language, human reader and augmentative and alternative modes, means and format of communication including accessible information and communication technology;

“Court” means the High Court of Barbados;

“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 all human rights and fundamental freedoms rights, privileges, interests, benefits and treatment in the political, social, cultural, civil, religious, educational or any other field, and includes all forms of discrimination including all forms of discrimination including denial of reasonable accommodation;

“disability” means any sensory, physical or developmental condition, or any mental and intellectual disability certified by a registered medical practitioner;

“disproportionate or undue burden” includes consideration of

- (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 the person claiming reasonable accommodation;

- (c) the financial circumstances of the person concerned who is claiming disproportionate or undue burden; and
- (d) the estimated amount of expenditure or other allocation of resources required by the person concerned who is claiming disproportionate or undue burden and whether it has been reasonably proportionate to the benefit likely to accrue;

“economic abuse” includes

- (a) the deprivation or threatened deprivation of any or all economic or financial resources to which the person with a disability is entitled under the law or requires out of necessity, including household necessities and mortgage bond repayments of the shared household; or
- (b) the disposal or threatened disposal of household effects or other property in which the person with a disability has an interest;

“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;

“emotional, verbal and psychological abuse” means degrading or humiliating conduct by a person to a person with a disability and includes

- (a) repeated insults, ridicule or name calling; or
- (b) repeated threats to cause emotional pain;

“Social Empowerment Agency” or “Agency” means the Agency established under the *Social Empowerment Agency Act, 2024* (Act 2024- );

“Fund” means the National Development Fund for Persons with Disabilities established under section 80;

“language” includes spoken and sign language and other forms of non spoken languages;

“main stream school” means a school other than special needs schools or special units which teach students a wide range of abilities;

“Minister” means the Minister with responsibility for disabilities;

“National Advisory Committee” means the Committee established under the *Social Empowerment Agency Act, 2024* (Act 2024- );

“organizations for persons with disabilities” means associations or societies led, directed or governed by persons with disabilities and formed for the purpose of rendering services to persons with disabilities or advocating on the rights of persons with disabilities;

“person with a disability” includes a person with an impairment, including physical, mental, intellectual, developmental or sensory impairments, which in interaction with various barriers may hinder full and effective participation in society on an equal basis with others;

“physical abuse” means any act of assault on a person with a disability;

“public building” means a building which is owned or operated by the State which is used and accessed by the public;

“public facility” means a facility which is owned or operated by a private individual which is used and accessed by the public;

“reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms, 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 received materials available to a person with a disability;

(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; and

(e) changes to the configuration of physical premises;

“sexual abuse” means any sexual conduct that violates the sexual integrity of a person with a disability;

“transportation” means transportation by air, land, water or sea that provides the public with general or a special service;

“Tribunal” means the Disability Rights Tribunal established under section 13;

“qualified person with a disability” means a person with a disability who, with or without reasonable accommodation, can in open employment perform the essential functions of the employment position that the person holds;

“UNCRPD” means United Nations Conventions on the Rights of Persons with Disabilities; and

“universal design” means the design of products, environments, programmes and services to be usable by all people to the greatest extent possible without the need for adaptation or specialized design.

### **Act binds the State**

3. This Act binds the State.

### **Guiding principles**

4. The Court or a person performing any function pursuant to the provisions of this Act shall be guided by the following:

(a) the protection of the rights of persons with disabilities;

(b) the empowerment of persons with disabilities;

(c) the provision for persons with disabilities in need of care and support;

(d) the promotion of the welfare of persons with disabilities;



- (e) the protection of persons with disabilities from abuse, neglect and discrimination;
- (f) compliance with the following:
  - (i) the United Nations Convention on the Rights of Persons with Disabilities;
  - (ii) the Universal Declaration of Human Rights; and
  - (iii) all other international instruments to which Barbados is a party with special regard to those which afford a person with a disability the protection, assistance and support to allow him to assume his full and equal enjoyment of rights to allow him to live a fulfilling life.

## PART II

### ADMINISTRATION

#### **Social Empowerment Agency**

5.(1) The Social Empowerment Agency shall be responsible for the administration of this Act.

(2) Notwithstanding the generality of subsection (1) the functions of the Social Empowerment Agency are

- (a) to assist in the formulation and development of measures and policies designed to
  - (i) co-operate with the government during the census of any data collection surveys to ensure that accurate figures of persons with disabilities are obtained in the country for the purposes of planning;

- (ii) advise the Minister on the provisions of any international treaty or agreement relating to the care and rehabilitation and habilitation of persons with disabilities and its benefits to the country;
  - (iii) recommend measures to prevent discrimination against persons with disabilities;
  - (iv) put into operation schemes and projects for self-employment or regular employment for the generation of income by persons with disabilities;
- (b) to provide to the maximum extent possible,
- (i) recommendations to facilitate the appropriate adaptations and modifications to motor vehicles driven by persons with disabilities or used to transport persons with disabilities;
  - (iii) recommendations to facilitate qualified driving instructors to train and test persons with disabilities so that they can acquire a driving licence;
- (c) to formulate a national plan of action that ensures that services are provided to all persons with disabilities;
- (d) to formulate an action plan to be approved by the Cabinet for the provision of rehabilitation and support services to persons with disabilities;
- (e) to consult with the Government in the formulation of suitable curricula for vocational rehabilitation and habilitation centres and other training facilities for persons with disabilities;
- (f) to consult with the Government to ensure the provision of suitable and affordable housing and shelter for persons with disabilities and the adoption of the principles of universal design in the provision of supplies and services;

- (g) to consult with the Government to ensure the provision of suitable transportation for persons with disabilities;
- (h) to periodically review any national policies to ensure that the standard of services offered to persons with disabilities are up to date, relevant and in keeping with international requirements;
- (i) to maintain a confidential Register containing the particulars of persons with disabilities;
- (j) to promote research and development of universally designed goods, services, equipment and facilities which require the minimum adaptation and the least cost to meet the specific needs of a person with disabilities;
- (k) to promote the availability and use of new technologies, mobility aids, devices and assistive technology suitable for persons with disabilities;
- (l) to operate as a forum at which all funding applications for disability projects by non-governmental organisations can be discussed and recommendations made to the Minister;
- (m) to establish and maintain a register of projects designed to assist persons with disabilities;
- (n) to approve programmes developed for the training of persons involved in the care, training, education and rehabilitation of persons with disabilities;
- (o) to monitor programmes and services designed for persons with disabilities;
- (p) to monitor institutions' compliance with the provisions of this Act;
- (q) to perform such other functions as may be assigned by it to the Social Empowerment Agency under this or any other enactment;
- (r) to review this legislation from time to time and make necessary recommendations to the Minister;

- (s) to advise the Minister on all matters relating to persons with disabilities; and
  - (t) to generally carry out measures for public information on the rights of persons with disabilities and the provisions of this Act.
- (3) Notwithstanding subsection (2), the Social Empowerment Agency may, for any purpose connected to the performance of its functions,
- (a) organize conferences, support initiatives and establish informal networks to promote the development of persons with disabilities; and
  - (b) impose charges for the facilities or services made available by it for any purpose; and
  - (c) provide grants to assist organisations providing services and advocating for the rights of persons with disabilities.

### **Complaints**

6.(1) Without prejudice to the generality of section 7, the Social Empowerment Agency shall receive and investigate complaints that a person, association or entity is not acting in compliance with a requirement of this Act from

- (a) a person with a disability;
  - (b) a care giver having legal custody of a person with a disability;
  - (c) a medical practitioner of a child with a disability;
  - (d) a health care worker;
  - (e) a police officer, a probation officer or a social worker; or
  - (f) any other person, who has a material interest in the well-being of a person with a disability.
- (2) Notwithstanding subsection (1), nothing shall prevent the Social Empowerment Agency from receiving an anonymous complaint or pursuing an investigation based on such complaint.

(3) Every member of the Social Empowerment Agency shall be bound by the principle of confidentiality in their handling of complaints made, unless the situation warrants the disclosure, on a need to know basis, of information received.

(4) The operation of subsection (3) is without prejudice to the right of a person with disabilities to consent to the release of their personal data for legitimate purposes.

### **Investigation**

7.(1) The Social Empowerment Agency may, initiate investigations regarding alleged breaches of this Act on its own initiative.

(2) Where the Social Empowerment Agency investigates under subsection (1), it shall only forward such complaints to the Tribunal, where the Agency considers that there is a need for the Tribunal's deliberation and decision regarding that complaint.

(3) No complaint shall be forwarded under subsection (2), where the Social Empowerment Agency

- (a) concludes that the acts or omissions do not contravene this Act or regulations made under this Act;
- (b) reasonably believes that the complaint was filed in bad faith or for improper motives; or
- (c) determines that the contravention alleged in the complaint has occurred more than 6 months before the complaint was filed, unless the Social Empowerment Agency considers otherwise.

(4) In the case of a complaint which is not forwarded to the Tribunal, the Social Empowerment Agency shall inform the parties in writing of the decision and the reasons for the decision.

(5) The Social Empowerment Agency may at any time terminate or suspend, as the case may require, the conduct of a formal investigation.

(6) A formal investigation that is conducted by the Social Empowerment Agency, may be terminated or suspended by a majority vote of the Social Empowerment Agency.

(7) No action or other proceeding for damages shall be instituted against the Social Empowerment Agency or any employee or agent of the Social Empowerment Agency for any act done in good faith in the performance of a duty or in the exercise of a power under this Act.

(8) The operation of this section is without prejudice to the Social Empowerment Agency's right to refer a case involving serious physical or sexual abuse or exploitation to the police for investigation under the provisions of any other enactment.

#### **Alternative dispute resolution**

8. The Social Empowerment Agency may, with respect to a complaint made under this Act, with the consent of the parties named in the complaint, refer the complaint for alternative dispute resolution.

#### **Assistance with complaints**

9.(1) The Social Empowerment Agency may provide assistance to an aggrieved person to make a complaint under this Act where the Social Empowerment Agency is of the view that there is a breach of this Act against the aggrieved person.

(2) Assistance under this section does not include the provision of legal representation.

#### **Assistance with High Court proceedings**

10.(1) This section applies to High 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 Social Empowerment Agency for assistance in relation to any proceedings to which this section applies,

the Social Empowerment Agency may grant the assistance on any of the following grounds:

- (a) that it is unreasonable to expect the applicant to deal with the case unaided; or
  - (b) that there is some other special consideration which makes it appropriate for the Social Empowerment Agency to provide assistance.
- (3) Where the Social Empowerment Agency grants the assistance, it may
- (a) arrange for the provision of legal advice;
  - (b) arrange for legal or other representation;
  - (c) seek to procure the settlement of the dispute; or
  - (d) provide or arrange for the provision of any other legal assistance which it thinks to be appropriate.

### **Registration**

- 11.(1) A person with a disability may register with the Social Empowerment Agency with respect of their disability.
- (2) All organizations of or for persons with disabilities shall register with the Social Empowerment Agency.
- (3) The Social Empowerment Agency shall determine the form and manner of registration.
- (4) The register may be viewed by persons authorized by the Social Empowerment Agency.
- (5) The register of organizations of persons with disabilities shall be made available to the public.

### **Giving false information to get registered**

- 12.(1) A person is guilty of an offence if he knowingly gives false information to the Social Empowerment Agency for the purpose of being

registered or for the purpose of acquiring any privilege due to persons so registered.

(2) A person who contravenes subsection (1) shall be liable on summary conviction to a fine of \$1 000.

### PART III

#### DISABILITY RIGHTS TRIBUNAL

##### **Establishment of the Tribunal**

13.(1) The Barbados Disability Rights Tribunal is hereby established.

(2) The Constitution of the Tribunal is set out in the *Schedule*.

##### **Membership**

14.(1) The Tribunal shall comprise of 3 members.

(2) The Tribunal shall consist of the following members to be appointed by the Minister after consultation with the Social Empowerment Agency

- (a) a chairperson who shall be an Attorney-at-law with at least 7 years' standing who has expertise in disability matters and or human rights matters;
- (b) a deputy chairperson who shall have expertise in social protection issues; and
- (c) one other member, who shall be a person with disabilities or represent an organisation for persons with disabilities.

(3) The chairperson shall preside over the Tribunal's proceedings and where the chairperson is not present, the deputy chairperson shall preside.

(4) Where any of the 3 members of the Tribunal dies or is incapacitated, or ceases to be a member thereof for any other reason after the panel begins to deal



with the complaint in relation to which it is constituted, but before it has made its award, another person shall be selected by the Minister after consultation with the Social Empowerment Agency and thereafter the proceedings of the Tribunal shall begin anew, unless all the parties to the dispute agree in writing that those proceedings may be continued as if they had not been interrupted by reason of such death or incapacity or cessation.

#### **Appearance before the Tribunal**

**15.** A party to a complaint referred to the Tribunal may either appear in person before the Tribunal or be represented by

- (a) an attorney-at-law;
- (b) an officer of the corporation if the party is a corporation;
- (c) a representative of an organization of persons with disabilities; or
- (d) any other person who the party wishes to represent him with the permission of the Tribunal.

#### **Non-attendance of party at hearing**

**16.** 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.

#### **Powers of Tribunal**

**17.(1)** After considering a complaint referred to it under section 6, 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 it considers just and equitable, namely

- (a) hold enquiries;
- (b) summon and examine witnesses;

- (c) compel the production of such books, records, papers and documents as it may deem necessary or proper for any proceeding or hearing held by it;
- (d) examine the documents produced;
- (e) require that any document submitted be verified by affidavit;
- (f) adjourn proceedings;
- (g) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the complaint relates; or
- (h) 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) that the respondent take or refrain from taking, within a specified period, such action as appears to the Tribunal to be reasonable and proportionate in all circumstances of the case for the purpose of obviating or reducing the adverse effects on the complainant of any matter to which the complaint relates.

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

#### **Admissibility of evidence**

18.(1) During any proceeding of the Tribunal, the Tribunal shall be bound to follow the rules of evidence stipulated in the *Evidence Act*, Cap. 121, but may inform itself on any matter in such manner as it thinks fit and may take into account opinion evidence and such facts as it considers relevant.

(2) Notwithstanding the generality of subsection (1), the parties to the proceedings shall be given the opportunity to give evidence.

- (3) The Chairperson to the Tribunal may summon a witness to attend a hearing at a specified place and time stipulated therein, and that person shall be bound to obey the summons which is served upon him.
- (4) A summons issued may be served either personally or by registered post.
- (5) The Tribunal may allow a witness to present evidence in camera.
- (6) The Tribunal may request a person to produce relevant documents which the Tribunal has reasonable grounds to believe can assist in determining the validity of a complaint before it.
- (7) A person who fails to comply with a decision of the Tribunal is guilty of an offence and is liable on conviction to a fine of \$10 000.

#### **Decision of Tribunal**

- 19.(1) The decision of the Tribunal shall be a majority vote.
- (2) The decision of the Tribunal is binding on the parties to the proceedings and may be enforced in the High Court.
- (3) The Tribunal shall make a decision within 60 days after a complaint has been heard by it.
- (4) Notwithstanding subsection (3), where it is impracticable to make a decision within the period referred to in subsection (3), the period of 60 days may be extended to a further period not exceeding 30 days.
- (5) A decision of the Tribunal shall be in writing and shall state the reasons for its decision.
- (6) The Tribunal shall furnish each party to the complaint with a copy of the decision.
- (7) The Tribunal may make any of the following decisions after consideration of a complaint:
  - (a) dismiss the complaint;

- (b) find in favour of the complainant and issue an order for the respondent to perform a reasonable action within a specified period of time by the party against whom the complaint was made for the benefit of the complainant;
  - (c) award compensation if appropriate to the complainant;
  - (d) recommend that the parties settle the matter by an alternative method of dispute resolution; or
  - (e) impose any further remedy which the Tribunal considers necessary.
- (8) Where the Tribunal makes a decision and awards compensation to the complainant, the decision in respect of the award of compensation
- (a) shall be binding on the parties;
  - (b) shall be reasonable and proportionate to the circumstance of the case;
  - (c) shall state the period from which the decision shall take effect;
  - (d) shall state the time period for the settlement of the compensation awarded;
  - (e) may be made with retrospective effect from a date as may be determined by the Tribunal but such a date shall not be earlier than the date on the which the complaint was filed; or
  - (f) may be appealed only for the reason and in the manner described in section 20.
- (9) Where an award for compensation under subsection 8(d) is granted, the Tribunal shall state the amount of compensation to be paid, the prescribed time for the settlement of the compensation and any interest that may accrue for failure to comply.

#### **Appeal of decisions of the Tribunal**

**20.(1)** Subject to subsection (2), a person who is aggrieved by the decision of the Tribunal may appeal the decision of the Tribunal to the High Court.

- (2) The grounds of the appeal shall state the following:
  - (a) the decision being appealed;
  - (b) facts found by the Tribunal; and
  - (c) the grounds of appeal, identifying and finding of fact and or law being challenged.
- (3) An appeal shall be made by filing a fixed date claim form with the grounds of appeal annexed to the form within 28 days of the date of notice of the decision of the Tribunal.
- (4) The appellant shall serve a copy of the notice of appeal to the Chairperson of the Tribunal.
- (5) The Chairperson of the Tribunal shall, after receiving a copy of the notice of appeal, prepare a report to the High Court which sets out
  - (a) the manner in which the hearing was conducted; and
  - (b) the reason or reasons for the decision.
- (6) After considering the grounds for the appeal and the report from the Chairperson, the Judge may
  - (a) confirm the decision of the Tribunal and dismiss the appeal; or
  - (b) overturn the decision of the Tribunal and make a decision.

## PART IV

### RIGHTS OF PERSONS WITH DISABILITIES

#### **Protection from Discrimination**

**21.(1)** A person with a disability is entitled to equal protection and equal benefits of the rights and freedoms under the *Constitution of Barbados*.

### **Protection from victimization**

22.(1) A person commits an act of victimization against a person with a disability where he treats the person less favourably in those circumstances than he would treat or treats other persons.

(2) A person with a disability is treated less favourable pursuant to subsection (1) where that person has

- (a) brought proceedings against the discriminator or any other person under this Act or any other relevant enactment;
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act or any other relevant enactment;
- (c) otherwise done anything under or by reference to this Act or other relevant in relation to the discriminator or any other person; or
- (d) alleged that the discriminator or any other person has committed an act which, whether or not the allegation so states, would amount to a contravention of this Act, or relevant enactment,

or by reason that the discriminator knows the person victimized intends to do any of those things referred to in paragraphs (a) to (d), or suspects the person victimized has done, or intends to do any of them.

(3) Subsections (1) and (2) does not apply to treatment of a person by reason of any allegation made by him, if the allegation was false and not made in good faith.

(4) A person who commits an act of victimization is liable to a fine not exceeding \$50 000.

### **Burden of proof**

23. A person alleging a violation of this Act shall bear the burden of presenting a *prima facie* case of discrimination or victimization under this Act,

and the burden of proof shall then shift to the respondent to disprove the allegations.

**Protection from exploitation, violence and abuse**

**24.(1)** A person with a disability shall not be subject to any form of

- (a) exploitation;
- (b) violence;
- (c) abuse, including
  - (i) economic abuse;
  - (ii) emotional, verbal and psychological abuse;
  - (iii) physical abuse;
  - (iv) sexual abuse; or
- (d) neglect.

(2) A person who commits an act under subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 5 years or to both.

(3) For the avoidance of doubt, subsection (2) is without prejudice to any other higher penalty prescribed under any other enactment for a serious case of exploitation, neglect, abuse or violence against a person with a disability.

**Right to sexual freedom**

**25.** Notwithstanding section 24, a person with a disability is entitled to exercise their sexual and reproductive rights.

**Void contracts**

**26.** Any contract for the provision of goods, facilities or services or any other agreement, shall be void insofar as it purports to deny any person of any

rights or privileges conferred under this Act or in any other way that limits the operation of this Act.

## PART V

### EDUCATION

#### **Right to education**

**27.(1)** A person with a disability shall have the right to a quality education on the basis of equal opportunity.

#### **Free primary and secondary education, trained teachers**

**28.(1)** The Minister responsible for Education in collaboration with the Social Empowerment Agency shall formulate and implement the National Education Programme to ensure that

- (a) training programmes for teachers specialising in disabilities are developed and implemented so that the requisite trained personnel are available for special schools and integrated schools for children with disabilities; and
- (b) special education is made a compulsory component of the teachers' curriculum offered by the institution established to train teachers.

(2) The Minister responsible for Education shall facilitate the provision of the appropriate communication to the students with disabilities in education and training institutions.

#### **Duty of educational institution**

**29.(1)** Every educational or training institution shall

- (a) provide reasonable physical access to the institution for every student with a disability;



- (b) ensure that a student with a disability is not placed at a disadvantage in relation to the student services provided; and
  - (c) ensure that a student with a disability has access to the facilities of the institution in the least restrictive environment.
- (2) An educational institution shall not discriminate against a student on the basis of their disability by
- (a) denying or limiting the student's access to any benefits, facilities or services provided by that educational institution;
  - (b) expelling, suspending or transferring the student or subjecting the student to any other detriment that impacts his educational development;
- (3) The application of subsection (2) is without prejudice to the application of bona fide disciplinary procedures prescribed by the *Education Act*, Cap. 41.
- (4) An educational or training institution shall take into account the special needs of students with disabilities with respect to the entry requirements, curriculum, assessments, auxiliary aids, and educational services including accessible formatting, use of school facilities, class schedules, physical education requirements and any other relevant matter.

#### **Integration of persons with disabilities in to mainstream schools**

- 30.(1)** The Minister responsible for Education shall, in so far as reasonably practicable, promote and facilitate the integration of students with disabilities into all schools, learning and training institutions.
- (2) The Minister responsible for Education shall promote the establishment of special schools by government and the private sector for students with disabilities.

### **Special education**

**31.(1)** The Minister responsible for Education shall provide a system of Individualized Education Plans to cater to the specific learning needs of students with disabilities.

(2) The Minister responsible for Education shall equip special schools with

- (a) vocational training facilities;
- (b) specially trained teachers;
- (c) reasonably accessible facilities;
- (d) information technology training and tools; and
- (e) a system of support services for special education in schools.

(3) The Minister responsible for Education shall, in collaboration with the Social Empowerment Agency, facilitate learning in subject areas including Braille, alternative script, augmentative and alternative modes, means and formats in communication, orientation and mobility skills.

(4) No student with a disability shall be transferred from a mainstream school to a special education school without an objective assessment of their disability first having been undertaken.

### **Accessibility of assessment to a person with a disability**

**32.(1)** An institution which conducts assessments, whether for licensing or certification purposes shall ensure that assessments are conducted in a manner and in a place with facilities which are accessible to a person with disabilities.

(2) An institution shall employ various forms of reasonable accommodation and universal design to assist a person with a disability to sit assessments, including but not limited to

- (a) allowing the person with a disability extra time to complete an assessment which contains a substantial written component;

- (b) identifying scripts with a coloured sticker to ensure that a person with dyslexia or a person with other learning disabilities is not penalized for spelling and syntax errors;
- (c) assigning a reader to the person with a disability;
- (d) assigning a scribe to the person with a disability;
- (e) preparing assessment papers in alternative communication formats;
- (f) using a recorder to produce spoken responses by the person with a disability which can later be transcribed into text by a typist for marking;
- (g) placing the person with a disability in a room with less persons;
- (h) assigning a sign language interpreter to a person with a disability; and
- (i) approving the request from the person with a disability to sit an assessment at home in the presence of a member of staff who will verify that the examination was conducted under conditions which are close as possible to the conditions at the examination center.

#### **Adult education**

**33.(1)** The Minister responsible for Education in conjunction with the Social Empowerment Agency, shall take measures to promote, protect and ensure participation as the case may be, of persons with disabilities in adult education and continuing education programmes

(2) A person with disabilities under subsection (1) shall have equal access to any adult education and continuing education programmes.

#### **Research**

**34.** The Social Empowerment Agency shall initiate or cause to be initiated research by official or non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials

or other materials or items as are necessary to provide persons with disabilities equal opportunities in education.

## PART VI

### EMPLOYMENT

#### **Equal access to employment**

**35.(1)** No person shall deny a person with a disability equal access to opportunities for suitable employment on the basis of their disability.

(2) A qualified employee with a disability shall be subject to the same

- (a) terms and conditions of employment;
- (b) compensation;
- (c) privileges, benefits and fringe benefits;
- (d) incentives; or
- (e) allowances,

as a qualified employee who does not have a disability.

(3) No employer shall discriminate against qualified persons with a disability in relation to

- (a) the advertisement of employment;
- (b) the recruitment for employment;
- (c) the creation, classification or abolition of posts;
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other benefits;
- (e) the choice of persons for posts, training, advancement, apprenticeships, transfer or promotion;

- (f) the provision of facilities relating to or connected to employment; or
  - (g) any other matter relating to employment.
- (4) Notwithstanding subsection (3), an employer shall not be deemed to have discriminated against a person with a disability if
- (a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the said person;
  - (b) the disability in question was a relevant consideration in relation to the particular requirements of the type of employment concerned;
  - (c) special facilities or modifications whether physical, administrative or otherwise, are required at the workplace to accommodate the person with a disability, which the employer cannot be reasonably expected to provide by reason of them being a disproportionate or undue burden; or
  - (d) the act or omission alleged to constitute the discrimination otherwise justified in the circumstances.
- (5) A person with a disability who has reasonable grounds for believing that he has been or is being discriminated against by an employer contrary to this Act, may complain to the Social Empowerment Agency.
- (6) The Social Empowerment Agency may take any action in respect of a complaint received as it considers fit.
- (7) The Tribunal shall have jurisdiction to hear and determine a case of discrimination referred to it by the Social Empowerment Agency.
- (8) Nothing in subsection (3) or (4) shall preclude a person with a disability who has been discriminated against from applying to the Chief Labour Officer pursuant to the *Employment Rights Act, 2012* (Act 2012-9).
- (9) An employer who fails to comply with subsection (1), (2) or 3 is guilty of an offence and is liable on summary conviction to a fine of \$50 000.

(10) The burden of proof shall be on an employer to establish the reasons for denying any person with a disability employment where a claim has been filed under this section.

(11) Where a claim has been filed under this section, the failure by an employer to provide satisfactory reasons for the denial of employment to a person with a disability shall constitute *prima facie* discrimination under this Act, and the employer may be subject to a complaint for discrimination to the Social Empowerment Agency.

**Reasonable accommodation**

**36.(1)** An employer shall, where possible, prevent a person with a disability from being at a disadvantage while on the job site by making reasonable accommodation but not limited to

- (a) making physical changes to the job site such as installing lifts and ramps where necessary;
- (b) permitting a person with a disability to work from a different location;
- (c) providing the person with a disability with special equipment or alternative modes of communication to execute their daily duties;
- (d) managing the workload at reasonable levels to accommodate a person with a disability under their employment; or
- (e) providing reasonable hours of work for a person employed with a disability.

(2) An employer may be exempt from the obligation under subsection (1), where the modifications or accommodation would impose a disproportionate or undue burden to the employer.

**Employer to make reasonable accommodation**

**37.(1)** An employer shall, upon the request of an employee, make such adjustments for the employee as may be reasonable in the circumstances.

- (2) The employer may be exempt from the obligation to make such accommodation where the modifications or accommodation would impose a disproportionate or undue burden to the employer.
- (3) For the purposes of subsection (1), accommodations includes
  - (a) making physical changes to the job site such as installing lifts and ramps where necessary;
  - (b) permitting a person with a disability to work from a different location;
  - (c) providing the person with a disability with special equipment or alternative modes of communication to execute their daily duties;
  - (d) providing reasonable hours of work for a person employed with a disability;
  - (e) altering the hours of work of the person with a disability;
  - (f) modifying the procedures for testing or assessment of the person employed with a disability;
  - (g) allowing the person with a disability to be absent during work hours for the purpose of assessment, rehabilitation or other treatment; and
  - (h) any other reasonable accommodation that may be necessary given the nature of the disability.

**Exemption - genuine occupational qualification**

- 38.(1) An employer may make an application to the Social Empowerment Agency for an exemption on the grounds of genuine occupational qualification.
- (2) For the purposes of this Act, a qualification is a genuine occupational qualification where it is an inherent occupational qualification.

(3) Without prejudice to the generality of subsection (2), being a person with a disability shall be taken to be a genuine occupational qualification where

- (a) the job can only be performed by a person who has the physical attributes which can only be performed by a person other than a person labouring under a disability;
- (b) the nature of the undertaking or establishment within which the job is to be performed requires the job to be held by a person who does not have a disability; or
- (c) the job involves providing the person with a disability with personal services concerning their welfare, health or education and those services can most effectively be performed by a person who is not labouring under a disability.

**Exemption - unjustifiable hardship**

39.(1) It is a defence to a complaint of discrimination on the grounds of disability, for a person to show that in the case of section 35 would impose an unjustifiable hardship on the person.

(2) For the purposes of subsection (1), in determining whether an unjustifiable hardship would be imposed on a person, all of the relevant circumstances of the particular case shall be taken into account including

- (a) the nature of the benefit or burden likely to accrue to, or to be suffered by, any person concerned;
- (b) the financial circumstance of, and the estimated amount of expenditure required to be made by, the person on whom the hardship would be imposed; and
- (c) the availability of financial or other assistance to the person to whom the hardship would be imposed.



### **Engagement as apprentices or learners**

**40.** Subject to the provisions of the *Employment (Protection of Discrimination) Act, 2020* (Act 2020-26), or any other enactment, persons with disabilities shall be eligible for engagement as apprentices or learners where their disability is not such as to impede their performance in particular occupations for periods for which they are employed.

### **Vocational training and self employment**

**41.(1)** The Ministers responsible for Labour, Disability, Education and the Social Empowerment Agency respectively, shall collaborate and formulate schemes and programmes to facilitate and support the employment of persons with disabilities for their vocational and self employment.

**(2)** The schemes and programmes referred to in subsection (1), shall provide for

- (a)* appropriate vocational measures which serve to develop the skills and potential of persons with disabilities and enable them to compete favourably for available, productive and remunerative employment opportunities in the market;
- (b)* adequate support and facilities to enable persons with disabilities to avail themselves of specific training towards employment;
- (c)* the facilitation of developmental loans to aid in self employment of persons with disabilities; and
- (d)* the mobilisation of a network of employers with the view to facilitate employment opportunities for persons with disabilities.

### **Hiring requirement**

**42.** Every Ministry shall employ qualified persons with disabilities.

### **Employment records**

**43.(1)** An employer shall maintain such records in respect of persons with disabilities employed within that establishment, in such form and in such manner as may be required by the Minister responsible for Labour.

(2) An employer shall ensure that the records are open to inspection at the establishment at all reasonable hours by persons who are authorised by general or special order of the Social Empowerment Agency.

(3) An employer who fails to comply with subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine of \$2 000.

### **Appeal against a ruling for exemption**

**44.(1)** Where an employer has been denied an exemption under sections 38 and 39 he may appeal the decision to the Tribunal.

(2) An application for an appeal from the decision of the Social Empowerment Agency to the Tribunal shall be made within 14 days of that decision.

### **Records for job placement**

**45.** The Social Empowerment Agency, in conjunction with the Ministry responsible for Labour, shall establish and maintain a record of persons with disabilities who are in possession of various levels of skills and training and shall update those records regularly for the purposes of job placement.

### **Redeployment of a person with a disability**

**46.(1)** Where a person with a disability is no longer capable of performing the duties stipulated in the contract of employment, the employer may

- (a) redeploy the person with the disability to a position or vacancy that
  - (i) is commensurate with the current skills and abilities of the person with a disability;

- (ii) does not result in loss of remuneration and benefits to the person with a disability;
  - (b) create a new position in which the person with a disability can function effectively without suffering a significant change in employment status and remuneration; or
  - (c) adjust the working hours of the person with a disability,
- provided that there will not be a disproportionate or undue burden to the employer.
- (2) In redeploying a person with a disability, an employer must consider the following factors:
- (a) the training, qualifications and previous performance of the person with a disability;
  - (b) the type of position previously held by the person with a disability; and
  - (c) the possible loss in income which the person with a disability may suffer.
- (3) A person with a disability shall, where possible be redeployed to a post which is closest to the graded post previously held by that person.

## PART VII

### HEALTHCARE

#### **Right of a person with a disability to equal healthcare**

**47.(1)** Every institution that offers healthcare services to the public shall provide a person with a disability with healthcare service which is specific to the special needs of that person, including services which are designed to minimize and prevent any further disability.

(2) Every healthcare provider shall ensure that the following minimum standards are met:

- (a) a person with a disability shall have access to the same range and standard of affordable healthcare services as provided to persons without disabilities, inclusive of sexual and reproductive health services and population based public health programmes;
- (b) subject to the *Mental Health Act*, Cap. 45, healthcare provided to a person with a disability shall be administered in respect of that person with a disability, on the basis of the free and informed consent of the person with the disability; and

#### **Accessibility of healthcare facilities and training**

48. The Minister responsible for Health may, in collaboration with the Minister responsible for Disabilities, the Social Empowerment Agency and any other relevant health and rehabilitative authority, ensure that

- (a) all public health care facilities are physically accessible to persons with disabilities;
- (b) all medical and paramedical personnel are adequately trained and equipped to give advice and medical care to persons with disabilities; and
- (c) health related information is in a format that is accessible and available to all persons with disabilities.

#### **Duty of care givers**

49.(1) A person who is responsible for the care of a person with a disability shall ensure that the person with the disability receives adequate food, clothing, medical attention, shelter and other necessities.

(2) A person who is responsible for the care of a person with a disability shall not

- (a) abuse or expose that person with a disability to abuse;
- (b) expose a person with a disability to danger;
- (c) abandon or desert that person with a disability;
- (d) neglect or mistreat that person with a disability; or
- (e) otherwise cause any harm to that person with a disability.

(3) A person who knowingly or recklessly contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$50 000 or to imprisonment for a term of 5 years or to both.

#### **Rehabilitation programmes**

**50.** The Minister with responsibility of Health, in consultation with the Social Empowerment Agency, shall ensure that the special requirements of persons with disabilities are addressed in the formulation and implementation of rehabilitation and other health policies and programmes.

#### **Insurance**

**51.(1)** A person with a disability shall not be denied insurance solely on the basis of his disability.

(2) An insurance provider shall not offer insurance services to a person with a disability at a cost which is significantly higher than the cost offered for the same coverage to a person who does not have a disability unless any increase in cost is reasonable, based on the cost of providing such insurance or the cost of reinsurance.

(3) Nothing in this Act prohibits an insurance provider from denying insurance to a person with a disability where this decision

- (a) was arrived at by reference to actuarial or other data from a source on which it was reasonable to rely; and

- (b) was reasonable having regard to the data and any other relevant factors.
- (4) The burden of proof shall be on the insurance provider to indicate the reasons for denying any person with a disability insurance coverage.
- (5) The failure by the insurance provider to provide satisfactory reasons for the denial of insurance coverage to a person with a disability shall constitute *prima facie* discrimination under this Act and the insurance provider may be subject to a complaint to the Social Empowerment Agency.

#### **Service animals**

**52.** The Minister with the responsibility for Disabilities may, in consultation with the Minister responsible for Animal Control and Protection of Animals

- (a) facilitate persons with disabilities who need assistance to be accompanied by a service animal in public places or public buildings or while accessing public services without being required to pay extra fees for the service animal;
- (b) make regulations for
  - (i) the importation of service animals into Barbados; and
  - (ii) provide standards for certifying animals for use by persons with disabilities.

## PART VIII

## SOCIAL PROTECTION

**Auxiliary Social Services**

**53.** The Minister shall ensure that persons with disabilities who are in vulnerable situations are encouraged to function and participate in community affairs by facilitating

- (a) the acquisition of prosthetic devices and other assistive devices;
- (b) specialised training activities designed to improve the functions of persons with disabilities with respect to their communication skills;
- (c) development among persons with disabilities of a positive self image through the provision of counselling, orientation and mobility;
- (d) family care services geared towards developing the capability of families to respond to the needs of persons with disabilities;
- (e) substitute family care services and facilities for abandoned, neglected, abused and unattached persons with disabilities who need an alternative form of care based on their individual needs;
- (f) family after care and follow-up services for the continued rehabilitation in a community based setting of persons with disabilities who are discharged from residential care or rehabilitation centres;
- (g) day care services for children with disabilities of preschool age, having regard to the needs of the child and the means of the parents; and
- (h) public assistance where the individual circumstances so require.

**Auxiliary social services - caregivers**

**54.** The Minister, in consultation with the representative body for persons with disabilities and caregivers of persons with disabilities, shall develop policies and programmes to assist caregivers of persons with disabilities by means of

- (a) counselling;
- (b) training and developmental programmes;
- (c) respite opportunities;
- (d) financial advice; and
- (e) any other relevant training,

to enable the caregivers to effectively care for the persons with disabilities.

**National emergencies**

**55.(1)** The Minister responsible for Home Affairs in collaboration with the Minister shall ensure that

- (a) a person with a disability is proactively removed from actual or potential emergency situations;
- (b) appropriate, safe and accessible accommodation is afforded to persons with disabilities in the context of an emergency situation;
- (c) efforts are taken to prevent the neglect, abandonment and abuse of persons with disabilities;
- (d) information about impending disasters is provided on a timely basis and in an accessible format.

(2) The Minister responsible for Home Affairs, in conjunction with the Ministry with responsibility for Environment and National Beautification and the Minister shall ensure that, in the implementation of policies aimed at combatting climate change, the rights, needs and interests of persons with disabilities are accounted for.



## PART IX

## ACCOMMODATION AND PREMISES

**Housing**

**56.(1)** The Minister with responsibility for Housing, in formulating and implementing Housing Programmes shall collaborate with the Social Empowerment Agency to include provisions to address accessible, affordable, and safe accommodation for persons with disabilities.

(2) In every government housing project, it shall be a requirement that at least 10 per cent of all the houses constructed shall be designed to fully accommodate persons with disabilities.

**Discrimination in relation to the disposal of premises**

**57.(1)** An owner, his agent or any person authorized by him, when selling, leasing or otherwise disposing of premises shall not knowingly discriminate against a person with a disability on account of the person's disability

- (a) in the terms and conditions on which an offer is made to dispose of the property;
- (b) by refusing to dispose of the premises;
- (c) in the way he permits the person to make use or of any benefit or facility on the premises;
- (d) by deferring an application for accommodation or according him a lower order of precedence on any list of applicants for that accommodation;
- (e) by evicting the person on the basis of his disability; or
- (f) by subjecting the person to any other detriment with respect of the premises.

- (2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$25 000.
- (3) The burden of proof shall be on the proprietor of the premises to establish that he did not knowingly discriminate against a person with a disability.
- (4) The failure to provide satisfactory reasons for denying a person with a disability of access to the premises shall constitute *prima facie* discrimination under this Act and may be subject to a complaint to the Social Empowerment Agency.

**Reasonable accommodation in respect of existing premises**

- 58.(1) Subject to subsection (3), the owner or the agent of an existing private premises, who rents or intends to rent or lease such premises, shall if requested by a person with a disability, make or cause to make such alterations to that premises or 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) Alterations made in respect of an existing private premises shall be such as will make or cause the premises to be made readily accessible and usable to a person with a disability, in respect of
  - (a) access to the premises;
  - (b) ramps;
  - (c) bathrooms; and
  - (d) emergency exits.
- (3) Subsections (1) and (2) shall not apply where it is demonstrated by the owner or his agent to the satisfaction of the Social Empowerment Agency that
  - (a) it is structurally impracticable to meet the requirements of this Act; or
  - (b) to effect such alteration would constitute a disproportionate or undue burden.

(4) For the purposes of this section, “existing” in relation to premises means in existence or under construction before the commencement of this Act.

(5) For the purposes of subsection 3(a), the factors to be considered in determining whether any alteration would unduly prejudice the owner of an existing private premises shall include

- (a) the nature and cost of alterations;
- (b) the overall financial resources of the proprietor involved in making of the alterations;
- (c) the number of persons with disabilities in the designated premises requiring alterations to be made;
- (d) the effect of the required alterations upon the operation of the building; and
- (e) the availability of financial assistance from public funds to defray the expense of any alterations.

#### **Power to amend list**

**59.** The Minister may by order amend the list of accommodation measures to make premises readily accessible and usable to a person with a disability as the circumstances may require.

#### **Alterations to leased premises by persons with disabilities**

**60.(1)** The lessee of a premises with a disability who intends to make alterations to the said premises which he has leased in order to meet the requirements of this Act, shall, before making such alterations,

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

(2) The lessor, who receives a written request pursuant to subsection (1), shall communicate his consent or refusal in writing, within 30 days of receipt of the request.

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

(4) The lessee shall consult with the lessor with respect to the proposed alterations of the premises and the agreed alterations shall be submitted to the Social Empowerment Agency for approval before the commencement of the alterations.

**Construction of new private premises intended for rent**

61. The owner or agent of a new private premises who intends to rent or lease the premises and where construction of the premises commences after the commencement of this Act, shall ensure that the premises being constructed are

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

**PART X**

**PUBLIC BUILDINGS, FACILITIES AND TRANSPORTATION**

**Equal access to public facilities**

62.(1) A person with a disability shall have the right to reasonable access to all indoor and outdoor places where services are being offered to the public.

(2) A person in charge of any public premises or the provision of services or amenities shall not deny a person with a disability, on the grounds of their disability, admission to the premises or the provision of the service or amenity unless the denial is motivated by a genuine concern for the safety of the person with the disability.

- (3) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$50 000.

**Alternations to existing and new buildings**

63.(1) Existing public buildings shall be altered, in accordance with the Barbados National Building Code within 3 years of this Act coming into effect in order to facilitate access by persons with disabilities.

(2) The owner of an existing public building shall alter his existing premises in accordance with subsection (1) unless doing so will constitute a disproportionate or undue burden to the owner.

(3) The owner or occupier of any public building constructed after the commencement of this Act, shall provide reasonable access to persons with a disability, in accordance with the provisions of the Barbados National Building Code, unless to do so would impose a disproportionate or under burden on the owner or occupier.

**Accessibility and mobility**

64. Within one year of the commencement of this Act, the Ministry responsible for Transport, Works and Water works shall review, update and cause to be published building code guidelines for the construction and renovation of buildings, institutions, establishments and public utilities in order to allow barrier free access to persons with disabilities.

**Parking and rest room facilities**

65.(1) A proprietor of a building to which the public is permitted to access shall adapt it to suit persons with disabilities in such manner that may be specified by the Social Empowerment Agency so that a person with a disability may access it.

(2) A proprietor of a building to which the public is permitted to access shall designate parking for persons of disabilities.

(3) All proprietors of buildings shall comply with subsections (1) and (2) within 3 years after this section comes into force or such other date as the Minister may appoint by notice published in the *Official Gazette*.

(3) The Minister with responsibility for Transportation, in conjunction with the Social Empowerment Agency, shall facilitate persons with disabilities obtaining stickers that would enable them to park in areas designated for parking by persons with disabilities.

(4) Nothing in this section shall be construed as imposing a disproportionate or undue burden on proprietors.

#### **Passenger vehicles**

**66.(1)** The Minister with responsibility for Transportation shall ensure as far as is practicable, the provision of public passenger vehicles which are accessible to and usable by persons with disabilities.

(2) The Minister responsible for Finance may provide exemptions from customs duty to proprietors of private vehicles that facilitate the transportation of persons with disabilities.

(3) A person with a disability shall not be denied on the basis of their disability, the opportunity to use public transport.

(4) A person with a disability who uses a public service vehicle shall not be charged a higher sum for using that transportation than that which is charged to a person without a disability.

(5) Nothing in this section shall be construed as affecting the use by a person with a disability who requires the use of a specially complemented vehicle.

## PART XI

## SPORTS, CULTURE AND RECREATION

**Access to and participation in sports, cultural and recreational activities**

67. The Minister responsible for Sports, Culture and Community Facilities, in the formulation and implementation of sports and cultural programmes, shall coordinate with the Social Empowerment Agency to ensure that

- (a) public and private sports and cultural facilities are accessible to persons with disabilities.
- (b) sports, recreational and cultural activities are provided for persons with disabilities;
- (c) training in sports, games and culture for persons with disabilities is provided;
- (d) there is improvement of existing facilities and equipment to provide for the full participation of persons with disabilities in sports, recreational and cultural activities;
- (e) there is development and implementation of sports and physical fitness programmes specifically designed for persons with disabilities taking into consideration the nature of their disability;
- (f) there are transportation facilities for persons with disabilities to and from recreational, sporting and cultural activities;
- (g) there is appropriate recognition of persons with disabilities who perform well in recreational sports and cultural activities.

## PART XII

### PARTICIPATION IN PUBLIC AFFAIRS

#### **Voting**

**68.(1)** Persons with disabilities shall be facilitated in asserting the right to vote in parliamentary elections and any referendum.

(2) Subject to the *Representation of the People Act*, Cap. 12, persons with disabilities shall be entitled upon request, to be assisted by a person of their choice in voting in parliamentary elections and any referendum.

(3) A person who, renders assistance under subsection (2), shall strictly comply with the instructions of the voter and shall not intimidate or otherwise hinder the person with the disability from engaging on a free and informed basis in the electoral process.

(4) A person who contravenes subsection (3), is guilty of an offence and is liable to a fine of \$10 000.

#### **Participation in the political process**

**69.(1)** A person with a disability shall not, by reason of their disability, be denied the opportunity to participate in programmes or activities that relate to political office, including

- (a) the opportunity to participate in the electoral process using procedures, facilities, materials and support including technology, that are appropriate, accessible and easy to understand and use;
- (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.



(2) As far as reasonably practicable, persons with disabilities shall be permitted to vote using colour coding, symbols and related forms of formatting suitable for their particular disability.

### **Polling place**

**70.** Every polling place shall be made accessible to persons with disabilities during elections, and such persons shall be provided with reasonable accommodations and assistive or adaptive devices and services to facilitate the exercise of this right under this section.

### **Exemption of certain persons**

**71.** The provisions of sections 68 and 69 are without prejudice to the provisions on voting by persons with mental health impairments contained in the *Mental Health Act*, Cap. 45, the *Representation of the People Act*, Cap. 12 or any other relevant enactment.

### **Participation in public life**

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

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

## PART XIII

### COMMUNICATION

#### **Broadcast media**

**73.(1)** A person in charge of the national visual broadcast shall provide a sign language inset, closed captioned or subtitles in at least one newscast programme daily and special programmes covering events of national significance.

(2) A person who fails to comply with subsection (1), is guilty of an offence and is liable on summary conviction to a fine of \$100 000.

#### **Information**

**74.** All public service departments and public service agencies shall provide information digitally in various formats in accordance with web content accessibility guidelines to ensure accessibility for all persons.

#### **Financial institutions**

**75.(1)** Financial institutions shall ensure that their services and facilities are fully accessible to persons with disabilities, including through the provision of disability sensitive audio-visual technology at automatic teller machines and other digital services.

(2) A financial institution which fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of \$100 000.

## PART XIV

### FINANCIAL AFFAIRS

#### **Credit provisions**

76.(1) A credit union, cooperative or lending institution shall not unreasonably withhold credit or financial services from persons with disabilities solely on the basis of their disabilities.

(2) A credit union, cooperative or lending institution that contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$100 000.

#### **Concessions**

77.(1) Materials, articles and equipment including motor vehicles that are modified or designed for the use of persons with disabilities, shall be exempt from import duty and any other government levy as the Minister responsible for Finance may decide.

(2) The Social Empowerment Agency shall monitor the extent to which a beneficiary of a concession granted under subsection (1) complies with the terms and conditions under which the concession has been granted.

#### **Exemptions and waivers**

78.(1) A person with a disability who is in receipt of an income may apply to the Minister responsible for Finance for an exemption from or a reduction of the income tax and any other levy payable on such income.

(2) The Minister responsible for Finance shall, in consultation with the Minister, assess all applications received under subsection (1) and make any order thereon, if any, as he deems fit.

(3) An order made under subsection (2) may

- (a) exempt the applicant wholly; or
- (b) exempt the applicant to the extent provided in the order,

from income tax, or other levies specified therein and any such order shall notwithstanding the provisions of any other enactment, have effect according to its terms.

#### **General requirements for exemption and deductions**

**79.(1)** The following shall apply with respect to exemptions or deductions under section 78

- (a) no person shall be eligible for an exemption or deduction unless the exemption or deduction has been recommended by the Minister; and
- (b) no person is eligible for an exemption or deduction unless the exemption or deduction has been approved by the Minister responsible for Finance.

(2) An exemption or deduction may be refused on the basis that it has not been provided for in the allocation of public resources specified in the Government's annual budget.

#### **Establishment of Fund**

**80.(1)** There shall be established a Fund to be known as the National Development Fund for Persons with Disabilities.

(2) The Fund shall be established as a permanent fund, and the income from the Fund shall be used for the benefit of persons with disabilities and organizations for disabilities in Barbados.

(3) The Fund shall be administered by the Social Empowerment Agency through a Board of Trustees as provided for under section 82.

**Sources of and payment from Fund**

- 81.(1)** The sources of the Fund shall comprise of
- (a) income generated by investments made by the trustees;
  - (b) any other donations from international, regional and local donors which the Social Empowerment Agency may receive; and
  - (c) money voted by Parliament.
- (2) The Board of Trustees may, out of the Fund,
- (a) contribute to capital expenses of organizations of or for persons with disabilities;
  - (b) contribute to capital expenses of institutions that train persons in the care of persons with disabilities;
  - (c) contribute to capital expenses of projects undertaken by the Government for the benefit of persons with disabilities; and
  - (d) contribute, in exceptional circumstances, to the payment of restitution to a person who has suffered loss as a result of the conduct of a person with a disability who is unfit to stand trial in circumstances where their immediate family or caregivers do not have the resources to make restitution.

**Trustees to manage Fund**

- 82.(1)** The Fund shall be managed by a Board of Trustees which shall consist of
- (a) a Chairperson and a Deputy Chairperson appointed by the Minister;
  - (b) the Chief Executive Officer of the Social Empowerment Agency who shall be the Secretary of the Board and an *ex officio* member;
  - (c) a Treasurer to the Fund appointed by the Minister;

- (d) a representative of the Ministry of Finance appointed by the Minister of Finance;
  - (e) three representatives appointed by the Minister consisting of persons with disabilities nominated by and from non-governmental organizations that are directly and solely concerned with the welfare and advancement of persons with disabilities; and
  - (f) not more than 2 persons appointed by the Minister to represent the donors that, in his opinion on consultation with the National Advisory Committee, have substantially supported the care of persons with disabilities.
- (2) The Trustees of the Board shall conduct its affairs in accordance with the regulations prescribed by the Minister, after consultation with the Social Empowerment Agency, subject to any law governing Trustees.

## PART XV

### LEGAL SYSTEM

#### **Access to justice**

- 83.(1)** The Registrar of the Supreme Court shall allow for
- (a) the exemption, for persons with disabilities, from the payment of fees of the Court in relation to proceedings commenced under this Act; and
  - (b) the provisions, to persons with disabilities who attend Court, of free sign language interpretation, braille services, physical guide assistance and orientation.
- (2) A person with a disability who intends to enforce an award of the Disability Rights Tribunal under this Act may be entitled to legal aid.
- (3) A person with a disability may be considered for legal aid in all cases in which he or she is alleged to be a perpetrator.

(4) An accused person with a disability who is denied bail shall be held in custody in facilities modified in a manner sensitive to the needs of persons with disabilities.

(5) The court shall ensure that all claims involving persons with disabilities are disposed of expeditiously, having due regard to the particular disability and hardship experienced by such persons.

(6) The mental age of a person with a disability shall be considered by all institutions of justice in their determination of all matters that concern that person with the disability.

#### **Legal capacity of persons with disabilities**

**84.** A person with a disability who is assessed to be competent to make decisions shall not be deprived of his capacity to make decisions regarding how he wishes to live his life including decisions about his sexual and reproductive health.

### **PART XVI**

#### **MISCELLANEOUS**

##### **General penalty**

**85.** A person guilty of an offence under this Act for which no penalty is expressly provided shall be liable on summary conviction to a fine of \$5 000..

##### **Concealment of persons with disabilities**

**86.(1)** No parent, guardian, next of kin or caregiver shall conceal any person with a disability in such a manner as to deny such a person the opportunities and services under this Act.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$5 000.

**Mandatory reporting**

**87.(1)** This section shall apply to

- (a) a parent;
- (b) a medical practitioner, a health practitioner, a dental practitioner, a nurse or mental health practitioner;
- (c) an administrator of a hospital or medical facility;
- (d) a school principal, teacher or other teaching professional;
- (e) a social worker or other social service professional;
- (f) a law enforcement officer;
- (g) an internet provider, film technician, computer technician or telecommunications technician;
- (h) any person who provides health care, welfare, education, religious, or law enforcement services, wholly or partly to a person with disabilities; and
- (i) any other person who by virtue of the nature of their work, owes a duty of care to a person with disabilities.

(2) A person listed under subsection (1), who has knowledge or has reasonable grounds to suspect that a person with disabilities is being abused or neglected, shall be under a duty to

- (a) immediately report or cause to be reported the circumstances to a police officer; and
- (b) provide the police officer with such additional information as is known or available in relation to the person with disabilities.

(3) Subsection (2) shall apply notwithstanding the confidential nature of the information on which the report is based.

(4) Nothing in this section abrogates any attorney-client privilege.



- (5) A report made under subsection (2) may be made anonymously.
- (6) A person who fails to comply with subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$10 000.
- (7) A person who makes a report in good faith shall not be liable for prosecution.
- (8) A person who intentionally makes a false report or provides false or misleading information is guilty of an offence and is liable on summary conviction to a fine of \$10 000.

#### **Review of the Act**

**88.** The Minister responsible for Disabilities shall review this Act every 3 years and report his findings to Parliament within 6 months of the review.

#### **Minister may make Regulations**

**89.** The Minister may, after consultation with the Social Empowerment Agency, make regulations for the purpose of giving effect to the provisions of this Act and without limiting the generality of the foregoing, may make regulations

- (a) prescribing standards for accessibility to infrastructure facilities, information and communication technologies;
- (b) prescribing the procedures, permits, forms and fees payable under this Act;
- (c) specifying and describing the nature of acts of discrimination against a person with disabilities; and
- (d) prescribing the procedure and forms for persons entitled to subsidized medical care.

#### **Amendment of Schedule**

**90.** The Minister may by order amend the *Schedule*.

**Commencement**

- 91.** This Act shall come into operation on a date fixed by proclamation.

**SCHEDULE***(Section 13)**Disability Rights Tribunal***Constitution of the Tribunal**

1.(1) The Tribunal shall be constituted in the manner prescribed under section 14 of this Act.

(2) If the Chairperson of the Tribunal is absent or unable to act, the Deputy Chairperson shall exercise the functions of the Chairperson.

**Term of appointment of a member of the Tribunal**

2. A member of the Tribunal shall hold office for a period of 3 years and each member shall be eligible for re-appointment for a further 3 years.

**Acting members**

3. The Minister may appoint a persons to act in the place of any member of the Tribunal who is temporarily unable to perform the functions as a member of the Tribunal.

**Resignation of a member of the Tribunal**

4.(1) A member of the Tribunal, other than the Chairperson, may resign at any time by instrument in writing addressed to the Minister with responsibility Disabilities and transmitted through the Chairperson and from the date of receipt by the Minister of the instrument such member shall cease to be a member of the Tribunal.

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

**Revocation of appointment to the Tribunal**

5. The Minister may at any time revoke the appointment of any member of the Tribunal if it is expedient so to do as a result of the member's

- (a) inability to discharge the functions of the office, whether arising from infirmity of body or mind or any other reasonable cause;
- (b) failure to discharge the functions of the office in a competent manner;
- (c) misbehaviour; or
- (d) absence without leave for 3 consecutive sittings.

**Gazetting appointment**

6. The names of all members of the Tribunal as first constituted and every change in membership thereof shall be published in the Gazette.

**Member shall recuse himself**

7. A member of the Tribunal shall recuse himself from any proceeding where his or participation may be reasonably consider a conflict of interest.

**Employees of the Tribunal**

8. The Minister with responsibilty for Disabilities shall make appropriate arrangements in relations to the provision and remuneration of employees of the Tribunal.

**Tribunal may regulate its procedure**

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

**Appearance before the Tribunal**

**10.** A party to a complaint referred to the Tribunal may either appear in person before the Tribunal or be represented by

- (a) an attorney-at-law;
- (b) an officer of the corporation if the party is a corporation; or
- (c) any other person who the party wishes to represent him with the permission of the Tribunal.