

**Minutes of the Eighty-eighth Meeting of
The Equal Opportunities Commission
held on 16 December 2010 (Thursday) at 2:30 p.m. in the
Equal Opportunities Commission's Conference/Training Room**

Present

Mr. LAM Woon-kwong, G.B.S., J.P.	Chairperson
Ms CHAN Ka-mun, Carmen, J.P.	
Ms CHAN Man-ki, Maggie	
Ms CHOI Hing-shi	
Mrs. CHONG WONG Chor-sar, M.H., J.P.	
The Hon FUNG Kin-kee, Frederick, S.B.S., J.P.	
Dr. LAW Koon-chui, Agnes, J.P.	
Mr. LEE Luen-fai	
Mr. LUI Tim-leung, Tim, B.B.S., J.P.	
Mr. Saeed UDDIN, M.H.	
The Hon TSE Wai-chun, Paul	
Dr. TSE Wing-ling, John, M.H.	
Ms WONG Ka-ling, Garling	
Mr. Michael CHAN Yick-man	Secretary Director, Planning & Administration [DPA]

Absent with apologies

Prof. Randy CHIU
Ms CHIU Lai-kuen, Susanna
Mr. Amirali Bakirali NASIR, J.P.
Ms NG Wing-mui, Winnie

In attendance

Mr. Josiah CHOK Kin-ming	Acting Director, Operations [Ag. D(Ops)]
Mr. Herman POON Lik-hang	Chief Legal Counsel [CLC]
Dr. Ferrick CHU Chung-man	Head, Policy and Research [HPR]
Ms Shana WONG Shan-nar	Head, Corporate Communications & Training [HCCT]

Miss Kerrie TENG Yee-san	Accountant [ACCT]
Ms Margaret WU Su-ka	Senior Equal Opportunities Officer (Compliance) [SEOO(C)]
Miss Gloria YU Wai-ling	Senior Equal Opportunities Officer, Administration & Personnel [SAP]

I. Introduction

1. The Chairperson (C/EOC) welcomed all Commission Members (Members) to the 88th Meeting. Apologies for absence were received from Prof. Randy CHIU, Ms CHIU Lai-kuen, Susanna, Mr. Amirali Bakirali NASIR, J.P. and Ms Winnie NG due to sickness/clash of meetings/out of town/other business engagements. The Hon Frederick FUNG and The Hon Paul TSE also informed that they might join the meeting later due to other engagements.

2. C/EOC said that a press briefing would be held after the meeting to brief on major items discussed in this meeting.

II. Confirmation of Minutes (Agenda Item No. 1)

3. The Minutes of the 87th Meeting held on 16 September 2010 issued to Members on 8 October 2010 were confirmed without amendment.

III. Matters Arising (Agenda Item No. 2)

Wheelchair Athletes' Participation in 2011 Marathon

4. Members were informed at the 84th meeting that the EOC office would suggest (and had subsequently done so) to the HK Athletic Association (the Association) to add a category of athletics using wheelchairs in the next marathon, for the purposes of inclusion.

5. HPR reported that in the past few months, the EOC had close liaison with the event organizer and had attended meetings in which representatives

from various government departments, including the Police, Transport Department and Leisure and Cultural Services Department, and the Hong Kong Sports Association for the Physically Disabled were present to consider the possibility of adding a category of athletics using wheelchairs in the 2011 Marathon. All meeting participants were supportive and very helpful on the subject but the main concern was the safety of the race track, which was very steep in certain parts. After consulting paralympic experts from Japan, the organizer had recently announced the launch of the 10km Wheelchair Race in the Marathon 2011 to be open to all experienced wheelchair athletes. Nevertheless, Members were informed that so far the response to this new category of race was not encouraging.

(Ms Carmen CHAN, Dr. Agnes LAW, The Hon Paul TSE and The Hon Frederick FUNG joined the meeting respectively at this juncture.)

6. Members deliberated on the subject and in general welcomed the addition of this race category though it was understood that the race might be too short for some professional athletes in this sector. Furthermore, as only experienced athletes could enter the Race, the number of entries could be restricted. However, taking into account safety and other considerations in this first try, the 10km Wheelchair Race was supported as a first step and having had experience in organizing this category of race, the organizer could consider lowering the entry criteria for the race in future. Hopefully in time, it could be extended to a full scale (42km) wheelchair marathon race. Members' views would be reflected to the organizer. The EOC would keep this subject in view and provide input to the organizer as necessary.

Progress on Cost Recovery on an EOC Defended Case

7. At the 86th (Special) meeting, EOC's auditors advised the need to monitor the cost recovery of an EOC defended case concerning a former EOC employee in which the EOC had incurred substantial legal fees.

8. CLC reported that the court had awarded costs to the EOC in this case.

However, the former employee was applying for legal aid to appeal against the costs order. Members noted that the total legal fee for the case was \$10.89M and the preliminary estimation of the possible recovery was around 40-50% of the fee. CLC explained that the difference was due to the lower District Court taxation scale compared to the actual legal costs incurred.

9. In response to questions raised by The Hon Paul TSE, CLC said that the hourly rate of the main lawyers working on the case was \$2600 in 1999, which was gradually increased to \$6000 at present. On the grounds for appeal against the costs order, the EOC had yet to receive related documents. For the \$0.45M already recovered from the former employee, it was paid as security for costs for the EOC out of a total of \$1M taxed costs awarded to the EOC in the previous proceedings.

10. The Hon Paul TSE and Ms Maggie CHAN opined that the EOC should immediately demand payment of awarded costs plus interest from the former employee now, and proceed with bankruptcy proceedings if required. They also expressed concern regarding the hourly rates charged by EOC's lawyers.

11. Ms Maggie CHAN suggested the EOC office to review the case, search for any relevant documents or agreement on charges by the lawyers and see if there was any possibility of recouping legal fees unreasonably paid. The Hon Frederick FUNG echoed that a review of the history and developments, the decision on hiring a particular legal firm for this case and the charging rate would be useful for future improvements. A review on future lawyer selection and retainer fee mechanisms in EOC assisted cases might also be warranted.

12. In response to a question raised by Mr. Tim LUI, CLC said that the EOC office had taken out an insurance policy a few years ago indemnifying it from legal cost and claims arising from similar cases. Mr. LEE Luen-fai agreed that a review of this case should be conducted for continuous improvement. On the selection of lawyers, he opined that apart from costs, the chances for winning the case should also be one of the criteria for

consideration.

13. C/EOC agreed that a detailed review on this case would be done, for the purpose of future improvement. A paper would be submitted to the Board at the next meeting.

Progress on the Follow-up Actions of the Report on Formal Investigation on Accessibility in Certain Publicly Accessible Premises

14. C/EOC reported that since the release of the Report on Formal Investigation on Accessibility in Certain Publicly Accessible Premises (FI Report) in June, the Government has provided an official reply to the EOC on 6 December 2010 detailing its programme of improvement. Members noted that the Government had drawn up an extensive retrofitting programme concerning 3900 premises and facilities. It has also pledged that it would complete 3306 (85%) retrofitting programmes by 30 June 2012 and follow up on other improvements by stages aimed for completion within 7 to 8 years. Bureaus and departments would appoint Access Co-ordinators to co-ordinate and monitor the improvement programmes within the bureau or department. An Access Manager would be appointed for each government venue to ensure the provision of appropriate barrier-free facilities. Names, titles and contact numbers of Access Co-ordinators and Access Managers would be made public. Members also noted that the LegCo Panel on Welfare Services has decided to set up a dedicated group to monitor the progress of government's improvement programmes on a quarterly basis.

15. Members in general welcomed the comprehensiveness and the speed with which the extensive retrofitting programme was to be implemented. The Meeting also agreed that future follow up actions on the FI Report was to be taken up by the Working Group on Access which dealt with the wider aspect of accessibility for all under the Policy and Research Committee.

16. C/EOC thanked Members' hard work and efforts made on various fronts that contributed to the success of this subject. The EOC would continue to examine the Government's improvement plan diligently, monitor

its implementation and promote the concept of accessibility for all.

Progress on Revision of the Code of Practice on Employment under the Disability Discrimination Ordinance

17. C/EOC said that the modified Code of Practice on Employment under the Disability Discrimination Ordinance (the Code) which had incorporated the key suggestions from stakeholders during the public consultation had been circulated to Members for comments. The major modification included clarifying the purpose of case illustrations; refining case illustrations to avoid misinterpretation; adding of popular topics; providing more explanation on controversial subjects such as management of sick leaves and fine-tuning of diction and style. DPA said that the great majority of Members had since given their endorsement of the modified Code and the consultation report for submission to LegCo with one Member suggesting having the Code formally endorsed in this meeting for record purposes.

18. Members endorsed the modified Code. It would now be submitted to LegCo for negative vetting.

Proposal to set up an Equal Opportunities Tribunal (EOT)

19. C/EOC reported that meetings with stakeholders was progressing. There had been one meeting with the Hong Kong Bar Association (Bar Association) and two meetings with the Law Society of Hong Kong (Law Society). Both had given their support in principle to the proposal. As another option, the Law Society commented that the alternative of simplifying the rules in the District Court would be worth exploring to serve the same purpose.

20. CLC explained that the District Court was empowered to make rules for discrimination cases. In theory, simplifying the rules would involve less change and resources. However, this option had been considered by the previous working group set up by the EOC with membership comprising

members of the Judiciary in their personal capacity. EOC's present proposal was preferred because there were questions on the feasibility and effectiveness of drawing up special rules for discrimination cases within the District Court, and that a new forum such as the proposed EOT would provide a better focus for change.

21. C/EOC said that liaison and discussion with NGOs on the proposal would start shortly and consultation work was expected to complete in about two months. The office would then consolidate all views and feedbacks collected following which Members' advice on the way forward would be sought.

IV. New Agenda Items

Findings of the Customer Satisfaction Survey on EOC's Complaints Handling Mechanism (EOC Paper No. 29/2010; Agenda Item No. 3)

22. Ag. D(Ops) highlighted the background, methodology and major findings of the Customer Satisfaction Survey conducted in June-July 2010 (CSS-2010) on EOC's complaints handling mechanism as contained in EOC Paper No. 29/2010. Members noted that CSS-2010 was conducted based on a pilot survey conducted in 2009 (CSS-2009). CSS-2010 covered a longer time span, with a larger number of target participants. Telephone interviews as well as self-completed questionnaires were used to obtain feedbacks from target participants. When compared to CSS-2009, there were some encouraging feedbacks obtained in CSS-2010 in most survey aspects but the overall perception in terms of satisfaction on the Commission's complaint handling service dropped from 54.5% to 50.69%. Members also noted that this was an initial report of the survey, and a full report with detailed analysis and suggestions for improvement would be drawn up for Members' attention by the first quarter of 2011.

23. The Hon Frederick FUNG opined that the most important survey aspects were "Impartiality" and "Overall Perception". He noted that

complainants' overall perception had dropped in CSS-2010 when compared to CSS-2009 though the same survey aspect for respondents in CSS-2010 had risen. He hoped that more detailed analysis on possible reasons could be made in the full report. Moreover, the EOC should find ways to improve the satisfaction rating on "Impartiality" which stood at 58.55%, as he considered that the rating for this aspect should at least be within the range of 60-70%.

24. In response to questions raised by Dr. Agnes LAW and Dr. John TSE, Ag. D(Ops) said that in the full report, survey respondents' demographic profile (except age, which was only requested to provide on voluntary basis from year 2010) would be provided and cross-analyzed against the survey aspects, the nature of discrimination complaints in question and the results of investigation including whether the cases were conciliated. The detailed analysis would provide further information for improvement. On the survey questions, they were designed with reference to a similar survey conducted by the Australian Human Rights Commission (HREOC) and that the results could be directly compared with that of the pilot survey conducted in 2009. Similar to HREOC, there were no reverse statements or questions but only direct statements in EOC's questionnaire requiring participants to respond. Taking Members' suggestions and advice, future survey questionnaires and methodology would be enhanced.

(The Hon Frederick FUNG left the meeting at this juncture.)

25. The Hon Paul TSE noted from paragraph 11 of the paper on comments by participants of the survey which showed misunderstanding on the nature of EOC's work and role in dispute resolution. He hoped more thoughts would be given to managing clients' expectation and helping them better understand EOC's position and power in handling discrimination complaints. In response to his question on the assistance provided to facilitate parties to complaints to provide information concerning the discrimination issue, Ag. D(Ops) replied that as complaints were required to be lodged in writing, case officers would offer help as far as possible including drafting verbally provided information into written form for the

parties concerned.

(Ms Maggie CHAN left the meeting at this juncture.)

26. C/EOC said that the initial findings of the survey reflected that EOC staff had been performing their work conscientiously as the satisfaction ratings on staff's friendliness and clarity of explanation were both high. Nevertheless, more work has to be done to understand the reasons and to manage the significant difference in expectation from clients on EOC's work and role in handling complaints. Review would also be conducted to see if there were other areas that could be improved to facilitate clients' access to our service. All the above would be examined in depth and presented for Members' advice in another meeting. Members noted EOC Paper No. 29/2010.

Report on Attendance in the International Forum on Women in Urban Development and Commemoration of the 15th Anniversary of the Fourth World Conference on Women

(EOC Paper No. 30/2010; Agenda Item No. 4)

27. Members noted that the Forum were well participated with around 300 participants from almost 50 countries and regions, including first ladies, deputy speakers of national parliaments, ministers and high-level government officials responsible for women's affairs/gender equality, members from royal families, high-level officials and experts from the UN system, leaders from women's organizations, scholars and outstanding women in various fields. Concepts and issues related to women, gender roles were discussed. Members also noted that much has yet to be done on breaking the "glass ceiling" and increasing the proportions of women in high-level political, economic and scientific decision making.

28. Apart from the above, Dr. Agnes LAW and Ms Garling WONG who attended the Forum on behalf of the EOC also expressed that although the Forum had been well organized and received, there were limited time for

in-depth discussion, in view of the very tight programme schedule. A visit to the World Expo 2010 venue also reflected that there were rooms for improvement in terms of barrier free facilities for wheelchair visitors.

29. Members noted EOC Paper No. 30/2010.

Reports of the Legal & Complaints Committee, Community Participation & Publicity Committee, Policy and Research Committee and Administration & Finance Committee

(EOC Paper No. 31/2010; Agenda Item No. 5)

30. Members noted EOC Paper No. 31/2010.

(The Hon Paul TSE left the meeting at this juncture.)

Appointment of Auditors (EOC Paper No. 32/2010; Agenda Item No. 6)

31. EOC Paper No. 32/2010 sought Members' approval on the appointment of auditors to audit EOC's statement of accounts. Members noted that the Administration and Finance Committee had endorsed the re-appointment of KPMG to audit EOC's account for 2010/11, 2011/12 and 2012/13 as the audit fee quoted by KPMG was the lowest among the bids and they provided good audit service to the Commission in the past.

32. Members approved the appointment of KPMG to audit EOC's account with details contained in EOC Paper No. 32/2010. In accordance with the engagement terms, the selected audit firm, KPMG might increase reasonable fees annually. Members' advice would be sought again if the proposed increase was not considered reasonable.

Six Monthly Report of EOC's Financial Position as at 30 September 2010

(EOC Paper No. 33/2010; Agenda Item No. 7)

33. ACCT briefed Members salient points contained in EOC Paper No.

33/2010. Members noted the paper.

Tentative EOC Meeting Schedule for 2011

(EOC Paper No. 34/2010, Agenda Item No. 8)

34. Members noted the tentative meeting schedule for 2011 as contained in EOC Paper No. 34/2010.

V. Any Other Business

Assistance to Staff on an Abusive Client Case

35. CLC briefed Members the details of a case concerning an abusive client. He said that the client had made abusive personal comments about EOC staff via email and also copied the mail to parties outside the EOC. He added that the abusive remarks could be libelous. The Legal Service Division (LSD)'s preliminary view was that the EOC could not sue for libel because it was a public body. It would be open for individual staff to sue, and it might be possible for EOC to assist them. Members deliberated on the possible assistance that could be offered to the staff concerned. Various alternatives were considered including seeking help from the Police, providing staff counseling and support, and seeking external legal advice. Members in general shared the Management's concern on staff's wellbeing but had reservation on using EOC's resources to seek external legal advice. After deliberation, the Meeting agreed to seek informal advice from Members who had a legal background.

[Post-meeting note: A letter was sent to Members who had legal background seeking their views. Two Members indicated a concern that the request for their views might lead to a perception that formal legal advice was being sought, and that the matter should better be discussed as a specific agenda item. Given that there had been no recurring abusive comments, and given Members' reservation on using EOC resource to take legal proceedings on staff's behalf, the management decided not to pursue this item further.]

An Alleged Breach of Privacy Law

36. CLC briefed Members on a claim lodged with the Small Claims Tribunal, by a claimant for EOC's alleged breach of the Personal Data (Privacy) Ordinance (PDPO) in using her old address from an old file to send a response to her new enquiry. The claim for damage in the form of monetary compensation was made. After carefully studying the case, LSD considered that it was arguable whether EOC had breached the PDPO. The EOC would hence file a defence. Members would be updated on the development of this case. Dr Agnes LAW suggested including an option in EOC's standard enquiry form for an enquirer to check if EOC could use his/her old contact methods to communicate with him/her on the enquiry.

[Post-meeting note: The EOC filed a defence with the Small Claims Tribunal prior to the call-over hearing held on 17 December 2010. In the hearing, the claimant applied to withdraw her claim upon the Tribunal questioning the basis of her claim for damages. The Tribunal ordered that the application for leave to discontinue the case be granted and there was no order as to costs. Details vide DPA's email to Members on 21 December 2010.]

37. There being no other business, the meeting was adjourned at 5:10pm.

VI. Date of Next Meeting

38. The next regular EOC meeting was scheduled for 17 March 2011 (Thursday) at 2:30 p.m.

Equal Opportunities Commission
January 2011