

EO Files (March 2016)

“THINGS WE DO, PEOPLE WE MEET - Reflections in Brief”

Equality laws need urgent reform if Hong Kong is to keep its status as an international business centre

York Chow says the Equal Opportunities Commission’s wide-ranging review of Hong Kong anti-discrimination legislation must be acted upon

Twenty years ago, Hong Kong’s first anti-discrimination law, the Sex Discrimination Ordinance, came into effect, marking a new era in our city’s aspiration towards building an inclusive society. With it came the establishment of the Equal Opportunities Commission, tasked with the responsibility not only to promote equality and eliminate discrimination, but also to keep under review the working of the anti-discrimination ordinances and make recommendations for amendments as appropriate to the Government – such that everyone’s protection against discrimination can keep up with the times and accompanying social changes.

Over the last two decades, Hong Kong society has evolved in significant ways, which have tangible implications on its equality landscape. The Commission’s own experience in implementing the law has demonstrated gaps in protection which render us unable to handle some claims of unjust discrimination. We also see how international trends have moved from providing individual redress for discrimination towards proactive steps to both prevent and tackle inequalities entrenched in policies and practices.

Without taking appropriate action, Hong Kong risks falling behind global human rights standards and losing our status as an international business centre that is open to all. As importantly, without reforms, the changing needs and demands of our society for greater inclusion and equality cannot be adequately addressed.

Bearing this in mind, the Commission began in 2013 the most comprehensive review of Hong Kong’s anti-discrimination legislation in the city’s history. Seeking evidence for reforms and a platform for different stakeholders to voice their views, the Commission launched a four-month public consultation in July 2014. We saw overwhelming responses from the public – a total of 125,041

submissions were received – which was the largest ever in any of the Commission’s consultation exercises.

Grateful for the public interest, the Commission took the various views into serious consideration while formulating our position on issues. In particular, the Commission looked at the evidence and reasoning provided, if any, when analysing the consultation responses. In addition, the Commission also considered a number of other factors, including our operational experience in handling complaints and conducting research, evidence and seriousness of the discrimination, the number of people affected, and Hong Kong’s human rights obligations under the Bill of Rights and international laws.

On Tuesday, the Commission publicly released our submission to the Government on potential reforms to the anti-discrimination legislation, totalling 73 recommendations covering a wide range of equality issues. To approach the reforms in a pragmatic way, the Commission named 27 issues as higher priority areas for legislative reforms, which we believe to be more pressing in nature.

These recommendations cover a wide range of activities across sectors. They seek to close gaps in the existing protection, such as making it unlawful for the Government to racially discriminate when they are exercising their functions and powers, similar to the protection for other protected characteristics such as sex and disability. They encourage institutional changes and steps to address lingering systemic inequalities, such as calling for the introduction of the statutory right for women to return to their work position after maternity leave, and the duty to provide reasonable accommodations for people with disabilities. And they endeavour to facilitate more effective applications of the anti-discrimination ordinances, such as making the definitions and protection against direct and indirect discrimination as well as harassment clearer and more consistent across various protected characteristics.

Ultimately, the goal of the recommendations is to strengthen the anti-discrimination protection for all, and to ensure that vulnerable groups, including women, people with disabilities, and ethnic minorities, can enjoy equal opportunities to participate in work, education and other aspects of public life.

During the consultation, public attention was often focused on two issues, namely the proposal to include nationality, citizenship, and residency status under the protected characteristic of race, and the proposal related to protection against marital status and family status discrimination for couples in unmarried,

cohabitating relationships, both opposite-sex and same-sex. For both of these issues, while the Commission strongly believes that reforms should be enacted, we recognise that the amendments would have impact across different policy areas.

Moreover, there remain strongly divergent views, which may benefit from wider platforms for exchange, discussion and clarification. We therefore urge the Government to undertake further public consultation on these issues, in order to explore in detail the potential impact across different domains, as well as to enable further public education and allow different sides to share their views in the legislative process. Importantly, the consultations should move beyond whether there should be reform, and focus on what format the reforms should take, including if any concern could be addressed through different measures, such as appropriate exceptions.

Throughout the review, what has become clear from the evidence and consultation is that there are multiple groups in society who still cannot participate equally in everyday life and opportunities in this city. This submission, therefore, represents not just the Commission's own views, but also the views of many groups in society whose struggle for equality continues.

It distils, in short, the collective vision for change from the Hong Kong community towards our shared aspiration of being a truly inclusive society.

The Commission earnestly hopes that the Government would give due and serious consideration to our proposals for change, which aim to be a multi-faceted and evidence-based foundation for taking the issue forward. The road ahead remains long, but this submission marks the next phase in how, working together, we can be stronger in our diversity.

Hong Kong must look to our collective future, and act now to take our anti-discrimination legislation to the next level, in line with the needs of the 21st century and staying true to our core values of equality, justice and inclusion.

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