

# 立法會 *Legislative Council*

LC Paper No. CB(2)1502/13-14(06)

Ref : CB2/PL/CA

## **Panel on Constitutional Affairs**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 19 May 2014**

#### **Discrimination on the grounds of sexual orientation and gender identity**

#### **Purpose**

This paper gives an account of the discussion of the Panel on Constitutional Affairs ("the CA Panel") on issues relating to discrimination on the grounds of sexual orientation and gender identity since the Fourth Legislative Council ("LegCo").

#### **Background**

2. Prior to the Fourth LegCo, the Panel on Home Affairs ("HA Panel")<sup>1</sup> and its related Subcommittee<sup>2</sup> had discussed issues relating to discrimination on the grounds of sexual orientation and gender identity. Members may refer to the background brief [LC Paper No. CB(2)727/09-10(04)] prepared by the LegCo Secretariat for details of the relevant discussions.

3. In the previous and the current legislative terms, issues relating to discrimination on the grounds of sexual orientation and gender identity were raised at a number of CA Panel<sup>3</sup> meetings. At its meeting on 18 January 2010, the CA Panel received a briefing on the measures taken by the Administration to promote equal opportunities in relation to sexual orientation and gender identity.

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<sup>1</sup> Prior to the Fourth LegCo, policies and issues relating to human rights had been monitored and discussed by the HA Panel.

<sup>2</sup> The HA Panel decided in December 2000 to set up the Subcommittee to Study Discrimination on the Ground of Sexual Orientation. The final report (LC Paper No. CB(2)737/03-04) of the Subcommittee was submitted to the HA Panel in July 2004.

<sup>3</sup> Since the Fourth LegCo, matters relating to human rights have been placed under the purview of the CA Panel.

The CA Panel also discussed related issues during discussion on the reports submitted by the Hong Kong Special Administrative Region ("HKSAR") to the United Nations ("UN") (as part of China's report) under various UN human rights treaties, as well as during briefings by the Chairperson of the Equal Opportunities Commission ("EOC") regarding EOC's work. The major issues of concern raised by members at relevant meetings of the CA Panel are summarized below.

## **Discussion of the CA Panel**

### *Legislating against discrimination on the ground of sexual orientation*

4. Some members strongly considered that the Administration should not postpone conducting public consultation on legislating against discrimination on the ground of sexual orientation. They pointed out that the findings of a survey<sup>4</sup> sponsored by Hon Cyd HO in November 2012 showed that 63.8% of the respondents supported enacting such legislation, whereas only about 14% of the respondents were against it. Besides, it was noted that 31 Members had voted for the motion on "Equal right for people of different sexual orientations" at the Council meeting of 7 November 2012 although it was negated because of failure to secure majority support of the Members returned by functional constituencies. These members also pointed out that back in 1999, the UN Human Rights Committee ("HRC") had expressed concerns in its Concluding Observations on the HKSAR's initial report in the light of the International Covenant on Civil and Political Rights ("ICCPR") about the absence of legislative remedies in HKSAR to individuals in respect of discrimination on the ground of sexual orientation, and HRC had recommended then the enactment of necessary legislation. In its Concluding Observations on the HKSAR's third report in the light of ICCPR issued in March 2013, HRC expressed concern again about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation. These members also requested the Administration to address the misunderstanding of some people that enacting such a law was the same as legalization of same-sex marriage or might result in "reverse discrimination".

5. Some other members, however, considered that legislation was not the only means to resolve discrimination on the ground of sexual orientation. They considered that administrative measures and public education were equally effective in combating discriminatory acts in this regard. They expressed concern that the anti-discrimination legislation, if enacted, would only give rise to more

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<sup>4</sup> Hon Cyd HO sponsored a survey by the Public Opinion Programme of The University of Hong Kong in November 2012 with a view to gauging public views on whether legislation protecting people of different sexual orientations against discrimination should be enacted.

litigation and the community would become more divided. They suggested that disputes in this regard might be resolved by mediation and requested the Administration to explore in this direction.

6. The Administration advised that the Government had no plan at present to conduct public consultation on whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation given the controversial nature of the issue. It would, however, make sustained efforts in promoting equal opportunities for sexual minorities through public education, publicity and various channels. These included further increasing the provision for the Equal Opportunities (Sexual Orientation) Funding Scheme, continuing to promote the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation ("the Code of Practice") to different levels of management in the public and private sectors, and establishing a dedicated Advisory Group in June 2013 to advise on matters specially relating to concerns about discrimination faced by sexual minorities in Hong Kong and for exchange of views with different stakeholders.

7. The Administration advised that, on the advice of the Advisory Group, it had commissioned a consultant to conduct a study about whether sexual minorities were discriminated against in Hong Kong and, if so, the discrimination they experienced, and how they responded to it. The study was expected to be completed by the second half of 2014. The results of the study would form a basis for further consideration by the Advisory Group on how to take forward its work. Also, the Administration would study the relevant overseas legislative and administrative measures in considering the way forward.

8. Some members considered that solely relying on the Code of Practice to tackle discriminatory practices in employment against sexual minorities was grossly inadequate. They pointed out that as reported by the press in early 2014, a Christian international school required its staff to sign an undertaking to abide by biblical ethics and integrity, and those who refused to sign might face the consequence of disciplinary action or termination of employment. They considered that the case had illustrated the severity of the discrimination against sexual minorities in Hong Kong. The Administration advised that the Education Bureau had all along advised schools to follow the good practices set out in the Code of Practice to ensure that the principle of equal opportunities was adhered to in handling staff related matters. The Administration's supplementary information on its follow-up on the case was issued vide LC Paper No. CB(2)1252/13-14(01).

EOC's study on legal protection for sexual minorities from discrimination on the grounds of sexual orientation and gender identity

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9. When the CA Panel received briefing by the incumbent Chairperson of EOC on its work at the meeting on 17 June 2013, members noted that the above study was amongst the five priority areas of work identified by EOC. Some members considered that the Administration had not been proactive in eliminating discrimination on the grounds of sexual orientation and gender identity. They asked the EOC Chairperson whether he was confident that he would succeed in persuading the Administration to introduce legislation to tackle discrimination on the ground of sexual orientation and gender identity.

10. The EOC Chairperson informed the CA Panel that EOC would undertake a feasibility study on legislating against discrimination on the grounds of sexual orientation and gender identity. The study aimed to provide an overview on discrimination encountered by lesbian, gay, bisexual, transgender and intersex persons and solicit views from stakeholders on the feasibility of the proposed legislation, with the goal of facilitating the Government to consider the possibility of legislating against discrimination on the grounds of sexual orientation and gender identity.

11. The EOC Chairperson advised that in order to share experiences on promoting the rights of sexual minorities and identify international best practices in this area, EOC would be co-organizing an international symposium in late August 2014. This event would be held in collaboration with the European Union Office to Hong Kong and Macau; the Gender Research Centre, Hong Kong Institute of Asia Pacific Studies, The Chinese University of Hong Kong; and a local business partner. Both overseas and local speakers conversant with this subject would be invited to speak at the symposium.

### **Recent development**

12. The Administration will brief the CA Panel on the progress of the work on anti-discrimination on grounds of sexual orientation and gender identity at the next meeting on 19 May 2014.

**Relevant motions/questions and papers**

13. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
15 May 2014

**Relevant documents on discrimination on the grounds of  
sexual orientation and gender identity since the Fourth Legislative Council**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
Panel on Constitutional Affairs	18 January 2010 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	10 February 2010 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20 December 2010 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	19 November 2012 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	21 January 2013 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	18 February 2013 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20 May 2013 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	17 June 2013 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	16 December 2013 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	20 January 2014 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	17 February 2014 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	23 April 2014 (Item IV)	<a href="#">Agenda</a>