

立法會
Legislative Council

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Panel on Home Affairs

Background brief prepared by Legislative Council Secretariat

**Termination of the employment of the Director (Operations) designate by
the Equal Opportunities Commission and other related incidents**

Purpose

This paper gives an account of the following incidents –

- (a) the appointment and termination of the employment of Mr Patrick YU as the Director (Operations) by the Equal Opportunities Commission (EOC);
- (b) the resignation of Mr Michael WONG as the EOC Chairperson;
and
- (c) the publication of “six allegations” against EOC during the tenure of Ms Anna WU as the EOC Chairperson.

2. This paper also summarises the issues and concerns raised at the meetings of the Panel on Home Affairs held on 7 and 14 November and 9 December 2003 regarding these incidents.

Equal Opportunities Commission

3. EOC is a statutory body established under the Sex Discrimination Ordinance (SDO) on 20 May 1996. EOC comprises the Chairperson and up to 16 members. The authority of appointment of the Chairperson and members rests with the Chief Executive (CE). EOC is responsible for the implementation of SDO, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. EOC is headed by an executive Chairperson, the post of which is pitched at the rank equivalent to Point 8 on the Government Directorate Pay Scale.

Appointment and termination of the employment of the Director (Operations)

Creation of the post of Director (Operations)

4. In February 2002, external consultants commissioned by EOC completed a review of the complaint handling and related procedures of EOC. One of the recommendations of the review was the amalgamation of the Gender Division and the Disability Division into an Operations Division, and the merging of the respective directors for disability and gender into the post of Director (Operations). The recommendations were approved by EOC in March 2002, and the amalgamation exercise was completed at the end of June 2003.

Appointment of Mr Patrick YU as the Director (Operations)

5. The recruitment of the Director (Operations) commenced in October 2002 after endorsement was obtained from the Administration and Finance Committee of EOC. The convenor of the Administration and Finance Committee approved the composition of a selection panel which was chaired by Mr Peter YEUNG, an EOC member. Ms Anna WU, the EOC Chairperson at that time, was also a member of the selection panel. The selection panel interviewed four candidates, but no decision for appointment was made. It was agreed that one of the external candidates interviewed would be a possibility and could be given further consideration if there were no other suitable candidates. Ms Anna Wu explained to the selection panel that Mr Patrick YU would be worth exploring and the executive search firm was asked to ascertain his interest and suitability.

6. After an interview with Mr YU through video conferencing, the selection panel recommended his appointment as the Director (Operations). The offer of appointment by EOC was accepted by Mr YU on 4 June 2003, and it was agreed that he would commence work on 1 November 2003. On 17 July 2003, EOC issued a press statement on the appointment of Mr YU as the Director (Operations).

Termination of the employment of Mr Patrick YU as the Director (Operations)

7. An article on an interview with Mr Patrick YU as the Director (Operations) designate was published in the South China Morning Post on 18 July 2003. Mr YU was reported to have said that he would uphold the integrity and mission of EOC, and he hoped to play a role in advising on the enactment of an anti-racism law in Hong Kong. According to Mr Michael WONG who assumed the duty of the EOC Chairperson on 1 August 2003, he considered that what Mr YU had said to the media exceeded the scope of the

duties of the Director (Operations) and was disrespectful to EOC and its new Chairperson.

8. According to Mr Michael WONG, he asked the Director of Planning and Administration (DPA) of EOC on 22 August 2003 to discuss with Mr YU the possibility of terminating his employment contract with EOC. DPA contacted Mr YU on 3 September 2003. Mr WONG was advised by DPA of the following –

- (a) Mr YU said that it would be difficult for him to go back to his job at the Northern Ireland Council for Ethnic Minorities (NICEM), as NICEM had arranged for someone to act in his position;
- (b) Mr YU mentioned that he would consider 12 months' salary (plus cash allowance) as compensation to settle the matter amicably. Mr YU then went on to say that he might consider to settle the matter for at least six months' salary (plus cash allowance);
- (c) Mr YU said that what EOC was considering was an anticipatory breach of contract;
- (d) DPA told Mr YU that it might be difficult to consider six months' salary (plus cash allowance) as compensation; and
- (d) DPA told Mr YU that he would convey the conversation to Mr WONG, and inform Mr WONG of his request for compensation.

9. On 5 September 2003, Mr Michael WONG asked DPA to further explore the issue of settlement with Mr YU and to find out if Mr YU would be prepared to accept two months' salary plus cash allowance as compensation for terminating the contract. According to Mr WONG, he also conveyed his view about the unsuitability of Mr YU as the Director (Operations) and his intention to recommend the termination of his employment contract to Mr Peter YEUNG, Chairman of the selection panel, on that day. Mr YEUNG agreed to Mr WONG's proposal. DPA informed Mr WONG on 16 September 2003 that he had contacted Mr YU who agreed to consider the offer. On 17 September 2003, EOC received a letter from the solicitors of Mr YU advising that they had instructions to issue proceedings for damages for breach of contract, breaches of the Bill of Rights and defamation of character against EOC and Mr Michael WONG personally, and that unless they received a proposal to settle the claim within seven days, they would issue proceedings without further notice.

10. The suitability of Mr YU for the post and termination of his contract were discussed at the EOC meeting on 18 September 2003. On 20 September 2003, on the instruction of Mr Michael WONG, the Legal Adviser of EOC advised the solicitors of Mr YU in writing that Mr YU's remarks published in the press were not commensurate to his obligations and responsibilities as Director (Operations) or as an employee of EOC and suggested a distinct lack of appreciation of the job duties and/or arrogance and disrespect towards EOC members and its Chairperson. It was also advised that EOC members and its Chairperson had formed the view that he was not a suitable employee for EOC.

11. On 23 October 2003, Mr YU held a press conference claiming that his employment contract had been unreasonably terminated by Mr Michael WONG and demanded Mr WONG to give an explanation.

12. On 24 October 2003, EOC issued a press release stating that members of EOC fully supported the Chairperson's decision to terminate the employment contract of Mr YU. While Mr Michael WONG maintained that EOC had authorised him to terminate the employment contract at its meeting on 18 September 2003, three EOC members, Hon LI Fung-ying, Ms CHAN Yu and Professor Nelson CHOW, told the media that they were not aware of such a decision being made at that meeting. (An extract from the minutes of the EOC meeting on 18 September 2003 on the employment contract of Mr YU and a summary of the relevant discussions are in **Appendix I**.)

13. According to a press interview published on 29 October 2003, Mr Michael WONG claimed that the criticisms about his termination of the employment contract of Mr YU were all linked to a political conspiracy against CE, who appointed him as the EOC Chairperson.

14. On 29 October 2003, Ming Pao reported that, according to a confidential document of EOC that it had obtained, it was Ms Anna WU herself who referred the name of Mr YU to the executive search firm hired by EOC to source suitable candidates for the vacancy of the Director (Operations). It was suggested that there might have been a conflict of interests for Ms WU, being a member of the selection panel, to have made such a referral.

15. On 30 October 2003, the media reported that Ms Anna WU had made available to the media a private letter she had sent to Mr Michael WONG on 22 July 2003. According to Ms WU's letter, Mr WONG had as early as in mid-July complained to Ms WU in a telephone conversation that she was pre-empting him in appointing Mr YU as the Director (Operations). (The letter is restricted to Members only and will be issued separately vide LC Paper No. CB(2)1004/04-05(01).)

16. On 1 November 2003, Ming Pao published a statement disclosing that the confidential document of EOC (paragraph 14 above refers) was provided

by Mr Michael WONG on 28 October 2003. The confidential document reportedly contained the personal data of Mr YU and other applicants for the post of Director (Operations).

17. Mr Michael WONG announced his resignation as the EOC Chairperson on 6 November 2003.

18. EOC and Mr Patrick YU issued a joint statement on 27 May 2004 that both parties had reached a settlement on the issues related to Mr YU's contract and agreed to maintain confidentiality on the nature and content of the settlement.

Concerns raised by members of the Panel on Home Affairs

19. The Panel on Home Affairs had invited Mr Michael WONG to attend its three meetings on 7 and 14 November and 9 December 2003 respectively to discuss the issues relating to the appointment and termination of Mr Patrick YU as the Director (Operations) and other related incidents. Mr WONG had declined the invitation on each occasion and only provided a written submission to the Panel (The submission is restricted to Members only and will be issued separately vide LC Paper No. CB(2)1004/04-05(02)). In his submission, Mr WONG spelt out a number of problems relating to the operation of EOC. He also made an allegation that the recruitment of Mr YU as the Director (Operations) did not follow the established procedure of EOC. Some members considered that an inquiry into the allegation should be conducted in order to do justice to the parties concerned.

20. A member pointed out that the selection panel, after conducting interviews with four candidates for the post of Director (Operations), had found that one candidate could be given further consideration. He considered it unfair to the other candidates that Ms Anna WU had asked that Mr YU be contacted at that stage. The member also pointed out that Ms WU had been directly involved throughout the selection process and she had laid down the job requirements and selection criteria. Given the circumstances, other people could not help suspect that some undue influence had brought about the employment of Mr YU.

21. At the meeting of the Panel on Home Affairs on 14 November 2003, Ms WU explained that she had provided the name of Mr YU to the executive search firm before the selection process was completed, and other members of EOC had also been asked for referrals for consideration of the selection panel. She pointed out that this was an accepted practice, and she had no conflict of interests in the matter. From her recollection, she had previously met Mr YU once when she invited him to give a short presentation to EOC. Ms WU stressed that she had the same level of involvement as that of other members of the selection panel in the selection process.

22. Mr Peter YEUNG, Chairman of the selection panel which recommended Mr YU for appointment, told the Panel at the same meeting that the procedures adopted for the recruitment of Mr YU as the Director (Operations) fully followed the established recruitment procedures of EOC.

23. Some members were of the view that the termination of the employment of Mr YU by EOC was not just a labour dispute as so described by the Administration. These members were of the view that the incident had dealt a blow to the credibility of EOC because what Mr Michael WONG had done as the EOC Chairperson was, ironically, an act of discrimination against his employee. These members pointed out that as Ms Anna WU's letter dated 22 July 2003 had shown (paragraph 15 above refers), Mr WONG had considered, at the very beginning, that the appointment of Mr YU was a move to pre-empt him, and the reasons given by Mr WONG at the EOC meeting on 18 September 2003 for terminating the employment contract of Mr YU were unconvincing.

24. These members also pointed out that since the post of Director (Operations) was a very senior position in EOC, the relevant employment contract should have been offered after a careful selection process. They queried why EOC members could have easily accepted Mr Michael WONG's proposal of terminating the appointment of Mr YU after discussing the matter for only 45 minutes at the EOC meeting on 18 September 2003. These members were concerned whether it was Mr Michael WONG himself who considered Mr YU unfit for the post, and whether Mr WONG had already initiated discussion with Mr YU about terminating his employment contract before Mr WONG was authorised by EOC to do so. They considered that without such authorisation by EOC, Mr WONG was acting beyond his power.

25. Mrs Patricia CHU, the successor of Mr Michael WONG, explained to the meeting of the Panel on Home Affairs on 9 December 2003 that as EOC members considered that they had fully expressed their views at the EOC meeting on 18 September 2003, and as they believed that the Chairperson would handle it in a reasonable and lawful way, the EOC Chairperson should be authorised to handle the employment contract of Mr YU. Mrs CHU also told the Panel that between 18 September and 23 October 2003 (i.e. the date on which Mr YU held a press conference in Hong Kong on his termination of employment by EOC), Mr Michael WONG did not inform EOC members of his decision to terminate Mr YU's employment contract.

26. Some members criticised the Government for failing to intervene in the incident of the termination of the employment of Mr YU by EOC at the initial stage. They considered that the Administration's failure to do so reflected its incompetence.

27. The Secretary for Home Affairs (SHA) explained to the Panel that he only had responsibility in handling the following four EOC-related matters –

- (a) to recommend candidates for the post of EOC Chairperson for consideration by CE;
- (b) to recommend candidates for the posts of EOC members for consideration by CE;
- (c) to provide adequate funding for the EOC's operation; and
- (d) to consider the EOC's advice relating to three anti-discrimination ordinances, including proposals for legislative amendments.

SHA pointed out that apart from these matters, the Government would not intervene in the work of EOC, which operated independently with the power conferred upon it by law.

28. Some members agreed with the Administration that the termination of the employment of Mr YU as the Director (Operations) by EOC was a labour dispute. They did not see the need for the Legislative Council (LegCo) to probe into the matter. These members considered that as a statutory body, EOC had the full authority to handle matters of staff employment and dismissal independently. The Government should uphold its non-intervention policy and let EOC resolve the dispute itself.

Resignation of Mr Michael WONG as the EOC Chairperson

Appointment of Mr Michael WONG as the EOC Chairperson

29. On 2 July 2003, the Government announced the appointment of Mr Michael WONG as the new EOC Chairperson, effective from 1 August 2003. According to Ms Anna WU who was re-appointed as the EOC Chairperson for one year until 31 July 2003, the appointment was made known to her while she was on holiday overseas by a long distance call from the Home Affairs Bureau (HAB) at 7 am on 2 July 2003.

30. Mr Michael WONG assumed the post of the EOC Chairperson on 1 August 2003. Towards the end of October 2003, it was reported in the media that Mr Michael WONG –

- (a) had allegedly received air tickets as a gift from a wealthy businessman without making any declaration to the Judiciary;

- (b) had been living in a luxury apartment given to his daughter by the same businessman; and
- (c) had continued to receive his monthly pension while taking up his appointment as the EOC Chairperson.

31. In response to media enquiries, the Judiciary issued two press statements on 30 October and 3 November 2003 respectively. In essence, the Judiciary explained that Government employees were permitted to accept any gifts from a relative, and there were no provisions governing receipts of personal gifts from their children.

32. In reply to a written question at the Council meeting on 12 November 2003, the Secretary for Civil Service explained that CE had exercised his discretion to approve Mr Michael WONG's application for continuation of his monthly pension, after taking into account the fact that Mr WONG had to come out of retirement and resign from various public and private appointments in order to take up the full-time post as the EOC Chairperson.

33. Mr Michael WONG originally agreed to attend the meeting of the Panel on Home Affairs on 7 November 2003 to discuss the termination of the employment of Mr YU. On the day before the meeting, Apple Daily published a report on a private meeting attended by SHA, Mr Michael WONG, Dr Raymond WU and Mr Andrew LIAO on the night of 5 November 2003. SHA subsequently informed the Panel on 14 November 2003 that the participants of the private meeting also included another EOC member, Ms Priscilla WONG.

34. Mr Michael WONG held a press conference in the afternoon of 6 November 2003 to announce his resignation. He claimed at the press conference that he had been "deserted" and was a victim of "political persecution". He also declined to attend the meeting of the Panel on Home Affairs on 7 November 2003. CE subsequently appointed Mrs Patricia CHU as Mr WONG's replacement for one year, effective from 15 December 2003.

Concerns raised by members of the Panel on Home Affairs

35. Some members pointed out that the controversies over the appointment of Mr Michael WONG had raised concerns about the criteria for his appointment as the EOC Chairperson. These members queried the suitability of Mr WONG for the post since he had little experience in the work of promoting equal opportunities.

36. Some other members also pointed out that during his interview with the media, Mr Michael WONG had mentioned that he would substantially reduce

the expenditure of EOC and downsize EOC. These members queried whether Mr WONG was appointed to carry out certain tasks, such as streamlining the establishment of EOC and revamping the work of EOC, during his tenure as the EOC Chairperson.

37. SHA informed the meeting of the Panel on Home Affairs on 14 November 2003 that the Government had considered other people before deciding to appoint Mr Michael WONG as the EOC Chairperson. He told the Panel that Mr WONG, being a retired Justice of Appeal of the Court of Appeal of the High Court, was highly reputable. The Government had taken into consideration the fact that judges were widely respected. They enjoyed a high social status and had the image of impartiality.

38. Many members strongly felt that measures should be taken to restore the credibility of EOC. Some members requested the Administration to enhance the transparency of the appointment process of the EOC Chairperson. They suggested that when a person was being considered for the post of EOC Chairperson, the Administration should make arrangement for that person to meet with the Panel in order to assess the suitability of that person for the post. They also suggested that consideration should be given to selecting the EOC Chairperson by open recruitment.

Publication of “six allegations” against EOC during the tenure of Ms Anna WU as the EOC Chairperson

“Six allegations”

39. On 12 November 2003, the East Week published an article on “six allegations” against EOC during the tenure of Ms Anna WU as the EOC Chairperson. These “six allegations” were –

- (a) rapidly expanding EOC’s establishment and adopting unfair appointment practices;
- (b) having serious internal discord and complaints from staff who had been unreasonably dismissed, with two of the complainants resorting to litigation;
- (c) deliberately encouraging complainants to initiate litigations, resulting in a sharp increase in litigation costs;
- (d) inflating the number of complaint cases in order to obtain more resources;

- (e) briefing out most of the litigation cases even though EOC had a legal services division comprising four lawyers; and
- (f) making available case files to outsiders in the name of research, thereby contravening the Personal Data (Privacy) Ordinance.

40. According to the article published by the East Week, these “six allegations” were drafted by Government official(s) of HAB and individual EOC members on the night of 5 November 2003. The “six allegations” were originally intended to be read out by Mr Michael WONG the following day during the press conference to announce his resignation, although he subsequently decided not to do so.

41. On 13 November 2003, it was reported by the media that Dr Raymond WU had admitted that the “six allegations” against EOC were drafted during the private meeting on the night of 5 November 2003, and that SHA was present in the course of discussing the content of Mr WONG’s resignation statement. Dr WU subsequently professed “memory loss” in a radio interview on Radio-Television Hong Kong on 18 November 2003. Dr WU refused to say whether SHA was present when the resignation statement of Mr WONG was being drafted during the private meeting.

42. On 14 November 2003, in response to the question raised at the meeting of the Panel on Home Affairs as to whether he was representing EOC members in drafting the “six allegations”, Dr Raymond WU explained that he had picked up some rumours about problems relating to the internal operations of EOC, which had been reported by the media for years, and had asked Mr Michael WONG to confirm them if they were true. Dr WU clarified that he had only suggested to Mr WONG that, if he agreed that the rumours were true, he should set out these problems in his resignation statement, as this would help the incoming Chairperson improve EOC.

43. SHA informed the Panel that he had met Mr Michael WONG twice regarding his resignation. The first occasion was 4 November 2003 when he was invited to a private gathering and Mr WONG was also present. On that occasion, Mr WONG told him that he had the intention to resign. The second occasion was 5 November 2003.

44. SHA explained that in order to have a better idea of Mr WONG’s intention, he had asked a friend to arrange a meeting with Mr WONG on 5 November 2003. On that occasion, Mr WONG explicitly indicated that he would consider resigning as the Chairperson of EOC. SHA further explained that when a friend of Mr WONG started to discuss with Mr WONG the content of his resignation statement, he felt that he should not be present and had left the meeting for some time. When he returned, the discussion between

Mr WONG and his friend was coming to an end. He heard that they were talking about the internal affairs of EOC, and he did not hear any allegation against any person or any smearing remarks. SHA reiterated that he did not participate in the drafting of the resignation statement of Mr WONG and he did not give any implicit consent to any smear campaign against anyone.

Concerns raised by members of the Panel on Home Affairs

45. Some members expressed serious concern that SHA and Dr Raymond WU had given different versions of what happened at the private meeting on the night of 5 November 2003. These members pointed out that SHA had the responsibility to safeguard EOC from being subjected to unfair allegations, and he should conduct investigation into any allegations against EOC before allowing such allegations to be published. These members considered that when SHA remained silent during the discussion, he was actually conniving in the smear campaign. They considered that this was a serious matter and LegCo should be told the whole truth as to what exactly happened at the private gathering in question and whether SHA was involved in a smear campaign against EOC.

46. Some members were dissatisfied with SHA's refusal to openly dismiss the "six allegations" published in the weekly magazine as unfounded. They considered that the Government should be concerned about the allegations and if they were confirmed to be unfounded, the Government should openly state so to defend the credibility of EOC.

47. Some other members considered that it was important for the Government to uphold its non-intervention policy in respect of the operation of statutory bodies including EOC. These members, however, were of the view that to do justice to all parties concerned, it was necessary to inquire into whether there was any truth in the "six allegations" published by the weekly magazine, as they had adversely affected the credibility of EOC.

Request for the Government to appoint a commission of inquiry

48. At the meeting of the Panel on Home Affairs on 9 December 2003, members considered that the various incidents had adversely affected the credibility of EOC and the reputation of Hong Kong. Most members agreed that there should be an investigation into the many important questions which had remained unanswered, such as –

- (a) whether the appointment and termination of employment of Mr Patrick YU had followed the established procedures of EOC;

- (b) what exactly happened at the meetings attended by Mr Michael WONG and other parties on the nights of 4 and 5 November 2003 before he tendered his resignation on 6 November 2003; and
- (c) what was the background to the article about the “six allegations” against EOC published by the weekly magazine on 12 November 2003.

49. Members unanimously agreed that CE should be requested to appoint an independent commission of inquiry to investigate the incidents.

50. On 9 January 2004, the Administration reported to the Panel its decision not to appoint an independent commission of inquiry to investigate the incidents concerning EOC. The Administration’s main considerations were –

- (a) the Government should respect the independence of EOC;
- (b) the termination of the employment contract of Mr YU by EOC was an employer/employee dispute and the Government should not intervene; and
- (c) there was no evidence to show that any person had breached the law in the incidents.

51. In view of the Administration’s decision, the Panel on Home Affairs recommended to the House Committee on 13 February 2004 that LegCo should appoint a select committee with the following terms of reference –

“To inquire into the incidents which have affected the credibility of the Equal Opportunities Commission and related issues, to examine the accountability of the persons concerned in that regard and to make recommendations on the restoration of credibility of the Equal Opportunities Commission.”

52. Just before the meeting of the House Committee on 13 February 2004, the Administration provided the Panel on Home Affairs with a letter dated 12 February 2004 from SHA to the EOC Chairperson. According to the letter, EOC had taken steps to set up a review committee to conduct a review of the policy and procedures relating to human resources management in EOC. EOC also considered setting up another review committee comprising independent members to inquire into the issues concerning the appointment and termination of Mr YU. In his letter, SHA expressed support for the EOC’s intention to set up a review committee to inquire into the issues concerning the appointment and termination of Mr YU. SHA also put to the EOC

Chairperson that it would be more appropriate for the Administration to nominate two independent members to sit on that review committee so as to enhance the credibility and transparency of the proposed review.

53. At its meeting on 13 February 2004, the House Committee agreed that before making a decision on the Panel's proposal for a select committee to be appointed, the Administration should be asked one more time whether it would appoint an independent committee or panel to inquire into the incidents which had affected EOC's credibility.

Appointment of an independent panel of inquiry by SHA

54. SHA wrote to the Chairman of the House Committee on 19 February 2004 informing the Chairman and Members that he would appoint an independent panel of inquiry with the following terms of reference to inquire into the incidents which had affected EOC's credibility –

- (a) to inquire into the appointment and termination of employment of Mr Patrick YU by EOC and issues related thereto; and
- (b) to inquire into the incidents which had affected the credibility of EOC and to make recommendations on measures to restore EOC's credibility.

55. SHA's letter was discussed at the House Committee meeting on 20 February 2004. Some Members did not support the appointment of an independent panel of inquiry by SHA on the grounds that –

- (a) it was doubtful whether a panel of inquiry appointed by SHA could be truly independent since the panel would not be in a position to inquire into the role and involvement of SHA in the incidents; and
- (b) the panel of inquiry would not have powers to summons witnesses to give evidence before it.

They considered that the inquiry should be carried out by a select committee appointed by LegCo.

56. Some other Members, however, expressed support for the appointment of an independent panel of inquiry by SHA. They were concerned that the proposed select committee, if appointed, would not be able to complete its inquiry before the end of the LegCo term, given the time constraint, the heavy work commitment of Members, and the ongoing inquiries undertaken by two select committees at that time. These Members also considered that the panel

of inquiry could address the concerns of Members and the public. If Members were not satisfied with the report of the panel of inquiry, LegCo could consider appointing a select committee in the next term.

57. The House Committee decided that the appointment of an independent panel of inquiry by SHA be supported. Pending the report of the panel of inquiry, the House Committee would not pursue the proposal for the appointment of a select committee by LegCo.

58. On 15 May 2004, SHA announced the appointment of Professor TAM Sheung-wai, the President Emeritus of the Open University of Hong Kong, as the chairman of the panel of inquiry. The other two panel members were Mr Anthony WU Ting-yuk, Chairman of Ernst & Young, Far East, China and Hong Kong and Mrs Fanny LAI IP Po-ping, a senior member of the accounting profession. HAB would provide secretariat and administrative support to the panel of inquiry. As scheduled, the panel of inquiry submitted its report within nine months from the date of its appointment, i.e. on 2 February 2005.

Relevant questions and motion raised/moved at Council meetings

59. Details of the questions and motion on issues relating to the three incidents are in **Appendix II**.

Relevant papers

60. A list of relevant papers, including statements, letters, papers and documents received by the Panel on Home Affairs/the House Committee, reports of the Panel on Home Affairs to the House Committee and minutes of the relevant meetings is in **Appendix III**. Soft copies of these documents are available on the LegCo website at <http://www.legco.gov.hk>.

Council Business Division 2
Legislative Council Secretariat
8 March 2005

**Minutes of the EOC Meeting on 18 September 2003
on the part concerning the case of Mr. Patrick YU Chung-yin**

V. Any Other Business

(Agenda Item No. 8)

(iv) **Contractual Matters**

The C/EOC raised with Members' the suitability of Mr. Patrick YU for employment with the Commission. Having discussed the matter, C/EOC was given full powers by Members to handle Mr. YU's contract.

Equal Opportunities Commission

**A Summary of the Discussions at the EOC Meeting
on 18 September 2003 concerning the Case
of Mr. Patrick YU Chung-yin**

1. C/EOC raised he wished to proceed to "A.O.B." as one Member required to leave early and C/EOC wished to discuss item while Member still present.

2. C/EOC brought up issue of suitability of Mr. Patrick YU as new Director (Operations). Mr. YU had signed contract and would start on 1/11/03. C/EOC indicated concern about article published in SCMP on 18/7/03. Comments by Mr. Patrick YU in article were not related to his job duties and Mr. YU's comment about upholding integrity in EOC mission was not Mr. YU's responsibility but that of Members. C/EOC said Mr. YU's responsibilities should be conducting investigations and handling complaints.

3. C/EOC also informed Members he had asked Mr. YU to provide a written summary of his experience in handling complaints and investigation and after reviewing the information, he did not consider Mr. YU to have much experience. C/EOC expressed Mr. YU was behaving like a Chairman and C/EOC did not know how to deal with him. C/EOC further expressed it would be bad to have internal power strife between him and Mr. YU. C/EOC asked Members to give him authority to handle Mr. YU's contract. C/EOC added he had already discussed the matter with one Member, who agreed, and he asked for EOC's authorisation to terminate Mr. YU's contract.

4. A Member remarked that if there was already a formal procedure for appointing Mr. YU and Mr. YU has not yet commenced employment, what would be the reasons for terminating his contract now. The Member added that based on C/EOC's comments, Mr. YU did not seem to understand the scope of his duties. However, it would be necessary to consider whether to handle Mr. YU's case before or after his taking up employment.

5. A Member expressed that EOC is a team and should support C/EOC's request to give him authority to deal with Mr. YU's contract. Another Member expressed support for C/EOC because C/EOC was full-time and responsible for output and quality and has the right to handle staff cases.

6. Some Members enquired the procedure for the appointment of Mr. YU. A Member explained the delegation of power to the Administration and Finance Committee (A&FC) by EOC and A&FC's setting up of selection board for recruitment. He informed Members about the selection process and there was no problem with the procedure.

7. A Member supported C/EOC to handle Mr. YU's case, but suggested C/EOC could talk to Mr. YU first and look into the case and then come back to EOC with information to make a decision. However, another Member said this would not allow sufficient time if C/EOC had to report back to Members as Mr. YU would report for duty on 1 November 2003 and suggested that authority be given to C/EOC to make a final decision.

8. A Member expressed the view that Mr. YU was properly and legally appointed and that EOC was now trying to rescind his contract. He expressed concern about rescinding of Mr. YU's contract and stated he found it difficult to agree and get rid of Mr. YU before he arrived.

[The Member left the meeting soon after.]

9. A Member asked whether A&FC had legal power to make the appointment of Mr. YU. LA clarified A&FC had EOC delegation for selection and appointment of employees MPS45 and above, so they had proper delegated authority to interview and select Mr. YU. She stated her understanding that Mr. YU was properly interviewed, selected and appointed.

10. A Member expressed the view that C/EOC should have full power and responsibility to deal with any subordinate staff, including affairs of EOC and gave authorisation to C/EOC to handle case.

11. Another Member expressed the opinion that Mr. YU was properly appointed and although she understood there might be difficulty for C/EOC to co-operate with him, Mr. YU had not yet taken up the post and she expressed great reservation on the matter.

12. Another Member expressed he did not doubt the legality of Mr. YU's appointment, but expressed that legal termination of Mr. YU's contract was also possible and that dismissal was reasonable and fair because C/EOC had new objectives and working goals. He said that EOC could of course

let Mr. YU come and evaluate his performance, and terminate his employment if performance was poor, but he appreciated C/EOC's views about early termination. A major conflict could be avoided so he fully supported C/EOC to dismiss Mr. YU before he reported for duty and EOC would of course pay financial compensation.

13. DPA clarified EOC had been conducting recruitment for the vacancy since December 2002. Decision was made by the selection board in May 2003 and at that time it was not known there would be a new C/EOC. A Member further clarified the recruitment process and factors considered by the selection board.

14. Another Member expressed that from the perspective of personnel management, it was common for appointment of senior level employees to be withdrawn if there were changes. If EOC directions had changed, the case should be left to C/EOC to handle lawfully. He expressed that the act was fair and reasonable and would be unfair to Mr. YU if he resigned and moved back to HK, then was asked to leave.

15. Another Member agreed that the matter should be handled by the Chairman as long as actions taken were lawful, reasonable and rational. She suggested that there should be a strategy particularly in dealing with enquiries from the media. She mentioned that concerns were expressed about the future development of the EOC both before and after the Chairman's assumption of duty. Some Members were also concerned on how the "organizational review" to be undertaken by the EOC would be perceived. There should be a strategy regardless of whether the actions

involved terminating Mr. YU's contract or not.

16. C/EOC asked Members to give him authority to deal with Mr. YU's contract. A Member moved the motion authorising C/EOC to have power to handle Mr. YU's contract. The motion was seconded. C/EOC asked whether there were any objections. No objections were raised by any Members present. The resolution was passed unanimously.

[Post-meeting note: An EOC Member who was present at the above Meeting wrote to EOC on 27/10/03 that she did not understand there was a decision to dismiss Mr. YU at the Meeting and did not agree with the decision to terminate Mr. YU's employment.]

Equal Opportunities Commission

Questions/motions raised/moved by Members at Council meetings

Meeting Date	Question/Motion
22 October 2003	Hon Albert HO raised an oral question on the appointment of retired judges to public offices.
12 November 2003	Dr Hon LAW Chi-kwong raised an oral question on the appointment of the Chairperson and members of the Equal Opportunities Commission (EOC), and measures to safeguard the reputation of EOC and restore public confidence in EOC.
12 November 2003	Hon Emily LAU raised a written question relating to the Chief Executive's exercise of discretionary power to allow retired civil servants or judicial officers to continue to receive their pensions during their re-appointment to the public service.
19 November 2003	Ir Dr Hon Raymond HO raised an oral question regarding the termination of the employment contract of the Director (Operations) designate of EOC, and the Government's assessment of the damage caused to EOC's credibility by the incident and its impact on other public bodies.
19 November 2003	Hon Emily LAU raised an oral question on how the Government would follow up an allegation that the former EOC Chairperson, Mr Michael WONG, while in office, had divulged internal documents of EOC, including the personal data of job applicants, to the media; details of the private meeting attended by SHA held on the night of 5 November 2003; and enhancement of EOC's credibility through a new appointment mechanism.
26 November 2003	Hon Fred LI moved a motion urging the Government to learn the lesson from the "Michael Wong Kin-chow incident" and take expeditious measures to restore public confidence in EOC.
2 June 2004	Hon Albert HO Chun-yan raised an oral question on the justifications for the Government's deviation from the six-year rule and the six-board rule in the appointment of some members of EOC.

List of relevant documents

Termination of the employment of the Director (Operations) designate by the Equal Opportunities Commission and other related incidents

Committee	Papers (including statements, letters, documents, reports and minutes of relevant meetings)	LC Paper No.
Panel on Home Affairs	Letter dated 22 July 2003 from Ms Anna WU to Mr Michael WONG (circulation restricted to Members only)	CB(2)245/03-04
	Letter dated 29 October 2003 from Hon Albert HO to the Panel	CB(2)218/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1107cb2-218e01.pdf
	Letter dated 29 October 2003 from Hon James TO to the Administration and copied to the Panel	CB(2)266/03-04(03)
	Relevant press cuttings and press statements circulated by the Complaints Division as requested by Duty Roster Members, and a submission from Women's Coalition on Equal Opportunities	CP102/03-04(01)
	Letter dated 29 October 2003 from the Administration to the Equal Opportunities Commission (EOC) and EOC's reply dated 3 November 2003	CB(2)247/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1107cb2-247e01.pdf
	Reply letter dated 5 November 2003 from the Administration to Hon Albert HO	CB(2)247/03-04(02) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1107cb2-247e02.pdf

Committee	Papers (including statements, letters, documents, reports and minutes of relevant meetings)	LC Paper No.
Panel on Home Affairs	Submission from Hong Kong Human Rights Monitor	CB(2)247/03-04(03)
	Submission from Mr Patrick YU (circulation restricted to Members only)	CB(2)265/03-04
	Letter dated 5 November 2003 from Mr Michael WONG to the Panel	CB(2)266/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1107cb2-266e01.pdf
	Letter dated 5 November 2003 from Mr Michael CHAN, Director (Planning and Administration) of EOC, to the Panel	CB(2)266/03-04(02) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1107cb2-266e02.pdf
	Letter dated 6 November 2003 from the Director (Planning and Administration) of EOC attaching with the press statement on Mr Michael WONG's resignation	CB(2)280/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1107cb2-280e01-scan.pdf
	Statement of Ms Anna WU dated 6 November 2003	CB(2)280/03-04(03) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1107cb2-280e03-scan.pdf
	Resignation letter of Mr Michael WONG dated 6 November 2003	CB(2)322/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1114cb2-322e01-scan.pdf
	Minutes of meeting on 7 November 2003	CB(2)1050/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031107.pdf

Committee	Papers (including statements, letters, documents, reports and minutes of relevant meetings)	LC Paper No.
Panel on Home Affairs	Submission from the Women's Coalition on Equal Opportunities	CB(2)288/03-04(01)
	Statement of Ms Anna WU dated 12 November 2003	CB(2)335/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1114cb2-335e01-scan.pdf
	Letter from Ms Anna WU to EOC and copied to the Panel	CB(2)335/03-04(02) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1114cb2-335e02-scan.pdf
	A set of documents provided by Mr Michael WONG (Circulation restricted to Members only)	CB(2)348/03-04(01)
	Minutes of meeting on 14 November 2003	CB(2)819/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031114.pdf
	Letter dated 15 November 2003 from Professor Stevenson FUNG Hon-yuen, former EOC member, to the Panel	CB(2)392/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1209cb2-392-1e.pdf
	Letter dated 18 November 2003 from Hon Emily LAU to the Panel	CB(2)392/03-04(02)
	Letter dated 19 November 2003 from Hon Albert HO to the Panel	CB(2)392/03-04(03)
	Minutes of EOC meeting on 18 September 2003 on the part concerning the case of Mr Patrick YU and a summary of the discussion at that meeting concerning the case of Mr Patrick YU	CB(2)574/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha1209cb2-574-1e.pdf

Committee	Papers (including statements, letters, documents, reports and minutes of relevant meetings)	LC Paper No.
Panel on Home Affairs	Minutes of meeting on 9 December 2003	CB(2)1241/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha031209.pdf
	Letter dated 18 December 2003 from Hon James TO to the Chief Executive (CE) and reply letter dated 19 December 2003 from CE's Office	CB(2)625/03-04(01) CB(2)919/03-04(01)
	Administration's paper entitled "The Government's decision on the EOC incident"	CB(2)944/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha0109cb2-944-1-e.pdf
	Minutes of meeting on 9 January 2004	CB(2)1724/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040109.pdf
	Paper on "Proposed select committee to inquire into the circumstances surrounding the appointment and termination of employment of Mr Patrick YU Chung-yin as Director (Operations) by EOC, and the resignation of Mr Michael WONG Kin-chow from the office of Chairperson of EOC" prepared by the Legislative Council Secretariat	CB(2)961/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha0114cb2-961-1-e.pdf
	Minutes of meeting on 14 January 2004	CB(2)1242/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040114.pdf
	Minutes of meeting on 29 January 2004	CB(2)1600/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040129.pdf

Committee	Papers (including statements, letters, documents, reports and minutes of relevant meetings)	LC Paper No.
Panel on Home Affairs	Paper on "Proposed select committee to inquire into the incidents which have affected the credibility of EOC and related issues" prepared by the Legislative Council Secretariat	CB(2)1082/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha0129cb2-1082-1e.pdf
	Letter dated 12 February 2004 from the Secretary for Home Affairs (SHA) to the Chairperson of EOC and copied to the Panel	CB(2)1365/03-04(01) http://www.legco.gov.hk/yr03-04/english/panels/ha/papers/ha0213cb2-1365-01e.pdf
	Minutes of meeting on 13 February 2004	CB(2)1746/03-04 http://www.legco.gov.hk/yr03-04/english/panels/ha/minutes/ha040213.pdf .
House Committee	Report of the Panel on Home Affairs proposing to appoint a select committee by the Legislative Council	CB(2) 1172/03-04 http://www.legco.gov.hk/yr03-04/english/hc/papers/hc0213cb2-1172e.pdf
	Minutes of meeting on 13 February 2004	CB(2)1353/03-04 http://www.legco.gov.hk/yr03-04/english/hc/minutes/hc040213.pdf
	Letter dated 19 February 2004 from SHA to the House Committee Chairman	http://www.legco.gov.hk/yr03-04/english/hc/papers/hc0220let-had0219e.pdf
	Minutes of meeting on 20 February 2004	CB(2)1475/03-04 http://www.legco.gov.hk/yr03-04/english/hc/minutes/hc040220.pdf