



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

香港現有四條反歧視條例，即《性別歧視條例》、《殘疾歧視條例》、《家庭崗位歧視條例》和《種族歧視條例》。法例禁止性別歧視、性騷擾、懷孕歧視、婚姻狀況歧視；殘疾歧視、殘疾騷擾及中傷；家庭崗位歧視；和種族歧視、騷擾及中傷等違法行為。《種族歧視條例》已於2008年7月18日刊憲，並於2009年7月10日起全面生效。

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。

### 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。

Hong Kong's four anti-discrimination ordinances, namely the SDO, the DDO, the FSDO and the RDO prohibit unlawful behaviour such as sex discrimination, sexual harassment, pregnancy discrimination, marital status discrimination; disability discrimination, harassment and vilification; family status discrimination; and racial discrimination, harassment and vilification. The RDO, gazetted on 18 July 2008, has come into full effect from 10 July 2009.

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 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.

### 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 and give both parties an opportunity to comment and respond to the allegations made. Where it is considered appropriate, 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.

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**表1** 2008年4月1日至2009年3月31日期間接獲的投訴(共778宗)  
**Figure 1** Complaints and Investigations: 778 complaints received – 1 April 2008 to 31 March 2009

		《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	317	436	25	778
投訴人數目	No. of complainants	272	395	20	687
答辯人數目	No. of respondents	306	425	22	753

### 經處理的投訴

2008/09年度，平機會接獲687位投訴人對753位答辯人作出投訴，共涉及778宗指稱違法行為的個案，較2007/08年度由670位投訴人對786位答辯人作出847宗投訴為少。在這些投訴中，有317宗是根據《性別歧視條例》提出、436宗根據《殘疾歧視條例》，另有25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了1,085宗投訴，比上年度的1,088宗微跌0.3%（詳情見表2）。成功調解率達67%，而之前12個月的調解率為72%。

**表2** 2008年4月1日至2009年3月31日期間處理的投訴調查(共1,085宗)  
**Figure 2** Complaints and Investigations: 1,085 complaints handled – 1 April 2008 to 31 March 2009

		《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	428	466	37	931
非僱傭範疇	Non-employment	28	124	2	154
<b>總數</b>	<b>Total</b>	<b>456</b>	<b>590</b>	<b>39</b>	<b>1,085</b>

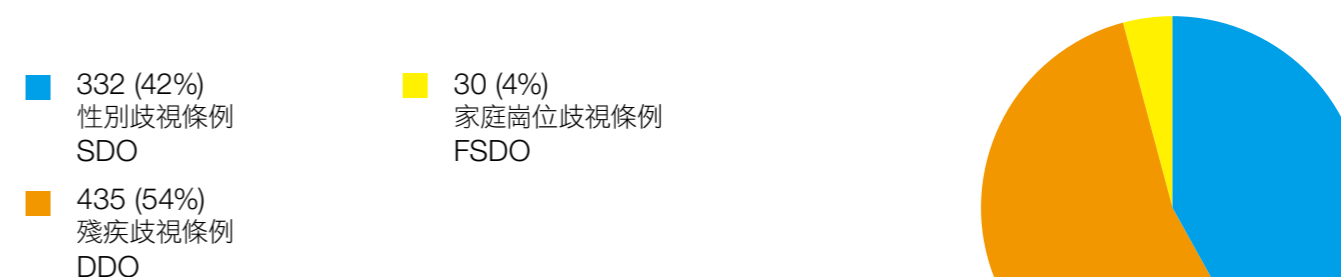
### Complaints Handled

During the year, we received complaints from 687 complainants against 753 respondents involving 778 cases of alleged unlawful acts, a decrease from the 847 complaints received in 2007/08 from 670 complainants against 786 respondents. Of the complaints, 317 were received under the SDO, 436 under the DDO and 25 under the FSDO. Together with those carried forward from previous years, we investigated a total of 1,085 complaints, representing a slight decrease of 0.3% as compared to 1,088 in the previous year (See Figure 2). The successful conciliation rate was 67% during the year, as compared to 72% in the previous 12 months.

在2008/09年度，平機會完成了797宗有關指稱違法行為個案的調查工作（詳情見表2a）。當中有307宗進行了調解，其中206宗調解成功，餘下的101宗未能和解（詳情見表2b）。

In 2008/09, we completed investigations on 797 cases of alleged unlawful behaviour (See Figure 2a). Of this number, 307 proceeded to conciliation with 206 reaching successful settlement; settlement failed for the remaining 101 cases (See Figure 2b).

**表2a** 2008年4月1日至2009年3月31日期間經調查及調解後已完結的個案(共797宗)  
**Figure 2a** Investigation & Conciliation: 797 cases concluded – 1 April 2008 to 31 March 2009



**表2b** 2008年4月1日至2009年3月31日期間曾進行調解的個案(共307宗)  
**Figure 2b** Cases Proceeding to Conciliation: 307 cases – 1 April 2008 to 31 March 2009

		《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	88	107	11	206
未能和解個案	Unsuccessful cases	40	58	3	101
<b>總數</b>		<b>128</b>	<b>165</b>	<b>14</b>	<b>307</b>

本年度有490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) 指稱的作為在投訴時已超過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 490 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).



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**表3** 2008年4月1日至2009年3月31日期間個案終止調查的原因 (共490宗)  
**Figure 3** Discontinued Cases by Reason: 490 cases – 1 April 2008 to 31 March 2009

		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	28	150	84	3	5	270
《性別歧視條例》	SDO	4	105	90	3	2	204
《家庭崗位歧視條例》	FSDO	0	12	3	0	1	16
<b>總數</b>		<b>32</b>	<b>267</b>	<b>177</b>	<b>6</b>	<b>8</b>	<b>490</b>

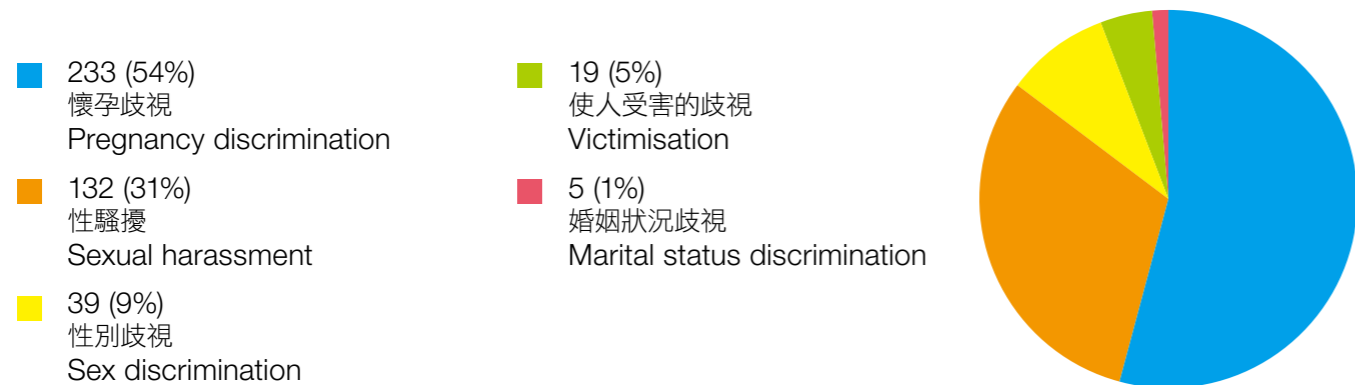
### 與《性別歧視條例》相關 之投訴

平機會本年度共調查了428宗關於僱傭範疇的指稱，當中懷孕歧視仍然是主要的投訴原因，有233宗(54%)；其次是性騷擾，共132宗(31%) (詳情見表4)。

### SDO-related Complaints

A total of 428 employment-related allegations were investigated. Pregnancy discrimination continued to be the major cause for complaint with 233 cases (54%), followed by 132 (31%) sexual harassment cases (See Figure 4).

**表4** 2008年4月1日至2009年3月31日期間根據《性別歧視條例》提出，關於僱傭範疇而進行調查的指稱 (共428宗)  
**Figure 4** Employment Related Allegations Investigated under the SDO: 428 cases – 1 April 2008 to 31 March 2009



平機會本年度共調查了28宗有關非僱傭範疇的指稱，其中12宗(43%)關於性別歧視(詳情見表5)。

Investigations were made into 28 non-employment related allegations; 12 (43%) of which were related to sex discrimination (See Figure 5).

**表5** 2008年4月1日至2009年3月31日期間根據《性別歧視條例》提出，關於非僱傭範疇而進行調查的指稱 (共28宗)  
**Figure 5** Non-employment Related Allegations Investigated under the SDO: 28 cases – 1 April 2008 to 31 March 2009



### 與《殘疾歧視條例》相關 之投訴

平機會本年度調查了590宗有關《殘疾歧視條例》的指稱，其中466宗屬僱傭範疇，124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542宗(佔總數92%) (詳情見表6及表7)。

### DDO-related Complaints

A total of 590 allegations were investigated, consisting of 466 employment-related and 124 non-employment related cases.

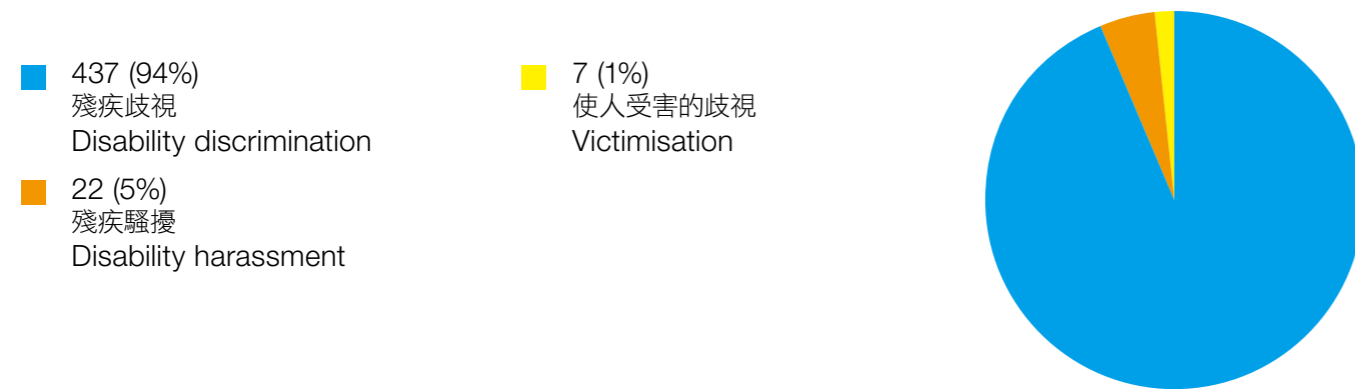
Among both the employment-related and non-employment related cases handled, disability discrimination was the single largest cause for complaint, accounting for 542 (92%) of the total (See Figures 6 and 7).

## 投訴處理及法律行動

### Complaint Handling and Legal Action

**表6** 2008年4月1日至2009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466宗)

**Figure 6** Employment Related Allegations Investigated under the DDO: 466 cases – 1 April 2008 to 31 March 2009



**表7** 2008年4月1日至2009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124宗)

**Figure 7** Non-employment Related Allegations Investigated under the DDO: 124 cases – 1 April 2008 to 31 March 2009

投訴種類 Type of complaint	投訴數目 Number of complaints
殘疾歧視 Disability discrimination	105
貨品、服務及設施的提供 Provision of goods, services and facilities	57
處所通道 Access to premises	25
政府 Government	14
教育 Education	7
授予資格的團體 Qualifying bodies	1
職業訓練 Vocational training	1
殘疾中傷、騷擾及使人受害的歧視 Disability vilification, harassment & victimisation	19
<b>總數 Total</b>	<b>124</b>

## 與《家庭崗位歧視條例》 相關的投訴

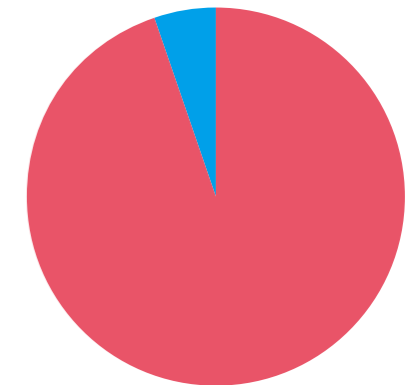
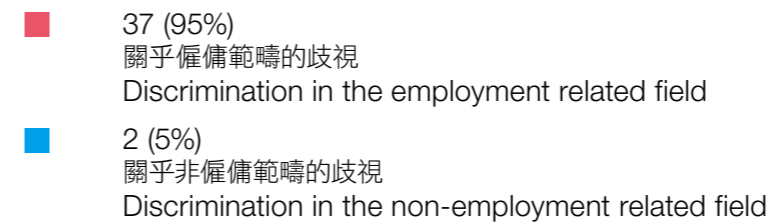
平機會本年度調查了39宗有關《家庭崗位歧視條例》的指稱，當中有37宗(95%)關乎僱傭範疇，2宗(5%)關乎非僱傭範疇(詳情見表8)。大部分關乎僱傭範疇的指稱(73%)是基於家庭崗位而被解僱。

## FSDO-related Complaints

During the year, a total of 39 FSDO allegations were investigated, 37 (95%) of which were employment-related and two (5%) were non-employment related (See Figure 8). The majority (73%) of the allegations in the employment field were related to dismissal on the grounds of family status.

**表8** 2008年4月1日至2009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39宗)

**Figure 8** Allegations Investigated under the FSDO: 39 cases – 1 April 2008 to 31 March 2009



### 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，平機會亦會主動作出調查。在這些情況下，平機會會聯絡有關人士，查詢有關事件，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60宗這類個案，其中11宗關於《性別歧視條例》(主要關於招聘及服務提供)，48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》。

### 查詢

查詢服務是平機會為公眾提供的一項重要服務。在2008/09年度，平機會共處理了14,550宗查詢，其中7,177宗為有關法律條文的一般查詢，7,373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，其後有可能變為正式投訴。本年度收到的7,373宗具體查詢中，有1,062宗與《性別歧視條例》有關，2,529宗與《殘疾歧視條例》有關，199宗與《家庭崗位歧視條例》有關。另有3,583宗關乎其他問題(詳情見表9)。

### EOC-initiated Investigations

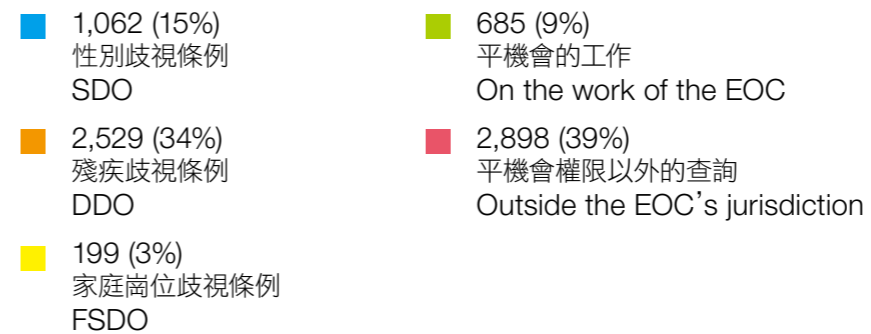
We also initiate investigation into incidents with regard to unlawful acts brought to our attention by third party, or aggrieved individuals who do not wish to be involved in the investigation or conciliation process. Under these circumstances, the Commission approaches the concerned parties to inquire into the matter, explain the relevant provision, and advise them to rectify the situation. During the year, we handled 60 such cases: 11 under the SDO (mainly on recruitment and service provision), 48 under the DDO (mainly on accessibility and service provision) and one under the FSDO.

### Enquiries

Enquiry service is an important service offered to members of the public. In 2008/09, the number of enquiries handled was 14,550 with 7,177 general enquiries on legal provisions and 7,373 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 7,373 specific enquiries received, 1,062 were related to the SDO, 2,529 to the DDO and 199 to the FSDO, while the remaining 3,583 covered enquiries on other issues (See Figure 9).

表9 2008年4月1日至2009年3月31日期間的具體查詢分類 (共7,373宗)  
Figure 9 7,373 Specific Enquiries – 1 April 2008 to 31 March 2009



### 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，平機會有權向希望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2008/09年度，平機會共處理了49宗有關法律協助的申請及1宗覆核要求，其中16宗獲得協助。有關申請的分類詳情請參閱《附錄5：申請法律協助》。

### Applications for Legal Assistance

Where a complaint has been lodged and has not been settled, the EOC has authority 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 2008/09, we had to deal with 49 applications for assistance and one request for review, and granted assistance in 16 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2008/09年度，共有6宗獲平機會協助的個案在展開法律程序前已經解決。此類個案包括雙方達成和解，以及申請人或平機會經進一步評估後撤回法律協助的個案。

此外，有13宗在2008/09年度或以前已獲給予法律協助的個案仍在處理中；截至2008/09年底，這些個案仍未有結果或未展開法律程序(見附錄6)。

### 法律訴訟

平機會在2008/09年度處理了5宗法庭案件，這些案件都在2008/09年度前已展開法律程序。當中1宗案件已獲解決，另1宗已進行審訊，並獲判平機會協助之原告人得直；尚餘的3宗案件在2008/09年度完結前仍在處理中。

平機會在2008/09年度展開了6宗案件的法律訴訟。其中2宗案件在雙方同意和解條款保密的情況下已獲解決。截至2008/09年完結前，仍有4宗案件在訴訟程序中(見附錄7)。

### Legally Assisted Cases

During 2008/09, six cases in which legal assistance was granted before and during 2008/09 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 in the light of further assessment.

Thirteen other cases where legal assistance was granted before and during 2008/09, were still being handled and for which no outcome had yet been reached and no court proceedings had been commenced as at the end 2008/09 (See Appendix 6).

### Court Cases

During 2008/09, the EOC handled five court cases in which court proceedings had commenced before 2008/09. One of these cases was settled and one of these cases proceeded to trial where judgment was given in favour of the EOC assisted Plaintiff in the trial. Three remaining cases were still under handling at the end of 2008/09.

During 2008/09, the EOC commenced legal proceedings in six cases. Two of these cases were settled on confidential terms and four were ongoing as at the end of 2008/09 (See Appendix 7).

### 平機會在2008/09年度採取法律行動的概要 Summary of the EOC's Legal Activities 2008/09

2008/09年度處理的法律協助申請 Applications for legal assistance processed during 2008/09	2007/08年度收到的申請 Received in 2007/08	6
	2008/09年度收到的申請 Received in 2008/09	43
	<b>總數</b> <b>Total</b>	<b>49</b>
	給予法律協助 Granted	16*
	不給予法律協助 Not Granted	25
	撤回申請 Withdrawal	0
	考慮中 Under Consideration	9
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	6
	處理中 Ongoing	13
委員會協助的法律案件(2008/09年度前已展開訴訟) EOC assisted court cases (commenced before 2008/09)	勝訴 Won	1
	已解決 Settled	1
	處理中 Ongoing	3
委員會協助的法律案件(2008/09年度展開訴訟) EOC assisted court cases (commenced during 2008/09)	已解決 Settled	2
	處理中 Ongoing	4

\* 其中一項申請在2007/08年度不獲給予法律協助，但申請人要求覆核，最終在2008/09年度（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 in 2008/09 (in April 2008).