

**Subcommittee to Study the Subject of Combating Poverty
Study on Women in Poverty**

Information Paper Submitted by the Equal Opportunities Commission

Introduction

1. The Subcommittee to Study the Subject of Combating Poverty formed under the House Committee of the Legislative Council (LegCo) has requested the Equal Opportunities Commission (EOC) to provide information on EOC's study on Equal Pay for Work of Equal Value (EPEV), progress made in reducing discrimination against women after enactment of the anti-discrimination legislation, and difficulties encountered and improvements required to eliminate discrimination against women. The following information is provided in response to the Subcommittee's request.

EOC's Studies on EPEV

What is EPEV?

2. EPEV is not the same as 'equal pay for equal work'. 'Equal pay for equal work' is a concept that women were paid less than men for doing the same job. EPEV, on the other hand, is a concept which deals with redressing discrimination which arises when women and men are segregated into different jobs, but the jobs done mainly by men are more highly rewarded than those done mainly by women, even though they may require similar credentials and similar work experience.

Hong Kong's Obligation

3. The principle of EPEV has been recognized in equal pay legislation in some developed countries. Although there is no specific equal pay legislation in Hong Kong, it should be noted that the Government is bound by a number of international human right instruments to implement the principle of EPEV. The Government takes the view that the provisions in the SDO already cover the concept of EPEV. The EOC was tasked to include EPEV in its portfolio.

Feasibility Study

4. Since its establishment in 1996, the EOC has worked steadily to advance the EPEV principle, first by including it in the Code of Practice on Employment issued under the Sex Discrimination Ordinance (SDO), and secondly by commissioning a 'Feasibility Study on EPEV' (Feasibility Study) in 1997 to examine the issues related to the implementation of the EPEV principle.

5. In its final report, the research team recommended a suasive approach for implementing EPEV in Hong Kong rather than making EPEV mandatory through legislation. Although it did not recommend compulsory introduction of EPEV, it made some preliminary suggestions to address the pay differentials between men and women. It suggested that the EOC could promote voluntary practice of EPEV by large organisations, while 'unequal pay for equal work' could be tackled by the current SDO. Discriminatory policies and stereotypical socialization and attitudes, on the other hand, could be changed through education.

The Current Consultancy Study

6. In January 2001, the EOC obtained a grant of \$2 million from the Government to carry out work on EPEV. It was originally decided to be a three-phase project. Phase One would involve an examination of the situation in the public sector; Phase Two would involve an examination of companies in the private sector with over 200 employees; and Phase Three would involve an examination of smaller companies. It was anticipated that benchmarks for assessing the values of jobs would have been developed by the time Phase Three was launched.

7. A Taskforce on EPEV, with representatives from the Civil Services Bureau (CSB), the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions, Home Affairs Bureau (HAB), the then Health and Welfare Bureau (*currently the Health Welfare and Food Bureau (HWFB)*) and the Labour Department was formed to oversee the study. The EOC also invited Professor Kenneth Law and Ms. Carole Petersen, academics from the Hong Kong University of Science and Technology and the University of Hong Kong respectively, to join the Taskforce, with a Member of the EOC served as the Convenor of the Taskforce.

8. The Phase One Consultancy Study adopted the Canadian job evaluation model which used four job-related factors to determine the value of the jobs selected for examination: 'skill', 'effort', 'responsibility', and 'working conditions'. These job samples were taken from two public sector employers, namely the Civil Service and the Hospital Authority. The Consultancy Study was conducted by interviewing a small sample of job holders who had to fill in a Job Analysis Questionnaire, which was designed to elicit information on the four job-related factors referred to above. The consultants then used the information to evaluate the value of each job according to a Job Evaluation Plan. The evaluation scores were then plotted against their respective salaries to assist analysis.

Draft Report Held in Abeyance

9. Draft report was submitted to members of the Taskforce set up to steer the Consultancy Study for comments in early 2003. However Taskforce members did not reach consensus on the interpretation of data or the future steps to be taken. Despite the concerns and divided views expressed by some Taskforce members, an embargoed draft report was submitted for EOC Members' consideration at the EOC Meeting held on 19 June 2003. The then EOC Members commented that the concept of EPEV was very complex and the subject was controversial. Taking into account the comments and reservation expressed by the then EOC Members, the draft embargoed Report was held in abeyance pending further deliberation by the Taskforce.

10. The issue was brought up again at an EOC Meeting held on 18 September 2003. Complexity of the issue was noted by the then new Chairperson and EOC Members. No consensus was reached by the Taskforce nor the EOC Members on the recommendations made in the draft embargoed Report. It was proposed to have a synopsis of the studies and a proposal on the way forward prepared by the EOC Office for EOC Members to consider in the next one or two meetings.

Samples of Views and Reservations of Taskforce and EOC Members

11. Taskforce members' divergent views were mainly concerned with the methodology adopted in the Study, the interpretation of data and whether the findings of the study could support the recommendations made. For example, it was commented that job-related allowances were not included as part of remuneration when evaluating Hospital Authority jobs and this could significantly affect the

findings. It was also commented that the samples were small and not selected on a random basis. Some of the findings on “underpaid” jobs were reached by drawing selective comparison and it was unclear as to the statistical significance of the pay inequities between the two jobs. Thus, they viewed that the report should focus on patterns and trends instead of making individual jobs comparisons.

12. The then EOC Members, on the other hand, commented that it would be necessary to look into the background before concluding that pay differentials were due to gender discrimination. They noted that the Government is bound by a number of United Nations Instruments to implement the principle of EPEV. It was considered that more work should be done in identifying the issues and practicability of implementing EPEV and in mapping out a strategy for implementation.

Resumption of Taskforce Meetings

13. Following another change in chairpersonship, the Taskforce resumed meeting in March 2004. In view of the fact that no consensus could be reached, the Taskforce decided that the report should not be positioned as the Taskforce’s Report. Instead, it was proposed that it be positioned as the Consultant’s Report, after distilling the inputs from the EOC Office and subject to the lead Consultant’s agreement. The proposal allowed Taskforce members and the EOC to present their respective views and comments on the Consultant’s Report.

Taskforce Members’ Views on the Revised Consultant’s Report

14. Members of the Taskforce have divided views on the re-positioned Consultant’s Report. As it is not fruitful to debate on the different views expressed by individual members, it was agreed that members’ written comments would be presented to EOC Members for their consideration, and it would be up to the EOC to decide whether and how the Report should be made public, and the way to take the subject forward.

15. Notwithstanding the different views of the Taskforce members, the following has been agreed upon by the Taskforce:

- ♦ Phases two and three of the Study should not be pursued, as it is not realistic to expect private sector and the small and medium enterprises (SMEs) to have clear delineation of job groups.

- ◆ Public education should be strengthened to remove stereotyping and to promote better understanding of the EPEV concept. This could be done in collaboration with concerned stakeholder groups and the Women's Commission.
- ◆ The Code of Practice on Employment under the SDO should be reviewed in order to provide more specific guidelines and illustrations to explain the complicated concept of EPEV.
- ◆ It should be up to the EOC to decide whether and how the Report should be published.

Ways Forward Proposed

16. Taking note of the Consultant's recommendations and the views of Taskforce members, Members of the EOC agreed in meetings held in late 2004 the following ways forward: strengthening public education and training to remove gender stereotyping; encouraging and supporting the tertiary institutes to work in collaboration with stakeholder groups to conduct baseline survey on public understanding of EPEV; and encouraging employers to introduce family-friendly employment policies and practices.

Current Status

17. In early 2005 (following another change in chairpersonship) further technical questions on data analysis were raised by EOC Members. The lead Consultant's answer to the technical questions and opinion of an independent expert were also obtained. In the meantime, a completely new EOC board was appointed in May 2005. Since new Members have to, among other competing priorities, take time to study and digest the Consultant's Report and related background information, it was not until December 2005 did Members have the opportunity to discuss the Consultant's Report. During that meeting, a working group consisting of seven EOC Members was formed to take the subject forward.

Progress Made and Problems Encountered in Reducing Discrimination Against Women

Eliminating Discriminatory Recruitment Advertisements

18. It had been a common practice for employers to specify preference of

applicants' sex in recruitment advertisements. Such preference was based mainly on stereotypes than genuine need or lawful reasons. In early 1997, the EOC had advised advertisers and publishers on 269 cases. Court action was taken against two newspapers for publishing discriminatory advertisement without justifiable reason. As a result of EOC's initiative, the general awareness on gender-biased recruitment advertisements virtually reduced to nil.

19. Elimination of deeply rooted discriminatory practices takes time and requires continuous effort to change the mindset of people. Overt act of discrimination and covert attitude have to be dealt with through long-term public education.

Eliminating Pregnancy Discrimination In Employment

20. The EOC had conducted investigations into 859 complaints of alleged pregnancy discrimination since our inception in 1996. While employment law prohibits dismissal during pregnancy, the SDO provides additional protection to employees against discrimination based on pregnancy. As such the protection extends beyond the pregnancy period.

21. Pregnancy discrimination takes up about 40% of the complaints lodged under the SDO. About 50% of these complaints were related to dismissal after complainants returned to work from maternity leave. The remaining touches on alleged deprivation of promotional opportunities, non-payment of bonus, work arrangement, etc.

22. Despite EOC's continuous enforcement and public education effort, pregnancy discrimination cases still take up roughly 40% of the SDO-related complaints.

Eliminating Sexual Harassment

23. Disrespect against women, biased and explicit depiction of the female gender and imbalance of power are often the causes for sexual harassment. The SDO prohibits sexual harassment and creation of a sexually hostile environment in the workplace. Since inception, the EOC have investigated into 645 complaints of sexual harassment lodged by female. The incidents took place usually in the form of verbal harassment, unwelcome physical contact or sexual advance. Through years

of public education and rise in general awareness on legal liabilities, the percentage of sexual harassment complaints has dropped. From 2000 to 2005, sexual harassment cases accounted for 32% of the complaints lodged under the SDO.

24. At the moment, the coverage of the sexual harassment provision is quite restrictive. For examples, it does not cover sexual harassment committed by customers against providers of goods, services and facilities, and it does not cover sexually hostile educational environment. EOC has suggested amendments to extend the provisions against sexual harassment to additional areas. These include, for example, sexual harassment of tenants/sub-tenants by other tenants/sub-tenants, and harassment of providers of goods, services and facilities by customers. No progress, however, is made so far in relation to these proposed amendments. The EOC strongly urges the Government to introduce the proposed amendments as soon as possible.

Formal Investigation on Secondary School Placement Allocation System (SSPA)

25. In 1999, the EOC concluded the formal investigation on SSPA and found that the system had adopted a set of gender-based criteria which put individual boys and girls at a disadvantaged position whereby they cannot be allocated to schools of their preference.

26. As the Government did not rectify the gender-based criteria identified, the EOC filed a judicial review with the High Court. The court released its judgment in June 2001 and declared that the three gender-based allocation criteria of the SSPA were discriminatory. Finally, the government reformed the SSPA to remove the discriminatory allocation criteria.

27. The EOC had received 592 complaints of alleged sex discrimination from female students out of the total of 861 complaints on SSPA.

Addressing Gender Stereotypes in Selection of Subjects

28. Gender stereotypes have influenced the choices of female students in selection of subjects, e.g. confining to study domestic science, discouraged to take technical subjects. It would in turn restrict the career choice and development of female students. Noting the problem, the EOC had taken up the matter with the Education & Manpower Bureau and some educational establishments in 2000. A

series of discussion forums and seminars were organised to address the problem. As a result, traditional mindset has changed. Nowadays, we are seeing more and more girls studying the design and technology subjects.

Eliminating Discrimination Against Women by way of Promotion and Public Education

29. The EOC has organized a series of public education activities to promote gender equality and reducing discrimination against women in employment, education and other areas of social services. These activities include:

(a) *TV Docu-drama Series*

Four series of TV docu-drama titled “A Mission for Equal Opportunities” were jointly produced by the EOC and RTHK from 1998 to 2005. A total of 29 episodes on discrimination cases were broadcast on TVB Jade Channel in the past seven years. An average 1.3 million viewers were recorded for each episode. Among the 29 episodes, 16 episodes aiming at promoting gender equality and eliminating sex discrimination are listed as follows:

1998	
1 st episode:	Dangerous Games (Sexual harassment)
3 rd episode:	No Sexual Discrimination (Sex discrimination)
4 th episode:	We've All Got Responsibilities (Pregnancy and family status discrimination)
1 st episode:	The Gender Race (Sex discrimination in SSPA)

2000	
2 nd episode:	Game of Betrayal (Sexual harassment)
4 th episode:	Family Ties (Family status discrimination and pregnancy discrimination)
8 th episode:	Commercial Revelation (Gender stereotyping in advertisement)

9 th episode:	Story of My Son (Disability discrimination and sexual harassment)
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2003	
2 nd episode	Temptation (Sexual harassment)
4 th episode	It is not my fault. (Family Status Discrimination)
5 th episode	Is pregnant woman guilty? (Pregnancy discrimination)
8 th episode	A battle against SARS (Family status discrimination and marital status discrimination)

2005	
2 nd episode	Family Ties (Family status discrimination)
3 rd episode	The Unmarried (Sex discrimination)
5 th episode	Sexy Campus (Sexual harassment)
6 th episode	The Three of Us (Sex discrimination)

Following the programme, a student forum was conducted in 2003 and 2005 respectively for production of educational modules.

(b) *‘Career Challenge’ Youth Mentorship Programme*

The EOC organized its first youth mentorship programme “Career Challenge” in 2002. The programme underlines the importance of breaking down stereotypes, which often limits academic and career choices for young women and men. The programme followed a comprehensive research study on stereotyping, “Baseline Survey on Students’ Attitude Towards People with a Disability and Gender Stereotypes and Family Roles” undertaken by the Commission earlier, which found that occupational stereotyping was extremely prevalent among students.

Over 2,000 secondary school students have successfully completed “Career Challenge” since 2002. They were able to broaden their horizon, as they joined their mentors at work or in large-group sharing sessions. For the

many young participants, the programme provided a rare opportunity for them to meet with successful individuals who were able to overcome gender and disability barriers to reach their goals.

In the past four years, 43 outstanding achievers from a wide spectrum of non-traditional fields had served as our “Career Challenge” mentors. They include: Benny CHEUNG Wai-leung, Chairperson of the Board of Directors, Hong Kong Federation of Handicapped Youth; Mabel CHEUNG, Film Director; CHONG Chan-yau, Executive Director, Oxfam Hong Kong; The Hon Audrey EU Yuet-me, Legislative Councillor; The Hon Rita FAN HSU Lai-tai, President, Legislative Council; LEE Lai-shan, Olympic Gold Medallist; Dr Rebecca LEE, Polar Researcher and Founder of China Polar Museum Foundation; Dr Sarah LIAO, Secretary for the Environment, Transport and Works; YIP Wing-sie, Music Director, Hong Kong Sinfonietta; Betty YUEN, Managing Director, CLP Power Hong Kong Limited.

(c) *Working together with Non-governmental Organisations (NGOs)*

NGOs are important partners of the EOC in the promotion of equal opportunity. As NGOs serving gender groups would usually become the first contact point of the group for information should they encounter discrimination or harassment in their everyday life and they also advocates for the rights of the group, the EOC believes that it is important for workers of the NGOs to be familiarized with the SDO, the principles underpinning the SDO and the complaint procedures of the EOC.

We have provided training to the NGOs either through calendar training programmes or tailor-made programmes to suit their specific needs in the past. We also participated in activities on the rights of the group organized by NGOs in order to understand more about the issues involved and their needs.

(d) *Working together with Trade Unions*

Trade unions are one of the organizations that affected groups would turn to when they encounter discrimination or harassment in employment. However, not all the workers are well aware of the EO laws, nor are they equipped with

the necessary knowledge to effectively handle discrimination complaints. In view of these needs, the EOC has worked together with trade unions to provide training workshops for frontline union workers with a view to assisting them to identify cases of discrimination and harassment and understanding the complaints procedures of the EOC. Training workshops for the frontline workers of trade unions will continue in 2006/07.

(e) *Sensitivity Training*

Women with a disability may face double discrimination, i.e. on ground of their gender and their disabilities. A workshop to enhance the sensitivity of frontline health care workers was provided to the Department of Health in 2005/06 in collaboration with an NGO.

(f) *Educating Employers*

The EOC had all along provided talks on equal opportunity (EO) laws to employers since its establishment in 1996. After the setting up of the training unit in 2001, we have provided customized training workshops and calendar training programmes to employers on the application of EO laws in various aspects. Employers are encouraged to adopt and implement EO policies in their workplace and provide training to all their employees in order to prevent the occurrence of discrimination and harassment.

(g) *Partnerships - Community Participation Funding Programme*

Since 1996, the EOC has provided funding to 486 community projects carried out by women's groups, social service organizations, self-help groups, unions, concern groups and schools to promote EO and educate members of the public about their rights under the anti-discrimination ordinances. These projects have helped to reduce discrimination against women in employment, education and social services. The total expenditure is more than \$7.1 million.

The funding has helped organizations deliver projects at the grassroots level for members of the community who are marginalized or socially disadvantaged, to promote equal opportunities and eliminate discrimination.

The themes of the 486 funded projects (from 1996 to 2005) are as follows:

- 24% related to EO principles or more than one EO ordinances
- 16% related to sex discrimination
- 8% related to family status discrimination
- 52% related to disability discrimination

Based on data provided by our funded projects, the programme has helped to make a difference and empowered the vulnerable members of our society. The participants are more aware of their rights under the anti-discrimination ordinances (increased knowledge). Having learned more skills and more knowledge about their rights, they have a better opportunity to seek and retain employment.

Legal Assistance

30. Under section 85 of the SDO, where a complaint has been lodged under section 84(1) but, for whatever reason, there has not been a settlement of the matter to which the act the subject of the complaint relates, then any person who may institute proceedings under this Ordinance in respect of that act may make an application to the Commission for assistance in respect of those proceedings.

31. Since its inception, the EOC has granted assistance to a total 59 SDO cases, involving 56 applicants. All the successful applicants are female. Of these 59 cases, 50 cases were employment-related, 7 cases were education-related and 2 cases were relating to provision of goods, services and facilities. Most cases were either settled before issuing of writ of Summons or concluded due to withdrawal. Only 19 cases proceeded to litigation stage. 11 out of the 19 litigation cases achieved out-of-court settlement. Court allowed and dismissed the applicants' claims in six and two of the remaining litigation cases respectively.

32. Apart from providing legal assistance to complainants of SDO cases, the EOC has also granted assistance to the female applicants of eight Family Status Discrimination Ordinance (FSDO) cases. Four out of these eight cases proceeded to

litigation stage. Two of these litigation cases achieved out-of-court settlement. For the remaining two litigation cases, the court allowed the applicant's claim in one case and the final one is pending trial.

Research Work

33. To combat systemic discrimination against women and to facilitate mainstreaming of gender equality and equal opportunities in the society, the EOC also engages in research work. Over the past nine years, the EOC has completed a number of baseline surveys and thematic studies as listed below:

- A Baseline Survey of Equal Opportunities on the Basis of Gender in Hong Kong
- A Baseline Survey of Students' Attitudes towards Gender Stereotypes and Family Roles
- Statistical Analysis on Census Data on Gender and Disability
- Feasibility Study on Equal Pay for Work of Equal Value
- Survey on Public Attitudes Towards Sex as a Genuine Occupational Qualification
- Research on Family Status Discrimination
- Discussion Paper on Insurance Issues under the Anti-discrimination Legislation
- Research on Content Analysis of Textbooks and Teaching Materials in Respect of Stereotypes
- Telephone Survey: Women's Knowledge of the Convention on the Elimination of All Forms of Discrimination Against Women

Concluding Observation

34. Despite the abovementioned efforts made and work done by the EOC, discrimination and sexual harassment against women persisted, particularly in the employment sector. To combat discrimination against women, we need the support of the community and cross-sectors cooperation. We will continue to adopt a collaborative approach to eliminate discrimination against women through partnership

with women NGOs, the Women's Commission, government departments and the business sector.

Equal Opportunities Commission

31 March 2006