

立法會
Legislative Council

LC Paper No. LS50/08-09

**Paper for the House Committee Meeting
on 20 March 2009**

**Legal Service Division Report on
Proposed Resolution under section 83 of
the Race Discrimination Ordinance (Cap. 602)**

The Secretary for Constitutional and Mainland Affairs (the Secretary) has given notice to move a motion at the Legislative Council meeting on 1 April 2009. The motion seeks the Legislative Council's approval of the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (the Regulation) made by the Secretary under section 83 of the Race Discrimination Ordinance (Cap. 602) (the Ordinance), which was passed in July 2008.

2. Section 83 of the Ordinance, which came into operation on 3 October 2008, empowers the Secretary to make regulations to specify-

- (a) the circumstances in which the Equal Opportunities Commission (EOC) may bring and maintain proceedings under section 70 of the Ordinance if a person who is entitled to bring such proceedings has not done so as if the EOC were that person; and
- (b) the remedies which the EOC may seek to obtain in such proceedings.

3. The Regulation, modeled on the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Cap. 480 sub. leg. C) and Family Status Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Cap. 527 sub. leg. C), provides that-

- (a) the EOC may bring proceedings where the case raises a question of principle and it is in the interests of justice to do so and it appears to the EOC that the claim is well-founded; and
- (b) in any such proceedings the EOC may apply for any remedy available to a claimant, including a declaration or an injunction or both.

4. Members may refer to an information paper (LC Paper No. CB(2)829/08-09(07)) issued by the Constitutional and Mainland Affairs Bureau to the Panel on Constitutional Affairs (the Panel) in February 2009.

5. The Panel was briefed on the paper and the proposed Regulation on 16 February 2009. Members had reservations in supporting the proposed Regulation, noting that a claim had to be 'well-founded' for the EOC to bring proceedings in its own name. Members also indicated an intention to propose setting up a subcommittee to study the Regulation when the Council's approval was to be sought.

6. The Regulation, if approved, will come into operation on a day to be appointed by the Secretary by notice published in the Gazette. The Administration aims to bring into operation the Regulation together with the remaining provisions of the Ordinance which are not yet in force by mid-2009.

7. The Legal Service Division is seeking clarification from the Administration on the approach taken in the Regulation, which is different from that of the Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Cap. 487 sub. leg. C) (Please see attached letter to the Administration).

Encl.

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17 March 2009

Mr LAM Sui Lung, Stephen, JP
Secretary for Constitutional and Mainland Affairs
3rd Floor, Main and East Wing,
Central Government Offices,
11 Ice House Street,
Central,
Hong Kong

Dear Mr LAM,

**Proposed Resolution under section 83 of
the Race Discrimination Ordinance**

I am scrutinizing the legal and drafting aspects of the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (the Regulation) made under section 83 of the Race Discrimination Ordinance (RDO).

By virtue of section 83 of the Ordinance, the Regulation empowers the Equal Opportunities Commission (EOC) to bring proceedings under the RDO in its own name where a victim of racial discrimination, harassment and vilification may bring proceedings under section 70 of the RDO but has not done so.

It is noted that the Regulation is closely modeled on regulations made by the Secretary for Constitutional and Mainland Affairs under the Sex Discrimination Ordinance, Cap. 480 (SDO) and Family Status Discrimination Ordinance, Cap. 527 (FSDO).

However, in the Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation made by the Secretary for Labour and Welfare under the Disability Discrimination Ordinance (DDO) subsequent to those made under the SDO and the FSDO, different provisions are made, e.g.-

- (a) there is no requirement for a claim to be 'well-founded' provided the EOC has reason to believe that a person committed an act of discrimination, harassment, vilification or which is otherwise unlawful under the DDO;

- (b) there are clear procedures to establish that the aggrieved person will not bring proceedings; and
- (c) there is also a pre-requisite that the EOC has offered assistance to the aggrieved person by way of conciliation but failed to effect a settlement.

I would be grateful for your clarification on the approach taken in the Regulation vis-à-vis the similar regulation made under the DDO to facilitate my reporting to the House Committee on 20 March 2009 (in both Chinese and English and with soft copy to Ms Christine LIU at ylliu@legco.gov.hk).

Yours sincerely,

(Clara TAM)
Assistant Legal Adviser