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Honourable Paul Tse Wai-Chun, Chairman, and
Members of the Subcommittee on Race Discrimination
Legislative Council of Hong Kong

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

Dear Mr. Tse and Members of the Subcommittee on Race Discrimination,

Thank you for your letter of 30 March 2009 seeking my views on the Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation.

My understanding, from the letter and materials sent by Ms. Flora Tai, is that you are chiefly concerned about the fact that the language describing the circumstances in which the Equal Opportunities Commission (EOC) may bring proceedings under the Race Discrimination Ordinance (which is based upon language used with respect to comparable regulations under the Sex Discrimination Ordinance (SDO)) is slightly different than language used in comparable regulations under the Disability Discrimination Ordinance (DDO).

Based upon the research that I have done regarding the EOC's use of its enforcement powers, I do not think that the difference in this particular language (between the regulations under the SDO and the regulations under the DDO) has had any practical impact. I believe that the EOC considers the same factors and applies virtually the same standard in deciding whether to commence proceedings, regardless of whether the case would be brought under the SDO or the DDO.

That being said, I do think that it would be better if the language in these regulations could be harmonized, across all of the anti-discrimination ordinances. The use of different language may make the public think that the EOC is more (or less) likely to commence proceedings when it is considering a case under a particular ordinance. It would not be desirable for the public to have that impression. However, that harmonization process may not be a high priority at this time and it would be unfortunate if an attempt to harmonize these regulations caused any delay in the implementation of

the Race Discrimination Ordinance. In the short term, the EOC could simply issue a public statement (which it could post on its website) explaining that the standard for deciding whether to commence proceedings is essentially the same across ordinances.

Of far greater concern (at least to me) is the fact that the Race Discrimination Ordinance is a weaker law than the SDO and does not give the EOC adequate jurisdiction to assist victims of racial discrimination by Government. This difference could have a significant impact on whether the EOC commences proceedings (or even accepts a complaint for investigation). My concerns regarding the scope of the legislation were elaborated more fully in my paper: *Hong Kong's Race Discrimination Bill: A Critique and Comparison with the Sex Discrimination and Disability Discrimination Ordinances*, June 2007, which I believe is still available on the Legislative Council's website (at <http://www.legco.gov.hk/yr06-07/english/bc/bc52/papers/bc52cb2-2232-1-e.pdf>.) While I appreciate that some amendments were made after I submitted that commentary, the Race Discrimination Ordinance is still weaker and narrower in scope than the SDO and I believe that this is unfair to Hong Kong's ethnic minorities and detrimental to Hong Kong's reputation as a leader in equality law in the region. If an attempt were made to harmonize Hong Kong's antidiscrimination legislative framework, then I would hope that the primary concern would be to make the Race Discrimination Ordinance as strong and wide in scope as the SDO.

Many thanks for the opportunity to comment on the proposed regulation. I hope that my comments are of assistance and would be happy to answer any additional questions.

Best regards,

Carole J. Petersen