

**LegCo Panel on Constitutional Affairs**

**Response to the position paper of the Society for Community Organization  
on the consultation paper on Code of Practice on Employment  
under the Race Discrimination Ordinance**

**Purpose**

This paper provides the response of the Equal Opportunities Commission (EOC) on the position paper of the Society for Community Organization on the consultation paper on the Code of Practice on Employment under the Race Discrimination Ordinance (COP), as requested by the Panel.

**Background**

2. The EOC is now conducting public consultation on the draft Code of Practice on Employment under the Race Discrimination Ordinance. The deadline of the consultation period is extended from 8 December 2008 to 19 January 2009. Members of the public may send in their written submissions to the EOC by 19 January 2009. The COP aims to explain the law accurately and suggest good practices to help employers to eliminate racial discrimination and promote racial equality. It also aims to enable employees and job applicants to understand their rights and responsibilities. The EOC's consultation paper is the first step in the development of the COP. Full consideration will be given to all public views and comments upon conclusion of the consultation exercise, to ensure that the COP can effectively provide suitable guidelines to employers and employees.

3. During the consultation period, the EOC received, inter alia, a position paper from the Society for Community Organization (SOCO) (LC Paper No. CB (2) 291/08-09 (01)). The EOC is specifically requested by the Legislative Council Panel on Constitutional Affairs to respond to the paper.

## **Responses to the position paper**

4. The various comments and recommendations raised in the paper, and the corresponding responses, are detailed below.

### Overall comments

5. One of the chief purposes of the COP is to provide employers and employees with practical reference materials to enable them to comply with the Racial Discrimination Ordinance (RDO) and refrain from engaging in unlawful acts. Therefore it is necessary for the EOC to develop the COP in a way that accurately reflects the state of the law.

6. Regarding measures to promote racial equality, the EOC will provide in the COP appropriate recommendations to assist employers, employees or organizations. The EOC hopes that during the consultation process, stakeholders will share with us information on practical issues, so that the COP can provide suitable guidance. The EOC therefore welcomes comments on practicable measures from stakeholders.

### Recommendation I of the position paper : Issue codes of practice in other fields especially relating to housing, education, provision of goods, facilities, services and premises.

7. The EOC prioritizes its work by drawing on its experience in enforcing other anti-discrimination ordinances, making reference to relevant overseas laws, and considering the degree of the overall seriousness of the race-related difficulties faced by people of different ethnicities. The first step is developing a COP on employment. Guidelines and public education and promotion materials in respect of other areas, including the provision of services and facilities (housing included), education, etc. will also be issued as appropriate.

### Recommendation II of the SOCO position paper : The RDO code to actively encourage employers to promote and seek equality of outcome. It should promote best practices and special measures and furthermore provide more detailed guidelines for employers.

8. In the present draft COP:

- (a) Section 7, which deals with exceptions, explains that employers may adopt special measures to help racial groups to enable them to compete fairly with people of other races, by such means as providing language and other suitable training and by giving them encouragement.
- (b) Section 8, which deals with good practices, suggests to employers that they can offer training, facilities and encouragement to employees belonging to racial groups that are under-represented within their organization, in order to help them to compete fairly with other people. This section also suggests that employers should review all of their rules, measures, policies and procedures, etc., to make sure that they do not have disparate adverse impact on, or cause disparate disadvantage to, any racial group. Employers may gather information about job applicants and employees through various methods such as survey by questionnaire or consultation to assess whether there is any adverse impact or disadvantage caused to any particular racial group. For example, if any disparities in relation to the success rate of job applicants; remuneration; benefits; performance pay; career development and training between people from different racial backgrounds are found, employers can offer suitable training and encouragement to racial minority groups as appropriate.

9. Upon conclusion of the consultation period, the EOC will consider views and comments from all parties in order to effectively offer suggestions on good practices, and encourage and help employers to achieve racial equality.

*Recommendation III of the SOCO position paper : The code should include language considerations throughout the code where discrimination based on language can be linked to the prohibited grounds of the RDO. It should clearly state that language serves relevant indicator of ones' ethnic or national origin and that employers and employees may be liable under the RDO*

10. Section 8 of the draft COP states that language ability is not necessarily connected to race, but requirements or criteria on language ability may amount to race discrimination.

11. The EOC recognizes that requirements and criteria on language ability may include accent and degree of fluency in a certain language, which may be based on racial considerations. Therefore differential treatment based on language ability may amount to racial discrimination. In addition, insult on the ground of other people's accent or degree of fluency in a certain language may also amount to unlawful racial harassment.

12. On the other hand, depending on the nature and demands of a job, employers may have certain requirements in relation to language ability. As long as such requirements are justifiable irrespective of race, they will not amount to racial discrimination.

13. The EOC will, upon completion of the consultation exercise, consider views from all parties in order to provide appropriate guidance in relation to the issue of language in respect of employment.

Recommendation IV of the SOCO position paper : The RDO code of practice should include a separate chapter for employee about their rights and responsibilities, giving suggestions of what special measures they can promote at the workplace.

14. Regarding employees' rights, the draft COP states in section 8 (in the part on drawing up equal opportunities policies) that:

- (a) No job applicant or employee should be treated less favourably on the ground of his or her race than other applicants and employees.
- (b) Opportunities for employment, training and development should be equally open to all regardless of race.
- (c) No disparate adverse impact or disadvantage for any particular racial group should be caused by any requirement or condition in rules and practices, unless the requirement or condition can be justified irrespective of race.
- (d) Everyone's dignity is to be respected. No job applicant or employee is to be subjected to racial harassment in any way.

- (e) There should be a grievance system for job applicants and employees to raise their concerns and complaints, and that the employer should deal with such matters properly.

15. Regarding employees' liability, section 5 of the draft COP points out that if an employee carries out an act of racial discrimination, harassment or vilification, not only will the employer be liable, the employee will also be held liable.

16. The EOC will, upon completion of the consultation exercise, consider views from all parties in order to effectively explain the employees' perspective.

*Recommendation V of the SOCO position paper : The code should aspire to racial harmony and actively encourage people not to discriminate against new immigrants. The code should also include a chapter on the protection of new immigrants from discrimination.*

17. The EOC takes the view that people from different races are protected under the RDO, which covers people from various parts of the world, who, if discriminated against because of race, will be protected. For example, it may be unlawful for an employer to offer employment to a person of non-Chinese origin and refuse to hire a person of Chinese origin who is more suitable for the job and who has recently settled in Hong Kong, because of the difference in race.

18. Upon conclusion of the consultation exercise, the EOC will consider views from all parties in order to effectively explain the various issues concerned.

19. Stakeholders' comments in relation to the content of the COP will help us make the COP more pertinent and effective in enabling parties in every aspect of employment to eliminate race discrimination and promote racial equality. We welcome views and comments in this regard.