

**Minutes of the Ninety-sixth (Special) Meeting of
The Equal Opportunities Commission
held on 10 July 2012 (Tuesday) at 5:00 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 CHIU Lai-kuen, Susanna	
Ms CHOI Hing-shi, M.H.	
The Hon FUNG Kin-kee, Frederick, S.B.S., J.P.	
Dr. KOONG May-kay, Maggie (via telephone conference)	
Mr. LEE Luen-fai	
Mr. LUI Tim-leung, Tim, B.B.S., J.P.	
Mr. Amirali Bakirali NASIR, J.P.	
Mr. Zaman Minhas QAMAR	
The Hon TSE Wai-chun, Paul	
Dr. TSE Wing-ling, John, M.H.	
Ms WONG Ka-ling, Garling	
Mr. YIP Siu-hong, Nelson, M.H.	
Mr. Michael CHAN Yick-man	Secretary Director, Planning & Administration [DPA]

Absent with apologies

Ms NG Wing-mui, Winnie
Dr. TSANG Kit-man, Sandra

In attendance

Mr. Joseph LI Siu-kwai	Director, Operations [D(Ops)]
Mr. Herman POON Lik-hang	Chief Legal Counsel [CLC]
Ms Shana WONG Shan-nar	Head, Corporate Communications and Training [HCCT]
Miss Gloria YU Wai-ling	Senior Equal Opportunities Officer, Administration & Personnel [SAP]
Ms Winnie TONG Yuen-ching	Senior Language Officer [SLO]
Ms Esther CHAN Pui-shan	Senior Policy & Research Officer [SPRO]
Ms Daisy WONG Wai-fan	Corporate Communications Officer [CCO]

I. Introduction

1. The Chairperson (C/EOC) welcomed all Commission Members (Members) to the 96th (Special) Meeting which was convened to discuss the issue of his dual role as Executive Council (ExCo) Convener and Chairperson of the EOC. Dr Maggie KOONG was not in Hong Kong but she would participate in the meeting via telephone conference.

2. Apologies for absence had been received from Ms NG Wing-mui, Winnie and Dr. TSANG Kit-man, Sandra due to out of town business/other prior business engagements.

II. The Chairperson's appointment to the ExCo and related matters

(Agenda Item No. 1)

3. C/EOC said that he would provide a background to Members related to his appointment to the ExCo facilitating their discussion on the matter first, and answer questions and queries from Members afterwards. After that, he would ask to be excused from the meeting so that Members could discuss the matter freely and provide their views candidly. Staff of the Secretariat were asked to relay Members' views with names undisclosed to him after the meeting.

4. C/EOC proceeded to provide an account to Members on his considerations made before accepting the CE's invitation for him to join the ExCo as Convener, including any conflict in interests and the possibility of any real role conflict between the Chairperson of EOC and the Convener of ExCo. He explained the functions and composition of the ExCo, its Members' appointment and term of office as stated in Article 54 and Article 55 of the Basic Law. He added that it was stated in Article 56 of the Basic Law that the ExCo of the SAR Government was to be presided over by the Chief Executive. Except for the appointment, removal and disciplining of officials and the

adoption of measures in emergencies, the Chief Executive was to consult the ExCo before making important policy decisions, introducing bills to the LegCo, making subordinate legislation, or dissolving the LegCo. If the Chief Executive did not accept a majority opinion of the ExCo, s/he was to put the specific reasons on record. There was no mention of the role of the Convener of ExCo in the Basic Law, but by convention, the ExCo Convener would be from one of the Non-official ExCo Members who would act as a liaison person and sometimes as a spokesperson on behalf of all the Non-official ExCo Members. In short, the ExCo Convener was like an independent policy adviser but did not have any administrative, decision-making or executive power. It was therefore most unlikely that there would be role conflict between the ExCo Convener and the EOC Chairperson.

5. C/EOC noted that there was reference to the “Paris Principles” with regard to the appointment of members of human rights institutions to the ExCo and the concern that the independence of the institutions would be compromised. C/EOC said that the “Paris Principles” referred specifically to the composition and guarantees of independence and pluralism in national institutions and had recommended that representatives of government departments should participate in the deliberations only in an advisory capacity, if included in human rights institutions, to ensure that the independent role of the institution was safeguarded. The EOC also adopted such principles.

(The Hon Paul TSE and Ms Susanna CHIU joined the meeting respectively at this moment.)

6. C/EOC noted that there were a lot of discussions and some strong views expressed in the community after his ExCo Convener appointment had been announced. Views expressed included concerns about the potential conflicts of interest arising from the two roles and that his taking up of the ExCo Convener role would undermine the EOC’s image of independence. Though he did not consider there were likely conflicts of interest in the two roles, he accepted that

there was confusion over his dual role as ExCo Convener and Chairperson of EOC. Hence, he would like to listen to more views of the community and Members before considering the matter further and deciding whether to continue with his dual role. He invited Members' questions before he was to excuse himself from the meeting.

7. A Member was of the view that it was entirely appropriate for C/EOC to stay throughout the meeting so that Members' views and questions could be directly addressed. This view was echoed by other Members and a decision was taken for the Chairperson to stay in the meeting. As an administrative arrangement, the Meeting also agreed that Ms Susanna CHIU, Convener of the Administration and Finance Committee would preside over Members' discussion at this juncture. She would ensure that sufficient time would be allocated to Members who wished to voice their views and pose questions.

(Ms Susanna CHIU presided over the meeting at this moment.)

8. Members deliberated on the matter.

(The Hon Frederick FUNG joined the meeting at this moment.)

9. A Member commented that the EOC Board comprised the Chairperson and 16 Members, all of whom were appointed by the Chief Executive of the HKSAR Government and the main source of EOC's funding was from the Government, and all Members of the EOC Board were mindful of the need to act with fairness and independence, which was made possible given the diversified background of Members. As such, he was confident that the work and integrity of EOC would not be compromised despite the Chairperson taking up the Convener role of ExCo. In addition, the EOC had established procedures and guidelines to declare and deal with conflict of interest situations that C/EOC had to fully comply. Hence, the probability of having actual conflict of interest was indeed limited. He then enquired if there had been any actions brought against the Government by the EOC in its past experience.

10. In response to the above Member's question, C/EOC said that in about 15 years of operation, there were 2 court cases that had been brought against the Government. One was related to the recruitment policy of two government departments and the other on the policy of secondary school places allocation. Both were not considered as important policies that required attention at the ExCo level. In addition, the number of complaints received by the EOC against the Government was relatively small, and in most cases, the issues could be resolved through enhanced communication and change in administrative practice. At present, on the issue related to equal education for ethnic minority students in Hong Kong, apart from other possible alternatives, the EOC could consider using its available power to take action against the Government. Although this might not normally be regarded as an important policy warranting the ExCo's attention, there were established procedures in place to deal with conflicts of interests if the matter was brought to the attention of the ExCo.

11. In response to another Member's question, the Meeting noted that there was in the past one ExCo Member that had been appointed as EOC Board Member.

12. Members expressed their views on C/EOC's appointment to the ExCo. In summary, the majority of Members present were in support of C/EOC to continue to serve in his dual role. They appreciated the role of Non-official Members of ExCo as advisory, bearing no executive authorities. They also understood that Non-official Members did not serve under the Executive Branch of the HKSAR Government and had no executive power. Hence, the chance of real role conflict was minimal. Even if conflict should arise, there were sufficient mechanisms both in ExCo and in EOC to tackle it. Many Members also considered that the Chairperson's role in ExCo would help to promote EOC's work and to more effectively influence the Government to make changes on policy conducive to the development of equal opportunities in Hong Kong.

13. Some Members in support of the Chairperson's dual role also considered that as ExCo's Convener, C/EOC could monitor the Government's work in relation to equal opportunities more effectively. As in the capacity of ExCo Convener, he could influence the Government in its policy making process at a higher level proactively. It would be more effective than the monitoring after implementation of policies. Some Members also expressed that they would monitor C/EOC's work in the EOC more closely while he was also taking up the appointment as ExCo Convener to ensure that he would continue to properly perform his duties as EOC Chairperson. If in future the work of EOC was adversely affected because of his dual role, Members would not rule out making appropriate demand on him for the benefit of the EOC. Additionally, the public would also continue to monitor C/EOC's work in the ExCo as well as in the EOC.

14. On the other hand, two Members at the meeting strongly objected to the Chairperson's dual role. They were of the view that as EOC's statutory function included monitoring the Government's compliance with the anti-discrimination laws, and there would inevitably be cases involving the Government that EOC had to deal with. While mechanisms were in place for the Chairperson to declare interest or to abstain from the discussions or meetings, it would not be desirable or even feasible in the actual situation. If for instance, the Chairperson were to be absent from LCC discussions involving government cases, it would undermine the role of the Chair and also adversely affect EOC's operation in complaint handling work. It was also the Chairperson's role to point out defects in government policies and to submit EOC alternative reports for hearing in human rights committees and having dual role in both the EOC and the ExCo would be seen as confusing. They therefore urged the Chairperson to consider taking up one post only. They considered the "Paris Principles" on human rights institutions were not adhered to and that it eroded public confidence on EOC's independence and set a poor precedent.

15. Three Members agreed that it was not an ideal arrangement for C/EOC

to take up the dual role since there could be public confusion over the two roles and perception issues over EOC's independence. They were in support of the Chairperson's dual role after balancing all factors concerned. They believed that the risk of real conflict would be unlikely with the Chairperson in an advisory capacity only in ExCo and his presence there would help advance EOC's work.

16. C/EOC thanked Members for their time spent and the candid views expressed on this matter. He said that he would carefully consider their views as well as the view of Dr Sandra TSANG, which had been sent to him by email. After carefully considered all the views, he would make a decision on the following day and inform Members of his decision before announcing it to the public.

[Post-meeting note: C/EOC issued a media statement on 11 July 2012 announcing that he would carry on with both jobs for the remaining term of his current contract which would end in January 2013. He explained in the statement that he had listened closely to the community in the preceding week, including from EOC's working partners and in particular from Members. He considered that the ExCo convenership a serious appointment. It would be irresponsible of him to walk away from the job when there was no real case of role conflict. Similarly, the Chairperson of the EOC was also a serious appointment to which he had pledged his full three years' service. Given that the job carried statutory duties and was designated by law, there was no acting arrangement to cover the gap should he resign immediately. It would bring serious disruption to EOC's work. Hence, he had decided that he should carry on with both jobs for the remaining term of his current appointment until the end of January 2013. Additionally, he would inform the Government that he would not consider any offer to renew his current contract with EOC and urge the Government to start the selection process for the next Chairperson of the EOC as soon as possible.]

III. Any Other Business

17. There being no other business. The meeting was adjourned at 7:30 p.m.

IV. Date of Next Meeting

18. The next EOC Meeting was a special meeting scheduled for 17 August 2012 (Friday) at 3:30 p.m. to consider the EOC's Audited Accounts for the Year Ended 31 March 2012.

*Equal Opportunities Commission
August 2012*