

立法會
Legislative Council

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LC Paper No. CB(2)2114/14-15
(These minutes have been seen
by the Administration)

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 20 July 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, SBS, JP
Hon CHAN Kin-por, BBS, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon WONG Kwok-kin, SBS
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Claudia MO
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon Gary FAN Kwok-wai
Hon MA Fung-kwok, SBS, JP

Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon Alice MAK Mei-kuen, BBS, JP
Dr Hon KWOK Ka-ki
Hon Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen
Hon Martin LIAO Cheung-kong, SBS, JP
Dr Hon CHIANG Lai-wan, JP
Hon Tony TSE Wai-chuen, BBS

**Members
absent**

: Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Dr Hon LAU Wong-fat, GBM, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon CHEUNG Kwok-che
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHUNG Kwok-pan

**Public Officers
attending**

: Item II

Mr LAU Kong-wah
Under Secretary for Constitutional and Mainland Affairs

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland
Affairs

Miss Helen CHUNG Chi-ching
Principal Assistant Secretary for Constitutional and
Mainland Affairs

Mr LI Pak-hong
Chief Electoral Officer
Registration and Electoral Office

Miss Candy MA Siu-hung
Principal Electoral Officer
Registration and Electoral Office

Item III

Equal Opportunities Commission

Dr York CHOW Yat-ngok
Chairperson

Mr Ivan LUK
Chief Legal Counsel

Dr Ferrick CHU Chung-man
Head (Policy, Research and Training)

The Administration

Mr Gordon LEUNG Chung-tai
Deputy Secretary for Constitutional and Mainland
Affairs

**Clerk in
attendance** : Ms Joanne MAK
Chief Council Secretary (2) 3

**Staff in
attendance** : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Miss Cindy HO
Senior Council Secretary (2) 3

Miss Connie AU
Council Secretary (2) 3

Mrs Fanny TSANG
Legislative Assistant (2) 3

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I. Information papers issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Publicity for the 2015 District Council ("DC") Election

[LC Paper Nos. CB(2)1908/14-15(01) and (02)]

2. The Under Secretary for Constitutional and Mainland Affairs ("USCMA") briefed members on the salient points of the Administration's paper [LC Paper No. CB(2)1908/14-15(01)]. Members noted the background brief prepared by the Legislative Council ("LegCo") Secretariat [LC Paper No. CB(2)1908/14-15(02)].

Discussion

Proposed publicity programme

3. Mr WONG Yuk-man said he expected a high turnout rate for the 2015 DC election judging from the Tai Po DC San Fu Constituency By-election on the previous day which had a turnout rate of 42.5%. He suggested that the Administration should formulate more effective measures to further encourage the public to vote. Mr IP Kwok-him enquired whether there were measures to facilitate candidates' reaching out to electors. The Principal Assistant Secretary for Constitutional and Mainland Affairs ("PAS(CMA)") said that the bulk of the publicity activities would be launched during the nomination and canvassing periods as detailed in paragraphs 6 to 8 of the Administration's paper. Besides, candidates were free to carry out electioneering activities which they deemed appropriate subject to the applicable election expenses limit. During the final phase of the publicity programme (i.e. in the week before the polling day), while the publicity measures launched in the earlier phase would continue, daily count-down clips would also be screened on TV to heighten the atmosphere for the election. Mr SIN Chung-kai suggested that apart from the major TV/radio broadcasters, the Administration should explore collaborating with new media platforms (e.g. Internet TV/Internet radio stations) to launch the publicity programme.

4. Miss CHAN Yuen-han said that election forums should be held as far as possible to enable electors to understand the election platforms of candidates. She considered that additional resources should be provided with a view to organizing an election forum in each DC constituency area

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("DCCA") to replace the previous arrangement that the Radio Television Hong Kong ("RTHK") would organize such forums only in selected constituencies. USCMA said that it was up to individual media organizations to consider whether they would hold election forums for the 2015 DC election. He further explained that given the small size of DCCAs, some election forums might not be able to attract sufficient audience/viewers. Miss CHAN, however, considered that the Administration should provide venues (e.g. community halls and schools) and necessary resources for holding election forums in as many DCCAs as possible. Ms Emily LAU and Mr SIN Chung-kai expressed support for the suggestion. USCMA noted Miss CHAN's suggestion. Ms LAU and Ms Claudia MO suggested that the election forums could be uploaded onto official websites for the public to watch. Mr SIN suggested that consideration should be given to holding an election forum in each DCCA.

5. Ms Emily LAU expressed concern about the previous arrangements of RTHK that an election forum would be cancelled if one of the candidates invited to the forum declined to attend. She enquired whether the Administration was aware of such arrangements which in her view were inappropriate. She considered that should any candidate choose not to attend the election forum, RTHK should still continue with the production of the forum as planned. The Deputy Secretary for Constitutional and Mainland Affairs explained that detailed arrangements of the programme production back then were decided by RTHK, and media organizations should continue to be free to exercise their editorial judgment in their productions, having regard to the guidelines on election-related activities issued by the Electoral Affairs Commission.

6. Mr LEE Cheuk-yan said that in the DC by-election on the previous day, some taxi-drivers were found to have displayed banners on their taxis to promote one of the candidates. He considered that the banners should be regarded as election advertisements ("EAs") and relevant costs should be counted towards the candidate's election expenses. However, the candidate concerned had denied that the banners were displayed with his consent. He asked what would be done to follow up the incident. Mr LEE further said that during the canvassing period of previous elections, it was not uncommon to find anonymous leaflets being sent to electors to prejudice the election of another candidate. As such leaflets were anonymous, the identity of the person who had published/distributed the leaflets could not be traced. Mr Frederick FUNG and Dr Priscilla LEUNG also expressed concern about measures to deal with smear campaign during elections.

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7. The Chief Electoral Officer ("CEO") of the Registration and Electoral Office ("REO") said that cases with prima facie evidence would be referred to the law enforcement agencies for follow-up investigation. He explained that the definition of "EA" was provided in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554) ("ECICO"). A person who published any materials caught by the definition of "EA" without the prior consent of the candidate concerned might have breached section 23 of ECICO, as under the law only a candidate or a person who had been duly authorized by the candidate as his/her election expense agent could incur election expenses for that candidate. USCMA said that in the first phase of the publicity programme commencing in August 2015, the Independent Commission Against Corruption ("ICAC") would organize publicity activities to promote clean elections. He pointed out that it was important for people who intended to stand for election and their agents to be made aware from early days of what constituted lawful or unlawful electioneering activities. To promote clean elections, staff of ICAC would reach out to different political parties for publicity and exchange of views.

8. Dr CHIANG Lai-wan considered that a smear campaign might affect the election results even if the allegations could not be substantiated and this was very unfair to the candidate whose election had been prejudiced. She requested the Administration to strengthen publicity of the relevant sanction under ECICO to enhance the deterrent effect.

9. Mr CHAN Chi-chuen urged the Administration to step up publicity to promote the use of the Online Voter Information Enquiry System ("OVIES") by electors to check their voter registration ("VR") status. He said that through OVIES, he had discovered that his mother, who lived in an elderly home and had de-registered in the preceding VR cycle, had got registered again in the current VR cycle without her knowledge. He suggested that REO should step up publicity at elderly homes to raise awareness of this kind of incidents. CEO said that OVIES provided a convenient means for electors to check their VR status and registration particulars so that they might timely submit applications for updating their particulars if required. He further explained the existing de-registration procedure which required the elector to submit a written notice to REO. In response to Mr LEUNG Kwok-hung's enquiry, CEO said that the VR regime in Hong Kong was a voluntary one and checking measures would not target a selected community group such as the elderly electors living in elderly homes. Ms Emily LAU suggested that the proposed publicity programme

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should also seek to prevent "vote-rigging". USCMA said that the Administration noted the suggestion.

10. Dr Priscilla LEUNG suggested that the Administration should step up publicity to remind electors the proper means for reinstatement of their registration status when their names had been put on the Omissions List. In response to her enquiry, CEO said that around 50 000 electors had failed to respond to REO's inquiry letters by the deadline on 2 July 2015, and their names would be included in the Omissions List to be published on 31 July 2015. REO would issue reminder letters by surface mail to these electors to remind them to confirm/update their residential addresses or lodge claims in accordance with the statutory procedure on or before the deadline of 25 August 2015, if they wished to reinstate their registration status. REO would launch publicity measures including newspaper and electronic advertisements to remind electors to check their registration status through OVIES or call REO's enquiry hotline. REO would take timely action to reinstate their registration status. In response to Mr WU Chi-wai's enquiry, CEO explained that before the publication of the Omissions List, an elector could also make use of OVIES to keep apprised of his/her current registration status, including whether or not he/she had been covered in the inquiry process.

11. Dr CHIANG Lai-wan suggested that regulations on the display of roadside publicity materials during an election period should also be publicized in the first phase of publicity. She requested that prompt enforcement against unauthorized display of EAs should be taken whenever non-compliance was found.

Other issues

12. Pointing out that the location of some polling stations was quite remote, Dr Priscilla LEUNG asked whether the Administration would make transportation arrangement to facilitate the elderly electors and electors with disabilities to go to these polling stations. Dr CHIANG Lai-wan also stressed the need for REO to make its best endeavours to facilitate electors with mobility difficulties to exercise their right to vote. CEO said that for the 2015 DC Ordinary Election, REO planned to set up around 590 ordinary polling stations and had put in a lot of efforts in securing barrier-free venues for use as polling stations. CEO further explained that electors with mobility difficulties could approach REO for assistance and rehabilitation buses could be arranged, as far as practicable, to take them to the polling stations.

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13. Dr CHIANG Lai-wan suggested imposing a cooling off period during which no canvassing activities would be carried out on the polling day or the day preceding the polling day. In her view, it would help reduce friction among election agents/electioneering teams. She also pointed out that many overseas countries had adopted such a practice. USCMA said that the Administration was inclined to maintaining the existing arrangement unless there was a consensus on implementing the suggestion. Dr CHIANG requested the Administration to conduct a survey to ascertain whether relevant stakeholders supported implementation of a cooling off period.

14. Mr WU Chi-wai enquired about the budget for the publicity programme for the 2015 DC election as compared with the 2011 DC election. In respect of the publicity programme, PAS(CMA) advised that the budget for the 2011 DC election was about \$7 million. It was increased to \$7.5 million for the 2015 DC election.

Admin 15. In response to Ms Claudia MO's enquiry about the publicity expenses relating to the public consultations on constitutional development, USCMA agreed to provide the requisite information after the meeting.

(Post-meeting note: The Administration's reply letter was circulated to members vide LC Paper No. CB(2)2094/14-15(01).)

III. Briefing by the Chairperson of the Equal Opportunities Commission ("EOC")

[LC Paper Nos. CB(2)1908/14-15(03) and (04)]

16. The Chairperson of EOC briefed members on the salient points of the paper submitted by EOC [LC Paper No. CB(2)1908/14-15(03)]. Members noted the updated background brief prepared by the LegCo Secretariat [LC Paper No. CB(2)1908/14-15(04)].

EOC's strategic priority work areas

Discrimination Law Review ("DLR")

17. Mr YIU Si-wing pointed out that many sectors (e.g. tourism, catering and retail) had been adversely affected in the past two years by

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discriminatory acts of some local people against tourists, new arrivals and even students from Mainland China. He expressed disappointment that EOC had made little progress in tackling the issue. Mr Paul TSE declared that he was an ex-member of the EOC Board. He echoed Mr YIU's concern and considered that EOC should give priority to tackling the issue. Dr CHIANG Lai-wan also shared Mr YIU's view that discrimination against new arrivals from the Mainland was prevalent in Hong Kong. Ms Starry LEE asked why the issue was not included as one of the EOC's strategic priority work areas.

18. The Chairperson of EOC said that EOC had issued public statements on various occasions to condemn this kind of behaviour. Nevertheless, the existing Race Discrimination Ordinance ("RDO") (Cap. 602) did not cover discrimination on the basis of nationality, citizenship and residency. Hence, DLR sought to examine, inter alia, whether the scope of RDO should be broadened to cover discrimination on these grounds. The DLR report was expected to be completed by the end of 2015 and published in early next year. The Chairperson of EOC added that cross-border issues were complicated involving difference in values and not just discrimination problems. More in-depth study would need to be conducted by EOC in order to tackle the issues.

19. In response to Mr SIN Chung-kai's enquiry on the timetable for DLR, the Chairperson of EOC said that he aimed to complete DLR within his current term of appointment but it would be for the Government to decide how to take forward the recommendations, including whether any legislative exercise should be conducted.

Legal protection for sexual minorities from discrimination on the basis of sexual orientation and gender identity

20. Mr CHAN Chi-chuen said that victims of discrimination on the grounds of sexual orientation and gender identity lacked legal protection in Hong Kong because there was no legislation to prohibit such discrimination and also due to the limited scope of protection under the Sex Discrimination Ordinance ("SDO") (Cap. 480). Speaking from his own experience of being harassed by certain passengers while he was travelling on the MTR on the grounds of sexual orientation, Mr CHAN said that in the absence of the relevant legislation for tackling such conduct, he had tried to resort to SDO. However, in the context of provision of goods, facilities or services, SDO only covered complaints about sexual harassment of service providers by

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customers (and vice versa), but not any sexual harassment of a customer by another customer. The Chairperson of EOC acknowledged that the scope of coverage of SDO was limited and legislative amendments would be needed in order to cover such behaviour. In this connection, EOC had made proposals to the Administration on the necessary amendments. On the issue of tackling discrimination on the basis of sexual orientation and gender identity, the Chairperson of EOC said that he had promoted discussion of the relevant issues in the community through various opportunities. He hoped that the DLR report to be released early next year could also facilitate more in-depth discussion of the discrimination encountered by sexual minorities.

21. Ms Cyd HO considered that the Administration should enact legislation to prohibit discrimination against sexual minorities. The Chairperson of EOC said that in order to gain better insight and perspectives of the discrimination experienced by sexual minorities, and solicit views on the approaches to tackle such discrimination, EOC had commissioned the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong to conduct a "Feasibility Study of Legislating against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status" in May 2014. It was expected that the final report would be ready in the second half of 2015.

Integrated education for students with special education needs ("SEN") and its implication on employment opportunities

22. Ms Emily LAU expressed concern on the inadequacy of support for students with SEN and urged EOC to adopt a tougher stance in pressing the Administration to strengthen the support measures for those students. The Chairperson of EOC responded that EOC had put in much effort in this area in the past two years and was pleased to note that the Administration had stepped up support for students with SEN and parents. EOC would continue to monitor the implementation and effectiveness of the support measures.

Anti-sexual harassment campaign in the community

23. With reference to paragraph 17(i) of the paper provided by EOC, Dr Helena WONG asked whether EOC had carried out any work to follow up the findings of its several surveys on sexual harassment. In particular, she expressed concern that 19% of the respondents in the service industries

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indicated that they had been sexually harassed while at work in the preceding 12 months. She asked whether EOC had devised a plan to tackle the problem. The Chairperson of EOC replied that EOC had carried out various initiatives to promote anti-sexual harassment and the number of complaints lodged with EOC on sexual harassment had dropped in the past few years. He said that it was most important to help organizations to formulate and put in place anti-sexual harassment policies. In this connection, EOC had developed the Framework for Corporate Policy on Sexual Harassment for companies in Hong Kong for their reference.

Adopting an updated and unified definition of disability in the performance of Government functions

24. Mr WONG Kwok-hing expressed concern about the slow progress made by the Administration in its review of the eligibility criteria for disability allowance under the Social Security Allowance Scheme. He asked whether EOC had been monitoring the relevant work progress. The Chairperson of EOC said that EOC had been urging the Administration to broaden and standardize the definition of "disability" for its services. EOC would continue to monitor the work progress made by the Administration.

Other discrimination issues

25. Mr WONG Kwok-hing expressed concern about the inadequate protection of men's rights in Hong Kong. Noting that the former EOC Chairperson had commenced a study on gender stereotyping and its impact on male gender, Mr WONG asked why EOC's follow-up on that study was not included in its strategic priority work areas. The Chairperson of EOC explained that SDO afforded equal protection to male and female, and any aggrieved men could lodge relevant complaints with EOC to seek redress under SDO. EOC also held meetings annually with Mr WONG Kwok-hing to discuss relevant issues.

26. Mr LEE Cheuk-yan asked whether EOC would urge the Administration to express concern to two local airline companies over their current policy on flight attendants' retirement age which, in his view, amounted to age discrimination. The Chairperson of EOC replied that EOC had commissioned a study on age discrimination in the workplace which was expected to be completed by the end of 2015 to ascertain the situations in various industries through the study. EOC would consider the way forward in the light of the findings.

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Accessibility in premises

27. Dr Helena WONG enquired if EOC had any plan to initiate investigations into the provision of barrier-free access in Government and private premises. The Chairperson of EOC responded that EOC had conducted a formal investigation several years ago on the accessibility in publicly accessible premises, and the Government had since implemented a lot of improvement works. Comparatively speaking, it was more difficult in dealing with privately owned premises especially those involving multiple ownership. EOC had also liaised with the public transportation companies and the Link Real Estate Investment Trust to enhance the provision of barrier-free access in their facilities.

The work of EOC

28. Mr LEE Cheuk-yan said that he had recently referred to EOC a case concerning discrimination on the grounds of disability. He noted that the officer-in-charge of the case had been changed for three times. EOC was also too lax in allowing the respondent to reply and often extended the period whenever the respondent failed to provide the requisite information by the deadline, thereby causing delay to the case. He considered that EOC should expedite the handling of complaint cases. The Chairperson of EOC pointed out that the actual time required for conciliation might vary depending on the complexity of the case as well as the willingness of the parties involved to resolve the dispute through conciliation. He added that EOC had managed to meet its performance pledge of concluding a complaint case within six months in over 70% of such cases it had handled.

29. Mr LEUNG Kwok-hung said that given the limited powers vested in EOC, it seemed to him that EOC could only focus on advocacy for anti-discrimination. The Chairperson of EOC explained that apart from advocacy work, the handling of complaints also formed a major part of EOC's work and almost half of EOC's resources were devoted to the work. Furthermore, EOC provided training and had established partnership with stakeholders to mainstream the concept of equal opportunities.

Reinstatement of Chief Operations Officer ("COO")

30. Mr CHAN Kin-por noted that COO was pitched at the rank equivalent to Point 3 of the Civil Service Directorate Pay Scale while the Chairperson was pitched at the rank equivalent to Point 8 of the same scale. In view of

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the wide gap in the rank of the two posts, Mr CHAN asked whether it would be very difficult if not impossible for the future COO to succeed the Chairperson under such arrangement. The Chairperson of EOC explained that the ranking of the posts in question was determined by the Government. Furthermore, the reinstatement of the COO post was in line with the recommendations in the Director of Audit's Report (No. 52).

31. Dr Priscilla LEUNG declared that she was assisting an EOC ex-employee who had taken legal action against EOC. She asked how EOC could ensure that the appointee to fill the COO post would maintain neutrality in his/her work, given that the EOC Chairperson had openly expressed support for enacting legislation to prohibit discrimination on the basis of sexual orientation and gender identity. The Chairperson of EOC said that the work of EOC was closely monitored by the EOC Board, the mass media as well as the public. Decisions concerning major policies and strategies of EOC (e.g. the priority work areas) were made collectively by members of the EOC Board and its committees.

Funding support from the Government

32. Ms Cyd HO enquired if EOC was included in the government's so-called "0-1-1" envelope savings programme requiring bureaux/departments ("B/Ds") to reduce the operating expenditure by 2% over the next three financial years so that resources saved would be re-allocated to B/Ds for provision of new services. The Chairperson of EOC confirmed that EOC was included in the programme, and he had reflected to the Government EOC's difficulty in achieving the savings target. Ms Cyd HO stressed that EOC should be allocated sufficient resources for the implementation of its work. She considered that savings achieved by EOC should be kept by it as its own reserve to meet any future operational needs.

IV. Any other business

33. There being no other business, the meeting ended at 4:40 pm.