



## 投訴處理及法律行動 Complaint Handling and Legal Action

香港的三條反歧視條例，即《性別歧視條例》、《殘疾歧視條例》和《家庭崗位歧視條例》禁止一切有關性別歧視、性騷擾、懷孕歧視、婚姻狀況歧視；殘疾歧視、殘疾騷擾及中傷；及家庭崗位歧視等違法行為。

三條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、中介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，涵蓋教育、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。

Hong Kong's three anti-discrimination ordinances, namely the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO), and the Family Status Discrimination Ordinance (FSDO) prohibit unlawful behaviour such as sex discrimination, sexual harassment, pregnancy discrimination, marital status discrimination; disability discrimination, harassment and vilification; and family status discrimination.

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 cover areas such as education, the provision of goods or services, participation in clubs and sporting activities, the management of premises and government activities.

### 投訴與調查

任何人士如認為自己在反歧視法例保障範圍內受到歧視，可親身或授權代表向平機會提出書面投訴。平機會調查投訴時，會研究每宗個案的事實，讓雙方有機會就有關指稱提出意見和作出回應。如認為合適，平機會將會致力以調解方式協助雙方和解。假如未能和解，平機會可應投訴人的申請，考慮提供其他形式的協助。平機會將會個別研究每宗申

### Complaints and Investigations

Anyone who feels that he or she has been discriminated against on protected grounds can lodge a complaint in writing, either personally or through a representative, with the EOC. 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. Where it is considered appropriate, we endeavour to resolve the matter through conciliation, helping the



# 投訴處理及法律行動

## Complaint Handling and Legal Action

請，考慮當中是否涉及原則問題，和評估投訴人能否在沒有平機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、或任何平機會認為適當的協助。

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.

表1 2007年4月1日至2008年3月31日期間接獲的投訴 (共847宗)  
Figure 1 Complaints and Investigations: 847 complaints received – 1 April 2007 to 31 March 2008

		《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	348	460	39	847
投訴人數目	No. of complainants	257	385	28	670
答辯人數目	No. of respondents	320	432	34	786

### 經處理的投訴

2007/08年度，平機會接獲由670位投訴人對786位答辯人作出的投訴，共涉及847宗指稱違法行為的個案，較2006/07年度由533位投訴人作出655宗投訴為多。在這些投訴中，有348宗根據《性別歧視條例》提出、460宗根據《殘疾歧視條例》，另有39宗根據《家庭崗位歧視條例》提出。連同往年未完成的個案，平機會在本年度共處理1,088宗投訴，比上年度的905宗增加20% (詳情見表2)。成功調解率達72%，與去年12個月的調解率相同。

### Complaints Handled

During the year, we received complaints from 670 complainants against 786 respondents involving 847 cases of alleged unlawful acts, an increase from the 655 complaints received in 2006/07 from 533 complainants. Of the complaints, 348 were received under the SDO, 460 under the DDO and 39 under the FSDO. Together with those carried forward from previous years, we investigated a total of 1,088 complaints, representing an increase of 20% as compared to 905 in the previous year (See Figure 2). The successful conciliation rate is 72% during the year, which is the same as that in the previous twelve months.

表2 2007年4月1日至2008年3月31日期間已處理的投訴調查 (共1,088宗)  
Figure 2 Complaints and Investigations: 1,088 complaints handled – 1 April 2007 to 31 March 2008

		《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	417	467	43	927
非僱傭範疇	Non-employment	24	134	3	161
總數	Total	441	601	46	1,088

在2007/08年度，平機會完成調查了781宗有關指稱違法行為的個案 (詳情見表2a)。當中有267宗進行了調解，其中191宗調解成功，餘下的76宗個案未能和解 (詳情見表2b)。

In 2007/08, we completed investigations on 781 cases of alleged unlawful behaviour (See Figure 2a). Of this number, 267 proceeded to conciliation, with 191 reaching successful settlement; settlement failed for the remaining 76 cases (See Figure 2b).

表2a 2007年4月1日至2008年3月31日期間經調查及調解後已完結的個案 (共781宗)  
Figure 2a Investigation and Conciliation: 781 cases concluded – 1 April 2007 to 31 March 2008

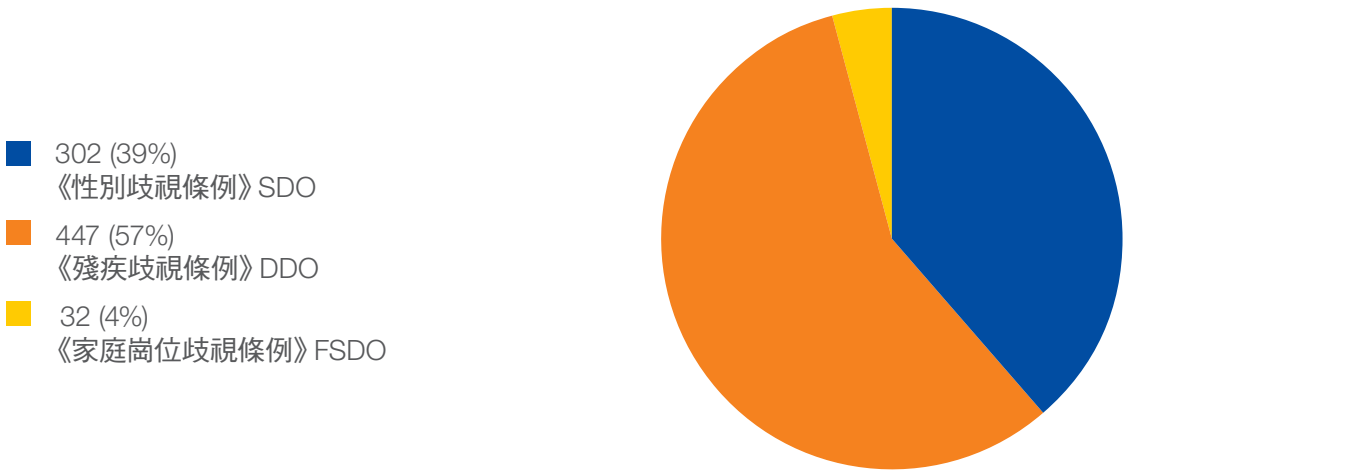


表2b 2007年4月1日至2008年3月31日期間曾進行調解的個案 (共267宗)  
Figure 2b Cases Proceeding to Conciliation: 267 cases – 1 April 2007 to 31 March 2008

	《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
調解成功個案 Successfully conciliated cases	68	117	6	191
未能和解個案 Unsuccessful cases	36	38	2	76
總數 Total	104	155	8	267

本年度有514宗投訴未進行調解，且因為各種原因需終止調查，例如：(i)有關作為並不違法、(ii)投訴人不想繼續追究、(iii)所指稱的行為在投訴時已超過12個月的限期、(iv)投訴透過其他方法獲得解決，或(v)平機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（詳情見表3）。

A total of 514 complaints did not proceed to conciliation and they were discontinued for a variety of reasons such as (i) the act in question was not unlawful, (ii) the complainant no longer wanted to pursue the complaint, (iii) a period of over 12 months had passed since the act was committed, (iv) the dispute was resolved through other means, or (v) the EOC considered the complaint to be frivolous, vexatious, misconceived or lacking in substance (See Figure 3).

表3 2007年4月1日至2008年3月31日期間個案終止調查的原因 (共514宗)  
Figure 3 Discontinued Cases by Reason: 514 cases – 1 April 2007 to 31 March 2008

	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	得到提早 解決 Matter 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	12	171	90	12	7	292
《性別歧視條例》SDO	6	89	84	16	3	198
《家庭崗位歧視條例》FSDO	0	16	7	0	1	24
總數 Total	18	276	181	28	11	514

與《性別歧視條例》相關之投訴 SDO-related Complaints

- 平機會本年度共調查了417宗涉及僱傭範疇的指稱，當中懷孕歧視仍然是主要的投訴原因，有201宗(48%)，其次是性騷擾，共138宗(33%)（詳情見表4）。
- 平機會本年度共調查了24宗涉及非僱傭範疇的指稱，其中13宗(54%)關乎性別歧視（詳情見表5）。
- A total of 417 employment-related allegations were investigated. Pregnancy discrimination continued to be the major cause for complaint with 201 cases (48%), followed by 138 (33%) sexual harassment cases (See Figure 4).
- Investigations were made into 24 non-employment related allegations; 13 (54%) of which were related to sex discrimination (See Figure 5).

表4 2007年4月1日至2008年3月31日期間根據《性別歧視條例》提出，關乎僱傭範疇而進行調查的指稱 (共417宗)  
Figure 4 Employment Related Allegations investigated under the SDO: 417 cases – 1 April 2007 to 31 March 2008

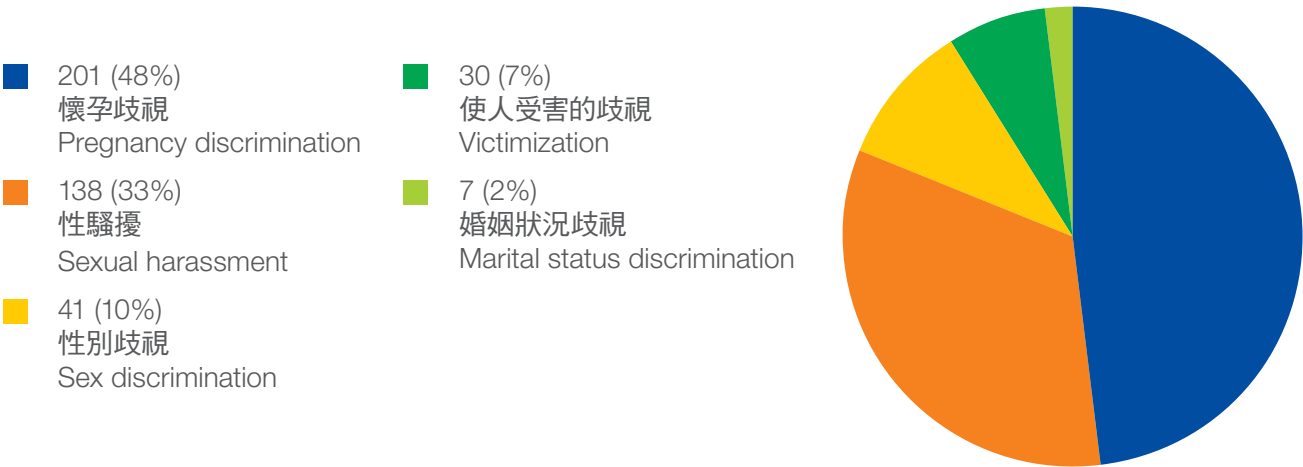




表5 2007年4月1日至2008年3月31日期間根據《性別歧視條例》提出，關乎非僱傭範疇而進行調查的指稱(共24宗))

Figure 5 Non-employment Related Allegations investigated under the SDO: 24 cases – 1 April 2007 to 31 March 2008

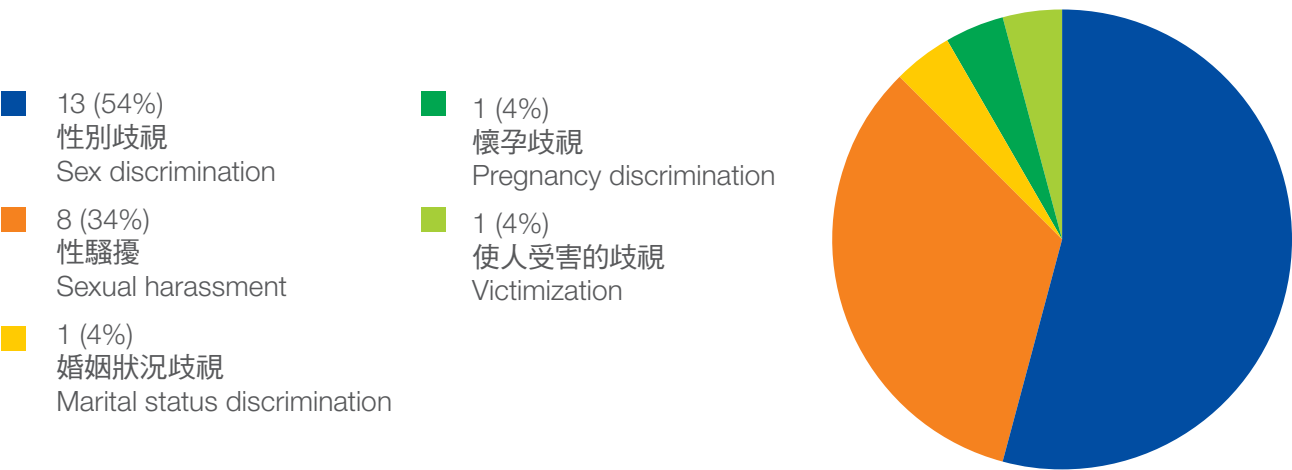
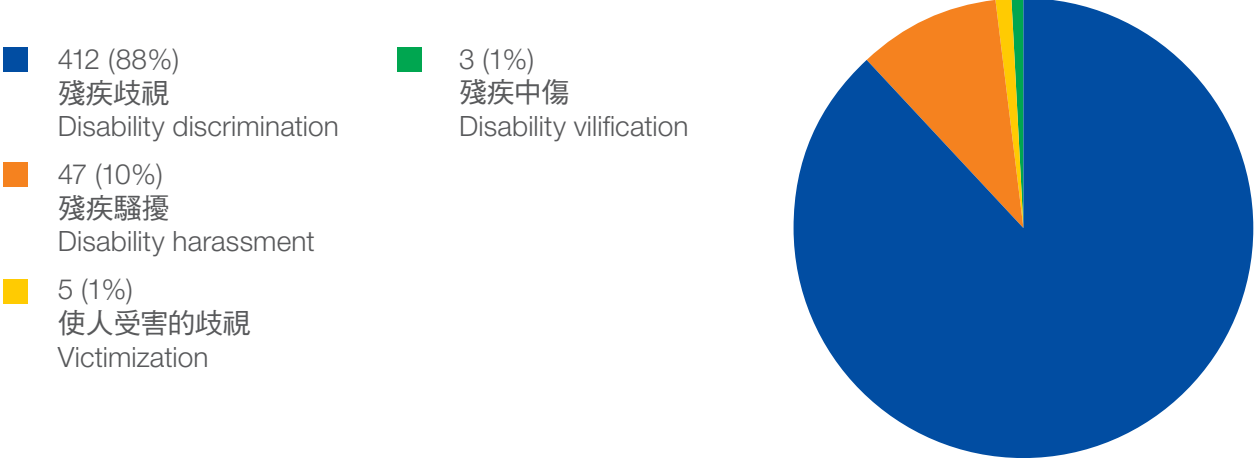


表6 2007年4月1日至2008年3月31日期間根據《殘疾歧視條例》提出，關乎僱傭範疇而進行調查的指稱(共467宗)

Figure 6 Employment Related Allegations investigated under the DDO: 467 cases – 1 April 2007 to 31 March 2008



與《殘疾歧視條例》相關之投訴

- 平機會本年度調查了601宗有關《殘疾歧視條例》的指稱，其中467宗屬僱傭範疇，134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518宗(佔總數86%) (詳情見表6及表7)。

DDO-related Complaints

- A total of 601 allegations were investigated, consisting of 467 employment-related and 134 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 518 (86%) of the total (See Figures 6 and 7).

表7 2007年4月1日至2008年3月31日期間根據《殘疾歧視條例》提出，關乎非僱傭範疇而進行調查的指稱(共134宗)

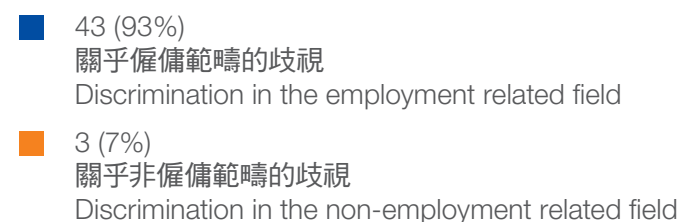
Figure 7 Non-employment Related Allegations investigated under the DDO: 134 cases – 1 April 2007 to 31 March 2008

投訴類別 Type of complaint	投訴數目 Number of complaints
殘疾歧視 Disability discrimination	106
貨品、服務及設施 Goods, services and facilities	56
處所通道 Access to premises	22
政府 Government	13
教育 Education	14
處所管理 Management of premises	1
殘疾中傷、騷擾及使人受害的歧視 Disability vilification, harassment & victimization	28
總數 Total	134

### 與《家庭崗位歧視條例》相關的投訴

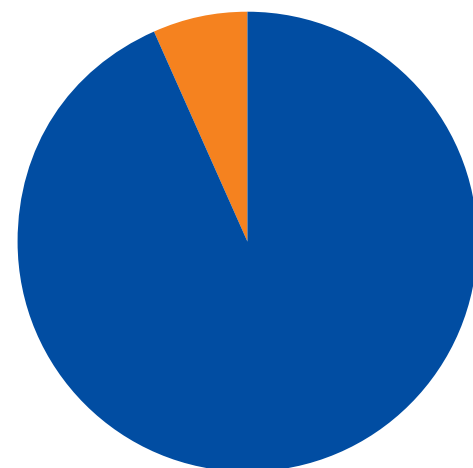
- 平機會本年度調查了46宗有關《家庭崗位歧視條例》的指稱，當中有43宗(93%)關乎僱傭範疇，3宗(7%)關乎非僱傭範疇(詳情見表8)。大部分關乎僱傭範疇的指稱(63%)與基於家庭崗位而被解僱有關。

表8 2007年4月1日至2008年3月31日期間根據《家庭崗位歧視條例》提出並進行調查的指稱(共46宗)  
Figure 8 Allegations investigated under the FSDO: 46 cases – 1 April 2007 to 31 March 2008



### FSDO-related Complaints

- During the year, a total of 46 FSDO allegations were investigated, 43 (93%) of which were employment-related and three (7%) were non-employment related (See Figure 8). The majority (63%) of the allegations in the employment field were related to dismissal on the grounds of family status.



### 平機會的主動調查

對於由不想參與調查或調解的受屈人士或第三者所提出的違法行為，平機會亦會採取行動。在這些情況下，平機會會聯絡有關人士，就事件作出查詢，向他們解釋有關法例，並建議他們加以糾正。在本年度，平機會處理了71宗有關個案，其中19宗關於《性別歧視條例》(主要關於招聘及服務提供)，51宗關於《殘疾歧視條例》(主要關於通道及服務提供)，以及1宗關於《家庭崗位歧視條例》。

### EOC-initiated Investigations

We also initiate investigation into incidents with regard to unlawful acts brought to our attention by third party, 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 provision, and advise them to rectify the situation. During the year, we handled 71 such cases: 19 under the SDO (mainly on recruitment and service provision), 51 under the DDO (mainly on accessibility and service provision) and one under the FSDO.

### 查詢

查詢服務是平機會為公眾提供的一項重要服務。在2007/08年度，平機會共處理了12,726宗查詢，其中6,181宗為有關法律條文的一般查詢，6,545宗為涉及特定事項的具體查詢。電話查詢仍然是最常用的途徑，其次為書面查詢及親臨向平機會職員查詢。

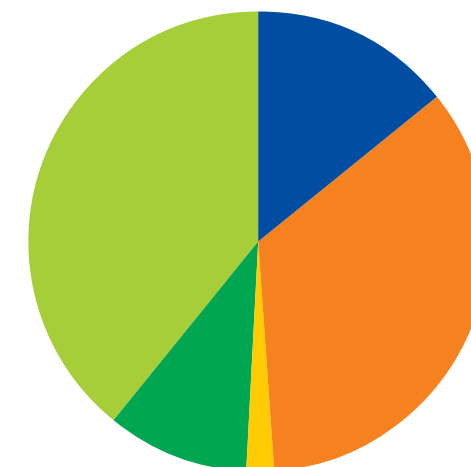
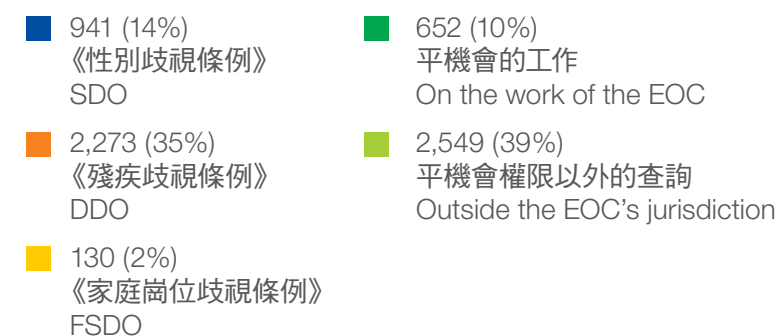
一般查詢涉及平機會的活動和反歧視條例的條文，而具體查詢則涉及個別事件的相關問題，具體查詢隨後有可能變為正式投訴。本年度收到6,545宗具體查詢中，有941宗與《性別歧視條例》有關，2,273宗與《殘疾歧視條例》有關，130宗與《家庭崗位歧視條例》有關。另有3,201宗關乎其他問題(詳情見表9)。

### Enquiries

Enquiry service is an important service offered to members of the public. In 2007/08, the number of enquiries handled was 12,726 with 6,181 general enquiries on legal provisions and 6,545 specific enquiries on situational matters. Telephone enquiry remains to be the most popular mode, followed by written enquiry and interview in person.

General enquiries relate to our activities and the provisions of anti-discrimination law, whilst specific enquiries cover incident-related issues with likelihood of becoming complaints. Of the 6,545 specific enquiries received, 941 were related to the SDO, 2,273 to the DDO and 130 to the FSDO, while the remaining 3,201 covered enquiries on other issues (See Figure 9).

表9 2007年4月1日至2008年3月31日期間的具體查詢分類(共6,545宗)  
Figure 9 6,545 Specific Enquiries – 1 April 2007 to 31 March 2008



### 法律協助的申請

若有投訴人提出投訴，卻未能與對方達成和解，平機會有權向欲採取法律行動的申請人提供法律協助。在收到法律協助的申請後，平機會的律師會評估個案，然後向委員會建議個案的證據是否有力及其他需考慮的因素。平機會將會根據法律意見，決定是否給予協助。協助的形式包括：由平機會的律師向申請人提供法律意見、協助申請人取得及評估進一步的資料或證據、或由平機會的律師或平機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。

在2007/08年度，平機會共處理了34宗有關法律協助的申請，其中14宗獲得協助。有關申請的分類詳情請參閱《附錄5：法律協助的申請》。

### Applications for Legal Assistance

Where a complaint has been lodged and has not been settled, the EOC has power to grant assistance to applicants who wish to take legal proceedings with regard to the complaint. When an application for assistance is received, our lawyers will conduct an assessment of the application before advising the EOC on the strength of the evidence and other considerations. Upon receipt of the legal advice of the lawyers, the EOC will decide whether or not to grant assistance. The assistance granted by the EOC may include legal advice to the applicant by the EOC's lawyers, legal services relating to the gathering and assessment of further information or evidence, representation in legal proceedings by the EOC's lawyers, or by barristers in private practice briefed by the EOC.

During 2007/08, we had to deal with 34 applications for assistance and granted assistance in 14 of them. Further details and a breakdown of the applications can be found under "Appendix 5: Applications for Legal Assistance".



### 獲法律協助的個案

在2007/08年度，共有12宗獲平機會協助的個案在展開法律程序前已經解決，當中包括自往年延續至本年度的個案。此類個案包括雙方達成和解，或申請人或平機會撤回法律協助的個案。

此外，有10宗在2007/08年度或以前已獲給予法律協助的個案仍在處理中；截至2007/08年底，這些個案仍未有結果或未展開法律程序（見附錄6）。

### Legally Assisted Cases

During 2007/08, 12 cases in which legal assistance was granted before and during 2007/08 were resolved without commencing legal proceedings. These include cases in which the parties reached settlement or cases in which the applicant withdrew or the EOC withdrew assistance.

Ten other cases where legal assistance was granted before and during 2007/08 were still being handled and for which no outcome had yet been reached and no court proceedings had been commenced as at the end 2007/08 (See Appendix 6).





法律訴訟

平機會在2007/08年度處理了7宗法庭案件，這些案件都在2007/08年度前已展開法律程序。當中4宗案件已獲解決，其中1宗已進行審訊，並獲判平機會協助之原告人得直；尚餘的2宗案件在2007/08年度完結前仍在處理中。

平機會在2007/08年度展開了4宗案件的法律訴訟。其中1宗案件在雙方同意和解條款保密的情況下已獲解決。截至2007/08年度完結前，仍有3宗案件在訴訟程序中（見附錄7）。

Court Cases

During 2007/08, the EOC handled seven court cases in which court proceedings were commenced before 2007/08. Four of these cases were settled and one of these cases proceeded to trial, and judgment was given in favour of the EOC assisted Plaintiff in the trial. Two remaining cases were still under handling at the end of 2007/08.

During 2007/08, the EOC commenced legal proceedings in four cases. One of these cases was settled on confidential terms and three were on-going as at the end of 2007/08 (See Appendix 7).

平機會在2007/08年度採取法律行動的概要  
Summary of the EOC's Legal Activities 2007/08

2007/08年度處理的法律協助申請 Applications for legal assistance processed during 2007/08	2006/07年度收到的申請 Received in 2006/07	4
	2007/08年度收到的申請 Received in 2007/08	30
	總數 Total	34
	給予法律協助 Granted	14
	不給予法律協助 Not Granted	13*
	撤回申請 Withdrawal	1
	考慮中 Under Consideration	6
獲給予法律協助的個案(毋需展開法律程序) Legally assisted cases (without commencement of legal proceedings)	已解決 Resolved	12
	處理中 Ongoing	10
委員會協助的法庭案件(2007/08年度前已展開訴訟) EOC assisted court cases (commenced before 2007/08)	勝訴 Won	1
	已解決 Settled	4
	處理中 Ongoing	2
委員會協助的法庭案件(於2007/08年度展開訴訟) EOC assisted court cases (commenced during 2007/08)	已解決 Settled	1
	處理中 Ongoing	3

\* 其中一項申請在2007/08年度不獲給予法律協助，但申請人請求覆核，最終在2007/08年度後(2008年4月)獲給予法律協助。

\*One application was not granted during 2007/08, but upon the Applicant's request for review, the application was granted after 2007/08 (in April 2008).

