

立法會
Legislative Council

LC Paper No. CB(3) 444/08-09

Ref. : CB(3)/M/OR

Tel : 2869 9205

Date : 16 March 2009

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 1 April 2009

**Proposed resolution under
the Race Discrimination Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Constitutional and Mainland Affairs will move at the Council meeting of 1 April 2009 under the Race Discrimination Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary for Constitutional and Mainland Affairs will deliver when moving the proposed resolution, is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

RACE DISCRIMINATION ORDINANCE

RESOLUTION

(Under section 83 of the Race Discrimination Ordinance
(29 of 2008))

RESOLVED that the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation, made by the Secretary for Constitutional and Mainland Affairs on 11 March 2009, be approved.

RACE DISCRIMINATION (PROCEEDINGS BY EQUAL OPPORTUNITIES COMMISSION) REGULATION

(Made by the Secretary for Constitutional and Mainland Affairs under section 83 of the Race Discrimination Ordinance (29 of 2008) subject to the approval of the Legislative Council)

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Constitutional and Mainland Affairs by notice published in the Gazette.

2. Circumstances in which Commission may bring proceedings

The circumstances in which the Commission may bring proceedings for the purposes of section 70(1) of the Ordinance (as if it were a person who may have brought proceedings under that section but has not done so) are where –

- (a) the case raises a question of principle; and
- (b) it is in the interests of justice to do so,

and it appears to the Commission that the claim of the person is well-founded.

3. Remedies Commission may seek in proceedings brought by it

In any proceedings brought under section 2, the Commission may apply for any remedy available to a claimant under section 70(3) of the Ordinance, including a declaration that the act which is the subject of the proceedings is an unlawful act or an injunction in respect of such act or both a declaration and an injunction.

Secretary for Constitutional and
Mainland Affairs

11 March 2009

Explanatory Note

Section 70 of the Race Discrimination Ordinance (29 of 2008) (“the Ordinance”) sets out the matters in respect of which a person may bring civil proceedings under the Ordinance. Section 83 of the Ordinance empowers the Secretary for Constitutional and Mainland Affairs to specify in regulations –

- (a) the circumstances in which the Equal Opportunities Commission (“the Commission”) may bring proceedings if a person who is entitled to bring proceedings under section 70 of the Ordinance does not do so; and
 - (b) the remedies which the Commission may seek to obtain in such proceedings.
2. Accordingly, this Regulation empowers the Commission –
- (a) to bring such proceedings where a question of principle is involved and it is in the interests of justice to do so and it appears that the claim is well-founded; and
 - (b) in any such proceedings to seek any remedy available under section 70(3) of the Ordinance, including a declaration or an injunction or both.

**Speech by the Secretary for Constitutional and Mainland Affairs
(1 April 2009)**

**Race Discrimination (Proceedings by Equal Opportunities
Commission) Regulation**

Mr. President,

I move the resolution standing in my name on the Agenda. The resolution is to the effect that the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation made under section 83 of the Race Discrimination Ordinance be approved.

2. The Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation, if passed and when read together with section 83 of the Race Discrimination Ordinance, will enable the Equal Opportunities Commission, in a case where a person suffering racial discrimination, harassment and vilification may bring proceedings under section 70 of the Ordinance but has not done so, to bring court proceedings in the Commission's own name as if the Commission were that person where the case raises a question of principle and it is in the interests of justice to do so and it appears to the Commission that the claim is well founded.

3. The Regulation will also enable the Commission to apply for any remedies available to a claimant under the Race Discrimination Ordinance. These will include a declaration that the act which is the subject of proceedings is an unlawful act and an injunction in respect of such act.

4. Mr. President, I beg to move.