

立法會

Legislative Council

LC Paper No. CB(2)1314/13-14(06)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 23 April 2014**

**Briefing by the Chairperson of the Equal Opportunities Commission
("EOC") on the work of EOC**

Purpose

This paper gives a brief account of the major issues raised by members when the Panel on Constitutional Affairs ("the Panel") received briefings on the work of EOC by its Chairpersons.

Background

2. Established under the Sex Discrimination Ordinance ("SDO") (Cap. 480) on 20 May 1996, EOC is a statutory body responsible for the implementation of SDO, the Disability Discrimination Ordinance ("DDO") (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance ("RDO") (Cap. 602). EOC comprises the Chairperson and up to 16 members. The authority of appointment of the Chairperson and members rests with the Chief Executive who shall determine the remuneration and the terms and conditions of appointment of the Chairperson. Under section 63 of SDO, the Chairperson shall be appointed on a full-time basis whereas other members of EOC may be appointed on a full-time or part-time basis.

3. The post of the Chairperson of EOC, which has the executive responsibility for the overall operation and management of EOC, is pitched at the rank equivalent to Point 8 on the Directorate Pay Scale of the Civil Service. EOC used to have a post of Chief Executive Officer ("CEO") which was pitched at the rank equivalent to Point 3 of the Directorate Pay Scale, but the CEO post was deleted in July 2000. The responsibility of the CEO post was then shared between the Chairperson and the Director (Planning and Administration) of EOC.

4. In Chapter 3 of Report No. 52 of the Director of Audit tabled at the Legislative Council ("LegCo") on 22 April 2009, Audit has recommended that

the Secretary for Constitutional and Mainland Affairs should expedite action to take forward the proposal of separation of the posts of the Chairperson and CEO of EOC which was recommended both in the report of the Independent Panel of Inquiry on the Incidents Relating to EOC as well as the reports of two internal reviews conducted by EOC. The Administration subsequently decided that the current position in respect of the Chairperson of EOC should be maintained, but the post of CEO at the level of Point 3 of the Directorate Pay Scale should be reinstated to oversee the administrative and operational matters, and to strengthen the governance of EOC.

5. On 5 March 2013, the Government announced the appointment of Dr York CHOW Yat-ngok as the new Chairperson of EOC for a term of three years commencing 1 April 2013. The incumbent Chairperson of EOC informed the Panel in June 2013 that in the next six months, he would consider whether there was a need to conduct open recruitment for the post of CEO in the light of the updated manpower situation of EOC.

Relevant issues raised by the Panel

6. It has been the practice for the Chairperson of EOC to brief the relevant Panel on its work on a regular basis. Mr LAM Woon-kwong, the former Chairperson of EOC who took office on 1 February 2010, briefed the Panel on his vision and the work of EOC at the meeting on 10 February 2010. He also briefed the Panel on the draft revised Code of Practice on Employment ("CoP") under DDO at its meeting on 17 May 2010. The incumbent Chairperson of EOC briefed the Panel on the work of EOC at the meeting on 17 June 2013. The major issues raised by members at these meetings are summarized in the following paragraphs.

Role of EOC

7. Members pointed out that EOC had experienced a spate of incidents in recent years which affected adversely its credibility and that non-government organizations ("NGOs") had expressed dissatisfaction that EOC had confined itself to the enforcement of the anti-discrimination ordinances. Members asked the former Chairperson of EOC as to how EOC could restore public confidence in its work of promoting equal opportunities. The former Chairperson of EOC stressed that EOC should be an advocate of equal opportunities, not merely a law enforcement agency. EOC should promote and disseminate the values of equal opportunities and anti-discrimination throughout society which would be a long-term task requiring the concerted efforts of NGOs and the Government.

8. Members in general supported the mission statement made by the former Chairperson of EOC to promote awareness, understanding and acceptance of diversity and equal opportunities and provide education to prevent discrimination. They enquired whether EOC would enhance its transparency by opening up its meetings to the public. The former Chairperson of EOC assured members that EOC would operate independently even though it was subvented by the Government. He advised that EOC would soon discuss whether its meetings should be opened up, and if so, to what extent. The minutes of meetings of EOC were already made accessible by the public on its website.

Provision of legal assistance

9. Members had all along expressed concern that the threshold for EOC to provide legal assistance to a person who wished to institute legal proceedings under anti-discrimination ordinances was higher than that applied in the merits test for granting legal aid. Members noted that EOC did not have an action fund for litigation and was not in a position to grant legal assistance for all meritorious cases. Under the present arrangement, EOC would assist an aggrieved person to seek legal aid from Legal Aid Department when needed. Members considered that the EOC's funding for providing legal assistance was insufficient to enable the Commission to discharge its duty effectively (which was \$1.5 million under the Recurrent Account).

10. The former Chairperson of EOC advised that according to past statistics, many of the cases had been resolved by conciliation before legal proceedings were initiated. Of the cases taken to court, the legal expenses incurred by EOC were affordable and most of the trials had resulted in favour of EOC-assisted parties. For meritorious cases which involved a question of principle, EOC would take them to court as long as there were sufficient evidence and a need to enhance and sustain public awareness. According to EOC, its actual expenditures on legal assistance cases over the past years were \$528,000 in 2008, \$863,000 in 2009 and \$660,000 in 2010.

11. Members may wish to note that the former Subcommittee on Revised CoP on Employment under DDO has requested that a litigation fund similar to that for the Consumer Council should be established for EOC. EOC has also proposed to establish a specialized Equal Opportunities Tribunal to replace the District Court as the adjudicating body for discrimination cases. The Administration, however, has reservations about the proposal. Details of the EOC's proposal and the Administration's response were circulated to the Panel vide LC Papers No. CB(2)214/11-12(01) and (02) respectively on 1 November 2011.

Implementation of anti-discrimination laws

12. Some NGOs suggested that the Administration should adopt an equality plan for all policy areas on the ground that the scope of protection afforded by RDO was too narrow. The former Chairperson of EOC said that EOC had been meeting with NGOs to discuss the implementation of RDO and would continue to do so. As an advocate of equal opportunities, EOC would take the initiative to rectify any deficiencies identified. The support of the Government, LegCo and the public would be needed to implement its work.

13. Responding to members' enquiry on measures taken by EOC to help the ethnic minorities and tackle discrimination encountered by new arrivals from the Mainland who were not protected by RDO, the former Chairperson of EOC said that EOC had liaised with the Education Bureau to help ethnic minority students integrate into the mainstream system. EOC had also rendered assistance to new arrivals from the Mainland should they be discriminated on the grounds of sex, disability and family status.

14. Some members were concerned whether barrier-free access facilities provided to persons with disabilities ("PWDs") in workplaces were adequate and enquired about the responsibility of employers in the provision of reasonable accommodation to employees who had disabilities. The former Chairperson of EOC explained that under the provision of CoP under DDO, an employer had the responsibility to provide reasonable accommodation to an employee with a disability to fulfil the inherent requirements of a job. The provision of accommodation by an employer was not unlimited and EOC would provide conciliation to the parties concerned when required.

15. At the meeting on 17 June 2013, some members suggested that EOC should promote the adoption of a broader definition of disability for the provision of government services, such as the Disability Allowance Scheme, to afford better protection to PWDs. The incumbent Chairperson of EOC responded that EOC considered that the Administration should standardize the definition of disabilities and adopt the new International Classification of Functioning, Disability and Health introduced by the World Health Organization in formulating its policies and providing services to PWDs. He advised that EOC would pursue the matter with the Administration.

Review of anti-discrimination laws

16. One of the main functions of EOC was to keep under review the relevant anti-discrimination laws and to draw up proposals for amendments when necessary. At the meeting on 17 June 2013, members asked about the

Administration's progress in following up the EOC's proposals to amend the anti-discrimination ordinances.

17. The Administration's letter dated 8 August 2013 providing information on the progress is at **Appendix I**.

18. Members were also briefed by the incumbent Chairperson of EOC that under the EOC's three-year strategic plan, EOC would undertake a Discrimination Law Review of all the existing anti-discrimination laws to rectify limitations and inconsistencies in the light of its operational experience.

Outlawing discrimination on the ground of sexual orientation and gender identity

19. Some members considered that the Administration had not been proactive in eliminating discrimination on the ground of sexual orientation and gender identity. They asked the incumbent Chairperson of EOC whether he was confident that he would succeed in persuading the Administration to introduce legislation to protect against discrimination on the ground of sexual orientation and gender identity. They also requested EOC to step up efforts in eliminating some people's misunderstanding that enactment of the legislation would lead to reverse discrimination. The incumbent Chairperson of EOC considered that the Government should conduct public consultation on legislating against discrimination on the ground of sexual orientation as soon as possible. He said that EOC would make the best efforts in exploring the feasibility of legislating against such discrimination.

Integrated Education for students with special education needs ("SEN")

20. Some members sought EOC's view on whether the Administration's limited progress in implementing the Integrated Education policy had been in breach of the relevant international human rights treaties and DDO which protected the right to equal access to education irrespective of disability. They also expressed concern that the Education Bureau had refused to take on board some of the recommendations made by EOC in its report entitled "Study on Equal Learning Opportunities for Students with Disabilities under the Integrated Education System" released in 2012. They enquired whether EOC would resort to legal means to tackle the issues.

21. The incumbent Chairperson of EOC said that although EOC had not examined the Administration's Integrated Education policy for SEN students from a legal perspective, EOC was concerned that there were still more than 6 000 SEN children on the waiting list for subvented pre-school rehabilitation places, and that SEN students might not benefit from the proposed 15-year free

education. EOC considered that adequate resources and support measures for SEN students should be provided in early childhood education and primary education to facilitate their integration into the mainstream education system. EOC would take this matter up with the Education Bureau, and would not rule out the possibility of resorting to legal means where necessary.

Anti-sexual harassment campaign

22. Some members expressed support for the anti-sexual harassment campaign targeted at the education and business sectors to be launched by EOC. They considered that EOC should draw up guidelines under SDO and DDO on the handling of sexual harassment at school. EOC should also issue guidelines to the medical sector and the disciplinary services on the prevention of sexual harassment at health care institutions and during removal of protestors in clearance operations, etc.

23. The incumbent Chairperson of EOC advised that EOC had arranged in collaboration with the Education Bureau four training courses on the handling of sexual harassment for school management staff and would issue relevant guidelines to schools. On the employment front, EOC had requested employees' associations and trade associations to provide information on whether they had issued any guidelines on handling of sexual harassment in workplace. EOC would also assist the Hospital Authority and health care institutions in preventing sexual harassment and developing related internal guidelines.

Recent development

24. The incumbent Chairperson of EOC will brief the Panel on the work of EOC at the next meeting on 23 April 2014.

Relevant papers

25. A list of relevant papers which are available on the LegCo website is in **Appendix II**.

政制及內地事務局
政府總部
香港添馬添美道2號
政府總部東翼



CONSTITUTIONAL AND MAINLAND AFFAIRS BUREAU
GOVERNMENT SECRETARIAT
EAST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE, TAMAR
HONG KONG

OUR REF : CMAB/CR 1/34/92

8 August 2013

The Honourable TAM Yiu-chung, GBS, JP
Chairman of Panel on Constitutional Affairs
Legislative Council Complex
1 Legislative Council Road
Central

Dear Mr TAM,

**Follow-up on the meeting of the Panel on Constitutional Affairs
on 17 June 2013**

At the meeting of the Legislative Council (LegCo) Panel on Constitutional Affairs (CA Panel) held on 17 June 2013, Members noted that the Administration has been following up the legislative proposals of the Equal Opportunities Commission (EOC) to amend the anti-discrimination ordinances. This letter provides further information about the progress concerned.

2. By way of background, in 1999 the EOC submitted to the Administration 20 proposals to amend the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO). These proposals were discussed by the LegCo Panel on Home Affairs (HA Panel) in 2001¹. At that juncture the Administration considered that eight of the 20 proposals were either infeasible or unnecessary; for the remaining 12, the Administration indicated no in-principle objection, among which three have since been implemented fully².

¹ Relevant HA Panel papers are Papers No. CB(2)247/00-01(01), CB(2)830/00-01(01) and CB(2)1672/00-01.

² These three relate to (a) extending the scope of s.2(5)(b) of the SDO to cover sexual harassment in the field of education; (b) extending the coverage of vicarious liability to acts of sexual harassment under s.76(1) of the SDO; and (c) extending the coverage of vicarious liability to acts of harassment or vilification under s.72(1) of the DDO. These amendments were implemented via Ord. No. 29 of 2008 when the Race Discrimination Ordinance (RDO) was enacted.

3. In 2009, the EOC informed the Administration that it was reviewing the 1999 proposals in the light of latest development and experience. In August 2011, the EOC submitted revised proposals relating to all the four anti-discrimination ordinances³, including 10 which were raised in 1999 and one new proposal. That being the case, the Chairperson of the EOC stated at the CA Panel meeting held on 17 June 2013 that the EOC would further review the four anti-discrimination ordinances, with a view to harmonizing the principles and provisions therein. We have sought clarification with the EOC; it stated to us its wish for the Administration to continue to take forward the 11 proposals submitted in 2011, but it would also reconsider the first-batch legislative proposals raised in 1999.

4. In the light of the EOC's latest position, the Administration will focus on the 11 amendments submitted by the EOC in 2011. The current status of these 11 proposals is as follows –

- (a) one has been implemented on 10 May 2013⁴;
- (b) five will be taken forward by the Statute Law (Miscellaneous Provisions) Bill, tentatively scheduled for introduction to the LegCo in the 2013/14 legislative session⁵;
- (c) one will be taken forward by an amendment bill tentatively scheduled for introduction to the LegCo in the 2013/14 legislative session⁶;
- (d) one has been considered by the Department of Justice (DoJ) as unnecessary from the legal point of view⁷; and

³ The SDO, DDO, RDO, and the Family Status Discrimination Ordinance (FSDO).

⁴ The Legislation Publication (Revision) Order 2013 amended the headings of SDO ss.7 and 8 to more accurately reflect the nature of these two provisions.

⁵ The five amendments are technical ones relating to the repeal of certain exceptions under Part 2 of Schedule 5 to the SDO; issuance of enforcement notice under the DDO; protection of EOC staff against liability in implementing the four anti-discrimination ordinances; and refining the Chinese text of the four anti-discrimination ordinances.

⁶ This amendment seeks to extend the protection of the SDO to cover sexual harassment by customers against service providers, as discussed at the CA Panel on 17 June 2013, ref: CB(2)1324/12-13(03).

⁷ EOC's proposal is to clarify that the District Court is not barred from granting more than one statutory remedy under the four anti-discrimination ordinances. DoJ considers that this is unnecessary as the current provisions do not have the effect of barring the District Court from awarding more than one statutory remedy.

- (e) three proposals need to be further considered because of their complexities and potential far-reaching implications⁸.

5. We will continue to work closely with the EOC in taking forward the legislative proposals above.

Yours sincerely,



(D. C. CHEUNG)
for Secretary for Constitutional and Mainland Affairs

cc Chairperson, EOC

⁸ The three proposals relate to recovery of costs and expenses by the EOC in civil proceedings; the concept of “direct disability discrimination” under s.6(a) of the DDO; and the availability of damages for indirect discrimination where intent cannot be proved.

Appendix II

Relevant documents on briefing by the Chairperson of the Equal Opportunities Commission ("EOC") on the work of EOC

Committee	Date of meeting	Paper
Legislative Council	26.11.2003	Official Record of Proceedings Pages 235 - 302 (Motion moved by Hon Fred LI)
	2.6.2004	Official Record of Proceedings Pages 40 - 48 (Oral question raised by Hon Albert HO)
	27.2.2008	Official Record of Proceedings Pages 46 - 47 (Written question raised by Hon Emily LAU)
Panel on Constitutional Affairs ("CA Panel")	17.11.2008 (Item III)	Agenda Minutes
	16.2.2009 (Item VI)	Agenda Minutes CB(2)1093/08-09(01)
	16.3.2009 (Item IV)	Agenda Minutes
	15.6.2009 (Item IV)	Agenda Minutes
Legislative Council	18.11.2009	Official Record of Proceedings Pages 87 - 89 (Written question raised by Hon LAU Kong-wah)
	3.2.2010	Official Record of Proceedings Pages 12 - 21 (Oral question raised by Hon Fred LI)
CA Panel	10.2.2010 (Item IV)	Agenda Minutes CB(2)971/09-10(01)
	17.5.2010 (Item IV)	Agenda Minutes

Committee	Date of meeting	Paper
Legislative Council	26.1.2011	Official Record of Proceedings Pages 132 - 252 (Motion moved by Hon CHEUNG Kwok-che)
Subcommittee on Revised Code of Practice on Employment under the Disability Discrimination Ordinance	11.5.2011	Agenda Minutes
House Committee	20.5.2011	Report of the Subcommittee on Revised Code of Practice on Employment under the Disability Discrimination Ordinance
CA Panel	21.11.2011 (Item II)	Agenda Minutes
Legislative Council	31.10.2012	Official Record of Proceedings Pages 96 - 100 (Written question raised by Hon WONG Ting-kwong)
	5.12.2012	Official Record of Proceedings Pages 95 - 97 (Written question raised by Hon WONG Yuk-man)
CA Panel	17.6.2013 (Item IV)	Agenda Minutes