



**Civil Rights for Sexual Diversities
Submission to Legislative Council
Home Affairs Panel meeting on 21 March 2005
regarding**

Report on the Independent Panel of
Inquiry on the Incidents Relating to the
Equal Opportunities Commission

March 2005

Civil Rights for Sexual Diversities is an NGO working for the rights of people who are disadvantaged by the law, policies and social prejudices in Hong Kong because of their sexual orientation, gender identity, sexual expression and HIV status.

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Introduction

There are a number of concerns perceived by our group through the recent incidents surrounding the dismissal of Mr Patrick Yu and the stepping down of Mr Michael Wong as chairperson as well as the operational problems exposed by the media. We are writing to outline and highlight our concerns and the inadequacy of the report in addressing them related to restoring public confidence in the Equal Opportunities Commission (as "The Commission", hereinafter).

We would like the Panel to set up a separate investigation committee to address these concerns.

A. Working towards Equal Opportunity for all

Previous chairpersons including Ms Anna Wu¹ and Mrs Pat Chu², in their official capacity as chair of the EOC, have spoken and written about equal opportunities for all, specifically for grounds other than those already protected by the law. Both Ms Wu and Mrs Chu were notified of non-renewal of their contracts in rather short notice. Mr Michael Wong, when he was chairperson of the Commission, did indicate to NGOs during a meeting shortly after his inauguration that he was restrained by law to work on and only on issues relating to the three grounds, viz. sex, disability and family status, protected by existing law. Furthermore, Mr Patrick Yu was dismissed partially due to his speech about the Race Discrimination Bill, which was seen as 'outside the scope' by the former chair, Mr Michael Wong. This sequence of incidents inevitably led the public to believe that the Commission is ambiguous in its commitment towards equal opportunity for all, which is laid down as the first of its functions and powers³.

The Commission is restrained by law in handling complaints related to grounds yet to be protected. However, it shall not shirk its responsibility in policy research, training and education in such areas including race and sexual orientation. The Commission also has a responsibility as a body independent of the government to advise and give opinion on issues relating to race and sexual orientation in occasions such as United Nations' human rights reporting, Legislative Council Committees and Panels when views are sought on these issues. The Commission shall not be gagged when inquired by mass media concerning race and sexual

¹ The Commission, during Ms Anna Wu's chairpersonship, has written submissions to the Home Affairs Panel's subcommittee to study discrimination on the ground of sexual orientation regarding the unequal ages of consent and other discrimination issues based on sexual orientation.

² Mrs Pat Chu was quoted as saying that she was 'supportive of antidiscrimination legislation for sexual orientation' in Sing Tao on 11th August, 2004.

³ See Cap 480, Sex Discrimination Ordinance, s64, 1(a).

orientation discrimination issues.

In a research done by the Commission on the business community in 2001⁴, 83% of the SMEs questioned believed that discrimination on the basis of religion and race was illegal and 78% believed discrimination based on sexual orientation was illegal. Furthermore, the report also recommended the EOC to be guided by the Paris Principles⁵, such as to consider any questions falling within its portfolio, including those related to race and sexual orientation. Thus, it will be disappointing should the Commission be gagged by self-censoring standards to restrain itself from speaking on issues other than the three protected grounds.

B. Declining / Dubious Number of Complaints

I doubt if the subsiding of impact of SSPA and the SARS incident in 2004 could account for the drastic drop of about 38% in the number of complaints received. After discounting the SSPA and SARS effect the drop was 32% which was still significant.

[Post-meeting notes] Mr Raymond Tang, the current chairperson of the Commission, suggested in the panel meeting that the level of complaints remained roughly the same, referring to the number of complainants being similar in the range of 430 – 490 over the years 2000-2004. Mr Tang attributed the drop to the way of counting complaints, the basis from being the number of allegations to being that of complainants and respondents.

It remained unclear in the report and after Mr Tang's explanation as to why the number of complaints dropped. If Mr Tang's explanation was correct, it still remained unexplained as to why there were significantly fewer complaints per complainant in 2004. Taking complaints in the area of employment as an example which constituted 74%⁶ of all complaints dealt with in 2004, each of them was expected to involve a person performing discriminatory acts and the employer of that person who was vicariously liable for the acts. Two respondents per complainant is a minimum for each employment-related incident, not to mention there may be more than one actors of discriminatory acts, multiple acts of discrimination (such as direct, indirect discrimination and harassment), etc. For the ratio of respondents to complainants to drop from 1.76 to 1.20⁷, it is evident that something has gone wrong. For the ratio to constantly remain below 2, the report has

⁴ See report "A Closer Partnership with Business (May – November, 2001), A Survey of Business – Employees and Owners / operators of Small and Medium Enterprises (SME) (Final Report)" by Wirthlin Worldwide Asia.

⁵ See 6.18 (a).

⁶ Total number of complaints = 313 + 477 + 41 = 660 out of 893 complaints in total. See <http://www.eoc.org.hk/CE/statistic/index.htm>.

⁷ The ratios for 2000 – 2004 are computed as follows: 1.31, 1.76, 1.51, 1.56 and 1.20.

yet to point out the reason behind this phenomenon. Were complainants discouraged from naming their supervisors and their employers at the same time? Were multiple acts and multiple respondents of discrimination suppressed in the process? Was the right to pursue vicarious liability of employers made known to complainants in general?

If Mr Tang was right in saying that the number of complainants coming to the Commission remained the same in 2004, what could possibly account for the drop in the ratio? Did case officers deliberately discourage complaints with or presented as multiple respondents or multiple acts? Did case officers not remind complainants of their right to employer's vicarious liability?

Mr Tang also attributed the decline of number of complaints to their switching back to the old counting method, which was based on the number of complainants. If that is the case, how can the efficiency in dealing with individual allegations be reflected? Is a complaint considered successfully dealt with if only one count of the discriminatory acts is settled and only one respondent agrees to settle out of multiple acts and multiple respondents?

C. Staff discrediting the Commission

The problem before us with EOC's credibility lies in that there was information leaking out to the press smearing the organization. The report pointed out clearly that "the allegations were supported by specific insider details"⁸. According to figures given, 31⁹ complaints were filed by staff / ex-staff against the EOC or its senior management. That means almost every other staff members¹⁰ on average wrote a complaint to undermine the very organization they work in or used to work in. That was a very high percentage. More importantly, those allegations were concluded as "unsubstantiated". How does the EOC operate on a staff of whom half do not believe in its mission and are ready to undermine it for their own agenda? One way is to convince them of the very meaningful mandate the EOC is committed to; the other will be to let them go. However, the report falls short of mention of how to bring up its staff's commitment to equal opportunities' principles and how to retain those who are committed and discard those who are not. The number may not be as high as 1 in 2, but we are talking about a significant number of staff members who do not subscribe to what the EOC stands for.

There are a few characteristics that are particularly worrying: (1) anonymous complaints, (2) outnumbering named complaints, (3) of which a large fraction are found to be unsubstantiated, and (4) are

⁸ See section 5.3 of the report.

⁹ See Table 5.1.

¹⁰ Based on the existing number of staff under establishment being 71, see Annex 4, Notes 2.

leaked to the media. (1) & (2) anonymous complaints outnumbering named complaints suggest that there are not sufficiently safe mechanisms and channels to voice out operational and organizational concerns within the Commission. It is believed that some of the complaints raised were valid concerns that needed to be looked at. However, (3) showed that a large fraction of those complaints were unsubstantiated. Either the complainants misunderstood the Commission or they maliciously intended to undermine the Commission or certain people in it. (4) Showed that there was no or poor control over keeping confidentiality within the Commission about operational issues.

Many of these issues are related to staff quality problems and corporate governance and the report was not specific as to how to eliminate them.

D. Legal spending on litigation

Out of the HK\$17.27 million legal spending on litigation, HK\$9.13 was spent on two lawsuits against the Commission itself. The fact that the Commission was not able to settle them by conciliation is worrying. It is unknown whether the Commission or the litigants declined to settle. It is important to derive policies to cap the apportionment of legal funding to lawsuits against the Commission itself, as contrast to supporting lawsuits by the public.

Conclusions

We would like to see the Commission deriving specific measures responding to these issues as soon as possible, or the public's confidence will be eroded further. These are some of the urgent issues the Commission needs to tackle. By submitting to the Home Affairs Panel, we expect a separate investigation committee to be set up to review these issues and provide concrete recommendations. At the same time, we would like the Panel to ensure that the Home Affairs Bureau provides the necessary support for the Commission's timely and progressive reform so as to restore the public's confidence.

Best Regards,

A handwritten signature in black ink, appearing to read 'Roddy Shaw', with a large, stylized initial 'R'.

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