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EQUAL OPPORTUNITIES COMMISSION

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立法會 CB(2)2293/07-08(01)號文件
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By Fax 2509 9055

Ms. Flora Tai
Clerk to Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Madam,

Clause 72 of the Race Discrimination Bill

I refer to the Bills Committee's meeting on 6 June 2008. There was a discussion on clause 72(5). In an earlier paper by the Commission (LC Paper No. CB(2)2175/07-08(01)), the Commission pointed out in paragraph 35 that the reference in clause 72(5) to "Section 67(4)" should read "Section 67(5)", but there was another view that the reference to "Section 67(4)" may also be given a meaningful reading. The Commission was requested to further consider this matter.

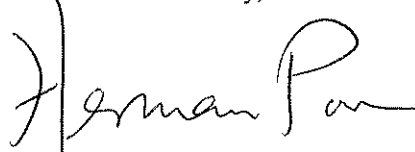
It is necessary to examine both clause 67 and clause 72. Clause 67 deals with the Commission's power to obtain information in conducting formal investigations. Clause 67(1) gives power to the Commission to require information by serving a notice. It is to be noted that, at this stage, there is no conclusion by the Commission yet that anyone has done any unlawful act. For this reason, although the Commission is given the power to obtain information, clause 67(4) restricts this power so that it is no more intrusive than the power of the Court of First Instance. Clause 67(5) deals with the consequences of non-compliance with the notice requiring information.

Clause 72 deals with enforcement notice which the Commission may issue after it has been satisfied that an unlawful act has been committed. The enforcement notice may require information from the person who has committed an unlawful act to inform the Commission about the changes that he is required to make to avoid further unlawful acts. The key feature in this situation is that there is a conclusion that an unlawful act has been committed. This is different from the situation in clause 67 where there is no such conclusion. The issue with an enforcement notice is to give powers to the Commission to obtain information about changes required to be made to remedy an unlawful situation. No issue arises here of giving powers to the Commission which are more intrusive than the Court before there is any conclusion of an unlawful act. Therefore, the Commission takes the view that it is not necessary to apply clause 67(4) to enforcement notices under clause 72.

For the purposes of ensuring compliance with enforcement notices, it is appropriate to stipulate consequences of non-compliance. For this reason, it is important to apply clause 67(5) to enforcement notices under clause 72. This is why the Commission takes the view that the reference to "Section 67(4)" in clause 72(5) should read "Section 67(5)". Such a reading is also in line with the other existing discrimination ordinances.

I would be grateful if you could kindly place this letter before the Chairman of the Bills Committee.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Herman Poon', written in a cursive style.

Herman L.H. Poon

Chief Legal Counsel

Equal Opportunities Commission

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