

立法會
Legislative Council

LC Paper No. CB(2)1581/11-12
(These minutes have been seen
by the Administration)

Ref : CB2/SS/8/10

**Subcommittee on
Revised Code of Practice on Employment under
the Disability Discrimination Ordinance**

**Minutes of the fourth meeting
held on Wednesday, 11 May 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Kwok-che
Hon IP Wai-ming, MH

Members absent : Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP
Dr Hon PAN Pey-chyou
Hon WONG Yuk-man

Public Officers attending : Item I
Mr Stephen SUI Wai-keung
Commissioner for Rehabilitation
Labour and Welfare Bureau

Equal Opportunities Commission

Mr LAM Woon-kwong
Chairperson

Ms Maggie WU Su-ka
Senior Equal Opportunities Officer (Compliance)

Clerk in attendance : Mr Raymond LAM
Chief Council Secretary (2) 1

Staff in attendance : Ms Wendy KAN
Assistant Legal Adviser 6

Ms Maisie LAM
Senior Council Secretary (2) 5

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration and Equal Opportunities Commission

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

2. Members noted the proposed amendments of the Equal Opportunities Commission ("EOC") to the revised Code of Practice on Employment under the Disability Discrimination Ordinance ("the revised Code"). The Subcommittee requested EOC to -

- (a) consider adding the words "的問題" after "法律程序" in the Chinese text of its proposed amendments to paragraph 1.4 of the revised Code to tally with the English text;
- (b) consider further amending paragraph 1.9 of the revised Code to remind readers that the summaries of local and overseas precedents quoted in the revised Code should not be taken as containing all information relating to the cases concerned. Where readers intended to rely on the decided cases cited in the revised Code, they should refer to the respective court judgments;
- (c) amend the citation "0490 08 2704" in its proposed amendments to footnote 1 of the revised Code as "0490_08_2704";

- (d) consider amending the terms "persons living with AIDS", "patients with AIDS and those who are HIV positive" and "AIDS patients" in the English text of its proposed amendments to paragraphs 3.5 and 6.37 and the English text of paragraph 9.10 of the revised Code as "persons living with HIV";
- (e) consider amending the terms "愛滋病毒感染者", "愛滋病患者和帶菌者", "愛滋病病人" and "愛滋病患者" in the Chinese text of its proposed amendments to paragraphs 3.5 and 6.37 and in the Chinese text of paragraphs 9.10 and 11.4.8 of the revised Code as "愛滋病病毒感染者";
- (f) review the appropriateness to make reference to the commencement date and Section 24 of the Minimum Wage Ordinance (Cap. 608) in its proposed amendments to paragraph 8.5 of the revised Code and to amend the reference chapter of the Ordinance in the paragraph as "CAP. 608"; and
- (g) closely follow up the Administration's programme for upgrading the barrier-free facilities in premises and facilities of the Government and the Housing Authority.

3. The legal advisor to the Subcommittee undertook to prepare a paper setting out the discrepancies between the meaning of future disability as provided in paragraph 3.4.2 of the revised Code and that as held in the case, *K & Ors v Secretary for Justice* [2000] 3 HKC 796, cited in footnote 7 of the revised Code for the consideration of members.

4. Members noted that EOC had set aside \$1.5 million in each year for the provision of legal assistance to members of the public. They considered the provision far from adequate for meeting the expenses of more complicated litigation cases. The Subcommittee agreed to request the Secretary for Constitutional and Mainland Affairs to establish for EOC a litigation fund similar to that for the Consumer Council.

II. Way forward

5. Members agreed that the full set of the latest version of the amendments to the revised Code proposed by EOC would be circulated to members for consideration. If members had no further comments on the proposed amendments, the Subcommittee would report its deliberations to

the House Committee at its meeting on 20 May 2011.

6. The Administration advised that it intended to move one resolution embodying all proposed amendments to the revised Code. Members requested the Secretariat to provide written information on the speaking time for each Member on the resolution to be moved by the Administration and the format of the resolution moved by Members to amend the revised Code, if any, for members' reference.

7. The meeting ended at 9:50 am.

Council Business Division 2
Legislative Council Secretariat
30 March 2012

**Proceedings of the fourth meeting of the Subcommittee on
Revised Code of Practice on Employment under
the Disability Discrimination Ordinance
held on Wednesday, 11 May 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|--|---|------------------------|
| 000000 - 000329 | Chairman | Opening remarks | |
| 000330 - 000805 | Chairperson of the Equal Opportunities Commission ("EOC") Chairman Hon Emily LAU | Briefing by EOC on the actual expenditures on legal assistance to members of the public and the number of complaints lodged with EOC against the Government as requested by members at the meeting on 6 May 2011 [LC Paper No. CB(2)1710/10-11(01)] | |
| 000806 - 001629 | Chairman Hon Emily LAU Chairperson of EOC | In response to Hon Emily LAU, EOC's advice that - (a) the sufficiency of the evidence for bringing the case to court was the prime factor of consideration by its Legal and Complaints Committee on whether legal assistance should be granted in a case. The availability of funds was not a consideration in deciding whether to grant legal assistance; (b) expenditures on legal assistance involved fees paid to outside counsels for advice on the cases' strength of evidence before deciding whether to grant legal assistance and trial preparation for cases resorting to legal proceedings, as well as expenses incurred in the proceedings for both cases settled in and out of court; and (c) additional funds could be allocated, where necessary, through internal redeployment for the provision of legal assistance | |
| 001630 - 001712 | Chairman Chairperson of EOC | In response to the Chairman, EOC's advice that the actual expenditures on legal assistance in 2008, 2009 and 2010 as set out in the Administration's paper covered all court cases under the purview of EOC | |
| 001713 - 002546 | Hon Audrey EU Chairman Chairperson of EOC | Hon Audrey EU's enquiry on whether the unused part of the annual provision of legal assistance had to be returned to the Government; and her view that a litigation fund similar to that for the Consumer Council should be established for EOC, as EOC's annual provision of \$1.5 million for legal assistance was far from adequate for meeting the expenses of more complicated litigation cases EOC's advice that any unused part of the financial provision for legal assistance would be transferred together with any other operating surplus to a reserve fund of EOC, subject to a ceiling | |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|----------------------------|--|--|---------------------|
| | | <p>Hon Audrey EU's suggestion that paragraph 1.9 of the revised Code of Practice on Employment under the Disability Discrimination Ordinance ("the revised Code") should be further amended to remind readers that the summaries of local and overseas precedents quoted in the revised Code should not be taken as containing all information relating to the cases concerned. Where readers intended to rely on the decided cases cited in the revised Code, they should refer to the respective court judgments. EOC agreed to consider the suggestion</p> | <p>EOC</p> |
| <p>002547 - 002619</p> | <p>Chairman Hon Emily LAU Chairperson of EOC</p> | <p>Members agreed that the Subcommittee should request the Secretary for Constitutional and Mainland Affairs to establish for EOC a litigation fund similar to that for the Consumer Council</p> | <p>Clerk</p> |
| <p>002620 - 003931</p> | <p>Hon Emily LAU Chairperson of EOC Chairman</p> | <p>Hon Emily LAU's concern about the proportion of complaints of disability discrimination lodged with EOC against the Government in the period from 20 September 2006 to 31 March 2011, which accounted for 19.8% of the total number of complaints of disability discrimination</p> <p>EOC's advice that there was no significant difference between Government related and non-Government related complaints of disability discrimination in the average investigation discontinuation rate and conciliation success rate. Among the 1 140 cases which were related to the Government, three had been brought to court</p> <p>Hon Emily LAU's query as to whether EOC, which was funded by the Government, was reluctant to bring cases related to the Government to court</p> <p>EOC's advice that although it was funded by the Government, it was an independent statutory body. There was no question of reluctance to bring a case to court because of its "Government-related" nature. That said, in most of the complaints related to the Government, the Government departments concerned had sought to resolve the problem and thus the number of cases brought to court was small. Generally speaking, EOC would consider whether the actions taken or explanations given by the Government were reasonable when deciding whether it should resort to legal proceedings</p> | |
| <p>003932 - 005055</p> | <p>Chairman Hon LEUNG Yiu-chung Chairperson of EOC Hon Emily LAU</p> | <p>Hon LEUNG Yiu-chung's enquiry about EOC's criteria for discontinuing investigation of a complaint or an EOC's self-initiated investigation related to the Government; and his suggestion that EOC could actively collect the views of the members of the public when determining whether the response from the Government was reasonable</p> <p>EOC's reiteration that the reasonableness of the actions taken or explanations given by the Government would be the prime consideration. Taking the provision of barrier</p> | |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|-----------------|---|---|-----------------|
| | | <p>free access and facilities for persons with disabilities as an example, the Administration had, in response to the investigation report issued by EOC in June 2010, drawn up a retrofitting programme for upgrading the barrier-free facilities in premises and facilities of the Government and the Housing Authority</p> <p>The Chairman and Hon LEUNG Yiu-chung's request that EOC should closely follow up the Administration's programme for upgrading the barrier-free facilities in premises and facilities of the Government and the Housing Authority</p> | EOC |
| 005056 - 005157 | Chairman Chairperson of EOC | <p>The Chairman's enquiry on whether EOC could continue its investigation of a complaint after the complainant had agreed to settle a case by conciliation</p> <p>EOC's advice that even where a complaint had been settled by conciliation, EOC could continue to follow up the matter of the case and conduct self-initiated investigation as necessary should it involve broader public interest</p> | |
| 005158 - 005342 | Hon Emily LAU Chairman | Hon Emily LAU's concurrence of the view that EOC should follow up the Administration's programme for upgrading the barrier-free facilities in premises and facilities of the Government and the Housing Authority | |
| 005343 - 005359 | Chairman | Examination of the amendments to the revised Code proposed by EOC [Annex 1 to LC Paper No. CB(2)1710/10-11(01)] | |
| 005400 - 005507 | Chairman ALA6 Chairperson of EOC | <p>EOC was requested to consider the following textual amendments -</p> <p>(a) add the words "的問題" after "法律程序" in the Chinese text of its proposed amendments to paragraph 1.4 of the revised Code to tally with the English text; and</p> <p>(b) amend the citation "0490 08 2704" in its proposed amendments to footnote 1 of the revised Code as "0490_08_2704"</p> | EOC |
| 005508 - 005550 | Chairman Chairperson of EOC | Proposed amendments to paragraph 1.9 of the revised Code | |
| 005551 - 005904 | Chairman Chairperson of EOC ALA6 Hon Emily LAU | EOC was requested to consider amending the terms "persons living with AIDS" and "愛滋病毒感染者" in the English text and the Chinese text of its proposed amendments to paragraph 3.5 of the revised Code as "persons living with HIV" and "愛滋病病毒感染者" respectively | EOC |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|---|---|------------------------|
| 005905 - 010434 | Chairman ALA6 Chairperson of EOC Hon LI Fung-ying Hon Emily LAU | The legal advisor undertook to prepare a paper setting out the discrepancies between the meaning of future disability as provided in paragraph 3.4.2 of the revised Code and that as held in the case, <i>K & Ors v Secretary for Justice</i> [2000] 3 HKC 796, cited in footnote 7 of the revised Code for the consideration of members | ALA6 |
| 010435 - 010642 | Chairman Hon Emily LAU Chairperson of EOC | Proposed amendments to paragraph 5.11 of the revised Code | |
| 010643 - 010835 | Chairman Chairperson of EOC | Proposed amendments to paragraph 6.20 of the revised Code | |
| 010836 - 010938 | Chairman Chairperson of EOC | Proposed amendments to paragraph 7.6 of the revised Code | |
| 010939 - 011115 | Chairperson of EOC Chairman | Proposed amendments to paragraph 8.5 of the revised Code | |
| 011116 - 011159 | Chairman Chairperson of EOC | Proposed amendments to paragraph 12.1 of the revised Code | |
| 011200 - 011309 | Chairman ALA6 Chairperson of EOC | Whether the word "encouraged" or "admissible" should be adopted in the English text of paragraph 6.20 of the revised Code | |
| 011310 - 011422 | ALA6 Chairperson of EOC Chairman | EOC was requested to consider amending the term "persons living with AIDS" in the English text of its proposed amendments to paragraph 6.37 of the revised Code and the term "愛滋病毒感染者" in the Chinese text of its proposed amendments to the paragraph as "persons living with HIV" and "愛滋病病毒感染者" respectively | EOC |
| 011423 - 011619 | ALA6 Chairman Hon Emily LAU Chairperson of EOC | EOC undertook to review the appropriateness to make reference to the commencement date and Section 24 of the Minimum Wage Ordinance (Cap. 608) in its proposed amendments to paragraph 8.5 of the revised Code; and to amend the reference chapter of the Ordinance in the paragraph as "CAP. 608" | EOC |
| 011620 - 011701 | ALA6 Chairperson of EOC | EOC was requested to consider the following textual amendments - (a) amend the terms "patients with AIDS and those who are HIV positive" and "AIDS patients" in the English text of paragraph 9.10 of the revised Code as "persons living with HIV"; and (b) amend the terms "愛滋病患者和帶菌者", "愛滋病病人" and "愛滋病患者" in the Chinese text of paragraphs 9.10 and 11.4.8 of the revised Code as "愛滋病病毒感染者" | EOC |

| Time marker | Speaker(s) | Subject(s) | Action Required |
|--------------------|---|---|------------------------|
| 011702 - 011813 | Chairman ALA6 Chairperson of EOC | The commencement date of sections 1, 2 and 16, Part 3 and Schedule 4 of the Minimum Wage Ordinance; and the productivity assessment of persons with disabilities under the statutory minimum wage regime provided in Schedule 2 of the Ordinance | |
| 011814 - 012300 | Chairman Hon Emily LAU Admin Clerk ALA6 | Members requested the Secretariat to provide written information on the speaking time for each Member on the resolution to be moved by the Administration to amend the revised Code and the format of the resolution moved by Members to amend the revised Code, if any, for members' reference | Clerk |

Council Business Division 2
Legislative Council Secretariat
30 March 2012