

Ms. Joanne Mak  
Clerk to Home Affairs Panel  
Legislative Council Secretariat  
3/F Citibank Tower  
3 Garden Road  
Central  
Hong Kong

**By email and by fax**  
**Fax no.:**

17 March 2005

Dear Joanne

**Re: Written Submission to the Home Affairs Panel on the Report of the Independent Panel of Inquiry on the Incidents relating to EOC**

Thank you for your letter of 16 February 2005 inviting me to make submission to the Home Affairs Panel on the captioned matter. Due to my business travel over the last five weeks I was hardly to squeeze any time to reply your request. Now I have a little time on St. Patrick's Day and reply the followings:

1. I have no intention to spend my time and energy to write a new document in response to the above Report but forward all correspondences between the Chair of the Inquiry and I that details all the issues that I raised to the Panel, in particular the reasons why I am not co-operated with the Panel. In viewing the full contents of the Report I was right at the very beginning that I have no confidence to the Panel, in particular their transparency, impartiality and independent. And my comments on the Report were widely reported in Hong Kong. I enclose a copy of my press-statement for your information;
2. The Report not only does not answer my questions, which have severe damages on the reputation of the EOC (the only national institution of human rights in Hong Kong and in China in accordance to the UN Paris Principles), the process to sack me (see the press-statement on the issue of ultra vires rule on public body) and the reasons behind to sack me, except a whitewash Report;
3. This Report, tries to rebuild the public confidence to the EOC, is not achieve its aims and objectives. Instead it further tarnishes the international image of Hong Kong on its competence to govern by appointing a Panel to investigate the conducts issues in public life (widening the scope of my dismissal in order to investigate the Chair, who appointed me) including the Minister who appointed the Panel, and the Report exonerated all the misconducts of the parties involved, except it is an ordinary labour dispute matters on my dismissal, as well as implicate the alleged misconduct of the Chair who appointed me; and

4. This Report undermines the well-established Paris Principles on national institution of human rights and it will draw the attention to the international criticism in the future hearing on Hong Kong under the UN reporting system (the forthcoming one is the Committee on Economic, Social and Cultural Rights);

May I thank to the Chair of the Home Affairs Panel, the Hon. Tommy Cheung Yuyan, JP and the Panel members on their interests in this issue.

Yours sincerely

Patrick Yu

**Under the whitewash: Report of the Independent Panel  
Of Inquiry on the Incidents Relating to the EOC**

**3<sup>rd</sup> February 2005**

**PRESS STATEMENT**

Mr. Patrick Yu reacts calmly today to the Panel Report. Mr. Yu says that “I am not surprised the conclusions of the Panel Report as they confirm I was right not to cooperate with the Panel simply I have no confidence that the Inquiry will be impartial and independence. And the findings, which we dispute with certain facts, and the conclusions are all one sided.”

The controversy is to ascertain “whether Mr. Wong had already initiated discussion with Mr. Yu about terminating his appointment before Mr. Wong was authorised by EOC to do so, as without such authorisation, Mr. Wong was acting ultra vires.” (Mr. Andrew Wong’s (expert on administrative law) comments at the Home Affairs Panel Special Meeting on 5 November 2003). This is one of the two key terms of reference of the Panel.

And in fact Mr. Wong’s evidence to the Home Affairs Panel on 5 November 2003 admitted on 5 September 2003 “I discussed my concerns about the appointment of Mr. Yu with Mr. Peter Yeung and that I did not consider him suitable for the post of Director (Operations). I informed Mr. Yeung that I was considering recommending the termination of Mr. Yu’s contract of employment. Mr. Yeung agreed with my proposal. I asked DPA to further explore the issue of settlement with Mr. Yu, and to find out if Mr. Yu be prepared to accept 2 months’ salary (plus cash allowance) as compensation if the contact were terminated.”

This important piece of evidence confirms that Mr. Wong did initiate discussion with me through Mr. Michael Chan, DPA, about terminating my appointment before Mr. Wong was authorised on 18 September 2003. **As a public body like EOC, which is governed by ultra vires rule, Mr. Wong was acting ultra vires. This is more than an employer / employee contract issue.**

Mr. Yu says “**I was surprised that the draft conclusion, which was circulated to me for comments, did not contain paragraph 3.34 The Panel’s Observation** (The key part to describe Mr. Wong is acting rightly and accordingly). This new section is in response to my argument that Mr. Wong acted ultra vires by dismissing me prior to the EOC Board meeting on 18 September 2003. And the September 18 meeting was basically to rubber-stamp Mr. Wong’s wrong doing. (“...give him authority to handle Mr. Yu’s contract” (paragraph 3.38)). This is the key part of the section to ascertain my dismissal. It’s a whitewash!”

Moreover, the Panel’s finding based on disputable facts and certain defamatory statements, which were part of my litigation with the EOC. It is a mere hearsay. This reflects in paragraph 3.1 the caution made by the Panel. “.....We would like to point

out that this chapter contains a lot of views and comments expressed by individuals. We will identify the sources where appropriate. Their presence in this report serves to illustrate our findings, and should not, in any way, be interpreted as the Panel's views of its endorsement of these views."

This is a contradictory statement: the Panel's fact finding is based on these evidence but not the views of the Panel. If this is the case, how the Panel can draw such a conclusion without endorsement of these views! What then are the views of the Panel?

These procedural irregularities are my key concerns that outline my reason to withdraw my co-operation with the Panel. On my letter to the Chair of the Panel on 20 August 2004 outline 18 questions for the Panel to answer on the procedures, powers and functions of the Panel. I received a minimal answer that more related to legal opinion of the potential defamation of the Report.

These key questions are standard in any public inquiry (judicial or otherwise):

**Will any meeting or hearing be conducted openly (full rights of the public to attend) on every occasion and will these proceedings be video and/or audio taped or recorded?**

**Will a full transcript of the hearings be provided on a regular basis? Does the Panel consider put all documents of the enquiry (letters, email, fax, questionnaires, statements, submissions, interviews, meetings, hearing, etc.) into public domain through a web page?**

**What powers does the Panel have to deal with malicious allegations and defamation made in the course of responding to your enquiry?**

**Will the Panel permit cross-examination of all persons providing information and opinions through submissions, responses, questionnaire, at hearings or in the form of statements?**

These procedural questions basically provide the Panel to operate in the most open and transparent way in order to ascertain independent and integrity. Regrettably the Panel not only does not answer these questions but also avoid operate in the most open and transparent way.

Mr. Yu concludes that The Report will not help the EOC to restore both the public confidence and the credibility. It is under the whitewash!

Professor Tam Sheung-Wai, GBS, JP  
Chairman  
Independent Panel of Inquiry on the  
Incidents relating to the EOC  
Rm. 124 East Wing  
Central Government Offices  
Hong Kong

**BY FAX AND BY MAIL**  
**FAX NO.: +852 2868 5617**

20 August 2004

Dear Professor Tam

I received a letter from the Secretary of the Panel, Ms. Michele Li, dated 10 July 2004 asking my assistance to answer a 16 pages questionnaire by 5 August 2004. Due to my holiday in Hong Kong for four weeks I was back to Belfast on 28 July and went to Brussels on the same day for my business trip. When I returned to Belfast again I contacted with my lawyer, who deals with my case and in fact she was still on holiday until this week. Having been advised I seek your full response to the following issues arising from your enquiry:

- (1) Can you provide me a full list of all documents under your possession or under your control relating to the enquiry on my personal information?
- (2) Can you provide me with a list of all persons to whom you have sent or to whom you intend to send questionnaire?
- (3) Can you provide me with all questionnaires issued and all documents (including all statements) and information based on which your secretariat drafted the questionnaires?
- (4) Can you provide me with a list of persons whom you or members of your secretariat have met, invited or intend to invite for meetings or hearings with you or any member of the Panel or the secretariat?
- (5) Can you provide me with copies of all legal advice pertaining to any matter relating to the enquiry?
- (6) Is the Panel advised or to be advised by independent legal advisors and, if so, are they provided by or paid for by Government?
- (7) Will you permit representation by legal representatives?
- (8) Do you have the authority to order cost recovery for legal representation and expenses incurred?
  
- (9) Does the Panel have power to compel witness to answer questions (including questionnaire, meeting and hearing) and / or to provide any documents and information?

- (10) What steps will the Panel take to meet any claims to legal privilege, privacy, unwillingness or inability to respond, for reasons arising from any possible or actual legal proceedings or confidential settlements?
- (11) Will the Panel review settlement terms and matters that led to the settlement?
- (12) Will any meeting or hearing be conducted openly (full rights of the public to attend) on every occasion and will these proceedings be video and / or audio taped or recorded? Will a full transcript of the hearings be provided on a regular basis?
- (13) Does the Panel consider put all documents of the enquiry (letters, , email, fax, questionnaires, statements, submissions, interviews, meetings, hearings, etc) into public domain through a web page?
- (14) Does the Panel have power to provide immunity to any person from a defamation claim?
- (15) Is the Panel protected against defamation and any claim arising from the enquiry and has the Panel been given an indemnity by Government against any such claims including breach of any law?
- (16) What powers does the Panel have to deal with malicious allegations and defamation made in the course of responding to your enquiry?
- (17) Will the Panel permit cross examination of all persons providing information and opinions through submissions, responses to questionnaire, at hearings or in the form of statements?
- (18) Will the Panel intend to provide a copy of your draft Report to all parties affected for comments before the publication of the final Report?

As the person directly involved in the incidents relating to the EOC an independent, fair, impartial and transparent Inquiry Panel is required in order to gain the public confident of the EOC, as well as our Government. Therefore, the above questions are crucial to answer before my decision whether or not to assist your process. Thank you for your attention.

Yours sincerely

Patrick Yu

Professor Tam Sheung-Wai, GBS, JP  
Chairman  
Independent Panel of Inquiry on the  
Incidents relating to the EOC  
Rm. 124 East Wing  
Central Government Offices  
Hong Kong

**BY FAX AND BY MAIL**  
**FAX NO.: +852 2868 5617**

4 October 2004

Dear Professor Tam

**Inquiry on the Incidents relating to the EOC**

Thank you for your letter of 6 September 2004. It is with considerable regret and disquiet that I must advise that I am not prepared to co-operate further with the Panel of Inquiry. I have no confidence that the Inquiry will be impartial and independent. I am concerned that your letter does not answer the questions posed in my letter of 20 August and I am not happy to “go through” the questions at a meeting when I made it clear that the answers were crucial to my making a decision whether or not to assist the Inquiry.

I also withdraw my consent to the processing of my personal data due to my concerns about the Inquiry. In case the Interim and / or Final Report or any such report from the Panel of Inquiry that will damage my professional integrity and reputation, I will reserve my legal rights for any cause of action. Thank you for your attention.

Yours sincerely

Patrick Yu

Prof. Tam Sheung-wai  
Chairperson of Independent Panel  
Rm. 124 East Wing  
Central Government Offices  
Central  
Hong Kong

**BY FAX AND BY MAIL**  
**FAX NO.: +852 2868 5617**

13 January 2005

Dear Professor Tam

**Independent Panel of Inquiry on the incidents relating to the EOC**

Thank you for your letter of 17 December 2004 and the annexed provisional conclusions in which I received on 22 December 2004. Having read the provisional conclusions and my legal advice I make the following comments:

I am not surprised at the provisional conclusions made as they confirm that I was correct in having the concerns expressed in my letter to you of 4 October 2004. In my opinion the provisional conclusions indicate that the Inquiry has not been impartial and independent. I note with considerable regret and disquiet that many of the conclusions are factually inaccurate. I wish to highlight some of the more significant examples:

1. Paragraph 1.15 regarding my non-cooperation with the Panel. I believe it is factually and contextually misleading to refer to the settlement agreement and my subsequent non-cooperation without referring to my reasons for refusing to cooperate. As you are aware I am not satisfied that the Panel answered all my questions which I outlined on 20 August 2004: "...As the person directly involved in the incidents relating to the EOC an independent, fair, impartial and transparent Inquiry Panel is required in order to gain the public confidence of the EOC, as well as our Government. Therefore, the above questions are crucial to answer before my decision whether or not to assist your process." Therefore Paragraph 1.15 is a defamatory statement on my professional integrity and reputation;
2. Paragraph 2.55 to 2.59 Declaration of interests and/or knowledge  
Creating a heading "Declaration of interests and/or knowledge" implies that there was something inappropriate occurring which had to be investigated. The Report then does not draw any conclusions into a matter which should

not have been investigated in the first place and an impression is left that something may not be quite correct.

3. Paragraph 2.70 to 2.76 regarding my references

The material fact is wrong in the conclusion. I did provide references for my recent and previous employers in which the Consultant was satisfied the requirement. The additional references are not necessarily required in the appointment as it related to my profile and reputation in the equality field.

4. Paragraph 3.2 to 3.14 regarding my interview with press, in particular SCMP  
The press coverage on 24 October 2004 widely reported (both Chinese and English, in particular SCMP) that the press interview with both the SCMP and the Ming Pao was arranged by the then Chair, Ms. Wu and her office. I acted honestly and professionally in that interview about my equality experience in Northern Ireland. My concerns about the fact finding of the Inquiry are confirmed by the failure of the Panel to enquire into these facts which were widely reported in the press.

5. Paragraph 3.16 to 3.21 on sequence of events in July and August 2003

I dispute all the material facts in paragraph 3.16 to 3.21, in particular my experience in handling investigation and complaints. My experience as outlined in my written summary to Mr. Wong shows both my front line (both in Hong Kong and in Northern Ireland) and the two Commissions (One as chair the legal committee and the other as the member of legal committee under statutory requirement on receiving complaints and legal assistance). The issue reflects Mr. Wong's prejudicial view on me and in my opinion shows his own lack of experience in the equality field.

6. Paragraph 3.22 regarding meeting with senior staff

I dispute the statement "He seemed to show little interest in discussing operational issues, and he did not make any effort to discuss casework with the Legal Adviser." It is a prejudicial statement without substantive evidence.

7. Paragraph 3.27 The Panel's Observations

The Observations are based on the one-sided prejudicial facts from paragraph 3.16 to 3.23. I restate my grievous concern on the Panel's fact-finding mission.

8. Paragraph 3.30 to 3.32

I dispute the facts provided by DPA, in particular 12 months' salary.

9. Paragraph 3.35 to 3.58

It is submitted that Mr. Wong was in breach of the contract before the meeting on 18 September 2003 (paragraph 3.30 to 3.32 exploratory attempts before the meeting on 18 September 2003). In my opinion Mr Wong had dismissed me prior to the Board meeting on 18 September 2003. The September 18 meeting was basically to rubber-stamp Mr. Wong's wrong doing and in particular it is not in accordance with good governance. There was no formal agenda to discuss this important issue and no notification was giving to the Board of my solicitor's

letter of 17 September 2003. The Panel does not draw any adverse conclusions about this course of action and indeed the Panel has endorsed the same.

Moreover can the Panel explain the reasons behind there are two versions of reason to dismiss me: the EOC letter in response to my lawyer's letter on 20 September 2003 and the EOC submitted Report to HAB on 3 November 2003 that delivered to Legco.

I am gravely concerned at the content of the draft Report and I reserve my legal rights for any cause of action.

Patrick Yu

Professor Tam Sheung-wai  
Chairperson of Independent Panel  
Rm. 124 East Wing  
Central Government Offices  
Central  
Hong Kong

**BY FAX AND BY EMAIL**  
**FAX NO.: +852 2868 5617**

24 January 2005

Dear Professor Tam

**Independent Panel of Inquiry on the incidents relating to the EOC**

Further to my letter to you on 13 January 2005 in response to the Panel's provisional conclusions I have not received any feedback. I received email from the Secretariat on 18 January 2005 seeking my consent to include my name into the Acknowledgement Section of the Panel's Report. Since my non-cooperation with the Panel as I stated the reasons in my letter to you on 4 October 2004 and reiterated the same in paragraph 1 of my letter to you on 13 January 2005 I will not consent to include my name into the Acknowledgement of the Panel Report that will implicate my contribution, as well as my acceptance, of the Panel Report. I indicated in my last letter that the provisional conclusion has not been impartial and independent based on inaccuracy of facts.

I have a few more issues that draw the attention to the Panel on the accuracy of facts:

1. Paragraph 2.7 to 2.76 regarding my references  
Both Mr. Michael Wong and Mr. Michael Chan submitted their evidence to the Panel on Home Affairs on 5 November 2005 for the Special Meeting on 7 November 2005 (LC Paper No. CB(2)266/03-04(01) and LC Paper No. CB(2)266/03-04(02)) to confirm the fact that "employment reference checks on Mr. Yu were satisfactorily completed." Can the Panel explain to me how you can draw the conclusion on paragraph 2.76?
2. Paragraph 3.21 written summary of Mr. Yu's experience and 3.27 Panel's Observations  
Mr. Peter Yeung, Chair of the Recruitment Board, provided evidence at the Special Meeting of the Home Affairs Panel on 14 November 2003 (LC Paper No. CB(2)819/03-04). Paragraph 80 of the minutes of the Special Meeting stated that "He said that the Selection Board was sincere and had followed the proper recruitment procedures in recommending Mr. Patrick Yu for appointment as Director (Operations).....He confirmed that the selection board had studied in detail the qualifications and working experience of Mr. Patrick Yu before recommending to appoint him as Director (Operations)."

The Job Description of Director (Operations) stated the requirement “to manage the operation division responsible for handling public enquires and complaints under the relevant legislation; formulate operational policies and procedures and making improvements where necessary.....” The introduction of the EOC in the advertisement including “EOC provides the following services to the People of Hong Kong : handle enquires, complaints and conciliation fairly, effectively and efficiency. (see Spencer Stuart information on Position Specification).

The Panel’s Observation concluded that the decision to seek the termination of my contract was based on a number of facts (see paragraph 3.27) in which I disputed all in my previous letter. Can the Panel explain to me why the members of the selection board confirmed my appointment that based on my qualification and working experience in accordance with the job description above-mentioned and subsequently Mr. Wong dissented my experience in handling investigations and complaints as outline in paragraph 3.27? Are the members of the selection board incompetence to select someone who is not qualified based on the job description? If this is the case the Panel should include, in the Report, the incompetence of the selection board in order to ascertain Mr. Wong’s argument on my experience to handle investigations and complaints.

### 3. Paragraph 3.57-3.58 Conclusion

I draw your attention to paragraph 124 of the minutes of the Home Affairs Panel Special Meeting on 14 November 2003 Mr. Andrew Wong asked the following question in which the Panel should investigate before the conclusion under paragraph 3.57.

Paragraph 124 states that “Mr. Wong pointed out that the whole issue was more than an employer / employee contract issue. He said that the crux of the matter was whether Mr. Wong had already initiated discussion with Mr. Yu about terminating his appointment before Mr. Wong was authorised by EOC to do so, as without such authorisation, Mr. Wong was acting ultra vires.”

Mr. Andrew Wong is the expert in public administration and his question carries much of the weight. And in fact my press conference on 23 October 2003 (my typing mistake on “2004” in the previous letter under paragraph 4) asked the same question: the reasons behind my dismissal and the procedure to dismiss me?.

In fact Mr. Wong’s evidence to the Home Affairs Panel on 5 November 2003 admitted on 5 September 2003 that “I discuss my concerns about the appointment of Mr. Yu with Mr. Peter Yeung (the Chair of the Recruitment Board which selected Mr. Yu) and that I did not consider him suitable for the post of Director (Operations). I informed Mr. Yeung that I was considering recommending the termination of Mr. Yu’s contract of employment. Mr. Yeung agreed with my proposal. I asked DPA to further explore the issue of settlement with Mr. Yu, and to find out if Mr. Yu would be prepared to accept

2 months' salary (plus cash allowance) as compensation if the contract were terminated.”

This important piece of evidence confirms that Mr. Wong did initiate discussion with me through Mr. Michael Chan, DPA, about terminating my appointment before Mr. Wong was authorised by EOC on 18 September 2003. As a public body like EOC Mr. Wong was acting ultra vires.

Moreover according to Section 67(1) of the Sex Discrimination Ordinance it states that the EOC may delegate functions or powers to “(a) any member of the Commission..... in writing”. Could the Panel confirm whether Mr. Wong's authorisation on 18 September was in accordance with Section 67(1) requirement in writing (a dedicated single instrument). If it is not the case Mr. Wong also acted ultra vires.

I also draw your attention to the letter of Ms. Anna Wu to me on 17 July 2003. Paragraph 3 of the letter states that “Termination of your agreement by the EOC prior to the completion of the agreement will be subject to the provisions in EOC's Memorandum on conditions of service and EOC Human Resource Policy (Policy). It will also be subject to the approval by EOC's Administration and Finance Committee (A&FC) comprising Members of the Commission. There are specific procedures and guidelines in the Policy to deal with disciplinary or performance issues. It is also spelled out in the Policy that as a matter of natural justice, employees should be given a chance to state his or her case before any disciplinary action is imposed. An employee also has the right to appeal against a disciplinary action.”

As a matter of natural justice I am not treated fairly in accordance with the policy and practice of the EOC in terminating my contract prior to the meeting on 18 September 2003 and thereafter.

Based on the above facts and arguments I dismiss the conclusion under paragraph 3.57-3.58.

As I stated in my previous letter that the provisional conclusions indicate that the Inquiry has not been impartial and independent. I also draw your attention to my letter to you on 4 October 2004 withdrawing my consent to the processing of my personal data in accordance with the data protection legislation in Hong Kong. In case of any wrongful disclosure of my personal data or confidential information in the Panel Report I reserve my legal rights for any cause of action. I also reserve my legal rights for any cause of action on the content of the Panel Report.

Thank you for your attention.

Patrick Yu