



THE
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OF HONG KONG
香港律師會

Practitioners Affairs

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18 February 2014

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BY FAX (2840 0716) ONLY

Attn: Ms. Mary So

Dear Ms. So,

**Panel on Administration of Justice and Legal Services
Meeting on 25 February 2014**

Thank you for your letter of 5 February 2014 to the Secretary General, which has been passed to me for reply.

The relevant specialist committees of the Law Society have no further comment on the agenda items III or IV for the AJLS meeting of 25 February 2014. No representative from the Law Society is to attend the Panel meeting on 25 February 2014.

I shall send you again the previous submission of the Law Society dated 3 September 2013. Please kindly ensure that this submission and also our reply letter to you of 16 January 2014 are brought to the attention of the Panel.

Yours sincerely,

Kenneth Fok
Director of Practitioners Affairs
The Law Society of Hong Kong

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Judiciary
G/F., High Court Building,
38 Queensway,
Hong Kong.

Attn: Mr. Esmond Lee

Dear *Esmond,*

Review on Adjudication of Equal Opportunities Claims by the District Court

Consultation Paper on the Proposed Legislative Amendments to the District Court Equal Opportunities Rules

Thank you for your letter of 30 December 2013.

The relevant specialist committees of the Law Society have considered your responses and have no further comment.

Yours sincerely,

Kenneth Fok
Director of Practitioners Affairs
The Law Society of Hong Kong



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3 September 2013

BY FAX (2501 4636) AND BY POST

Judiciary
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38 Queensway,
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Attn: Mr. Esmond Lee

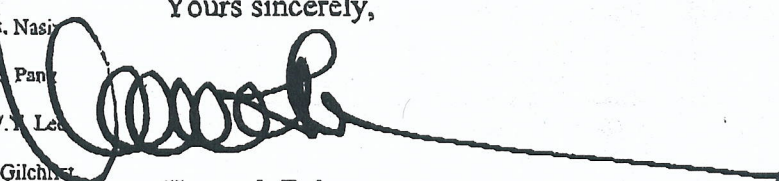
Dear Esmond,

Consultation Paper on the Proposed Legislative Amendments to the District Court Equal Opportunities Rules

Thank you for writing to the President on 10 July 2013. I am asked to reply to your letter on his behalf.

The Civil Litigation Committee and the Employment Law Committee have reviewed the consultation paper, and have produced a submission. I enclose a copy of the said submission for your attention.

Yours sincerely,


Kenneth Fok
Assistant Director of Practitioners Affairs
The Law Society of Hong Kong



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**CONSULTATION ON THE PROPOSED LEGISLATIVE
AMENDMENTS TO THE DISTRICT COURT EQUAL
OPPORTUNITIES RULES (“CONSULTATION PAPER”)**

SUBMISSIONS

The Law Society’s Civil Litigation Committee and Employment Law Committee have reviewed the proposed amendments to the District Court Equal Opportunities Rules (Cap 336, sub. Leg. G). They have observations on the following:

- the proposed regime on the request for further particulars of a party’s case;
- the draft claim form, and
- the Practice Direction on the Equal Opportunities claims.

(1) Proposed Regime on request for further particulars

1. Discrimination or equal opportunities claims (EO Claims) arise usually not from a single incident, but from series of events which accumulate and lead to grievances and complaints. In some cases, the factual matrix underlying the EO claim is complicated. It may not be easy for the claimants or the respondents, particularly litigants in person (LIPs), to appreciate the basis of the complaints and to prepare their cases.
2. The draft rules provide for a regime for both claimants and respondents to request particulars of their opponents’ cases:
 - (a) the request for particulars (*draft rules 10(1)(a) and 11(1)(a)*);
 - (b) the time limited for making the request (*draft rules 10(1)(b) and rules 11(1)(b)*); and also
 - (c) the effect of such request on the filing of the respondent’s response (*draft rule 9(3)*).

(a) *Parties to request further particulars on specified forms*

3. The majority welcomes the proposal for a party to seek further particulars by the use of standardized forms, in lieu of the formal court applications (*draft rules 10(1(a)) and 11(1)(a)*); it serves to simplify the procedures and helps to remove technicalities.
4. The above remark is made on the understanding that the use of the standardized forms do not preclude parties to seek directions from the Court when, for example, a party argues that the opponent is not entitled to seek particulars or a request is unclear or appears to be not relevant. The Court could direct to apply the District Court Rules in such circumstances (*draft rule 4(3)*).
5. There is a minority view that, if and when such request for particulars is contemplated, the requesting party should formally and promptly make a court application for the adjudication of the request.
6. Those who take the above view point to the following:
 - (i) EO claims usually arise from a continuum of events; there should therefore be a control on the extent of request for evidence;
 - (ii) it is appropriate to have an early identification of issues in dispute;
 - (iii) case management directions should be given at an early stage in order that there could be better focus on the evidence;
 - (iv) there is only a relatively small number of EO claims in the District Court; and
 - (v) a judge and a special list have been designated for the EO claims.

(b) *Request for further particulars be made within 14 days upon receipt of claims/response*

7. The 14 days period allowed for a party to raise a request for further particulars (*draft rules 10(1)(b) and 11(1)(b)*) is unrealistic and is insufficient for a party to investigate or to consider raising the request.
8. This period of time is also unnecessarily restrictive because:
 - (i) an unsophisticated LIP could easily miss the deadline; and
 - (ii) a party, for fear of losing this opportunity to raise the request, could try to put in as many requests as possible.
9. While the Judiciary considers that this proposed time limit for seeking further particulars will help ensure the timely processing of EO claims (para 20, Consultation Paper), this proposal could bring the unintended consequence of:

- (i) generating court applications: for example, applications for leave to serve a request for particulars out of time under Order 3, rule 5 of the Rules of the District Court (RDC) (but it is not clear whether Order 3, rule 5 is still applicable in this situation under *draft rule 4(2)*), or
 - (ii) encouraging the filing and the service of an exceedingly large number of requests, for tactical reasons.
10. We have the following suggestions:
 - (i) If the Judiciary considers that it is necessary to put in a time period, then, the time period limited for raising requests should, in order to be reasonably realistic, at least be 28 days;
 - (ii) furthermore and in the alternative, if the Judiciary agrees that, where relevant, the Court should be given the necessary power to adjudicate on matters arising from the time period, then the phrase "*unless the Court orders the otherwise*", or a phrase to that effect, could be inserted after the "14 days" period in the draft rules.
- (c) *Time for a respondent to file and serve the response after a request for particulars has been made*
11. The current draft provides that:
 - (i) a respondent must within 28 days file and serve the response; and
 - (ii) this 28 days period is not lengthened or shortened even though a request for particulars is made (*draft rule 9(3)*).
12. We have no major objection to the above, on the understanding that, if a respondent needs more time to file and serve the response, he may ask the Court to apply the District Court Rules and seek a time extension under Order 3, rule 5 of RDC (subject to clarification on its applicability under the *draft rule 4(2)*), or ask for relief which is similar to Order 18 Rule 12(5) RDC (e.g. to enable the respondent to prepare the response, the respondent be allowed to serve its response within a period of a certain number of days after further particulars of the claim are provided).
13. There is one suggestion that if a respondent makes a request for particulars, the time for him to file and to serve the response should automatically be extended, say, to 28 days after the receipt of the further particulars to be supplied.
- (2) *Checklist of remedies*
14. The draft Form 1 (Claim form) lists out those remedies available to a claimant as a matter of law (paragraph C(3)).

15. This list is recognised as useful and relevant to the claimants, in particular LIPs who do not have sufficient knowledge of the remedies available to them. Furthermore, by checklisting the remedies, LIPs can more easily focus on the evidence they should adduce.
16. The provision of a checklist of remedies is helpful to the EO Judge as well, since it could give the Judge a picture of what a claimant is claiming and what he is not claiming. It also helps the judge to control the evidence.
17. There is nevertheless a concern that the checklist could be misused by a claimant, as a matter of convenience and/or tactics, in that there may be a temptation for him to take the easy step of checking all the remedies on the form.
18. The language on the list of remedies needs to be improved and simplified. An LIP, for instance, might not understand the remedies on payment of *punitive or exemplary damages*, or that the contract be declared "*void ab initio*" on the English version of the claim form.
19. When a claimant chooses his remedies on the list, he is not required to provide in the claim form any justification. A respondent, on the other hand, *must* include in the response the grounds of his opposition (*draft Rule 9(2)*). Seemingly the respondent is saddled with a more onerous duty in terms of this procedural requirement, even though the duty of proof remains with the claimant.

Practice Direction on EO Claims

20. A new Practice Direction for EO claims is welcomed (para 26, Consultation Paper). It is hoped that the new Practice Direction will detail how a EO Claim may be conducted in a speedy and time-and cost-efficient manner.

The Law Society of Hong Kong

3 September 2013