

政制及內地事務局  
政府總部  
香港下亞厘畢道



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU  
GOVERNMENT SECRETARIAT  
LOWER ALBERT ROAD  
HONG KONG

本局檔號 OUR REF : CMAB/CR1/34/92  
圖文傳真 FAXLINE : 2840 0657

16 March 2009

Ms Flora Tai  
Clerk to Panel on Constitutional Affairs  
Legislative Council Building  
8 Jackson Road  
Central Hong Kong

Dear Ms Tai,

**Panel on Constitutional Affairs**

**Legal Assistance provided by Equal Opportunities Commission**

At the meeting of the Panel on Constitutional Affairs held on 16 February 2009, Members requested information on the legal assistance provided by the Equal Opportunities Commission (EOC). Attached please find a note prepared by the EOC, entitled "Legal assistance provided by Equal Opportunities Commission", for Members' reference please.

As explained at the meeting and also in the note, the function of the EOC in providing legal assistance to victims of discrimination is distinct from its power to initiate proceedings as if it were the victim under the regulations of respective discrimination ordinances, including the proposed Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation when it comes into operation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Arthur Ho'.

( Arthur Ho )

for Secretary for Constitutional and Mainland Affairs

Encl.

## Legislative Council Panel on Constitutional Affairs

### Legal Assistance provided by Equal Opportunities Commission

#### Purpose

Pursuant to Members' enquiries in the meeting held on 16 February 2009, this Paper provides information on legal assistance provided by the Equal Opportunities Commission (EOC) under the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance (the Ordinances).

#### Background

2. A person may lodge a complaint with the EOC in respect of an unlawful act under the Ordinances, and the EOC will investigate the complaint and will endeavour to effect a settlement between the parties<sup>1</sup>.

3. After a complaint is lodged with the EOC, and if there is no settlement, any person who may take legal proceedings in respect of the unlawful act concerned may apply for assistance from the EOC (legal assistance) in respect of those proceedings<sup>2</sup>.

4. The EOC's function of providing legal assistance under the Ordinances is distinct from other types of legal proceedings which the EOC may become involved. Where applicable, the EOC may also take proceedings in its own name under regulations made under the Ordinances<sup>3</sup>. The EOC may apply for judicial review, as it did in the case of *EOC v Director of Education* [2001] 2 HKLRD 690. The EOC may also provide amicus curiae to the courts, as it did in *Secretary for Justice v Chan Wah* [2000] 3 HKLRD 641, *Tsang Helen v Cathay Pacific Airways Ltd (No 2)* [2001] 4 HKC 585 and *Leung T C William Roy v Secretary for Justice* [2006] 4 HKLRD 211.

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<sup>1</sup> SDO s.84, DDO s.80 and FSDO s.62

<sup>2</sup> SDO s.85(1), DDO s.81(1) and FSDO s.63(1)

<sup>3</sup> Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation Cap.480C; Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation Cap.487C; Family Status Discrimination (Proceedings by Equal Opportunities Commission) Regulation Cap.527C

## Factors considered by EOC

5. Under the Ordinances<sup>4</sup>, the EOC shall consider an application for legal assistance and may grant it if it thinks fit to do so, in particular where –

- (a) the case raises a question of principle; or
- (b) it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided.

6. The Ordinances enable the EOC to decide whether to provide assistance in each case as it thinks fit. The EOC may do so by reference to the priorities of its work. This is in line with former commissions in the UK operating under similar legislation before they were merged into a single commission<sup>5</sup>.

7. Applications for assistance are considered by the EOC's Legal and Complaint Committee. In deciding whether to provide assistance, the factors considered by Committee include:

- (a) Whether the case raises a question of principle;
- (b) Whether it is unreasonable, having regard to the complexity of the case or the applicant's position in relation to the respondent or another person involved or any other matter, to expect the applicant to deal with the case unaided;
- (c) The strength of the evidence;

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<sup>4</sup> SDO s.85(2), DDO s.81(2) and FSDO s.63(2)

<sup>5</sup> For example, the former Commission for Racial Equality stated that it was "*obliged only to support cases which we consider suitable... Decisions are usually made on the basis of the strength of the case, but other factors also come into play, such as whether or not the case meets the CRE's priorities; whether the applicant already has, or could have, access to alternative representations...*" (<http://83.137.212.42/sitearchive/cre/legal/assistance.html>). In the UK, the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission were merged into the Equality and Human Rights Commission in October 2007.

- (d) The need to establish legal precedents;
- (e) The need to enhance and sustain public awareness;
- (f) The publicity impact on EOC's work in promoting equal opportunity if legal assistance is given;
- (g) Whether the case reinforces a policy issue emphasized by the EOC;
- (h) Whether suitable and effective remedy for the applicant could be obtained through legal proceedings;
- (i) Whether assistance has been granted in another case which will achieve the same purpose;
- (j) Whether the applicant has alternative resources, including legal aid;
- (k) The attitude and behaviour of the parties during the complaint handling process.

### **General information**

8. As at February 2009 (**Annex I**), there have been 451 applications to the EOC for legal assistance, and the EOC have provided assistance in 190 applications (42%). Out of these 190 applications, 61 applications were settled before legal action was commenced. Legal action was commenced in 69 applications. The same legal action may deal with more than one application. From the 69 applications, there have been 58 legal actions.

9. Out of 58 legal actions, 33 legal actions were settled without a trial. There have been 15 trials; 13 trials have resulted in favour of the EOC assisted party; 2 trials have not resulted in favour of the EOC assisted party.

10. The legal expenses incurred by the EOC in providing assistance have been HK\$6,778,361.25. The settlement sums or damages awarded to EOC assisted party have been HK\$24,645,404.94.

11. While pregnancy discrimination and disability discrimination in employment constitute the majority of applications made to EOC, the EOC currently pays particular attention to applications involving accessibility to buildings and facilities for people with disabilities, sexual harassment, and family status discrimination in employment.

12. With regard to the strength of evidence, the EOC takes the view that it should provide assistance only if there are good prospects of establishing the facts contended. This approach is in line with the former UK commissions<sup>6</sup>.

13. According to the information of the Legal Aid Department (**Annex II**), from 2005 to 2007, there were 28 applications for legal aid under the Ordinances. There were 24 unsuccessful applications and 3 refusals on means.

14. In the UK, the former Disability Rights Commission supported 47 new legal cases in the year 2004/05<sup>7</sup>. The former Commission for Racial Equality provided full legal representation in 1 case in 2004 and 3 cases in 2005<sup>8</sup>.

## **Funding**

15. At present, under the envelop funding approach, the EOC's legal expenses in relation to giving legal assistance are absorbed in the Recurrent Account. From 2005/06 up to the present, about HK\$1.5 million is set aside each year. Should this amount be insufficient, resort can be had to the General Reserve (except for funds designated for specific purposes). The General Reserve is currently around HK\$17 million.

Equal Opportunities Commission

March 2009

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<sup>6</sup> For example the former Disability Rights Commission stated that it "will fund individual need cases where there is exceptional individual need or hardship, such that without DRC support it is likely the disabled person will not be able to access the justice system. However, to warrant DRC support, as with cases involving points of legal principle, the prospects of success of the case must usually exceed 60% (prospects of success will be assessed as they would be with DRC support in place)" (Guide to DRC's Legal Case Selection Priorities, March 2006, paras. 1.6 and 1.7)

<sup>7</sup> Disability Rights Commission Annual Report and Accounts 2004-05

<sup>8</sup> Commission for Racial Equality Annual Report 2005

Table 1: Applications to the EOC for legal assistance from 1997 to February 2009

Ordinance	No. of applications for legal assistance	No. of applications withdrawn	No. of applications under consideration	No. of unsuccessful applications	No. of successful applications [a+b+c+d]	Status of applications provided with legal assistance			
						(a) not pursued (withdrawn by assisted person/ terminated by EOC)	(b) settled before proceedings commenced	(c) Proceedings commenced	(d) in progress
SDO	172	0	2	93	77	17	27	28	5
DDO	261	2	1	155	103	28	30	37	8
FSDO	18	0	1	7	10	2	4	4	0
<b>Total no. of applications</b>	<b>451</b>	<b>2</b>	<b>4</b>	<b>255</b>	<b>190</b>	<b>47</b>	<b>61</b>	<b>69</b>	<b>13</b>

Table 2: Legal actions assisted by the EOC from 1997 to February 2009

Ordinance	No. of EOC assisted legal actions [a+b+c+d]	Status of legal actions			
		(a) Settled out of court	(b) Court ruled in favour of the EOC assisted party	(c) Court ruled in favour of the Defendant	(d) On-going
SDO	22	13	6	2	1
DDO	34	18	7	0	9
FSDO	2	2	0	0	0
<b>Total no. of legal actions</b>	<b>58</b>	<b>33</b>	<b>13</b>	<b>2</b>	<b>10</b>



法律援助署  
Legal Aid Department

Annex II  
LC Paper No. CB(2)2187/07-08(01)

本署檔號 Our Ref.: LA/ADM 115/37 (C) II  
來函檔號 Your Ref.: CB2/BC/2/06  
電話 Tel.: 2867 4521  
圖文傳真 Fax: 2537 2110

**BY FAX 2509 9055 (Total page : 1)**

5 June 2008

Ms. Flora Tai  
Clerk to Bills Committee  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central, Hong Kong

Dear Ms. Tai,

**Re.: Bills Committee on Race Discrimination Bill**

Thank you for your letter of 27.5.2008 enquiring information about applications for legal aid under the three existing anti-discrimination ordinances.

We provide the required information for the past 3 years as follows :-

	2005	2006	2007
No. of applications	5	8	15
No. of unsuccessful applications	5	7	12
No. of refusal on means	1	2	0

Yours sincerely,

( Ms. Juliana O.Y. Chan )  
for Director of Legal Aid

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