

PREVENTION OF SEXUAL HARASSMENT POLICY OF THE CAPE BAR

PREAMBLE

The Cape Bar is committed to the prevention of sexual harassment, which is a form of unfair discrimination under the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 ("the Equality Act"). In line with that commitment, this policy: (a) provides appropriate procedures to deal with sexual harassment in the professional/working environment of members and prevent its recurrence; and (b) is aimed at ensuring that the professional/working environment within which members of the Cape Bar practise, is free of sexual harassment.

INTERPRETATION

- (1) In interpreting this policy reference may be made to the CODE OF GOOD PRACTICE ON THE HANDLING OF SEXUAL HARASSMENT CASES issued under Labour Relations Act 66 of 1995, which, although intended primarily as a guide to employers and their employees, provides useful guidance on the definition of sexual harassment and the forms that it may take.

THE PROHIBITION AND THE RESPONSIBILITY OF MEMBERS

- (2) Members of the Cape Bar shall not subject any person in their professional/working environment to sexual harassment. In particular, no member of the Cape Bar may sexually harass:
 - (a) members of the Cape Bar;

- (b) staff employed by members of the Cape Bar;
 - (c) staff employed by the Cape Bar Council;
 - (d) members of the attorneys' profession with whom members of the Cape Bar interact and engage; or
 - (e) clients or other persons who visit the premises occupied and used by members of the Cape Bar.
- (3) All members of the Cape Bar have a responsibility to maintain a professional/ working environment that is free from all forms of sexual harassment and to take reasonable measures to ensure such an environment.
- (4) The obligation to take reasonable measures to ensure a professional/working environment which is free from sexual harassment may require members of the Cape Bar to be proactive in addressing issues when they arise and not rely on a complaint being made by any specific person affected by the conduct.

THE DEFINITION AND THE GUIDING FACTORS TO ESTABLISH SEXUAL HARASSMENT

- (5) With due regard to the definition of "harassment" in the Equality Act, sexual harassment for the purposes of implementation of this policy means:

"Unwanted or unwelcome conduct of a sexual nature which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences."

Unwanted or unwelcome conduct

- (6) There are different ways in which a person may indicate that sexual conduct is unwelcome or unwanted, including non-verbal conduct such as walking away or not responding to the person responsible for the conduct.
- (7) Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome.

Nature and extent of the conduct

- (8)
 - (a) The unwelcome conduct (including physical, verbal and non-verbal conduct) must be of a sexual nature.
 - (b) Physical conduct of a sexual nature includes all unwelcome physical contact.
 - (c) Verbal conduct of a sexual nature includes unwelcome innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, and the sending by electronic means or otherwise of sexually explicit text.
 - (d) Non-verbal conduct of a sexual nature includes unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects.
 - (e) A single incident of unwelcome or unwanted sexual conduct may constitute sexual harassment.

THE COMPLAINTS PROCEDURE

- (9) The Cape Bar Council shall appoint a sub-committee comprising a representative cross-section of suitably qualified members with experience and knowledge in the law of sexual harassment ("the Sexual Harassment Sub-committee").
- (10) Any person who believes that he or she has been the object of sexual harassment by any member of the Cape Bar in the professional/working environment of such member or any person who believes that another person has been the object of such conduct should immediately report the alleged conduct to the Chairperson of the Cape Bar Council ("the Chairperson").
- (11) A complaint of alleged sexual harassment will be taken seriously and dealt with promptly.
- (12) The Chairperson shall refer the complaint to an *ad hoc* committee appointed by the Sexual Harassment Sub-committee, which shall endeavour to resolve a complaint, in the first instance, on an informal and confidential basis (for example, by consultation or mediation). If satisfied that sexual harassment has occurred, the *ad hoc* committee will take such steps as are deemed appropriate at the time and having regard to all the circumstances to ensure that the conduct ceases and will not reoccur. It may be sufficient for the complainant to have an opportunity to explain to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends him or her, makes him or her uncomfortable, and that it interferes with his or her work.
- (13) The complaint shall be dealt with in accordance with the Disciplinary Guidelines of the Cape Bar Council if the *ad hoc* committee resolves that

the complaint cannot be dealt with informally, or if the conduct is severe, persistent or not resolved under clause 12. If the Cape Bar Council decides to appoint a disciplinary sub-committee to investigate a complaint of sexual harassment, the disciplinary sub-committee shall include at least one member of the Sexual Harassment Sub-committee, such member not having been involved with the complaint at an earlier stage.

- (14) Retaliation of any kind against any person who in good faith raises a reasonable concern about sexual harassment will not be tolerated and may in certain circumstances amount to professional misconduct.
- (15) In addition to exercising rights under this policy, it is always open to a complainant to seek independent advice and pursue such remedies as are available under law.

CONFIDENTIALITY

- (16) The importance of confidentiality in the treatment of complaints of sexual harassment is recognised. The members of the Cape Bar who are responsible for dealing with complaints under this policy will respect and maintain confidentiality and privacy of all individuals involved, to the extent that this is reasonably possible.

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