

本函檔號 OUR REF : EOC/CR/ORD/15/01

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29 May 2009

Clerk to Subcommittee on Race Discrimination (Proceedings
by Equal Opportunities Commission) Regulation
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Madam,

**Information relating to regulations under discrimination ordinances empowering
EOC to take proceedings as if it were the person who may bring proceedings**

In the meeting on 25 May 2009 of the Subcommittee on Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation, Members requested information on whether the Equal Opportunities Commission (EOC), in relation to specific cases, had ever considered relying on corresponding regulations under the Sex Discrimination Ordinance (SDO), Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO) (relevant regulations).

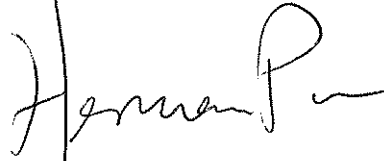
The relevant regulations would come into play only when the person who may take proceedings has not done so, and when the relevant conditions specified in the regulations are satisfied (i.e., the case raises a question of principle and appears well-founded to the EOC). In this situation, the relevant regulations empower the EOC to take proceedings as if it were that person. The relevant regulations are open to the EOC among other options in pursuing an issue of concern. A notable example relates to the EOC's formal investigation in 1999 on the Secondary School Allocation System.

After commencement of the Formal Investigation, the EOC received individual complaints involving pupils who were alleged to have been discriminated under that system. These complaints could not be settled by conciliation. One of

the options for EOC was to take proceedings as if it were the pupil in specific cases. But this might expose the pupil and parents to litigation and contradict their wishes. Eventually, the EOC decided to pursue the matter by applying for judicial review of the system in general rather than taking specific cases to court.

The relevant regulations are among a number of options which the EOC may consider to pursue an issue of concern. Other options include giving legal assistance in the ordinary way in other similar cases raising the same issue, applying for judicial review, providing amicus curiae to the courts or conducting formal investigation. The EOC will continue to consider and make use of all available options as appropriate.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Herman Poon', written in a cursive style.

Herman Poon

Chief Legal Counsel

Equal Opportunities Commission