

立法會
Legislative Council

Ref : CB2/SS/14/08

LC Paper No. CB(2)2332/08-09
(These minutes have been seen
by the Administration)

**Subcommittee on Race Discrimination (Formal Investigations) Rules,
Race Discrimination (Investigation and Conciliation) Rules and
Code of Practice on Employment under the Race Discrimination Ordinance**

**Minutes of the 7th meeting
held on Monday, 22 June 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Paul TSE Wai-chun (Chairman)
Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, BBS, JP
Hon IP Kwok-him, GBS, JP

Members absent : Dr Hon Margaret NG
Hon Miriam LAU Kin-ye, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Cyd HO Sau-lan
Hon Starry LEE Wai-king

Public Officers attending : Equal Opportunities Commission

Mr Raymond TANG Yee-bong
Chairperson

Mr Joseph LI
Director of Operation Division

Mr Herman POON Lik-hang
Chief Legal Counsel

The Administration

Constitutional and Mainland Affairs Bureau

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

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Ms Amy YU
Senior Council Secretary (2)3

Action

I. Meeting with the Administration and Equal Opportunities Commission

[LC Paper Nos. CB(2)1642/08-09(01) and (02), CB(2)1764/08-09(01), CB(2)1891/08-09(01), CB(2)1892/08-09(03), CB(2)1929/08-09(01) CB(2)1938/08-09(01) and G.N. 2733 of 2009]

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

Scrutiny of the Code of Practice on Employment (the Code) under the Race Discrimination Ordinance (RDO)

2. The Equal Opportunities Commission (EOC) agreed to -

- (a) amend the word "or" in the phrase "conviction by fine at a maximum at \$100,000 or imprisonment" in paragraph 6.4 to "and", in line with section 46 of RDO;
- (b) add "or appropriate legal action" after "initiating formal investigation" in paragraph 7.4.1(4) and "through public education and public initiatives" after "issuing codes of practice for elimination of discrimination and promotion of racial harmony" in paragraph 7.4.1(5) in order to reflect more comprehensively the functions undertaken by EOC; and
- (c) make reference to management staff in paragraph 3 of the sample policy on racial equality in order to underline the fact that the role of management staff, other than employees and workers, were equally important for the effective implementation of the policy on racial equality.

Action

Conclusion

3. The Subcommittee supported both the Race Discrimination (Formal Investigations) Rules and Race Discrimination (Investigation and Conciliation) Rules. Subject to the amendments to be moved by the Administration, the Subcommittee also supported the Code.

4. The Chairman concluded that the Subcommittee had completed its scrutiny work and would make a verbal report of its deliberations to the House Committee on 26 June 2009, to be followed by a written report. Members agreed. Members also noted that the deadline for giving notice of amendments to the Rules and the Code was 30 June 2009.

II. Any other business

5. There being no other business, the meeting ended at 3:14 pm.

Council Business Division 2
Legislative Council Secretariat
31 July 2009

**Proceedings of the 7th meeting of the
Subcommittee on Race Discrimination (Formal Investigations) Rules,
Race Discrimination (Investigation and Conciliation) Rules and
Code of Practice on Employment under the Race Discrimination Ordinance
on Monday, 22 June 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action required
000040 - 000155	Chairman Ms Emily LAU	Opening remarks	
000156 - 000303	EOC	<p><u>Scrutiny of the detailed provisions of the Code</u> (with reference to the marked-up version of the Code provided by the Equal Opportunities Commission (EOC) and EOC's response to the summary of views of depositions prepared by the Legislative Council Secretariat)</p> <p>Chapter 6 - Unlawful Acts under the Race Discrimination Ordinance (RDO)</p> <p>Regarding SOCO's suggestion of placing the contents of chapter 6 in the earlier part of the Code, EOC's advice that it was appropriate to put emphasis on good practice by placing the chapter on unlawful acts (chapter 6) after the chapter on good practice (chapter 5), in line with the views received during the consultation process.</p>	
000304 - 000535	EOC	<p>Paragraphs 6.1.1 - Racial discrimination</p> <p>Illustration 13</p>	
000536 - 000604	EOC	Paragraph 6.1.2 - Discrimination on the ground of near relative's race	
000605 - 000706	EOC	<p>Paragraph 6.1.3 - Discrimination by way of victimization</p> <p>Illustration 15</p> <p>EOC's advice that having considered the view of the Law Society of Hong Kong, an insertion was made in the paragraph to make it clear that victimization could occur even when the allegation of unlawful discrimination was not made out, except where the allegation was false and not made in good faith.</p>	
000707 - 000750	EOC	Paragraph 6.2 - When discrimination is unlawful in employment	

Time Marker	Speaker(s)	Subject(s)	Action required
000751 - 000918	EOC	<p>Paragraph 6.3 - Unlawful racial harassment</p> <p>EOC's advice that in response to a deputation's view, the contents on preventing and eliminating racial harassment was enhanced in chapter 4 (new paragraphs 4.2.4 to 4.2.13) and in paragraph 5.3.14 of the Code.</p>	
000919 - 001026	Chairman EOC	<p>Paragraph 6.4 - Vilification and the offence of serious vilification</p> <p>EOC's advice that the word "or" in the first sentence of the paragraph would be amended to "and" in line with section 46 of RDO.</p>	EOC to follow-up (para 2 of minutes)
001027 - 001100	Chairman EOC	Paragraph 6.5 - Discriminatory advertisements	
001101 - 001117	EOC	Paragraph 6.6 - Instructions and pressure to discriminate	
001118 - 001330	Chairman EOC	Paragraph 6.7 - Acts allowed under RDO	
001331 - 001705	Chairman EOC Ms LI Fung-ying	<p>Chapter 7 - When discrimination and harassment is encountered</p> <p>Paragraphs 7.1 and 7.2</p> <p>In response to Ms LI Fung-ying's enquiry concerning the time limit for lodging a complaint with EOC, EOC's advice that while under RDO, the time limit for lodging a complaint with EOC was 12 months, EOC had the discretion to take up a complaint lodged after the expiry of the specified time limit.</p> <p>EOC's advice that in response to the suggestion of a deputation, an insertion was made to paragraph 7.2.10 to remind complainants that they might resort to legal proceedings directly if the parties concerned did not wish to resolve disputes through mediation.</p>	
001706 - 002720	Chairman Mr LEUNG Yiu-chung EOC	<p>Paragraphs 7.3 and 7.4</p> <p>In response to Mr LEUNG Yiu-chung's enquiries, information provided by EOC on the various forms of legal action which might be taken by EOC, such as providing legal advice and representation to a complainant, initiating judicial review or acting as amicus curiae.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		<p>At Mr LEUNG Yiu-chung's suggestions, EOC agreed to add "or appropriate legal action" after "initiating formal investigation" in paragraph 7.4.1(4) and "through public education and public initiatives" after "issuing codes of practice for elimination of discrimination and promotion of racial harmony" in paragraph 7.4.1(5) in order to reflect more comprehensively the functions undertaken by EOC.</p>	<p>EOC to follow-up (para 2 of minutes)</p>
002721 - 003605	<p>Chairman EOC Mr LEUNG Yiu-chung Ms LI Fung-ying</p>	<p>Annex - Sample Policy on racial equality</p> <p>EOC's response to the comments raised by deputations on the sample policy.</p> <p>Ms LI Fung-ying's view on the important role of management staff in the effective implementation of the policy on racial equality and her suggestion that reference to management staff be added to the relevant sub-paragraphs under paragraph 3.</p>	<p>EOC to follow-up (para 2 of minutes)</p>
003606 - 003700	<p>Chairman Mrs Sophie LEUNG ALA9</p>	<p>The legal adviser to follow-up on the amendments to be made to the Code by EOC and to report to members if there were matters requiring the Subcommittee's attention.</p>	
003701 - 004438	<p>Chairman Ms Emily LAU Administration Mr LEUNG Yiu-chung Ms LI Fung-ying</p>	<p>The Administration's written response on measures to be taken by the Administration and EOC to allay the concern of employers of foreign domestic helpers about inadvertently committing acts of racial discrimination, which was tabled at the meeting.</p> <p>The Administration's advice that -</p> <ul style="list-style-type: none"> (a) it would liaise with the Immigration Department to include the leaflets on relevant guidelines in the information folder to be distributed to prospective employers of foreign domestic helpers which would also be uploaded onto the Department's website and distributed through employment agencies of foreign domestic helpers; (b) on the suggestion of adding a clause to the standard contract for foreign domestic helpers to alert employers of their responsibilities under RDO, the Administration was liaising with the Security Bureau on the suggestion; and (c) it would report on the measures that would be taken to help employers of foreign domestic helpers understand their responsibilities under RDO, including relevant progress, in moving 	

Time Marker	Speaker(s)	Subject(s)	Action required
		the motion on the amendments to be made to the Code at the Council meeting on 8 July 2009. Date of reporting to the House Committee and deadline for giving notice of amendments.	

Council Business Division 2
Legislative Council Secretariat
31 July 2009