

立法會
Legislative Council

Ref : CB2/SS/9/08

LC Paper No. CB(2)1851/08-09
(These minutes have been seen
by the Administration)

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

Minutes of the third meeting
held on Monday, 25 May 2009, at 2:30 pm
in Conference Room B 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 LEUNG Kwok-hung
Hon Starry LEE Wai-king
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
- Member attending** : Hon Cyd HO Sau-lan
- Members absent** : Dr Hon Priscilla LEUNG Mei-fun
Dr Hon Samson TAM Wai-ho, JP
- 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. Meeting with the Administration

[LC Paper Nos. CB(2)1638/08-09(01) and CB(3)444/08-09]

The Subcommittee deliberated (index of proceedings attached at **Annex**).

2. The Administration was requested to -

(a) consider adding the word "出" between the words "指" and "屬" in line 2 of the Chinese version of section 3 of the proposed Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (the proposed Regulation); and

(b) standardize the wording of the threshold provisions governing the circumstances in which the Equal Opportunities Commission (EOC) could bring proceedings in the respective anti-discrimination ordinances at an appropriate time.

3. EOC was requested to provide information on the number of cases, if any, in which EOC had considered bringing proceedings in its own name as if it were the victim under the Sex Discrimination Ordinance, the Family Status Discrimination Ordinance and the Disability Discrimination Ordinance but had eventually decided not to do so, the reason for EOC deciding not to do so, and the operation of the mechanism.

Action

4. The Administration agreed that when moving the motion on the proposed Regulation, the Secretary for Constitutional and Mainland Affairs (SCMA) would inform the Council of EOC's undertaking to issue a public statement explaining that the standard for deciding whether to bring proceedings in its own name would be essentially the same across all the existing anti-discrimination ordinances. The Administration also undertook that the responses as requested in paragraphs 2(a) and 3 above would be provided to the Subcommittee as soon as possible. It would relay to the Labour and Welfare Bureau members' request for standardizing drafting of the threshold provisions in the respective regulations made under all the existing anti-discrimination ordinances at an appropriate time.

5. Members expressed support for SCMA giving fresh notice to move the motion on the proposed Regulation at the Council meeting on 17 June 2009. The Subcommittee agreed to report to the House Committee on 5 June 2009. The Clerk advised members that the deadline to give notice of amendments, if any, to the proposed Regulation was 10 June 2009.

6. The meeting ended at 3:22 pm.

Council Business Division 2
Legislative Council Secretariat
11 June 2009

**Proceedings of the third meeting of the
Subcommittee on Race Discrimination
(Proceedings by Equal Opportunities Commission) Regulation
on Monday, 25 May 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000005 - 000102	Chairman	Opening Remarks	
000103 - 000240	Administration	Briefing by the Administration on its response to issues raised by members at the last meeting (LC Paper No. CB(2)1638/08-09(01))	
000241 - 000550	Dr Margaret NG	<p>Dr Margaret NG's acceptance of the Administration's response on the grounds that -</p> <ul style="list-style-type: none"> (a) legal assistance that could be provided by the Equal Opportunities Commission (EOC) under section 79 of the Race Discrimination Ordinance (RDO) and the functions and powers of EOC would not be narrowed down by the proposed Regulation; (b) there was no material difference in implementation between the threshold of "it appears to the Commission that the claim...is well founded" (adopted in regulation under the RDO) and "the Commission has reason to believe that a person has committed an act of discrimination..." (adopted in the regulation under the Disability Discrimination Ordinance (DDO)); and (c) the implementation of RDO should be brought into operation as soon as practicable. <p>Dr NG's request that the Administration should in the long term introduce legislative amendment to the effect that provisions relating to EOC bringing proceedings in its own name under the respective anti-discrimination ordinances should be as consistent as possible and that the relevant threshold provisions for doing so should be standardized.</p> <p>Clarification of the Hong Kong Bar Association's view in paragraph 3 of its submission dated 3 April 2009 that the subjectively phrased threshold adopted in the proposed Regulation was higher than the objectively phrased threshold of the corresponding regulation made under DDO because the former allowed more leeway for</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		EOC in deciding not to bring proceedings, and the Bar's wish for RDO to commence operation as soon as practicable.	
000551 - 001314	Administration Dr Margaret NG Ms Emily LAU Chairman	<p>Detailed examination of the provisions of the proposed Regulation</p> <p><u>Section 1 - Commencement</u></p> <p>Response of the Administration to issues raised by members -</p> <p>(a) the Administration intended to bring the principal ordinance and the relevant subsidiary legislation into operation around mid-July 2009;</p> <p>(b) the commencement date could not be made earlier because :</p> <p>(i) two sets of rules and the Code of Practice on Employment (the Code) made under RDO were currently being scrutinized by a LegCo subcommittee; and</p> <p>(ii) EOC had yet to make all the preparatory work for implementing RDO, e.g. translation of the Code into six other common languages of ethnic minorities.</p>	
001315 - 003053	Administration Ms Emily LAU Dr Margaret NG Chairman EOC Mr IP Kwok-him Mr LEUNG Kwok-hung	<p><u>Section 2 - Circumstances in which EOC may bring proceedings</u></p> <p>Views of Dr Margaret NG that -</p> <p>(a) the Administration should consider standardizing the threshold provisions in the respective regulations made under all the existing anti-discrimination ordinances by way of introducing a statute law miscellaneous amendments bill, and advise members of the relevant timetable; and</p> <p>(b) the Subcommittee's report to the House Committee should reflect the preference expressed in the written submissions received for a consistent drafting version.</p> <p>Response of the Administration that -</p> <p>(a) EOC would issue a public statement explaining that the standard for deciding whether to bring proceedings would be essentially the same across all the existing anti-discrimination ordinances; and</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>(b) Secretary for Constitutional and Mainland Affairs (SCMA) was authorized to make the relevant regulation under RDO, the Sex Discrimination Ordinance (SDO) and the Family Status Discrimination Ordinance (FSDO) while the Secretary for Labour and Welfare was authorized to make the relevant regulation under DDO. The Labour and Welfare Bureau (LWB) had been advised of members' concern about the inconsistency in drafting the threshold provisions in the existing anti-discrimination ordinances. Given that the rehabilitation sector had been consulted on the making of the relevant regulation under DDO, LWB had to consult them if amendments were to be made.</p> <p>Views of Mr IP Kwok-him -</p> <p>(a) he supported that the drafting of the threshold provisions in the respective regulations made under anti-discrimination ordinances should be standardized;</p> <p>(b) he preferred the version adopted in SDO, FSDO and RDO over the one adopted in DDO; and</p> <p>(c) amendments to the threshold provision of DDO should be made at an appropriate time when the Ordinance was to be amended.</p> <p>Undertaking by the Administration to relay members' concern to LWB</p> <p>Response of EOC to questions raised by Ms Emily LAU -</p> <p>(a) EOC had never brought proceedings in its own name as if it were the victim under SDO, FSDO and DDO;</p> <p>(b) the legal assistance granted to victims of discrimination by EOC and the legal aid granted to applicants by the Legal Aid Department operated under different principles and regimes; and</p> <p>(c) the function of EOC in providing legal assistance to victims of discrimination was distinct from its power to initiate proceedings as if it were the victim as explained in Annex E to LC Paper CB(2)1166/08-09(02).</p>	<p>Admin</p>

Time Marker	Speaker(s)	Subject(s)	Action required
003054 - 003243	Administration	<u>Section 3 - Remedies EOC may seek in proceedings brought by it</u>	
003244 - 003642	Chairman ALA9 Administration Ms Emily LAU	<p>ALA9's confirmation that the legal and drafting aspects of the Chinese version of the proposed Regulation were in order, with the exception of a slight inconsistency with the wording of the corresponding provision in the regulation under FSDO.</p> <p>In the light of ALA 9's observation, the Administration was requested to consider adding the word "出" between the words "指" and "屬" in line 2 of the section 3.</p> <p>Follow-up actions to be taken by the Administration as summarized by the Chairman -</p> <p>(a) when moving the motion on the proposed Regulation at the Council meeting, SCMA would inform the Council of EOC's undertaking to issue a public statement explaining that the standard for deciding whether to bring proceedings in its own name would be essentially the same across all the existing anti-discrimination ordinances; and</p> <p>(b) the Administration would consider the request to standardize the drafting of the threshold provisions in the respective anti-discrimination ordinances at an appropriate time.</p>	<p>Admin</p> <p>Admin</p>
003643 - 004811	Ms Emily LAU EOC Mr LEUNG Kwok-hung Chairman Administration	<p>Explanation by EOC on the number of applications for legal assistance, number of legal actions assisted by EOC and number of applications for legal aid under SDO, DDO and FSDO with reference to the two annexes of Annex E to LC Paper CB(2)1166/08-09(02).</p> <p>Reiteration by EOC that the mechanism for EOC to bring proceedings in its own name as if it were the victim of discrimination would be invoked under exceptional circumstances.</p> <p>Concern of Ms Emily LAU and Mr LEUNG Kwok-hung about the mechanism of EOC in considering whether or not to bring proceedings in its own name.</p> <p>EOC was requested to provide information on the number of cases, if any, in which EOC had considered bringing proceedings in its own name as if it were the victim under SDO, DDO and FSDO but had eventually decided not to do so, the reason for EOC deciding not to do so, and the operation of the mechanism.</p>	<p>EOC</p>

Time Marker	Speaker(s)	Subject(s)	Action required
004812 - 005123	Chairman Ms Emily LAU Administration Clerk	The way forward - (a) members expressed support for the proposed Regulation; (b) the Subcommittee would make a report to the House Committee on 5 June 2009; (c) the Administration would provide written responses to the issues raised by members at the meeting as soon as possible, and would give fresh notice to move the motion on the proposed Regulation at the Council meeting on 17 June 2009; and (d) the deadline for giving notice of amendments to the proposed Regulation was 10 June 2009.	 Clerk Admin

Council Business Division 2
Legislative Council Secretariat
11 June 2009