

Miss Flora TAI
Chief Council Secretary (2)2
Home Affairs Panel
Legislative Council

13 JUNE 2005

Legco Home Affairs Panel Meeting on 21 JUNE 2005
**Submission on the “Public consultation on legislating against racial
discrimination”**

Introduction

It is important that Hong Kong as an international city should enact a law on racial equality (“the new law”). Therefore, we support the Government’s proposed bill to enact the new law. We also recommend that new arrivals from the PRC should enjoy the protection of the new law.

The new law is a very sensitive piece of legislation as it concerns the living in harmony of different races in a small community like Hong Kong by the force of law. The treatment of the law, if seen as non-sensical or non-conciliatory, would likely bring resentment and disturbance, to both the local and the alien communities (or even nations) whose subjects become the focuses of a discrimination dispute.

We recommend that **a new body** which has the ability, determination and foresight to deal with these very sensitive issues be set up to enforce the new law. We require a forward-looking body that could provide a positive and harmonious working environment for real professionals to enforce the new law.

We consider that the EOC in their present state is unsuitable to enforce the new law. We are concerned that the Independent Panel of Inquiry on the Incidents Relating to the EOC (“the Independent Panel”), has criticised the EOC at paragraph 6.75 of its report, among many other criticisms, that “*there are **small circles and sub-culture** within the EOC. This phenomenon is not desirable in a people-oriented organization dedicated to embracing diversity and promoting conciliation.*”

We list out below our other major concerns and views for opposing the EOC to be tasked with the administration of the new law.

EOC financial statements “blackened out” for three years

It is the practice of all public statutory bodies to publish an annual report, which contains a statement of accounts so that the public are made aware of the way that these bodies spent public revenue. This is done to meet the principles of accountability and openness. However, for the previous **three** financial years, i.e. 2002/2003, 2003/2004 and 2004/2005, the EOC has not publicised its financial statements.

The EOC used to publicise its accounts on its website, but for reasons unknown, it has stopped doing so for the past three years. This lack of financial transparency has caused concern, as the public could no longer assess whether public money entrusted to the EOC was rightfully and lawfully spent.

Further, even the Audit Commission did not know how the EOC spent public money over their 9 years of operation since their opening in 1996. In paragraph 6.77 of the Independent Panel’s report, it stated *“the EOC should demonstrate its accountability by subjecting itself to the scrutiny of the Director of Audit as to whether it has complied with the principle of economy, efficiency and effectiveness in the use of its resources and complying with the subvention guidelines and submitting regular reports.”*

We consider that as a public organization, the EOC must demonstrate its accountability and post their statement of accounts on their website for public scrutiny.

The EOC has requested that extra funding be granted if they were to administer the new law. In the lack of an audit by the Audit Commission in the way that the EOC spent public money, we doubt if they have wasted public money in the past. In this regard, we oppose empowering the EOC to administer the new law, which involved the grant of extra public money, because the Audit Commission has never audited their accounts.

EOC annual report 2003/2004 “missing”

Whilst most public bodies are now in the final stage of publicising their annual reports for 2004/2005, EOC’s annual report for 2003/2004 has not yet been publicised.

The annual report of 2003/2004 is supposed to explain to the public EOC’s operations and events that had occurred in the 12 months commencing April 2003. It is now May 2005, which is 25 months from April 2003, and we are still

unable to know what the EOC had done in April 2003 and in the days following thereafter.

The annual report is a tool for the public to assess EOC's own words of their performance. Due to a lack of an annual report of EOC's operations since April 2003, we cannot assess their overall performance for as long ago as 25 months in the past.

We object therefore the empowering of the new law to the EOC, as we have no evidence that the EOC have the proven track records and ability to administer the new law. On the contrary, we know that there are 70 recommendations in the publicised Independent Panel's report and there are 60 plus recommendations said to have been made in two unpublicised Internal Reviews conducted by the EOC.

In fact, it is bad administration and dangerous for the Government to empower the EOC with the new law when the Government and the public is unaware of any of the problems identified in the two unpublicised Internal Reviews conducted by the EOC.

Question for the Government: "Did the EOC comply with the SDO?"

Under schedule 6, section 18 of the Sex Discrimination Ordinance ("SDO"), it is stated that *"The EOC shall, as soon as practicable and in any case not later than 9 months after the expiry of a financial year (or such further period as the Chief Secretary for Administration allows), furnish (a) a report on the activities of the EOC during that year including a general survey of developments, during that year, in respect of matters falling within the scope of the EOC's functions; (b) a copy of the statement of accounts; and (c) the auditor's report, to the Chief Secretary for Administration who shall cause the same to be tabled in the Legislative Council."*

Without repeating the foregoing paragraphs about the "missing" annual report 2003/2004 and the "blackened out" financial statements for 2002/2003, 2003/2004 and 2004/2005, we would like to know from the Government if the EOC had failed to comply with the said provisions in any year.

Lack of Independent Body to oversee EOC's processes

At paragraph 5.2 of the Independent Panel's report, it was stated that there were 79 complaints against the EOC. Of these 79 complaints, 31 were staff complaints against the EOC, which represented almost 40% of all the complaints against the EOC. These staff complaint figures are alarming as the

EOC has only an average of 70 staff, which means that almost one in two staff complained against the EOC. There is no independent body to investigate these complaints. Justice could never be seen to be done when EOC investigates complaints against their own selves.

The EOC's functions are important, as they are concerned with the infringement of human rights. There are independent bodies to oversee the work of or investigate complaints against public bodies such as the HKP, the ICAC and the SFC etc. But there is no such body for the EOC. We require an independent body to review and monitor all the EOC's processes to ensure that they function fairly.

Uncertainty over EOC's ability to remedy their faults

It is unusual that more than 130 recommendations were made in the three reports about the operation of the EOC since its establishment in 1996. Mr Raymond Tang, the Chairman of EOC, pledged in Legco that he will see to it that the recommendations will be implemented except one recommendation about the use of conciliation rate as an indicator of EOC's performance.

There is no way for the public to monitor what Mr Tang will do or has done to implement the recommendation and whether any implementations were or will be effective to address the problems identified by the three reports.

We note that two executive directors in the EOC management team have been working in the EOC since 1996 and both of them are responsible for formulating and implementing the policies, practices and procedures of EOC for all these years. They are Mr Michael Chan Yick Man, Director of Administration and Planning and Ms Alexandra Papa, Director of Legal Services. They were recruited at the Government directorate level 2.

Mr Tang is reluctant to identify those who were responsible in the EOC for the many problems identified in the three reports. It is a principle of good corporate governance that wrongdoers are identified and sanctioned. The lack of an accountability system undermined the morale of those staff who had performed well.

Exceptionally high staff salaries

The latest financial statement that we can get was that of 2001/2002 which was contained in the annual report of EOC of 2001/2002. Accordingly, we find out that the average monthly salary of an EOC staff was \$66,452 in 2001. We have compared the staff costs of the Ombudsman and find out that the average

monthly salary of an Ombudsman staff was \$48,878 in 2004 according to the latest figure in the annual report of 2003/2004.

Both EOC and Ombudsman staff investigates complaints where the complainants are aggrieved by the wrongdoings of another party. The work nature is therefore very similar for both organizations. It is unfair that the EOC staff is paid more than 36 % above those of the Ombudsman.

The information below is extracted from the annual reports of both public bodies:

EOC STAFF EXPENDITURE in 2001

Staff salaries in 2001 was \$39,232,745

Staff gratuity, other benefits and allowances in 2001 was \$22,168,933

EOC Staff has a total of 77 in 2001

OMBUDSMAN STAFF COSTS 2004

Salaries and allowances: \$45,451,427 in 2004

Contract gratuity: \$4,340,704 in 2004

Pension costs - MPF Scheme \$758,322 in 2004

Unused annual leave: \$636,318

Other staff benefits \$428,769 in 2004

Total: \$51,615,540 in 2004

Ombudsman Staff has a total of 88 in 2004

Benefits of a Commission for Racial Equality

We consider that there are benefits if a new body, i.e. a Commission for Racial Equality is established. The benefits are as follows:

1. The government can appoint a commissioner who has good credentials for racial discrimination work and gain back credibility from the criticisms that it received because of the appointment of Mr Raymond Tang, who is unheard of in anti-discrimination work.
2. The government can show that it holds a high regard for racial equality to the Hong Kong and international communities by appointing a separate body to look after racial matters. This will attract more talents from people of all races all over the world to serve Hong Kong.
3. There are plenty of qualified personnel in anti-discrimination work, as over the past years, the government has promulgated extensive publicity and awareness through public education and the anti-discrimination laws. The government can save high salary costs that are now paid out to the EOC and recruit equally well qualified staff for the new Commission at a market-level pay.

4. The new Commission will have a fresh approach and thinking towards a completely new area of equality as opposed to the EOC which has stereotyped their way of operation and thinking over the years.
5. The EOC is still served by several executive directors in the management team who have been working since day one. The EOC's internal operations and executive functions were almost totally disapproved of by the Independent Panel's report and seemingly by EOC's two own Internal Review reports. The new Commission has the benefit of learning from the EOC's failures and not repeating what the EOC had gone wrong over their nine years of operation.
6. If the new Commission performs well, the Government could transform it into a Human Rights Commission to take over all laws from the EOC and to be entrusted with more new laws, as more new human rights laws are bound to be enacted.

Conclusions

We support a new Commission for Racial Equality and urge the Government to enact the new law on racial equality soonest.

Yours truly,

Hon. LEUNG Kwok-hung
Member of the Legislative Council, HKSAR
April 5 Action