

立法會
Legislative Council

Ref : CB2/SS/9/08

LC Paper No. CB(2)1346/08-09
(These minutes have been seen
by the Administration)

Subcommittee on Race Discrimination
(Proceedings by Equal Opportunities Commission) Regulation

Minutes of the first meeting
held on Thursday, 26 March 2009, at 10:45 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Paul TSE Wai-chun (Chairman)
Dr Hon Margaret NG
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Starry LEE Wai-king
Dr Hon Priscilla LEUNG Mei-fun
Hon IP Kwok-him, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
- Members absent** : Hon LEUNG Kwok-hung
Hon CHEUNG Kwok-che
- Public Officers attending** : The Administration

Mr Raymond TAM Chi-yuen
Under Secretary for Constitutional and Mainland Affairs

Mr Arthur HO Kin-wah
Deputy Secretary for Constitutional and Mainland Affairs

Mr Hubert LAW Hin-cheung
Principal Assistant Secretary for Constitutional and Mainland
Affairs

Miss Betty CHEUNG Yuet-wah
Senior Assistant Law Draftsman (Acting)

Miss Emma WONG
Senior Government Counsel (Acting)

Mr Herman POON Lik-hang
Chief Legal Counsel
Equal Opportunities Commission

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

I. Election of Chairman

Mr Paul TSE was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[LC Paper Nos. CB(2)1142/08-09(01), CB(2)1166/08-09(02) and LS50/08-09]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).
3. The Administration was requested to provide information on the drafting of similar regulations under anti-discrimination legislation in common law jurisdictions for the reference of the Subcommittee.
4. Members agreed that the Subcommittee should invite written views on the proposed Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation from individuals and organizations which had given views on the Race Discrimination Bill.
5. The Subcommittee further agreed that the Subcommittee would schedule its next meeting when written views were available.
6. The meeting ended at 11: 40 am.

**Proceedings of the first meeting of the
Subcommittee on Race Discrimination
(Proceedings by Equal Opportunities Commission) Regulation
on Thursday, 26 March 2009, at 10:45 am
in the Chamber of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000027 - 000146	Dr Margaret NG Dr Priscilla LEUNG Mr IP Kwok-him Mr Paul TSE	Election of Chairman	
000147 - 000407	Chairman Dr Margaret NG Administration	Briefing on the proposed Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (the proposed Regulation)	
000408 - 001056	Dr Margaret NG Administration Chairman	Differences in drafting between the proposed Regulation made under the Race Discrimination Ordinance (RDO) and other corresponding regulations made under respective discrimination ordinances, i.e. the Sex Discrimination Ordinance (SDO), the Family Status Discrimination Ordinance (FSDO) and the Disability Discrimination Ordinance (DDO) (paragraphs 3 and 4 of LC Paper No. CB(2)1166/08-09(02)) Reasons for the proposed Regulation not modeled on the corresponding regulation made under DDO (paragraphs 6 and 7 of LC Paper No. CB(2)1166/08-09(02))	
001057 - 002439	Mr IP Kwok-him Administration ALA9	Confirmation by the Administration that the wording used in the provision concerning circumstances in which the Equal Opportunities Commission (EOC) might bring proceedings under RDO was identical to corresponding provisions in Regulations under SDO and FSDO, though different from those in Regulation under DDO The Administration's explanation that the wording "it appears to the Commission that the claim ... is well founded" used in the proposed Regulation and "the Commission has reasons to believe that a person has committed an act of discrimination..." used in the corresponding regulation under DDO served the same purpose despite the difference in expression	

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		<p>Mr IP Kwok-him's enquiry as to how the difference in drafting would have an impact on the decision of the court and the implementation of the provision.</p> <p>ALA's advice that -</p> <p>(a) where different wording serving the same purpose was used in respective discrimination regulations, it might lead to different interpretation and hence result in inconsistent practices adopted by EOC. It was preferable to adopt the same wording to ensure consistency in implementation; and</p> <p>(b) the threshold of "well founded" was higher than "has reasons to believe"</p>	
002440 - 002648	Mr Abraham SHEK Chairman	Need to make reference to the drafting of similar regulations under anti-discrimination legislation adopted by overseas countries	
002649 - 003239	Administration Chairman	<p>Explanation by the Administration on why two versions were adopted for the drafting of the provision concerning circumstances in which EOC might bring proceedings and why a threshold of "well founded" was adopted in the proposed Regulation -</p> <p>(a) As RDO and DDO served different policy objectives, the drafting adopted for the respective regulations made could be different;</p> <p>(b) The differences between the Regulation under DDO on the one hand and the Regulations under SDO and FSDO on the other hand laid not only in the two different expressions of "the Commission has reason to believe that a person has committed an act of discrimination..." and "it appears to the Commission that the claim ... is well founded" but also in the procedural requirements on EOC bringing proceedings. The Regulation under DDO imposed additional procedural requirements which did not exist in the Regulations under SDO and FSDO; and</p> <p>(c) Proceedings under section 83(1) of RDO related to exceptional circumstances, namely, a victim might bring proceedings under section 70 of the RDO but had not done so, and the EOC brought such</p>	

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		<p>proceedings in its own name as if it were the alleged victim. EOC needed good reasons before it should bring such proceedings. These considerations were reflected by both expressions of "the Commission has reason to believe that a person has committed an act of discrimination..." (adopted in the Regulation under DDO) and "it appears to the Commission that the claim ... is well founded" (adopted in the Regulations under SDO and FSDO).</p>	
003240 - 003747	Dr Margaret NG Chairman Administration EOC	<p>Views of Dr Margaret NG that -</p> <ul style="list-style-type: none"> (a) while the threshold of "well founded" was obviously higher than "has reasons to believe", the crux of the question should be, as a matter of policy, which threshold should be applied; (b) the Administration should explain, as a matter of policy, why the proposed Regulation had adopted the wording used in the corresponding regulations under SDO and FSDO, and not that under DDO; (c) it was not an exceptional circumstance for a victim of racial discrimination, harassment and vilification not to bring proceedings under section 70 of RDO, given the hefty litigation expenses in proceedings; and (d) the purpose for EOC to institute proceedings in its own name was to ensure equality. Given the risk of incurring hefty litigation expenses in proceedings, the threshold for EOC to institute legal proceedings should be high. The question was whether the threshold was too high which would go against the mission of EOC to promote equality of opportunity <p>Concern of the Chairman and Dr NG that if a very high threshold was set in the proposed Regulation, it would be less likely that the decision of EOC not to institute proceedings in its own name could be challenged by judicial review.</p>	

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003748 - 004515	Administration Chairman Dr Margaret NG EOC Clerk	<p>Response of the Administration that the version adopted by the proposed Regulation provided greater flexibility for EOC to bring proceedings for the purpose of protecting the interests of ethnic minorities because unlike the corresponding regulation under DDO, it was not necessary to -</p> <p>(a) establish that the aggrieved person would not bring proceedings; and</p> <p>(b) resort the claim to conciliation beforehand</p> <p>Response of EOC that -</p> <p>(a) despite the different expressions of "it appears to the Commission that the claim ... is well founded" under the proposed Regulation and "the Commission has reason to believe that a person has committed an act of discrimination..." in the corresponding regulation under DDO, there was as a matter of practice not much difference in implementation procedures; but</p> <p>(b) given that the procedural requirements in instituting proceedings were specified in the relevant regulation of DDO, it would be more rigid when compared with the proposed Regulation; and</p> <p>(c) it would be unusual for an alleged victim of racial discrimination, harassment and vilification not to seek legal assistance from EOC in the first place and EOC must be prudent when deciding whether to institute proceedings in its own name when the alleged victim did not bring proceedings.</p>	
004516 - 005504	Dr Margaret NG Chairman Ms Starry LEE Mr Abraham SHEK Administration	<p>Invitation of written views on the proposed Regulation from individuals/organizations which had given view on the Race Discrimination Bill</p> <p>Need to make reference to the drafting of similar regulations under anti-discrimination legislation in common law jurisdictions</p>	<p>Clerk</p> <p>Admin</p>