

立法會民政事務委員會特別會議

日期：2003年11月14日(星期五)

時間：上午8時30分

地點：立法會會議廳

主席：葉國謙議員, JP

爲何要解除余仲賢先生合約？

1. 終止與余仲賢先生的合約，並不是針對他個人。平機會行動科總監一職的要求就據當時招聘這職位的廣告所說明：

平等機會委員會

行動科總監



平等機會委員會（委員會）是法定機構，致力消除基於性別、婚姻狀況、懷孕、殘疾及家庭崗位而產生的歧視；委員會亦致力消除性騷擾，以及基於殘疾的騷擾和中傷；並推動男女之間、傷健之間及有家庭崗位和沒有家庭崗位人士之間的平等機會。委員會誠聘一高級管理人員擔任行動科總監，該總監將直接向委員會主席負責。

職責

- 管理委員會的行動科，該科負責處理根據有關法例提出的投訴及公眾查詢
- 制定策略性工作方案、運作政策和程序，並於有需要時作出改善
- 為消除歧視，作出調查及政策研究
- 就推廣委員會的使命，與相關機構及人士保持聯繫及建立關係網絡

入職條件

- 具備豐富管理經驗，曾擔任管理層要職；擅於制定機構策略，具極強的領導才能和推行政策的能力
- 充分認識歧視及平等機會課題；具備法律背景更佳
- 對處理投訴和作出修正行動，具備豐富知識及經驗
- 中英文優異；通曉普通話更佳

EQUAL OPPORTUNITIES COMMISSION

Director, Operations



The Equal Opportunities Commission (EOC) is a statutory body charged with the mission to eliminate discrimination on the grounds of sex, marital status, pregnancy, disability and family status, as well as to eliminate sexual harassment, and harassment and vilification on the ground of disability. EOC promotes equality of opportunities between men and women, between persons with and without a disability and irrespective of family status. EOC is currently seeking a senior executive for the position of Director, Operations. This position reports to the Chairperson, EOC.

THE ROLE

- Manage the operations division responsible for handling complaints and public enquiries under the relevant legislation.
- Formulate strategic plan, operational policies and procedures and make improvements where necessary.
- Undertake general investigation and policy research relating to elimination of discrimination.
- Liaise and build networks with stakeholders on promoting the mission of EOC.

THE QUALIFICATIONS

- Extensive experience in management at a very senior level with strategic vision, strong leadership and execution ability.
- Good understanding of the issues relating to discrimination and equal opportunities; some legal background is desirable.
- Substantial knowledge and experience relating to redress and grievance handling.
- Excellent command of English and Chinese, proficiency in Putonghua an advantage.

2. 平機會行動科總監的主要工作，就如上述招聘廣告所列出的條件，是執行現有的三條反歧視法例，需有豐富處理這方面投訴的經驗。
3. 我參考余仲賢先生的簡歷和與余先生見面後，余先生僅專長於「種族歧視條例」，並沒有平機會現行的三條反歧視條例的實質參予和經驗，這與所刊登的招聘廣告需求，並不完全符合。
4. 再加上余先生接受南華早報訪問時亦直認本身僅專長於「種族歧視條例」和人權法，且余先生亦在同一個訪問中，直認他打算推行「種族歧視條例」，但從沒有提及過廣告中作為行動科總監主要的職責。(如下是余仲賢先生的簡歷和 2003 年 7 月 18 日在南華早報刊登的有關訪問。

Page 5 – 6 for members' reference only

第五、第六頁只供議員傳閱

Anna Wu gives key post to rights lawyer

New director of operations vows to uphold integrity of the Equal Opportunities Commission after being handpicked

Kavina Shamdasani

Outgoing equal opportunities chief Anna Wu Hung-yak has hired a new director of operations with a strong track record in human rights law, in one of her last acts before she is replaced before the end of this month.

Pedrick Yi Chung-yin, a former commissioner of the Northern Ireland Human Rights Commission, told the South China Morning Post

he would uphold the integrity and mission of the equal opportunities body when he takes up the post in November.

Mr Yu has been closely involved in racism and ethnic minority issues in Ireland and is expected to play an important role in advising the government in these areas.

"I must praise the Hong Kong government for handling the United Nations and agreeing to grant a pardon law and I am keen to see

Hong Kong follow the international standard and set up a human rights commission," he said.

Born and raised in Hong Kong, Mr Yu did social work and worked with trade unions and church groups, including the Justice and Peace Commission, before moving to Belfast to do a law degree at Queen's University in 1990. He lives in Ireland with his wife and son but makes frequent trips to Hong Kong, where he still has close family ties.

Mr Yu said he would oppose not only government departments but the private sector in promoting equal opportunities and would not resort to legal action unless all else failed. As senior staff in the EOC Equal Opportunities Committee, that will not be to enforce the law no matter who you are because everyone is equal before the law, he said. "I think it is important for both parties to have a willingness to work together to try to find a solution."

He said he was aware of the controversies that surrounded the commission, including the government's handling of Ms Wu's con-

tract and the commission's successful court challenge to the government's allocation of secondary school places in 2001.

"From my point of view, the challenge in relation to gender discrimination was not controversial at all," Mr Yu said. "The government is obliged to show its commitment to implementing the law and it should have internal exercises to identify practices that may not comply with new laws. The EOC had been working with the Education Department for years without progress and unfortunately it had to become a political issue."

The government announced

two weeks ago that Ms Wu's contract would not be renewed when it expires this month and that she would be replaced by retired judge Michael Wong Kin-chow.

Ms Wu declined to comment yesterday, saying only that she was considering various options for her future.

With a strong background in social work and the law, Mr Yu has been involved in equality and race issues as executive director of the Northern Ireland Council for Ethnic Minorities and deputy chairman of the Commission for Racial Equality among other related positions.

He also has been advising the British government on combining existing anti-discrimination laws into a single equality bill. As director of operations in Hong Kong, he will oversee complaints based on both the gender and disability discrimination laws but also hopes to play a role in advising on the enactment of an anti-racism law.

"I think my experience in drafting a single bill will be very useful for Hong Kong too, but I need to sense the situation there before making any recommendations," Mr Yu said.

He is due in Hong Kong next week to meet Ms Wu and Mr Wong.

South China Morning Post - 18 July 2003 (reported by Ravina Shameasani)

Anna Wu gives key post to rights lawyer

New director of operations vows to uphold integrity of the Equal Opportunities Commission after being handpicked

Outgoing equal opportunity commission chief Anna Wu Hung-yuk has hired a director of operations with a strong track record in human rights law, in one of her last acts before she is replaced at the end of the month.

Patrick Yu Chung-yin, a former commissioner of the Northern Ireland Human Rights Commission, told the South China Morning Post that he would uphold the integrity and mission of the equal opportunities body when he takes up

the post in November.

Mr. Yu has been closely involved in racism and ethnic minority issues in Ireland, and is expected to play an important role in advising the government in these areas,

“I must praise the Hong Kong government for heeding the United Nations and agreeing to an act in racism law and I am keen to see Hong Kong follow the international standard and set up a human rights commission.”

Born and raised in Hong Kong, Mr. Yu did social work and worked with trade unions and church groups, including the Justices and Peace Commission before moving to Belfast to do a law degree in Queens University in 1990. He lives in Ireland with his wife and son, but makes frequent trips to Hong Kong, where he still has close family ties.

Mr. Yu said he would engage not only government

departments but the private sector in prompting equal opportunities and would not resort to legal actions unless all else failed. "As senior staff in EOC (Equal Opportunities Commission), our role is to enforce the law, no matter who you are, because everyone is equal before the law," he said. "I think that is important for both parties to have a willingness to work together, to try to find a solution."

He said he was aware of the controversies surrounding the commission, including the government's handling of Ms. Wu's contract and the commission's successful court challenge to the government's allocations at secondary school places in 2001.

"From my point of view, the challenge in relation to gender discrimination was not controversial at all," Mr. Yu said. "The government is obliged to show its commitment to implementing the law and it should have internal practices that might not comply with new laws. The EOC had been

working with the Education Department for years without progress and unfortunately had to become a political issue.”

The government announced two weeks ago that Ms. Wu’s contract will not be renewed when it expires this month and that she would be replaced by retired Judge Michael Wong Kin Chow.

Ms Wu declined to comment yesterday, saying that she was only considering various options for her future.

With a strong background in social work and the law, Mr Yu has been involved in equality and race issues as executive director of Northern Ireland Council for the Ethnic Minorities and deputy chairman of the Commission for Racial Equality among other related positions.

He also has been advising the British government on combining existing anti-discrimination laws into a single

equality bill. As director of operations in Hong Kong, he will oversee complaints based on both the gender and discriminations laws, but also hope to play a role in advising on the enactment of an anti-racism law.

“I think my experience in drafting a single bill will be very useful for Hong Kong too, but I need to sense the situation there before making any recommendation,” Mr Yu said.

He is still in Hong Kong next week to meet Ms Wu and Mr Wong.

5. 根據南華早報的報導，很明顯余仲賢先生對外發表，平機會會推行「種族歧視條例」及人權法為主流，但當時余仲賢先生或胡紅玉女士，並無與新任主席或平機會委員會討論有關余仲賢先生對外的發表，是超出其職權範圍和不尊重平機會或新任主席。
6. 我上任後，曾會見余仲賢先生，當時余仲賢先生還未向平機會呈交有關他個人的資料及推薦書。從會面中及事後閱讀余仲賢先生呈交的個人簡歷後，平機會認為他是不適合出任平機會行動科總監的職位。
7. 平機會認為余仲賢先生雖擁有北愛爾蘭的工作經驗和參予，但考慮到北愛爾蘭的環境，及人權法的方針，與香港完全不同，因為北愛爾蘭是一個很特殊的地方，當地所推行的種族歧視條例和人權法，未必適合於香港的情況。
8. 我亦對於平機會聘請余仲賢先生任行動科總監一職，感

到奇怪。在翻查紀錄後，發現余仲賢先生並非廣告中的最佳要求人選，且在聘用余先生的程序中，並非依從平機會內的招聘程序。余仲賢先生的名字，原來是由前主席胡紅玉女士，親自把名字和聯絡地址電話交給獵頭公司，再經獵頭公司去招聘余先生，委員會事前並不知情。

9. 而且根據平機會的紀錄，前主席胡紅玉女士在聘請過程中，只交由一個為數五人的遴選委員會處理，而胡紅玉女士則是會中的委員之一，來通過聘請余仲賢先生作為平機會行動科總監。胡女士在聘請這個重要職位時，並沒有考慮到尋找整個合共十六人的委員會的意見。
10. 另前主席胡紅玉在聘用余仲賢先生時，本港正處於「沙士」襲港時期，平機會不明白當時有何急切要立刻聘請該職位。況且，余仲賢先生亦需待至十一月才能上任該職位。當時已有由澳洲借用到平機會作顧問的 Penny Dedes 女士同時署任行動科總監。
11. 翻查文件後，亦發覺前主席胡紅玉女士，寄給余仲賢先

生的招聘書中，列明余仲賢先生需要於稍後，把僱主及其他有關的推薦書交予平機會作參考，最終會否聘請余仲賢先生，亦要視乎余先生的推薦書是否令平機會滿意。但平機會在余仲賢先生接受南華早報訪問時，平機會尚未收到有關余仲賢先生的推薦書。

12. 我在翻看較早前平機會會見四名就上述職位的應徵者紀錄後，發現該等應徵者均符合平機會刊登招聘廣告的內容

13. 平機會沒有任何紀錄，解釋上述四名應徵者不符合該職位的原因，而亦沒有解釋為何不再刊登廣告，邀請其他應徵者。我認為當時為沙士非常時期，很明顯不會有很多應徵者參予，何不將聘請一事暫擱置，尋求更適合的人選。

14. 事前我對於聘請余仲賢先生的程序，並不願作出評論，是因為我不想再牽連前主席胡紅玉女士在內，但事到如今，沒有任何選擇，聘請余先生的程序，是很明顯不符合平機會正確的「招聘程序」。

15. 故平機會均認為余先生的經驗是不適合這個職位。平機會認為作為這個行動科總監是必定要有在接受投訴和作出修正行動的實質參與和豐富經驗。我明白到余先生是有豐富的「種族歧視條例」經驗，但這個條例在香港還未立法，平機會對「種族歧視條例」亦未有任何確實的方針和政策，所以單是這方面的參與和經驗是不足夠去完全發揮這個平機會行動科總監職位。

16. 平機會認為平機會內部已暫時有足夠經驗的人手去處理行動科的工作，因為平機會可暫由內部調配人手充當此職，為了節省資源，所以暫時不需要高薪外聘一個「種族歧視條例及人權專家」來任此職位。
17. 平機會認為行動科總監一職的月薪連同其他福利高達十五萬元，若以這麼高薪酬來聘用一個並非完全適合的人選，作為主席的我絕對有權去考慮在北愛爾蘭年薪僅有數萬英鎊的余仲賢先生是否能勝任該職位。香港正處於經濟低迷的情況下，再加上平機會過去的支出不斷上升，認為平機會在現階段，應慎重處理招聘人手一事。
18. 我在較早前已解釋平機會認為余仲賢先生的專長，他的資歷不符合此職位的所有要求，故他不可能在行動科總監職位有充份的發揮。若余先生是不能在這職位有全面的發揮，這樣無論對平機會或各市民都沒有理想的得益。

Page 18 – 20 for members' reference only

第十八至第二十頁只供議員傳閱

19. 還有，我承認作為新一任平機會主席，在處理平機會的架構和觀念，跟前任主席胡紅玉女士有不相同的看法。大家的方向都有分歧，例如：

(A) 財政預算

(i) 胡女士在任期，平機會不斷開闢新路向，架構不斷地澎漲、使費大增。例如：去年整體開資已達八仟多萬，是九六年成立時四仟萬元的一倍，當中訴訟費用在九九至零二年，便已達一仟萬元，平均每年達三百萬元。而每年的訴訟費支出中，有半數為平機會內部雇員，控告平機會的訴訟費。其中一宗個案「L v EOC」，雖然平機會獲判勝訴，但仍然要付數以百萬計的訟費。

(ii) 但我則有不同的看法，我認為平機會的首要工作不是要開闢新路向，同時在財赤下的香港，平機會應節省不必要的支出。

(B) 政策

- (i) 胡女士在任期間，不停的增大平機會的職務和支出，去參與和研究很多外國的反歧視法例，令致平機會逐漸澎漲。
- (ii) 我在平機會的政策方面也有不同的看法，我認為香港平機會首要的工作是要向社會大眾推廣現行的三條反歧視法例，令香港的市民對該三項條例加深認識和了解，及接受市民的投訴。
- (iii) 我認為先要令全港市民了解平機會的三條現行反歧視的條例後，才慢慢逐步推行其他方案，以免過於急進，及浪費資源。
- (iv) 作為新一任平機會主席，我的出發點都是想維持倡導平等、公開、公平、公正，及整理架構，

最主要是令市民最終得益。市民在投訴中，往往涉及訴訟和大量的金錢支出，不是每一個市民可以承擔。排期審訊的時間也很長，市民得益甚少。我在上任後兩個月，即向公眾發表構思，希望成立平等機會審裁處去處理市民的直接申訴，若這個構思能夠實行可節省很多金錢和時間，而市民將成爲最終的受益人。

(C) 總結

- (i) 我相信大家都同意每一位平機會主席都會有不同的個人看法，尤其在財政及政策方面，我希望在資源增值下，令平機會更有效發揮，而重整架構也是必然的事。

- (ii) 例如在前主席胡紅玉女士上任後，亦有重整架構。在胡女士年代，她亦刪除約八個職位，但胡女士事後卻新增逾二十五個職位。事實上胡紅玉女士在任期間，亦曾終止多名僱員合約。

其中亦有向平機會內部投訴。

20. 每一位主席都會有不同的看法，無論在分析聘請員工或刪除任何職位。我再重申嚴格地說，平機會中止與余仲賢先生的合約並不是針對他個人，完全是以平機會現時的實質需要，和這行動科總監的職位條件。在考慮到以上所提及的理由，平機會認為余先生並不適合此職位。

爲何不讓余仲賢先生上任後，觀察余先生的工作表現再作決定呢？

22. 平機會亦考慮到如果平機會待余仲賢先生上任後，才解除與余先生的合約，豈不是浪費余先生的時間，他可能需要安排他家人從北愛爾蘭到香港定居，這會對他和他的家人帶來不便。

23. 事實在平機會和余仲賢先生的僱傭合約內亦有清晰列明，可以在余仲賢先生的上任期間，平機會可以隨時和余仲賢先生解除合約，賠償條件就要視乎解除合約的時間。合約內列明如平機會在：

〔A〕余仲賢先生任職期內頭一個月解約，平機會是不需要對余先生作出任何賠償；

〔B〕余仲賢先生在任職期第二至六個月期間解約，平機會會對余先生要作出一個月的薪金(加津貼)作爲適合的賠償；

〔C〕余仲賢先生在任職期在第六個月以後的合約時間內被解約，平機會將要給余先生三個月的薪金(加津貼)作為賠償。

24. 在正式解除余先生的合約前，早在九月初，我已要求平機會的行政總監陳迹民先生代表平機會與余先生探討解約一事。陳迹民先生當時向我匯報有關余先生的表態。陳先生告訴我余仲賢先生是願意接納平機會的解約，但開出的條件是要平機會要作出賠償給他一年的薪金，以月薪十二萬多港元另加津貼，總共十五萬元一個月的總數來計算。余先生即是要求平機會作出的賠償額總數為一百八十萬元。探討期間余先生亦曾表態若不可能有十二個月的賠償金，他也願意接受平機會給他六個月的賠償，即九十萬元。

25. 在九月十六日平機會行政總監陳迹民再次代表平機會致長途電話給余先生，作為探討解除合約的事，亦和余先生探討，平機會給他兩個月的月薪加津貼來作為解約的

賠償，他會否考慮。

26. 余先生沒有在這探討過程中即時表態或接納任何條件。

27. 在九月十七日余先生透過律師給平機會一封律師信。

28. 現時余仲賢先生指控我是針對他本人，來不合理的僱他的僱傭合約，這是對我很不公平。事實余先生在探討期間，已很明顯表態願意接受解僱，唯獨是金錢賠償的問題。我認為平機會不應再進一步浪費公帑，以高達最少九十萬元的賠償金，去解除余先生的合約。而事實上我是依據所有合法程序去處理事件。

29. 在九月十八日平機會召開委員會大會，在這個會議上曾討論到有關解除余仲賢先生的合約，而在會議上亦獲得各委員一致同意，授權給我代表平機會，去處理余仲賢先生的合約。我認為平機會一向倡導公平，公正及公開的理念，故此我在委員會大會，商討解除余仲賢先生的僱傭合約。我大可以像前主席胡紅玉女士聘用余仲

賢先生，透過五名委員的小組委員會來處理。

30. 在九月二十日平機會正式發出解除余先生的合約信件，還向余仲賢先生作出兩個月的薪金作為賠償。
31. 由九月二十日至十月二十二日，余先生都一直沒有回覆平機會在九月二十日發給他的信件。
32. 在十月二十三日余先生已返回香港，亦於當日在“FCC”會所內出席一個記者招待會。開這個記者招待會前，余先生是沒有給平機會任何信函或通知。我或平機會都不知道余先生為什麼要事後大概個多月後才在公開場合作出回應，而不直接和平機會再進一步聯絡商討。他在記者招待會表態因他認為受無理解僱，將會在勞資審裁處提出訴訟。
33. 我認為解除合約的過程合法，合情，合理，如果余仲賢先生不接受兩個月的賠償，應由法庭處理，而非要召開記者會聲討，我真的不知道余先生召開記者會背後的真

正動機。

王見秋

王見秋