

立法會
Legislative Council

LC Paper No. CB(2)1738/15-16(04)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 20 June 2016**

**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 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 18 March 2016, the Government announced the appointment of Prof Alfred CHAN Cheung-ming as the new Chairperson of EOC for a term of three years commencing 11 April 2016 to succeed Dr York CHOW Yat-ngok, the former EOC Chairperson (the press release on the appointment of the new EOC Chairperson is at **Appendix I**).

Relevant issues raised by the Panel

6. It has been the practice for the Chairpersons of EOC to brief the relevant Panel on EOC's work on a regular basis. The former Chairperson of EOC, briefed the Panel on the work of EOC at the meeting on 20 July 2015. He also briefed the Panel on the progress of the Discrimination Law Review ("DLR") on 16 March 2015 and on the Report of the Study commissioned by EOC on "Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status"¹ (the "EOC Report") on 15 February 2016. The major issues raised by members are summarized in the following paragraphs.

DLR

7. Some members considered that discrimination against new arrivals from the Mainland was prevalent in Hong Kong and urged EOC to give priority to tackling the issue. The former EOC Chairperson advised that EOC had issued public statements on various occasions to condemn this kind of behaviour. Nevertheless, the existing RDO 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 2016².

¹The study was commissioned by EOC and conducted by Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies of The Chinese University of Hong Kong. The EOC Report was published in January 2016.

² On 29 March 2016, EOC submitted its report on the review of the four anti-discrimination ordinances. The report contained 73 recommendations covering a wide range of issues relating to eliminating discrimination and promoting equality. The Administration advised that it would carefully study the content of the report and consider how to follow-up on the recommendations, and maintain liaison with EOC.

8. Hon Gary FAN pointed out that according to the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"), racial discrimination referred to "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin". Hon Gary FAN and Hon Claudia MO queried that it would be fundamentally wrong to propose amending RDO to cover Mainlanders and new arrivals as they did not constitute a racial group in Hong Kong. Some other members, however, supported that DLR should cover the relevant issues as they considered that the discrimination experienced by Mainlanders in Hong Kong was a matter of concern.

9. The then Chief Legal Counsel of EOC advised that discrimination on the basis of nationality and citizenship was covered by ICERD. The race discrimination legislation in Australia also included provisions prohibiting discrimination against new arrivals. EOC considered it appropriate to study whether or not RDO should be amended to cover them.

10. Hon WONG Yuk-man considered that a comprehensive review of the provisions of SDO should be conducted as the ordinance had come into operation for more than a decade. He considered that section 2(5) of SDO should be amended to clearly provide for the applicability of the relevant provisions in SDO to men as well. He also suggested that in the review of SDO, reference might be made to the relevant legislation in Australia where, in addition to the two genders (male and female), a gender "X" was provided representing the transgender and intersex people. He considered that these people should also be protected under SDO.

11. Members may wish to note that EOC has decided to include in DLR to examine whether gender neutral language should be used for certain provisions of SDO³, and recommendations would be made upon completion of the review.

12. Hon Cyd HO suggested that new provisions should be added to SDO to prohibit employers/the management concerned from taking punitive actions

³ Members may wish to note that a bills committee was formed in the 2013-2014 session to scrutinize the Sex Discrimination (Amendment) Bill 2014, which sought to expand the scope of protection against sexual harassment to cover customers harassing providers of goods, services, or facilities. In the course of scrutiny of the Bill, some members of the Bills Committee proposed using gender neutral references in the Bill to ensure that persons of different gender identities would also be protected under the Bill. EOC explained that while it was desirable to use gender neutral references in SDO, the use of gender neutral references solely for the proposed new subsection (1A) (which only concerned sexual harassment by customers of service providers) in the Bill would create inconsistency in the drafting approach of the provisions of SDO. EOC advised that DLR would examine whether gender neutral language should be used for certain provisions of SDO and recommendations would be made in due course.

against their employees who had lodged complaints about sexual harassments in their workplace to EOC even though the complaints were not substantiated. The Administration advised that the suggestion would be considered.

13. Noting that DLR would cover, among others, whether protection under the relevant discrimination laws should be extended to cover "de-facto relationships", Hon CHAN Chi-chuen asked whether the definition of "de-facto relationships" covered "same-sex cohabitation relationship", "same-sex marriage" and "civil union for same-sex partners". The former Chairperson of EOC advised that in the context of family status discrimination and sex discrimination, "de-facto relationships" was meant to include cohabitation relationship between a man and a woman, but not same-sex cohabitation relationship as Hong Kong's existing marriage institution was based on monogamy between one male and one female.

14. Some members suggested that EOC should promote the adoption of a broader and refined definition of disability for the provision of government services, such as the Disability Allowance Scheme, to afford better protection to PWDs. Hon CHAN Yuen-han expressed concern that any changes to the definition might affect the provision of services to some chronically ill patients.

15. The former Chairperson of EOC pointed out that there were discrepancies in the definition of "disability" between DDO and those adopted in overseas jurisdictions, e.g. whether it should be refined to require substantial and/or longer term impairments similar to the relevant legislation in the United Kingdom. Dr Hon Fernando CHEUNG considered that the definition of "disability" for the Disability Allowance was outdated and had excluded people with injuries not falling within the specified types. He requested EOC to propose suitable changes to the definition.

Outlawing discrimination on the ground of sexual orientation and gender identity

16. Some members considered that the Administration had not been proactive in eliminating discrimination on the ground of sexual orientation and gender identity and urged EOC to engage in active discussion with all relevant stakeholders on how the rights of transgender persons could be protected. They also requested EOC to step up efforts in eliminating some people's misunderstanding that enactment of the legislation against discrimination on grounds of sexual orientation and gender identity would lead to reverse discrimination.

17. Dr Hon Priscilla LEUNG considered that granting marriage rights to transgender persons would have far-reaching implications on the marriage

systems and views of different stakeholders other than sexual minority groups should be consulted before EOC formed stances on the issue. The former Chairperson of EOC considered that Hong Kong should initiate discussion on issues like "same-sex marriage" and "civil unions" in the light of recent developments such as the legalization of same-sex marriage in some overseas jurisdictions. To facilitate the Administration's consideration of the way forward, EOC had commissioned a consultant to conduct a study on legislating against discrimination on the grounds of sexual orientation, gender identity, and intersex status.

18. The former EOC Chairperson briefed the Panel on the recommendations of the EOC Report on 15 February 2016⁴. He advised that the study commissioned by EOC indicated that the Hong Kong society and the general public were more supportive of legislating against discrimination on the grounds of sexual orientation and gender identity than before. In particular, there was a significant increase of public support for legislating against discrimination on such grounds in the past 10 years from 28.7% to 55.7%. EOC recommended that the Government should consider launching a public consultation exercise with a view to legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status. Hon Claudia MO and Dr Hon Helena WONG urged the Administration to introduce legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, taking into account the findings of the EOC Report. Dr Hon Priscilla LEUNG, however, considered that it was equally important to safeguard the freedom of parental choice of children's religious and moral education under Article 18(3) and (4) of the International Covenant on Civil and Political Rights, as well as the freedom of religious belief under Article 32 of the Basic Law. She said that according to overseas experience, legislating against discrimination on the ground of sexual orientation might result in "reverse discrimination".

19. The Administration acknowledged that more and more people in Hong Kong had expressed support for enacting anti-discrimination legislation to protect sexual minorities in recent years. The Administration considered that similar concerns were raised in the report of the Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group") and the EOC Report :

⁴ At the same Panel meeting, the Chairperson of the Advisory Group on Eliminating Discrimination against Sexual Minorities ("the Advisory Group"), Professor Fanny CHEUNG Miu-ching, was also invited to brief members on the findings and recommendations of the Report of the Advisory Group.

- (a) both reports acknowledged there were divergent views on whether legislation should be introduced to prohibit discrimination on the grounds of sexual orientation and gender identity; and
- (b) the Advisory Group recommended that an in-depth study on the experience of legislative and non-legislative measures in other jurisdictions should be conducted and one of the issues to be covered was the implications of legislation on the freedom of religion. Meanwhile, the EOC Report mentioned that "It is crucially important for the consultation exercise to contain as many concrete details as possible to minimize misunderstandings and unnecessary anxieties" and recommended that "The Government should give further consideration to explore claims about possible discrimination on the grounds of religion or belief".

20. The Administration considered that conducting the in-depth study as recommended by the Advisory Group would provide useful reference for further discussion in the community on the appropriate measures to eliminate discrimination on grounds of sexual orientation and gender identity. The Administration advised that it would study both the Advisory Group's report and the EOC Report, and would map out the way forward in consultation with different stakeholders.

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

21. Ms Emily LAU expressed concern about 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 former Chairperson of EOC advised 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 measures for students with SEN and parents. He undertook that EOC would continue to monitor the implementation and effectiveness of the support measures.

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 former Chairperson of EOC advised that EOC had launched an anti-sexual harassment campaign in schools in collaboration with the Education Bureau in the second half of 2013. These initiatives included developing a Framework for Sexual Harassment Policies in Schools, organizing seminars and five large scale forums on the subject. EOC would continue to provide training for secondary schools and tertiary institutions on the prevention of sexual harassment and would conduct surveys to assess the effectiveness of the work in this area. Members urged EOC to expedite the preparation of the Code of Practice on Education to facilitate schools' handling of complaints relating to sexual harassment.

24. At the Panel meeting on 20 July 2015, Dr Hon Helena WONG expressed concern that 19% of survey respondents in the service industries 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 former Chairperson of EOC advised 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 considered 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.

Age discrimination

25. Some members urged EOC to conduct an in-depth study on age discrimination in employment in order to assess the prevalence of the problem. The former Chairman advised that EOC would commission an "Exploratory Study on Age Discrimination in Employment" and submit a report to the Administration upon completion of the study.

Recent development

26. At the Council meeting of 1 June 2016, Hon Cyd HO raised an oral question regarding the appointment of Chairperson of EOC. The question and the Administration's reply are at **Appendix II**.

27. The incumbent Chairperson of EOC will brief the Panel on the work of EOC at the next meeting on 20 June 2016.

Relevant papers

28. A list of relevant papers which are available on the LegCo website is at **Appendix III**.

Council Business Division 2
Legislative Council Secretariat
14 June 2016

Press Releases

繁體版 | 簡體版 | Email this article | news.gov.hk

Chairperson of Equal Opportunities Commission appointed

The Government announced today (March 18) that under the provisions of the Sex Discrimination Ordinance (Cap. 480), the Chief Executive has appointed Professor Alfred Chan Cheung-ming as Chairperson of the Equal Opportunities Commission (EOC) for a term of three years commencing April 11, 2016.

Professor Chan has an impressive professional and public service record in fields such as health, welfare, the elderly and ethnic minorities in both Hong Kong and the international arena. Professor Chan is currently Chair Professor of Social Gerontology cum Director of Asia-Pacific Institute of Ageing Studies and Office of Service-Learning at Lingnan University. He has also been Chairman of the Elderly Commission since 2011, and is also an incumbent member of the Minimum Wage Commission, the Independent Police Complaints Council and the Health and Medical Development Advisory Committee.

A Government spokesman said, "An open recruitment exercise was conducted by a human resources consultant to select the EOC Chairperson. A Selection Board was set up to carefully consider each candidate and make recommendations to the Chief Executive.

"The selection criteria included knowledge, ideals and passion towards equal opportunities and anti-discrimination, extensive administrative experience and leadership as well as good communication skills and so forth.

"Professor Chan's clear vision, passion and commitment in various areas of equal opportunities have been fully evidenced by his work and experience in the social service and tertiary education sectors over the years.

"Professor Chan has extensive experience in public service and possesses good leadership, management and communication skills. We are confident that under his leadership, the EOC will continue to actively promote equal opportunities and eliminate discrimination in the community."

The Government also expressed its gratitude for the work of Dr York Chow Yat-ngok, the incumbent Chairperson, at the EOC over the past three years. The spokesman said, "During the term of office of Dr Chow, the EOC has continued to effectively implement the four anti-discrimination Ordinances, facilitated the amendment of the Sex Discrimination Ordinance to expand the scope of protection against sexual harassment, and set up the Ethnic Minorities Unit. The EOC has also promoted equal opportunities in the community and raised public awareness of the EOC through various publicity and educational initiatives. In addition, under the leadership of Dr Chow, the EOC's performance has exceeded its targets, handling efficiently over 10,000 enquiries and over 500 complaints a year."

The Selection Board appointed to advise the Chief Executive on the recruitment was chaired by Mrs Laura Cha and comprised Mr Chow Chung-kong, Mr Bernard Chan, Mr Tsang Kin-ping, the Secretary for Labour and Welfare and the Secretary for Constitutional and Mainland Affairs.

Ends/Friday, March 18, 2016
Issued at HKT 11:58

NNNN

Appendix II

Press Releases

LCQ2: Appointment of Chairperson of Equal Opportunities Commission

Following is a question by the Hon Cyd Ho and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council today (June 1):

Question:

When the Government announced the appointment of Professor Alfred Chan Cheung-ming (Prof Chan) to be the new Chairperson of the Equal Opportunities Commission (EOC) on March 18 this year, the selection board concerned praised Prof Chan of his "clear vision, passion and commitment in respect of the promotion of equal opportunities". However, before taking the office, Prof Chan said in a media interview that the equal rights movement for people of different sexual orientations "was not a rational form of policy discussion", and that enactment of legislation to regulate discrimination against sexual orientation was "the least preferable". He also pointed out that EOC should, where possible, take the same stance as the Government on promoting equal opportunities. Besides, he expressly stated that he "felt kind of bored when approaching retirement and thought he might as well try out the hot kitchen". He also admitted that he was not familiar with the existing anti-discrimination ordinances (e.g. he mistakenly thought that sexual minorities were already protected from discrimination under the existing anti-discrimination ordinances, and confused "gender identity" with "sexual orientation"). Some comments have pointed out that Prof Chan's views reflect that he does not understand the controversial nature of the work on promoting anti-discrimination and is not committed to protecting the basic rights of the disadvantaged before making the decision to enter the hot kitchen. In this connection, will the Government inform this Council:

(1) as the requirements on the applicants for the post of EOC Chairperson as set out in the recruitment advertisement included "a strong commitment to promoting equal opportunities", whether the authorities know if the selection board and the human resources consultant responsible for the recruitment had agreed on the ways to assess if an applicant satisfied this requirement, such as by conducting a test of the applicant's extent of knowledge of and experience in the work on human rights, and if the applicant could reflect the views of the disadvantaged who were subjected to discrimination;

(2) as there are views that the two former EOC Chairpersons, Dr York Chow and Ms Anna Wu Hung-yuk, dared to openly criticise the Government for its inadequacies in the work on promoting equal opportunities and even applied for judicial review to challenge the Secondary School Places Allocation System adopted by the Government, whether the authorities know if the selection board had any information showing that Prof Chan's commitment to promoting equal opportunities was no less than that of his predecessors; and

(3) whether it has approached members of the selection board to find out why they recommended, for appointment as the EOC

Chairperson, someone who subsequently admitted that he was not familiar with the anti-discrimination ordinances and claimed that he felt kind of bored when approaching retirement and thought he might as well try out the hot kitchen, and whether it will put forward remedial measures in this regard to prevent any damage to the credibility of EOC?

Reply:

President,

Our reply to the question raised by the Hon Ho is as follows:

The Equal Opportunities Commission (EOC) is an independent statutory body established under section 63 of the Sex Discrimination Ordinance (SDO) (Chapter 480 of the Laws of Hong Kong). According to the SDO, the Chairperson of the EOC is appointed on a full-time basis by the Chief Executive. The EOC was set up in 1996.

According to the SDO, the Chairperson and 16 members of the EOC jointly form the governing body of the EOC which performs the functions and exercise the powers of the EOC. The functions of the EOC include implementing the four existing anti-discrimination ordinances (viz. the Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance), working towards the elimination of discrimination, promoting equality of opportunity and harmony, working towards elimination of harassment and vilification, handling complaints and assisting persons aggrieved by discrimination by way of conciliation and other assistance.

Since 2009, the Chairperson of the EOC has always been appointed through open recruitment and the same procedure was adopted for the appointment of the new Chairperson. Last year, the Government set up a Selection Board and engaged a human resources consultant to assist in the recruitment. An open recruitment exercise was launched on September 10 last year for a three-week period. The consultant reported to the Selection Board after conducting professional analysis on the applications received as well as other candidates deemed suitable. The Selection Board assessed every candidate by taking into consideration the professional analysis of the consultant and the requirements set out in the recruitment advertisement, and accordingly invited the potentially suitable candidates for interview. A total of 144 candidates were considered and the Selection Board unanimously agreed that Professor Alfred Chan Cheung-ming (Prof Chan) was the most suitable person for the post of the Chairperson of the EOC among the candidates under consideration. After considering the recommendation of the Selection Board, the Chief Executive appointed Prof Chan as the Chairperson of the EOC.

As stated by the Selection Board in its meeting with the media on the day when the appointment was announced, Prof Chan has an extensive public service record, having served in various Government advisory bodies and having considerable involvement in fields such as elderly matters, health, welfare and employment relationship, etc. Before his appointment as the Chairperson of the EOC, Prof Chan was Chairman of the Elderly Commission, member of the Minimum Wage Commission and the Independent Police Complaints Council, Convener of the Healthcare Services Industry Consultative Network of the Employees Retraining Board, and

member of the Health and Medical Development Advisory Committee. Furthermore, Prof Chan was a consultant on ageing and social development issues at the United Nations Economic and Social Commission for Asia and the Pacific. He also dealt with ethnic minority issues through racial relations and community work in the United Kingdom.

On March 18, the Government announced the appointment of Prof Chan as the Chairperson of the EOC. Prof Chan assumed office on April 11. The EOC is an independent statutory body operating independently in accordance with its functions and powers provided under the four anti-discrimination ordinances. The Government does not interfere with the daily operations of the EOC. As the EOC is responsible for monitoring the implementation of the four anti-discrimination ordinances, and the Hong Kong Special Administrative Region Government is also governed by the provisions of these ordinances, we considered it inappropriate for the Government to comment on the work of the EOC, including comments made by its Chairperson on its work.

We notice that Prof Chan has taken the initiative to meet with various stakeholders since his assumption of office, and received media interviews at various occasions. We believe that Prof Chan will continue to be dedicated to the work of EOC and together with EOC members, lead the EOC in discharging its statutory duties in an impartial manner, while actively promoting the message of equal opportunities in the community.

Every year, at the invitation of the Panel on Constitutional Affairs of the Legislative Council, a briefing is given by the EOC Chairperson to members of the Panel on the work of the EOC. We understand that Prof Chan will attend the meeting of the Panel on June 20. Members may wish to learn more about and discuss the salient areas of the EOC's work directly with Prof Chan at the occasion.

Ends/Wednesday, June 1, 2016
Issued at HKT 12:39

NNNN

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

Committee	Date of meeting	Paper
Panel on Constitutional Affairs	17.6.2013 (Item IV)	Agenda Minutes
	23.4.2014 (Item IV)	Agenda Minutes
	16.3.2015 (Item IV)	Agenda Minutes
	20.7.2015 (Item III)	Agenda Minutes
	15.2.2016 (Item IV)	Agenda Minutes

Council Business Division 2
Legislative Council Secretariat
 14 June 2016