

投訴處理 及法律行動 Complaint Handling and Legal Actions

根據香港的三條反歧視條例，凡基於性別、婚姻狀況、懷孕、殘疾或家庭崗位而作出歧視，即屬違法。根據《性別歧視條例》和《殘疾歧視條例》，性騷擾或基於殘疾而作出的騷擾及中傷，皆屬違法。

反歧視條例中有關僱傭範疇的條文不單保障在職人士，亦為求職者、代理人及承辦商提供保障。條例亦涵蓋關乎職業訓練、職業介紹所、業務合夥、專業團體及職工會等活動。條例中有關非僱傭範疇的條文，包括教育、貨品或服務的提供、以至參加會社和體育活動、處所管理及政府活動等方面。

查詢

委員會在本年度繼續致力為市民服務，解答市民對各種歧視問題的查詢，和接受他們的投訴。委員會於1997年4月至1998年3月(即正式全面投入服務的首年)共接獲7,284宗查詢，其中包括5,670宗一般查詢和1,614宗具體查詢。在2004/05年度，此數字已倍增至13,341宗，當中7,035宗是一般查詢，6,306宗是具體查詢。

一般查詢包括委員會的工作和本港三條反歧視條例，至於具體查詢，則涉及與個別事件有關的問題。在本年度6,306宗具體查詢中，1,324宗與《性別歧視條例》有關，2,800宗與《殘疾歧視條例》有關，157宗與《家庭崗位歧視條例》有關，另有430宗關乎委員會的工作，其餘1,595宗則涉及年齡、種族、性傾向及宗教等不屬委員會權限的問題(詳情見表1)。

Under Hong Kong's three anti-discrimination ordinances, it is unlawful to discriminate against anyone on the grounds of sex, marital status, pregnancy, disability or family status. Behaviour such as sexual harassment, or harassment and vilification on the grounds of disability, are unlawful under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance.

The employment-related provisions of the ordinances provide protection, not only to existing employees but also to job applicants, agents and contractors. They also cover activities relating to vocational training, employment agencies, partnership admissions, professional bodies and trade unions. The non-employment related provisions offer coverage in areas ranging from education and the provision of goods or services to participation in clubs and sporting activities, the management of premises and government activities.

Enquiries

During the year, the EOC continued to work with the public as they approached us with their enquiries and complaints on a range of issues relating to the different kinds of discrimination in Hong Kong. In our first full year of operation, from April 1997 to March 1998, we recorded a total of 7,284 enquiries consisting of 5,670 general and 1,614 specific enquiries. In 2004/2005, the figure had nearly doubled to 13,341 with 7,035 general and 6,306 specific enquiries.

General enquiries relate to our activities and the provisions of Hong Kong's anti-discrimination legislation, whilst specific enquiries cover incident-related questions. Of the 6,306 specific enquiries received, 1,324 were related to the Sex Discrimination Ordinance (SDO), 2,800 to the Disability

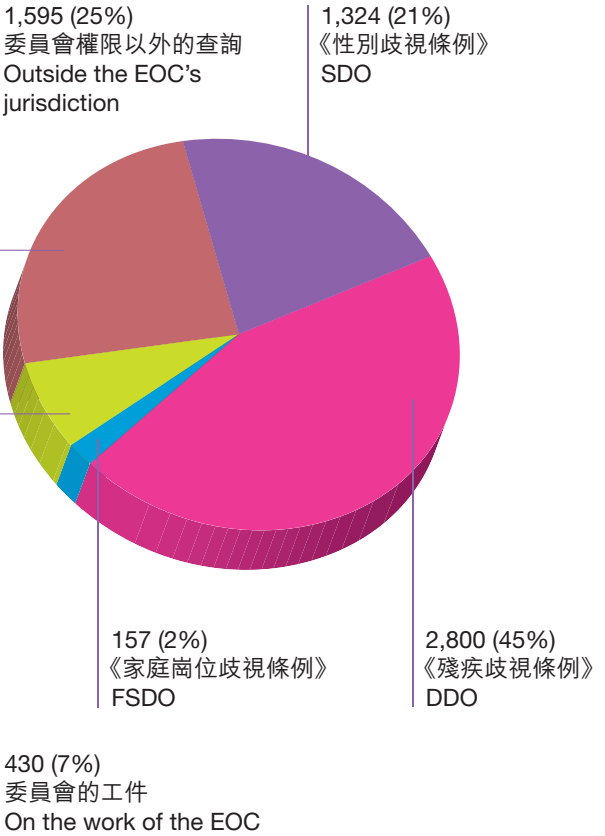
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投訴與調查

根據香港的反歧視條例規定，任何人士如認為受到違法歧視，可親身或授權代表向委員會提出書面投訴。調查期間，委員會會研究個案情況，並讓雙方就有關指稱提出意見和作出回應。我們首先會致力以調解方式協助雙方和解，假如未能和解，委員會可應投訴人的申請，考慮提供其他形式的協助。委員會會研究每宗申請，考慮當中是

表 1. 2004年4月1日至2005年3月31日期間的具體查詢分類 (共6,306宗)
Figure 1. Specific Enquiries received from 1 April 2004 to 31 March 2005 (Total Number: 6,306)



Discrimination Ordinance (DDO) and 157 to the Family Status Discrimination Ordinance (FSDO). A further 430 focused on the work of the EOC, while the remaining 1,595 enquiries, covering areas such as age, race, sexual orientation and religion, fell outside our jurisdiction. (See Figure 1).

Complaints and Investigations

Anyone who feels that he or she has been treated unlawfully under Hong Kong's anti-discrimination legislation can seek redress by lodging a complaint in writing, either personally or through a representative, with the EOC. First of all, when investigating the complaint, we look into the facts of each case with both parties being given the opportunity to comment and respond to the allegations made. Then, we endeavour to resolve the matter through conciliation, helping the parties involved to reach a settlement. If a settlement cannot be reached, we are able to consider other forms of assistance if the complainant makes an application to take the matter further. We look at each application individually, considering issues of principle as well as the ability of the applicant to deal with the case unaided. Assistance granted can include advice, legal assistance or any other assistance deemed appropriate.

Complaints Handled

During the year, we received complaints from 449 complainants against 534 respondents involving 562 cases of alleged unlawful acts, a decrease from the 854 complaints received in 2003/04 from 500 complainants. Of the complaints, 195 were received under the SDO, 343 under the DDO and 24 under the FSDO. (See Figure 2). Together with those carried forward from previous years, we investigated a total of 789 complaints, representing a decrease of 31% as compared to 1,151 in the previous year (See Figure 3). However, this has meant a higher conciliation rate between complainants and respondents, rising to 69% during the year as compared with 53% in the previous twelve months. The higher number of

表2. 2004年4月1日至2005年3月31日期間接獲的投訴調查 (共562宗)
Figure 2. Number of Cases of Complaint Investigation received from 1 April 2004 to 31 March 2005 (Total number: 562)

		《性別歧視條例》 SDO	《殘疾歧視條例》 DDO	《家庭崗位歧視條例》 FSDO	總數 Total
投訴數目	No. of complaints	195	343	24	562
投訴人數目	No. of complainants	148	281	20	449
答辯人數目	No. of respondents	185	327	22	534

否涉及原則問題，和評估投訴人能否在沒有委員會協助的情況下獨自處理個案。協助形式包括給予法律意見、法律協助、或任何委員會認為適當的協助。

經處理的投訴

2004/05年度，委員會接獲由449名投訴人對534名答辯人作出的投訴，共涉及562宗指稱違法作為的個案，較2003/04年度由500名投訴人作出854宗投訴為少。在這些投訴中，有195宗根據《性別歧視條例》提出、343宗關乎《殘疾歧視條例》，另有24宗關乎《家庭崗位歧視條例》。(詳情見表2)。連同往年未完成的個案，委員會在本年度共處理789宗投訴，比上年度的1,151宗少31%(詳情見表3)。不過，投訴人與答辯人達致和解的比率有所提升，本年度達69%，較諸前12個月的53%為高。2003/04年度處理的投訴個案較多，是由於當時爆發非典型肺炎引起社會恐慌，受疫症影響的市民紛紛致電委員會查詢及投訴，所以委員會需處理的投訴較多。

在2004/05年度，委員會完成了593宗有關指稱違法作為個案的調查工作(詳情見表3a)。當中有261宗進行了調解，其中181宗調解成功，餘下的80宗個案未能和解(詳情見表3b)。

complaints and cases handled in 2003/04 year was attributed to the SARS epidemic, which resulted in a rush of enquiries and complaints from those directly affected by the panic within the community.

In 2004/05, we completed investigations on 593 cases of alleged unlawful behaviour (See Figure 3a). Of this number, 261 proceeded to conciliation, with 181 reaching successful settlement. The remaining 80 cases were unsuccessful (See Figure 3b).

Complaint cases that do not proceed to conciliation are discontinued for a variety of reasons. This happens if the act in question is not unlawful, the complainant no longer wants to pursue the complaint, or if a period of over 12 months has passed since the act was committed. Investigations also cease if the dispute is resolved through other means, or if the EOC considers the complaint to be frivolous, vexatious, misconceived or lacking in substance. A total of 332 complaints in this category were discontinued (See Figure 4).

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表 3. 2004年4月1日至2005年3月31日期間已處理的投訴調查 (共789宗)
Figure 3. Number of Cases of Complaint Investigation handled from 1 April 2004 to 31 March 2005 (Total number: 789)

		《性別歧視條例》 SDO	《殘疾歧視條例》 DDO	《家庭崗位歧視條例》 FSDO	總數 Total
僱傭範疇	Employment	259	323	24	606
非僱傭範疇	Non-employment	27	148	8	183
總數	Total	286	471	32	789

至於未進行調解的投訴，是因為各種原因需終止調查，例如有關作為並不違法、投訴人不想繼續追究、所指稱的行為在投訴時已超過12個月。此外，若投訴透過其他方法獲得解決或委員會認為有關投訴屬瑣屑無聊、無理取鬧、錯誤理解或缺乏實質，委員會亦會終止調查。在終止個案方面，本年度有332宗(詳情見表4)。

與《性別歧視條例》相關之投訴

- 委員會本年度共調查了259宗涉及僱傭範疇的指稱，當中懷孕歧視個案依然佔最多，有112宗(43%)，其次是性騷擾，共94宗(36%) (詳情見表5)。
- 委員會本年度共調查了27宗涉及非僱傭範疇的指稱，其中14宗 (52%)關乎性騷擾(詳情見表6)。

與《殘疾歧視條例》相關之投訴

- 委員會本年度調查了471宗有關《殘疾歧視條例》的指稱，其中323宗屬僱傭範疇，148宗屬非僱傭範疇。
- 在已處理的僱傭範疇及非僱傭範疇個案中，殘疾歧視的投訴個案佔最多，達421宗(佔總數89%)(詳情見表7及表8)。

表 3a. 2004年4月1日至2005年3月31日期間經調查及調解後已完結的個案 (共593宗)
Figure 3a. Number of Cases of Complaint Investigation concluded from 1 April 2004 to 31 March 2005 (Total number: 593)

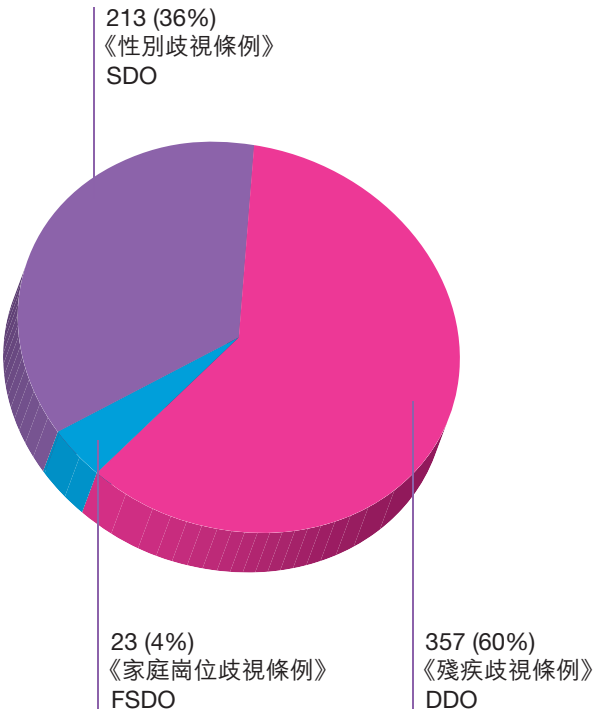
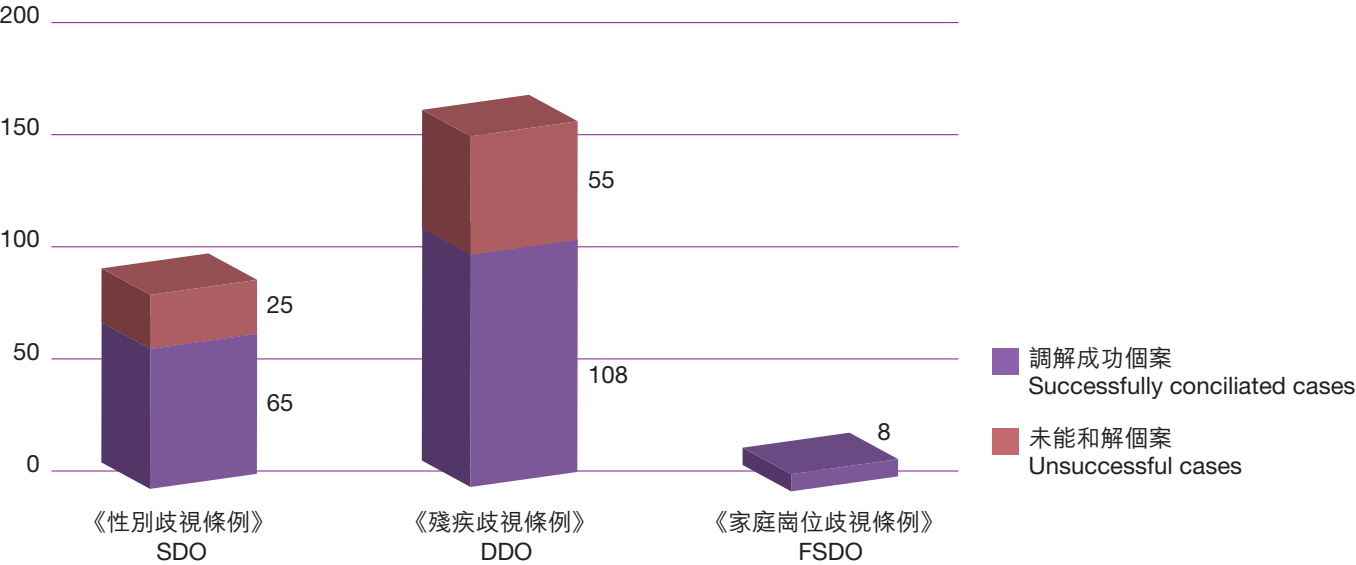


表 3b. 2004年4月1日至2005年3月31日期間曾進行調解的個案 (共261宗)
Figure 3b. Cases Proceeding to Conciliation from 1 April 2004 to 31 March 2005 (Total number: 261)



與《家庭崗位歧視條例》相關的投訴

- 委員會本年度調查了32宗有關《家庭崗位歧視條例》的指稱，當中有24宗(75%)關乎僱傭範疇，8宗(25%)關乎非僱傭範疇(詳情見表9)。大部分關乎僱傭範疇的指稱 (58%)與基於家庭崗位的解僱有關。

委員會的主動調查

對於第三者或不想參與調查或調解的受屈人士所提出的違法行為，委員會亦會採取行動。在這些情況下，委員會會聯絡有關人士，就事件作出調查，向他們解釋有關法例，並建議他們加以糾正。在本年度，委員會處理了32宗有關個案，其中16宗關乎《性別歧視條例》，18宗關乎《殘疾歧視條例》，而委員會在本年度並沒有收到關乎《家庭崗位歧視條例》的投訴。

SDO-related Complaints

- A total of 259 employment-related allegations were investigated. Pregnancy discrimination continued to be the major cause for complaint with 112 cases (43%), followed by 94 (36%) sexual harassment cases (See Figure 5).
- Investigations were made into 27 non-employment related allegations; 14 (52%) of which were related to sexual harassment (See Figure 6).

DDO- related Complaints

- A total of 471 allegations were investigated, consisting of 323 employment-related and 148 non-employment related cases.
- Among both the employment-related and non-employment related cases handled, disability discrimination was the single largest cause for complaint, accounting for 421 (89%) of the total (See Figures 7 and 8).

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表 4. 2004年4月1日至2005年3月31日期間個案終止調查的原因 (共332宗)
Figure 4. Discontinued Cases by Reason from 1 April 2004 to 31 March 2005 (Total number: 332)

		不屬違法 作為 No unlawful acts	瑣屑無聊 或缺乏實質 Frivolous or lacking in substance	投訴人不願 繼續追究 Complainants did not wish to pursue	投訴得到 提早解決 Complaint resolved through early resolution	超過12個月 的時限 Beyond 12-month time bar	總數 Total
《殘疾歧視條例》	DDO	10	132	36	12	4	194
《性別歧視條例》	SDO	2	67	47	6	1	123
《家庭崗位歧視條例》	FSDO	0	12	2	1	0	15
總數	Total	12	211	85	19	5	332

表5. 2004年4月1日至2005年3月31日期間根據《性別歧視條例》提出，關乎僱傭範疇而獲調查的指稱 (共259宗)
Figure 5. Employment Related Allegations investigated under the SDO from 1 April 2004 to 31 March 2005 (Total number: 259)

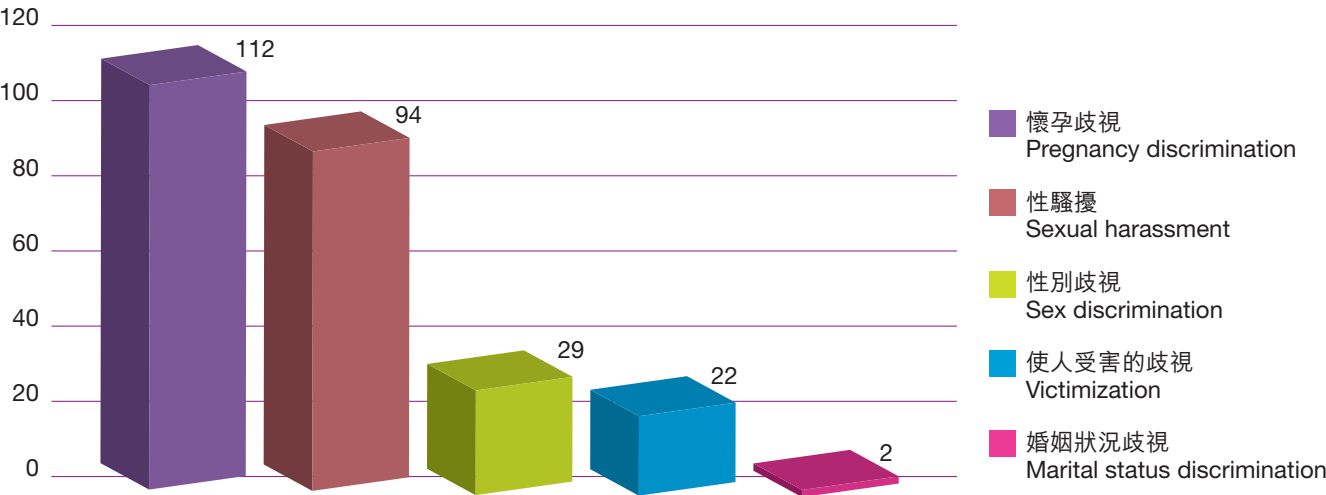
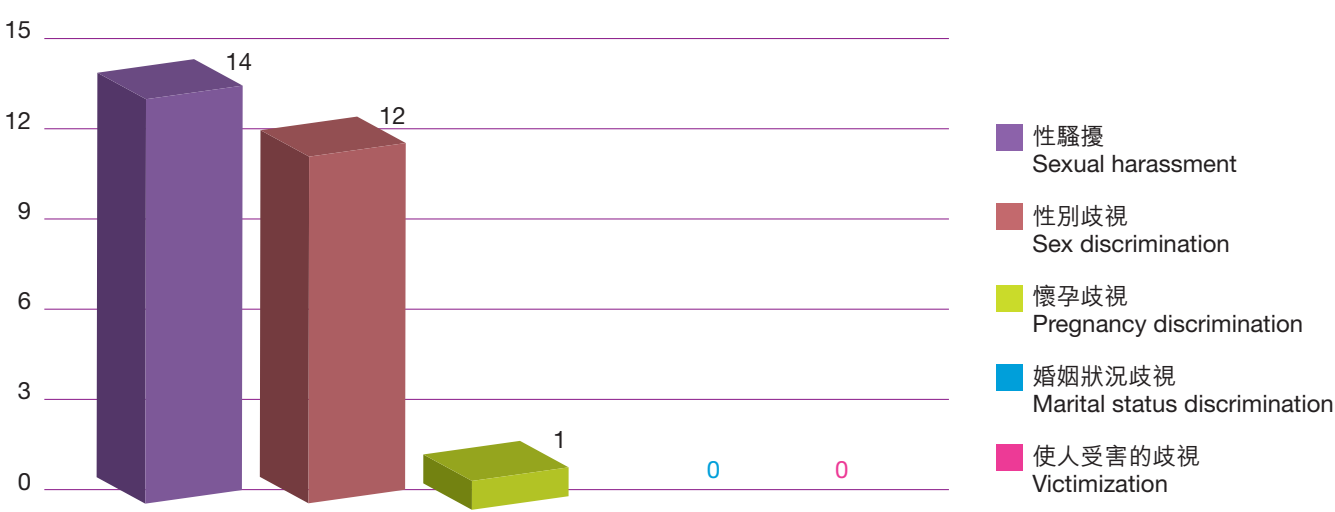


表 6. 2004年4月1日至2005年3月31日期間根據《性別歧視條例》提出，關乎非僱傭範疇而獲調查的指稱 (共27宗)
Figure 6. Non-employment Related Allegations investigated under the SDO from 1 April 2004 to 31 March 2005 (Total number: 27)



法律協助的申請

如果投訴的雙方未能達成和解，委員會可向有意採取法律行動的申請人提供法律協助。在收到協助申請後，委員會的律師會評估個案的證據是否有力及其他考慮因素，然後向委員會提出建議。委員會的法律及投訴專責小組會根據法律意見，決定是否給予協助。協助的形式包括：由委員會的律師向申請人提供法律意見、協助申請人取得進一步的資料或證據、由委員會律師或經委員會延聘的私人執業大律師在訴訟中擔任申請人的法律代表等。

在2004/05年度，委員會一共處理53宗有關法律協助的申請，其中14宗獲委員會給予協助。有關申請的分類詳情請參閱“附錄5：法律協助的申請”。

FSDO-related Complaints

- During the year, a total of 32 FSDO allegations were investigated, 24 (75%) of which were employment-related and eight (25%) were non-employment related (See Figure 9). The majority (58%) of the allegations in the employment field were related to dismissal on the grounds of family status.

EOC-initiated Investigations

We also take action on complaints with regard to unlawful acts brought to our attention by third parties, or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under these circumstances, the Commission approaches the concerned parties to inquire into the matter, explain the relevant legislation, and advise that they rectify the situation. During the year, we handled 32 such cases, 16 under the SDO and 18 under the DDO. No complaints in this category were received under the FSDO.

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獲委員會給予法律協助的個案

本年度有20宗獲委員會給予法律協助的個案(包括2004/05年度或以前已獲給予協助的個案)在展開法律程序前已獲得解決。解決原因包括:雙方就問題達成和解，或委員會因各種原因撤回法律協助(例如委員會在研究過證據後，認為不宜繼續給予協助)，或個案發展令委員會需繼續給予法律協助等。

此外，有9宗在2004/05年度或以前已獲給予法律協助的個案，至2005年3月底仍未有結果或仍未展開法律程序，詳情見附錄6。

Applications for Legal Assistance

If a lodged complaint has not been settled, the EOC has the power to grant assistance to applicants who wish to proceed with legal action in relation to the complaint. When an application for assistance is received, our lawyers conduct an assessment of the application before advising the Commission on the strength of the evidence and other considerations to be taken into account. Depending on the legal advice received, we will decide whether or not to grant assistance. This assistance can include legal advice to the applicant by the EOC’s lawyers, legal services relating to the consideration and assessment of further information or

表 7. 2004年4月1日至2005年3月31日期間根據《殘疾歧視條例》提出，關乎僱傭範疇而獲調查的指稱 (共323宗)
Figure 7. Employment Related Allegations investigated under the DDO from 1 April 2004 to 31 March 2005 (Total Number: 323)

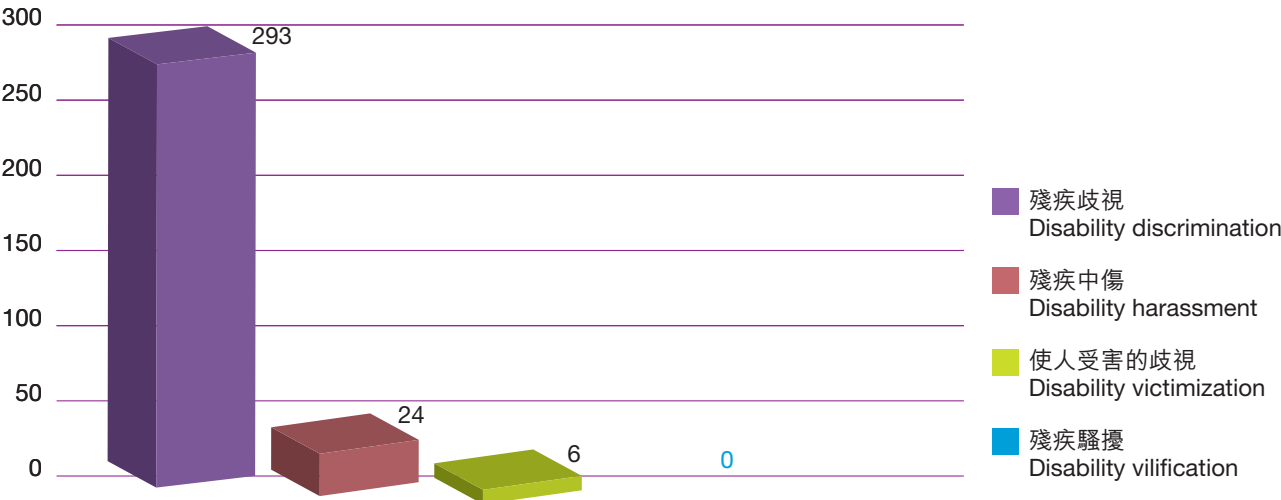


表 8. 2004年4月1日至2005年3月31日期間根據《殘疾歧視條例》提出，關乎非僱傭範疇而獲調查的指稱 (共148宗)
Figure 8. Non-employment Related Allegations investigated under the DDO from 1 April 2004 to 31 March 2005 (Total number: 148)

投訴類別 Type of complaint	投訴數目 Number of complaints
殘疾歧視 Disability discrimination	128
貨品、服務及設施 Goods, services and facilities	47
處所通道 Access to premises	49
教育 Education	11
政府 Government	19
處所的處置和管理 Disposal and management of premises	1
其他 Others	1
殘疾中傷、騷擾及使人受害的歧視 Disability vilification, harassment & victimization	20
總數 Total	148

法律訴訟

委員會在本年度處理了三宗法庭案件，這三宗案件在2004/05年度前已展開法律程序，但截至2005年3月底止，案件仍未了結。

有一宗上訴案雖在2004/05年度結束時仍在進行，其後，上訴法庭維持原訟法庭的判決，宣判由委員會協助的原告人得直。不過，上訴法庭把給予原告人的賠償額降低。

在本年度，委員會展開了9宗個案的法律程序，其中4宗個案在雙方同意和解條款保密的情況下已獲解決；另外4宗個案在2004/05年度結束時仍在進行，餘下的一宗個案，原告人獲判勝訴，詳情見附錄 7。

evidence, or representation at these legal proceedings by the EOC’s lawyers, or barristers in private practice briefed by the EOC.

In 2004/05, we dealt with 53 applications for assistance, granting assistance in 14 of them. Further details and a breakdown of these applications can be found under “Appendix 5: Applications for Legal Assistance”.

Legally Assisted Cases

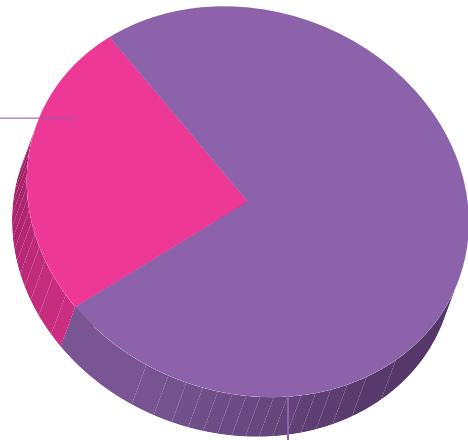
In the year under review, 20 cases, in which legal assistance had been granted (both before and during 2004/05), were resolved without the commencement of legal proceedings. Either the parties in question reached settlement or the EOC withdrew assistance for various reasons. These reasons range from instances where, upon further examination of

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表 9. 2004年4月1日至2005年3月31日期間根據《家庭崗位歧視條例》提出並獲調查的指稱 (共32宗)
Figure 9. Allegations investigated under the FSDO from 1 April 2004 to 31 March 2005 (Total number: 32)

8 (25%)
關乎非僱傭範疇的歧視
Discrimination in the
non-employment related field



24 (75%)
關乎僱傭範疇的歧視
Discrimination in the
employment related field

the evidence, it was deemed inappropriate to continue assistance, or when subsequent developments between the parties made it unnecessary for assistance to continue.

In addition, we also dealt with nine other cases where legal assistance had been granted either before or during 2004/05. These cases are ongoing as no outcome had been reached nor court proceedings commenced as at the end of March 2005. For further details, please refer to Appendix 6.

Court Cases

During the year, we also handled three court cases which had commenced proceedings before 2004/05. These cases were all still ongoing at the end of March 2005.

An appeal case was also still ongoing at the end of 2004/05. The appeal court subsequently upheld the decision handed down at the court of first instance, which found on behalf of the Plaintiff, who was assisted by the EOC. However, the appeal court reduced the compensation awarded.

During the year, we commenced legal proceedings in nine cases. Four of these were settled on a confidential basis and four were still ongoing at the end of the year 2004/05. In the remaining case, judgment was received for the Plaintiff. Please see Appendix 7 for details.

委員會在2004/05年度採取法律行動的概要 Summary of the EOC's Legal Activities in 2004/05

2004/05年度處理的法律協助申請	2003/04年度收到的申請	
Applications for legal assistance processed in 2004/05	Received in 2003/04	17
	2004/05年度收到的申請	
	Received in 2004/05	36
	總數	
	Total	53
	給予法律協助	
	Granted	14
	不給予法律協助	
	Not Granted	30
	撤銷申請	
	Withdrawn	1
	考慮中	
	Under Consideration	8
獲給予法律協助的個案 (毋需展開法律程序)	已解決	
	Resolved	20
Legally assisted cases (without commencing legal proceedings)	處理中	
	Ongoing	9
委員會協助的法庭案件(2004/05年度前已展開訴訟)	處理中	
EOC assisted court cases (commenced before 2004/05)	Ongoing	3
獲委員會協助的上訴案	處理中	
Assisted cases under appeal	Ongoing	1
獲委員會協助的法庭案件(在2004/05年度展開訴訟)	已解決	
EOC assisted court cases (commenced in 2004/05)	Settled	4
	勝訴	
	Won	1
	處理中	
	Ongoing	4