



DOMESTIC WORKERS ROUNDTABLE



Submission to Manpower Panel
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I will address the issue of enforcement with reference to the Code of Practice, and the environment of impunity in which Domestic Worker employment agencies currently operate.

According to the Labour Department, there were 12 prosecutions of employment agencies last year and 2 prosecutions up to May of this year.

There are 1,900 employment agencies working with Domestic Workers in Hong Kong, and it is well-known that there is widespread unethical and unlawful behaviour amongst Domestic Worker employment agencies. It is understood that the CoP was created to help address this behaviour.

The lack of prosecutions of employment agencies does not reflect a lack of criminality, but instead reflects a lack of enforcement, particularly ineffective investigation practices. Behind this are three main factors:

1. The limited resources which the Labour Department deploys to investigations,
2. A lack of close collaboration with stakeholders, including NGOs and the Police, and
3. The need for a witness protection programme for Domestic Workers and other informants

In the current environment of weak enforcement, the employment agencies are able to act with impunity, exploiting both domestic workers and employers alike. This is a clear failure of enforcement, but the CoP does not address this problem

Amongst the three most common unlawful acts agencies engage in are:

1. overcharging of domestic workers for placement fees

2. interference in domestic workers' financial affairs, including the placement of loans to repay illegal charges and conspiracy in the unauthorized and unlawful deductions of wages, and
3. detention of identity documents including passports and HKID cards

Enforcement is the most effective weapon the Government has to control the agencies' behaviour, yet the CoP does not address this.

The Labour Departments has said repeatedly that a lack of evidence is the major impediment to their ability to prepare effective briefs for recommendation to the Department of Public Prosecutions.

What is the solution?

1. Increased numbers of effective investigations are required to enable successful prosecutions, and
2. improved investigation techniques are essential to improve investigative outcomes.

In short, Labour Department investigations must be improved.

The employment agencies are experts in hiding evidence of their illegality. The Labour Department needs to become expert at lawfully gathering this evidence, using all of the resources at its disposal. This includes close collaboration with the police and engaging Cap. 589 – the Interception of Communications and Surveillance Ordinance

To achieve increased numbers of successful prosecutions of Domestic Worker employment agencies, the Labour Department needs to focus on three things:

1. devote more resources to investigations, including manpower, training and equipment
2. collaborate closely with NGOs, ethical agencies and other stakeholders to gather intelligence
3. increase cooperation with the Police, particularly in regard to engaging Cap. 589 – the Interception of Communications and Surveillance Ordinance - in order to obtain prescribed authorization to collect evidence under section 3 of the Ordinance

The agencies need to be caught in the act in order get convictions. The only way to do this is with lawful covert surveillance, lawful use of undercover operatives, and the lawful interception of communications.

The ICAC has proven over the last 40 years that corruption can be significantly decreased in Hong Kong with the effective use of legal resources including Cap. 589, together with special teams of well-trained personnel, and collaboration with the Hong Kong community on both education and intelligence gathering.

Likewise, the Labour Department needs to adopt this tried, tested and proven approach, and work with the Police to gather evidence and combat agency impunity with increased numbers of convictions.

Only this will act as a deterrent to the impunity of the agencies.