

**Legislative Council Panel on Constitutional Affairs
EOC's Response to Letter from The Hon LUK Chung-hung**

Purpose

1. This paper provides information on the implementation of the Race Discrimination Ordinance (RDO) (Cap. 602) by the Equal Opportunities Commission (EOC), and the Commission's handling of complaints in relation to the oaths taken by Ms YAU Wai-ching and Mr Sixtus LEUNG Chung-hung, as raised by The Hon LUK Chung-hung in his letter dated 29 May 2017.

Implementation of the RDO

2. As stipulated in the respective anti-discrimination Ordinances (Ordinances), one of the major functions of the EOC is to handle complaints lodged by members of the public in respect of unlawful acts under the Ordinances, by conducting investigation into the complaints, and endeavouring, by conciliation, to effect a settlement of the complaints. Since the RDO came into operation in July 2009 and until April 2017, the EOC received a total of 553 complaints under the RDO. Among these, 495 were classified as complaint investigations, while 58 belonged to EOC-initiated investigations. Of the 495 cases of complaint investigations, 397 cases were discontinued before or during the course of investigation owing to a number of reasons, such as early resolution between the parties concerned, no unlawful act found or the complainant had no desire to pursue the complaint further. For the remaining cases, 93 cases proceeded to conciliation, with 61 cases (66%) successfully conciliated, while 32 cases were unsuccessful. There are 5 cases still under investigation. Among the 58 cases of EOC-initiated investigations, 26 cases were resolved, 31 cases required no further action and only 1 case is still under investigation.

3. For the unsuccessful cases, the complainants may choose to apply to the EOC for legal assistance. As at the end of April 2017, the EOC provided assistance in 5 applications (about 42% of total applications). Out of these 5 assisted cases, 2 cases were settled before trial by Court, while legal assistance for 3 cases was withdrawn because of lacking in substance.

Discrimination Law Review (DLR)

4. In addition to the implementation of four anti-discrimination Ordinances, the review of the Ordinances is one of the statutory functions of the EOC. In March 2013, the EOC commenced a large-scale review of the Ordinances, aiming at looking into areas of the Ordinances that needed to be enhanced and modernised as a response to evolving social expectations and global trends, and making recommendations to the Government on necessary reforms to the Ordinances.

5. Currently, the RDO protects people from discrimination because of their race, colour, descent or ethnic origin. It does not cover a person's nationality, citizenship, Hong Kong residency or related status. Nationality and citizenship are the statuses of belonging to a country, to which one has rights and duties as a national or citizen. Hong Kong residency or related status is about whether one is a resident, tourist, or an immigrant in Hong Kong. Since the protected areas under the RDO does not cover nationality, citizenship, Hong Kong residency or related status, the EOC does not have the statutory power to follow up on complaints related to these areas. Nevertheless, the EOC has, through advocacy and public education, proactively called on the public to treat newcomers in our society, including mainland Chinese, in a positive and respectful manner, and express their opinions in rational ways.

6. Between 8 July and 31 October 2014, the EOC conducted a citywide public consultation exercise to invite views from the public on possible reforms to the laws. More than 125,000 public responses were received, making it the largest number of public responses ever received by the EOC in any single consultation exercise. On 29 March 2016, after months of careful analysis of the responses, the EOC released the *Discrimination Law Review – Submissions to the Government*, which detailed 73 recommendations on possible law reforms in relation to strengthening the anti-discrimination protection (27 recommendations were designated as high priority areas that deserved urgent actions). Regarding the recommendation on protection from discrimination on the grounds of nationality, citizenship, and residency status, the EOC believes there should be legislative reforms, but proposes that the Government should first conduct further research or consultation. This would help determine the

content and scope of the provisions, and where necessary, the exceptions that should apply, and take into account the evidence of relevant stakeholders.

Handling of complaints in relation to the oaths taken by Ms YAU Wai-ching and Mr Sixtus LEUNG Chung-hang

7. In October 2016, the EOC received a large number of complaints against Ms Yau and Mr Leung, accusing them of racial vilification as defined under the RDO. The EOC attached great importance to the matter, in view of the large number of complaints received. The EOC also exercised great caution in the interpretation of racial vilification, by seeking legal advice from the Legal Service Division of the EOC and an external Senior Counsel. Based on both the internal and external legal advice, the EOC concluded that the conduct of Ms Yau and Mr Leung did not constitute any unlawful act including racial vilification under the RDO. Therefore, the EOC could not carry out further follow-up action. The EOC already informed the complainants of the decision and the rationale behind in December 2016.

8. According to Section 45 (1) of the RDO on racial vilification, it is unlawful for any individual, by any activity in public, to incite hatred towards, serious contempt for, or severe ridicule of, another person or a group of people on the ground of their race. Incitement can be understood as “to urge, spur on, stir up, animate, prompt, or to stimulate action”. It is, however, not unlawful if the words merely convey hatred or express serious contempt or severe ridicule.

9. Based on legal advice and previous Court cases, the Court would only accept a behaviour as “vilification” or “serious vilification” when the speech in question incites hatred, serious contempt or severe ridicule. In the case of Ms Yau and Mr Leung, it is unlikely that Hong Kong residents would be incited to express hatred towards, or hold serious contempt for or severe ridicule of Chinese people. As such, their speech in question does not amount to racial vilification under the RDO.

10. The EOC understands that there may be different opinions on the interpretation of the RDO by members of the public. As a law enforcement body, the EOC must ensure that its actions and decisions have legal justifications. Hence it had taken the legal advice from the Senior Counsel and

concluded that the conduct of Ms Yau and Mr Leung did not constitute any unlawful act including racial vilification under the RDO.

11. When dealing with complaints, the EOC will examine different approaches in order to find the most appropriate arrangement for handling the matter. Beyond investigation and legal assistance, the EOC will, in selected cases of complaints, consider if there is a need for conducting public education, taking into account the nature of the incidents. Such public education is intended to explain the relevant legislation to the public and call for public action. In the case of Ms Yau and Mr Leung, since there is an ongoing judicial review case in relation to their comments made during the Legislative Council swearing-in ceremony and there was no unlawful act under the RDO, the EOC decided it would be inappropriate to issue a press release on this matter in accordance with the legal advice and discussions among senior management of the Commission. Nevertheless, we understand that various sectors of the community are offended by derogatory terms such as “chee-na”. In April 2017, the EOC published two articles on its website and that of am730. The articles condemned the use of offensive language to ridicule different races, including the use of the term “chee-na”, even though it may not amount to an unlawful act. As well as expressing the EOC’s concerns, the articles were intended to call for mutual respect between different sectors of the community.

Equal Opportunities Commission
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