

To the Legislative Council Home Affairs Panel

18 March 2005

Due to conflicting commitments, I regret that I am unable to attend the meeting on 21 March which will discuss the report on matters relating to the EOC. I am therefore making a written submission to you instead.

I wish to comment on the process leading to the findings of the report but not the findings themselves. I am reserving my legal rights on a number of matters and it would not be appropriate for me to comment on the findings. I set out my concerns on the process as follows:

1. The Secretary for Home Affairs -being himself a target of investigation- should not be the one to appoint the panelists and should have refrained from appointing a subordinate from Home Affairs to serve the Panel.
2. The Panel should have explained publicly the issues it was addressing to facilitate it's own investigation.
3. The Panel failed to give me (and perhaps others) adequate inspection of documents which pertain to me and refused to give me the right to cross-examine witnesses.
4. The Panel had no legal power to compel attendance by witnesses or the giving of evidence. The Panel also had no power to compel production of documents or the disclosure of any documents to relevant parties.

On the advice of senior counsel and solicitors, I sought inspection of documents which pertain to me and the right to cross-examine witnesses. I gave specific notice to the Panel that I wished to cross examine a number of individuals. Save for the production of a small number of specific documents, I was denied both rights.

In justifying the Panel's refusal to give me access to documents, transcripts and supporting documents, its solicitors cited *Re: National Irish Bank Limited* [1999] 3 I.R. 145 & 190. My lawyers pointed out to the Panel that the case provided that when adverse conclusions may be drawn against individuals on the testimony of others, "such individuals at risk will be entitled to attend, hear the evidence, cross-examine the witnesses and give evidence themselves." The Panel and its solicitors then refused to accept the logical implications of a case they cited.

In meeting the Panel's enquiry, I had sought assistance and cooperation from the EOC. I had not been supplied by EOC -or given access to- material documents or information that pertain to me or were necessary to enable me to respond to the Panel and I had not been given consent by the EOC to use or disclose EOC information that I acquired as Chair of the EOC to meet the Panel's enquiries.

I was also prohibited by law to disclose any details regarding the personal data of individuals. The EOC also refused to provide me with a copy of a document which

provided the facts and figures rebutting the six allegations. In fact the EOC initially refused to admit its existence.

These constraints were made known to the Panel. I sought assistance from the Panel to persuade the EOC to give me consent to respond to the Panel. The Panel declined. In the end my response to the Panel drew on information available in the public domain.

There is nothing more fundamental to the protection of an individual than due process, fairness and transparency. The Panel explained to me that its procedure was inquisitorial. It was not clear what this meant. If this meant ousting the rules of natural justice, this could become a very dangerous tool. If it meant not having to tell anyone what issues were being looked at, what facts were taken into consideration or whose evidence it believed, an investigation of this type could become very manipulative. This troubles me deeply. In making these comments, I wish to make it clear that I do not intend any disrespect to anyone. Rather, I wish to emphasize the importance of due process, fairness and transparency which are fundamental to our system of justice. I ask you above all to establish clear protocols and fair procedures for any future enquiries.

From Anna Wu