

# 香

港現時共有三條反歧視法例，即《性別歧視條例》、《殘疾歧視條例》和《家庭崗位歧視條例》。根據反歧視條例，任何人如基於性別、婚姻狀況、懷孕、殘疾或家庭崗位而歧視另一人，即屬違法。根據《性別歧視條例》和《殘疾歧視條例》，性騷擾或基於某人的殘疾而作出騷擾或中傷的行為，亦屬違法。三條條例規定，刊載歧視性廣告也屬違法。

反歧視條例中關乎僱傭範疇的條文不單保障現職僱員，也保障求職者、經紀及訂立合同者。該等條文涵蓋職業訓練、職業介紹所、合夥人委任、專業團體及工會等活動。條例中與僱傭無關的條文適用於多個範疇，包括教育、提供貨品或服務、參加會社、體育活動、處所的管理，以及政府活動等。

## 查詢

隨着市民對委員會的工作認識日深，我們收到的查詢及投訴個案也日多，其性質亦越來越多樣化。

由1998年4月1日至1999年3月31日，委員會共接獲5,849宗一般查詢和1,991宗具體事項查詢。一般查詢包括索取有關委員會角色與職能、活動和刊物等資料。至於具體事項查詢，其中818宗關乎《性別歧視條例》，871宗關乎《殘疾歧視條例》，144宗關乎《家庭崗位歧視條例》，另有25宗關乎委員會的工作。其餘133宗具體事項查詢不屬委員會司法管轄權之內，包括：年齡、種族、性傾向和宗教等方面的歧視行為。

## 投訴

### 需進行調查及調解的投訴

反歧視條例規定，任何人士如認為受到違法歧視行為對待，可親身或授權代表向委員會提出書面投訴。

調查期間，委員會的職員會研究每宗個案的事實，投訴的雙方都有機會就所指稱的事宜提出意見和作出回應。委員會致力透過調解方式解決事情，協助雙方達致和解。如果未能達成和解，委員會會應投訴人的申請，考慮給予其他形式的協助。委員會會獨立考慮每個申請，研究個案是否涉及原則問題，以及如不給予協助，投訴人能否自行處理個案等。委員會給予的協助包括提供法律意見、法律協助或任何適當的協



助。委員會在本年內處理個案的一些例子，包括成功和解及終止調查的個案詳情，請參閱本年報第48頁至54頁。

在某些情況下，委員會可根據多項原因而決定不進行或終止某個案的調查工作。原因計有：有關行為並不違法、投訴人不願繼續投訴、或所指稱的行為已發生超過十二個月。如投訴不應為代表投訴、或委員會認為投訴屬瑣屑無聊、無理取鬧、基於錯誤理解或缺乏實質等，也會不進行調查或終止調查。

由1998年4月1日至1999年3月31日，委員會共接獲408宗投訴，其中127宗關乎《性別歧視條例》、265宗關乎《殘疾歧視條例》、16宗關乎《家庭崗位歧視條例》。連同過往未完結的個案，我們本年度共處理496宗投訴。

期間我們完成了318宗個案的調查工作，其中163宗進行了調解。在這163宗個案中，96宗(59%)成功和解，67宗(41%)調解失敗。餘下的155宗個案已終止調查，其中52宗(33.5%)因投訴人基於個人理由不想繼續投訴；另47宗(30.3%)在調查過程中已得到解決，且投訴人滿意結果；還有37宗(23.9%)屬瑣屑無聊或缺乏實質，其餘19宗(12.3%)則沒有違法行為。

根據《性別歧視條例》提出的投訴之中，關乎僱傭範疇的達138宗，主要見於招聘、僱用條款及條件、晉升及解僱等方面。當中涉及性騷擾(54宗)、性別歧視(27宗)、懷孕歧視(40宗)、婚姻狀況歧視(4宗)及使人受害的歧視(13宗)。

There are at present three pieces of anti-discrimination legislation in Hong Kong, namely, the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO). Under the 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 SDO and the DDO. It is also unlawful to publish a discriminatory advertisement under the three ordinances.

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

As the community becomes more aware of the work of the Commission, the range and number of enquiries and complaints we received have correspondingly increased.

During the period from 1 April 1998 to 31 March 1999 there were 5,849 general and 1,991 specific enquiries.

General enquiries included requests for information on the role and functions of the Commission, activities and events, publications, etc. As for the specific enquiries, 818 were related to the SDO, 871 were on the DDO and 144 on the FSDO, with a further 25 on the work of the Commission. As for the remaining 133 specific enquiries, they covered areas falling outside our jurisdiction, such as discriminatory behaviour relating to age, race, sexual orientation and religion among others.

### Complaints

#### *Complaints for Investigation and Conciliation*

Under the anti-discrimination legislation, anyone who feels that he or she has been subjected to a discriminatory act that is unlawful, can seek redress by lodging a complaint in writing with the Commission, either personally or through a representative.

During the investigation, the facts of each case are looked into and both parties will be given the opportunity to comment and respond to the allegations made. The Commission will endeavour to resolve the matter through conciliation and help the parties to reach a settlement. If a settlement cannot be reached, the Commission may consider other forms of assistance upon the application of the complainant. 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 may include advice, legal assistance



根據《性別歧視條例》提出而與僱傭範疇無關的個案，有21宗涉及在提供貨品、服務或設施時的性騷擾(12宗)、婚姻狀況歧視(5宗)及性別歧視(4宗)。

在40宗懷孕歧視個案中，19宗的投訴人被僱主要求自動辭職或在通知僱主懷孕後被解僱。12宗的投訴人是放完產假後恢復上班不久即被僱主解僱。根據《性別歧視條例》提出的投訴中，懷孕歧視投訴屬第二大類別，僅次於性騷擾投訴。根據《殘疾歧視條例》提出的投訴之中，關乎僱傭範疇的達195宗，主要為解僱。這些個案中有166宗(85.1%)涉及殘疾歧視，29宗(14.9%)涉及殘疾騷擾。

根據《殘疾歧視條例》提出而與僱傭範疇無關的個案達125宗，其中95宗分別涉及貨品、服務或設施的提供(38宗)、通道(35宗)、教育(14宗)、政府活動(5宗)、及處所管理(3宗)。餘下30宗關乎殘疾騷擾和中傷。

根據《家庭崗位歧視條例》提出的個案有17宗，全部關乎僱傭範疇，涉及解僱、晉升和調職。

#### 需跟進的投訴

由第三者或不想參與調查或調解的受屈人士向委員會提出有關違法行為的投訴，委員會亦會採取行動。在這情況下，我們會聯絡有關人士，向他們解釋有關法例條文，並請他們作出糾正。我們於本年度處理了166宗這類投訴，其中106宗是關乎《殘疾歧視條例》，56宗關乎《性別歧視條例》，

4宗關乎《家庭崗位歧視條例》。此外，我們也會主動找出歧視性廣告。本年度我們處理了14宗這類個案。

#### 處所通道

根據《殘疾歧視條例》提出的投訴中，有關處所通道的殘疾歧視佔相當大比數。本年度委員會收到77宗關乎通道的投訴，投訴的事項包括：斜坡道缺乏扶手、地面/行人道地面凹凸不平或破爛、處所入口有梯級、通道受阻或殘疾人士廁所的用途被更改等。在調查這些投訴時，委員會的職員會進行實地視察、拍照及量度、收集有關資料和確定有沒有其他通道。某些有關通道的投訴個案，我們更會就修建斜坡道和清拆障礙物等問題徵詢建築界的專家意見。約三分二的個案得到解決。

#### 法律協助

根據《性別歧視條例》第85條、《殘疾歧視條例》第81條和《家庭崗位歧視條例》第63條，凡曾以書面提出需調查及調解投訴的人士，假如調解失敗，委員會有權向投訴人提供不同形式的協助。委員會在本年度共收到21宗申請協助的個案，其中10宗獲得協助。協助的形式很多，可能由委員會的律師給予法律意見、以至由委員會的律師及/或大律師在法律訴訟中擔任申請人的法律代表等。有關申請法律協助及獲得法律協助的統計數字資料載於第88頁。

5849  
一般查詢  
General Enquiries

1991  
具體事項查詢  
Specific Enquiries

一般查詢及具體事項查詢  
一九九八年四月一日至一九九九年三月三十一日  
General and Specific Enquiries  
(1 April 1998 to 31 March 1999)

or any other assistance which is appropriate. Some typical examples of conciliated and discontinued cases handled during the year are included on pages 48-54 of this report.

In certain situations, the Commission can decide not to conduct or to discontinue an investigation for a number of reasons — the act in question may not be unlawful, the complainant may not want to pursue a complaint, or if more than 12 months have passed since the act was committed. They also include situations where the complaint should not be a representative complaint or where the Commission considers the complaint to be frivolous, vexatious, misconceived or lacking in substance.

Between 1 April 1998 and 31 March 1999, the Commission received a total of 408 complaints, with 127 falling under the SDO, 265 under the DDO and 16 under the FSDO. Together with the complaints brought forward from the previous years, we handled a total of 496 complaints during the year.

During the period, we concluded investigations on 318 complaints, with 163 of them proceeding to conciliation. Out of 163 cases, 96 (59%) were conciliated and conciliation was not successful in 67 cases (41%). Investigations of the remaining 155 complaints were discontinued because the complainants in 52 cases (33.5%) did not wish to pursue the matter for personal reasons while in another 47 cases (30.3%), the matter

under complaint was resolved in the course of investigation and the complainants were satisfied with the outcome. 37 cases (23.9%) were also found to be frivolous or lacking in substance and the remaining 19 cases (12.3%) involved no unlawful acts.

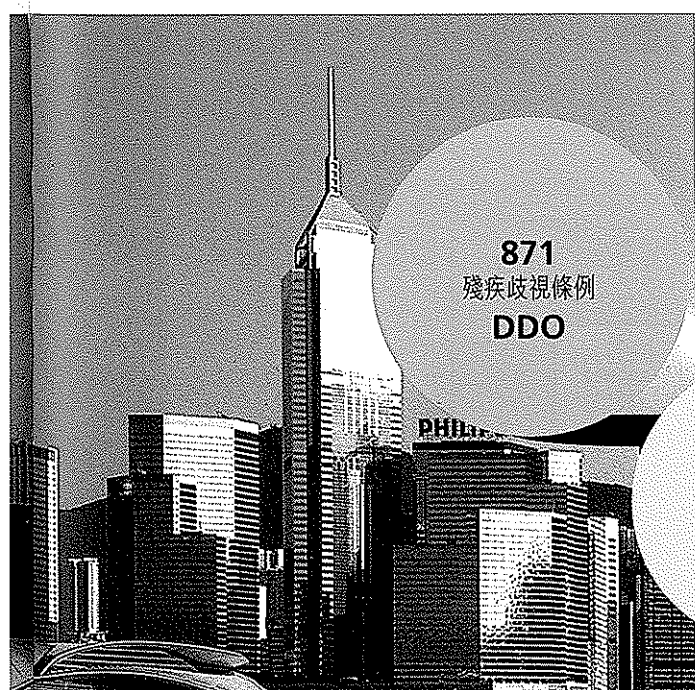
Under the SDO, there were 138 employment-related complaints, mainly in recruitment, terms and conditions of employment, promotion and dismissal. They concerned sexual harassment (54), sex discrimination (27), pregnancy discrimination (40), marital status discrimination (4) and victimization (13).

There were 21 non-employment related complaints in the provision of goods, services or facilities which involved sexual harassment (12), marital status discrimination (5) and sex discrimination (4).

Of the 40 cases in pregnancy discrimination, 19 of the complainants were asked to resign or were dismissed upon notifying employers of their pregnancy. Twelve cases involved employers dismissing employees shortly after they returned from maternity leave. This was the second largest category of complaints under the SDO after sexual harassment.

Under the DDO, there were 195 employment-related complaints, mostly involving dismissal. Of these, disability discrimination accounted for 166 cases (85.1%) while 29 (14.9%) concerned disability harassment.

As for the 125 non-employment related complaints, there



**871**  
殘疾歧視條例  
**DDO**

**144**  
家庭崗位歧視條例  
**FSDO**

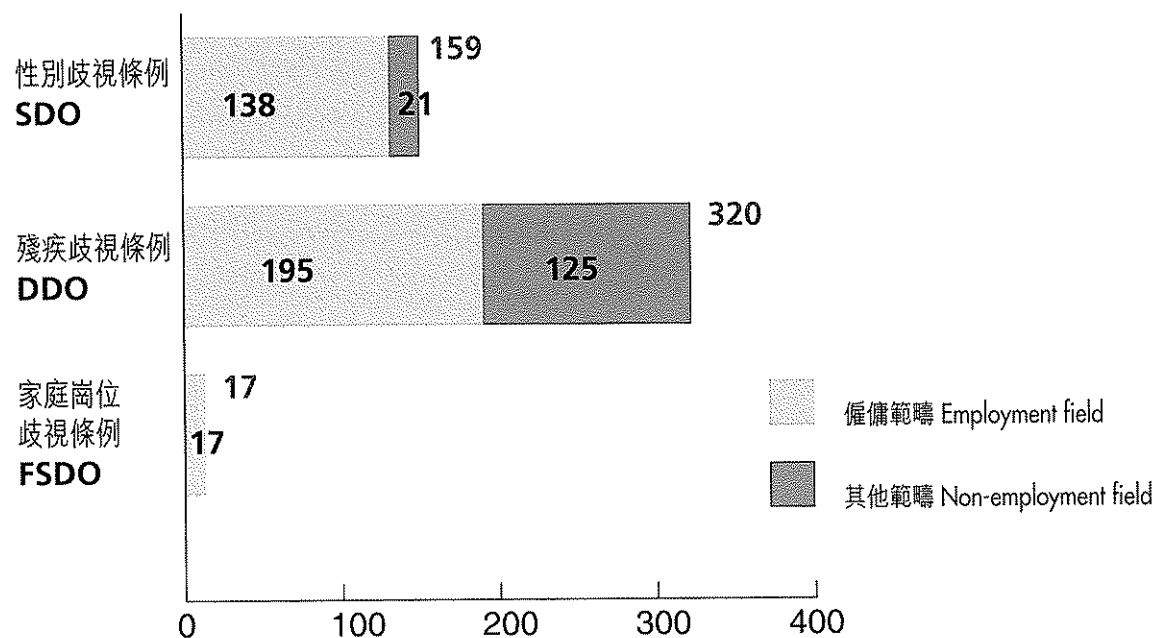
**25**  
委員會的工作  
**On the work  
of EOC**

**133**  
不屬委員會管轄權之內  
**Outside EOC's  
Jurisdiction**

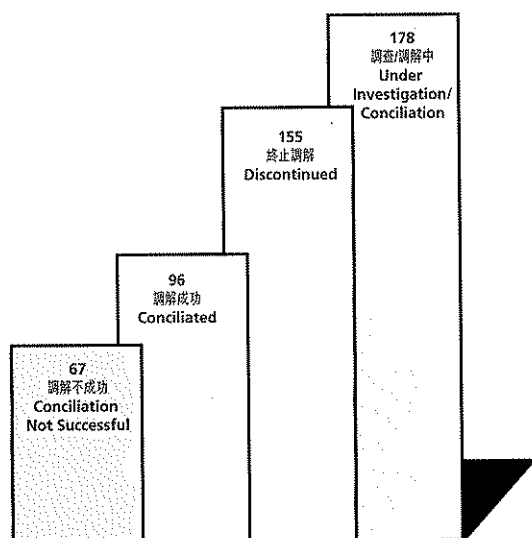
**818**  
性別歧視條例  
**SDO**

具體事項查詢分類(具體事項查詢總數: 1,991)  
Breakdown of Specific Enquiries  
(Number of Specific Enquiries: 1,991)

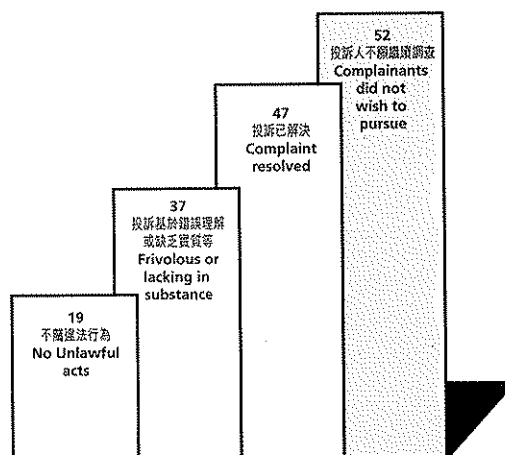
經處理的投訴的狀況 (1998 年 4 月 1 日至 1999 年 3 月 31 日)  
 Status of Complaints Handled (1 April 1998 to 31 March 1999)  
 需作出調查及調解之投訴 (總數: 496)  
 Complaints for investigation and conciliation:  
 Total number of complaints handled - 496



經處理的個案分類 (總數: 496)  
 Total SDO, DDO and FSDO cases handled : 496

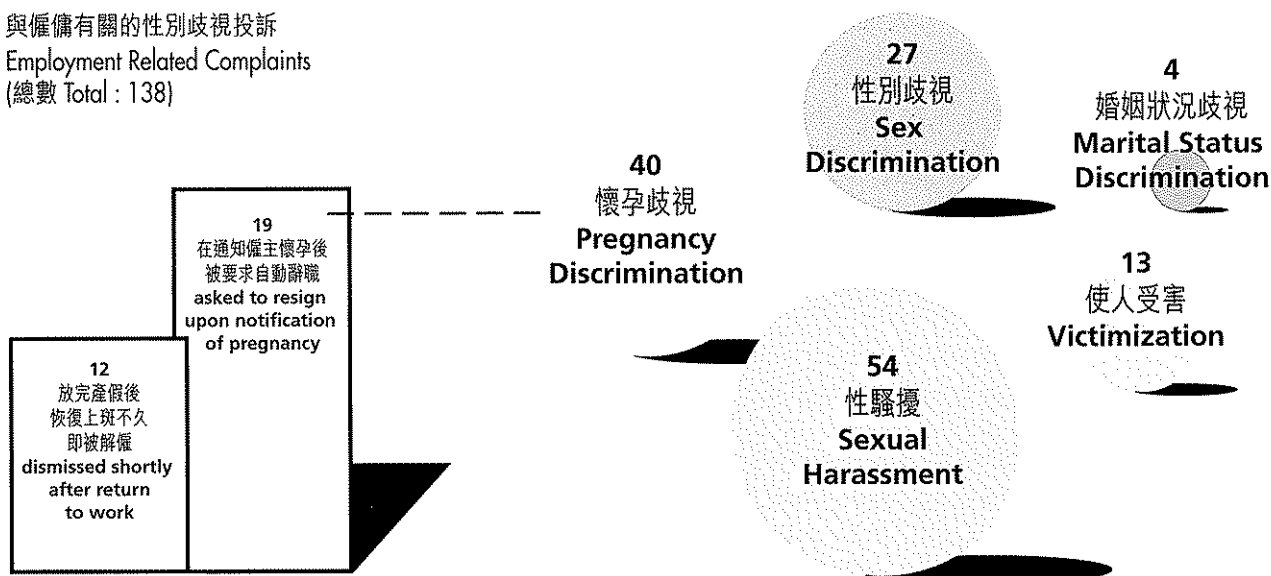


終止調解個案的原因分類  
 Discontinued cases by reason

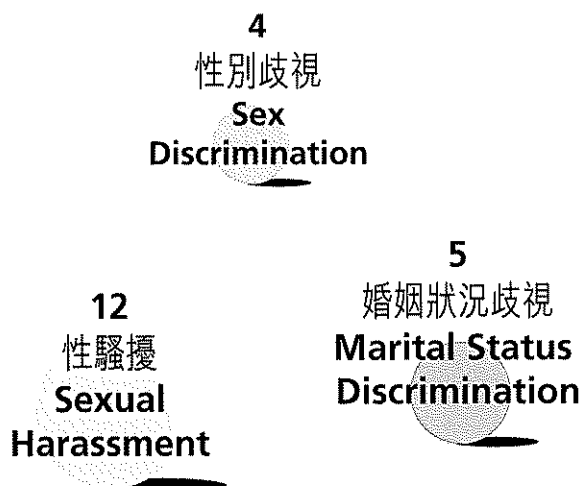


按《性別歧視條例》需作出調查及調解的投訴個案分類 (一九九八年四月一日至一九九九年三月三十一日期間處理)  
Breakdown of Complaints Handled under the SDO (1 April 1998 to 31 March 1999)

與僱傭有關的性別歧視投訴  
Employment Related Complaints  
(總數 Total : 138)



非僱傭範疇的性別歧視投訴  
Non-employment Related Complaints  
(總數 Total : 21)



按《家庭崗位歧視條例》需作出調查及調解的投訴個案分類 (一九九八年四月一日至一九九九年三月三十一日期間處理)  
Breakdown of Complaints Handled under the FSDO (1 April 1998 to 31 March 1999)

17  
家庭崗位歧視-  
僱傭範疇  
Family Status  
Discrimination  
-Employment  
related

## 法庭個案

區域法院於1998年1月聆訊了兩宗案件。該兩宗案件都得到委員會給予法律協助，並分別根據《性別歧視條例》和《殘疾歧視條例》提出訴訟。兩案的原告人均獲法官裁定勝訴。

第一宗為性騷擾案，法官下令被告人因性騷擾原告人，須向原告人支付80,000元損害賠償金，書面道歉和為原告人支付訴訟費。原告人是一名前女大學生。被告人在她的宿舍房間內秘密藏起攝錄機；偷拍原告人，歷時五個月。她因這些性騷擾行為而感到受冒犯和沮喪。

根據《性別歧視條例》，凡做出涉及性的不受歡迎行徑，即屬性騷擾。在教育機構內，某學生性騷擾另一名學生，即屬違法。

第二宗案件，區域法院裁定被告人(的士司機)基於原告人的殘疾而歧視和騷擾她，須負法律責任。的士司機拒絕協助坐輪椅的原告人上的士，又在的士內向她說難聽的話，使她感到受辱和困擾。原告人獲總數達20,000元損害賠償，法官下令被告人作出道歉。

根據《殘疾歧視條例》，在提供貨品、服務或設施時，基於某人的殘疾而歧視該人，即屬違法；服務提供者騷擾想獲取服務的殘疾人士，亦屬違法。

## 委員會的法律行動

根據《性別歧視條例》與《殘疾歧視條例》第43條和《家庭崗位歧視條例》第31條，發布歧視性廣告屬違法行為。發布或安排發布歧視性廣告的人士可能需負上同等的法律責任。委員會根據各條條例所賦予的權力，可向出版商及安排發布廣告的人採取法律行動。1998年的一宗個案，法庭裁定某則招聘多名採訪Ball場靚女記者的廣告不含歧視成分，因為該廣告的中文字眼可以有別的意思。

委員會就有關裁決提出上訴，上訴庭於1998年11月27日裁定委員會得直，並裁定出版商事實上發布了一則歧視性廣告。

## 「中學學位分配辦法」正式調查

「中學學位分配辦法」(下稱「該制度」)由教育署負責，用以分配小學生入讀各中學。該制度自1978年推行以來，一直沒有重大的改變。

教育署於1998年7月首次公開個別學生的所屬派位組別。由於有派位組別比較，令市民關注到該制度在施行上可能含性別歧視成分。

委員會於1998年9月21日根據《性別歧視條例》對該制度進行正式調查，又授權法律及投訴專責小組監察調查工作，且成立了調查小組和委任了一個專家小組。

正式調查的調查範圍於1998年9月18日在憲報刊登，委員會需要：-

「就「中學學位分配辦法」進行正式調查，並參照確保男女學生得到最大教育利益的平等機會法律及常規，研究「中學學位分配辦法」，小六學生成績評定和中學派位的方式，以及施行該辦法的理據，包括：(a)「校內成績」的評定方法是如何制定及實際運作；(b)校外「學業能力測驗」是如何制定及實際運作；(c)把學生歸入不同「派位組別」的做法；及(d)如何根據「中學學位分配辦法」按成績評定和「派位組別」分派學位，及就上述的評定及學位分配方法，為推廣一般男女學生之間的平等機會作出適當建議。」

調查小組從三方面取得資料。為深入瞭解該制度，調查小組要求教育署提供文件及答覆具體問題。又召開教師和校長焦點小組會議，收集教育界人士的意見。更調查學生家長意見，以瞭解家長對該制度的認識程度。

調查小組分析過所收集的資料後，於1999年3月向委員會發表了初步調查結果。正式調查報告全文預計在1999年夏天發表。

were 95 cases related to discrimination in the provision of goods, services or facilities (38), accessibility (35), education (14), government activities (5) and management of premises (3). Another 30 cases concerned disability harassment and vilification.

There were 17 complaints under the FSDO, all of which were employment related involving dismissal, promotion and transfer of post.

#### *Complaints for Follow-up Action*

The Commission also takes action on complaints about unlawful acts brought to our attention by third parties or aggrieved persons who do not wish to be involved in the investigation or conciliation process. Under such circumstances, we approach the concerned parties to explain the provisions of the relevant legislation to them and advise them to rectify the situation. During the year, we handled 166 such complaints, of which 106 were under the DDO, 56 under the SDO and four under the FSDO. In addition, we deal with discriminatory advertisements identified through our monitoring system. There were 14 such cases during the year.

#### **Access to Premises**

Discrimination in access to premises was a major source of complaint under the DDO. During the year, we received 77 access complaints which involved, for instance, ramps without handrails, uneven or broken floors and pavements, steps at entrances to premises, blockage of passages or altered use of disabled toilets. In investigating these complaints, our officers conduct site visits, take photographs and measurements, collect relevant information and ascertain if an alternative access exists. In some access complaint cases, expert architectural advice was sought on the construction of ramps and removal of barriers. About two-thirds of the cases were resolved to the satisfaction of the complainants.

#### **Legal Assistance**

Where conciliation has not been successful, the Commission has powers under section 85 of the SDO, section 81 of the DDO, and section 63 of the FSDO to grant various forms of assistance to applicants who have lodged complaints in writing with the Commission for the purpose of investigation and conciliation. During the year,

the Commission received 21 applications for assistance and granted assistance in 10 of them. The assistance varied from the giving of legal advice by the Commission's lawyers to legal representation in legal proceedings by the Commission's lawyers and/or barristers. The statistics on assistance sought and granted are listed on page 88.

#### **Court Cases**

In January 1998, there were two cases heard in the District Court in which the Commission had provided assistance under the SDO and the DDO respectively to the complainants in taking out legal proceedings. The judge ruled in favour of the plaintiffs in both cases.

*In the first case on sexual harassment, the defendant was ordered to pay \$80,000 in damages, write an apology and pay for the legal fees for sexually harassing the plaintiff. The plaintiff, a former female university student, was filmed by a video camera secretly installed in her dormitory room by the defendant for over five months. She was offended and distressed by such acts of sexual harassment.*

*Under the Sex Discrimination Ordinance (SDO), engaging in unwelcome conduct of a sexual nature is regarded as sexual harassment and it is unlawful for a student of an educational establishment to sexually harass another student.*

*In the second case, the District Court found the defendant, a taxi driver, liable for discriminating against the plaintiff and harassing her on the ground of her disability. The taxi driver left the plaintiff, a wheelchair user, humiliated and frustrated when he refused to help her into his vehicle and said hurtful things to her inside the taxi. The plaintiff was awarded the total sum of \$20,000 for damages and the defendant was similarly ordered to apologize.*

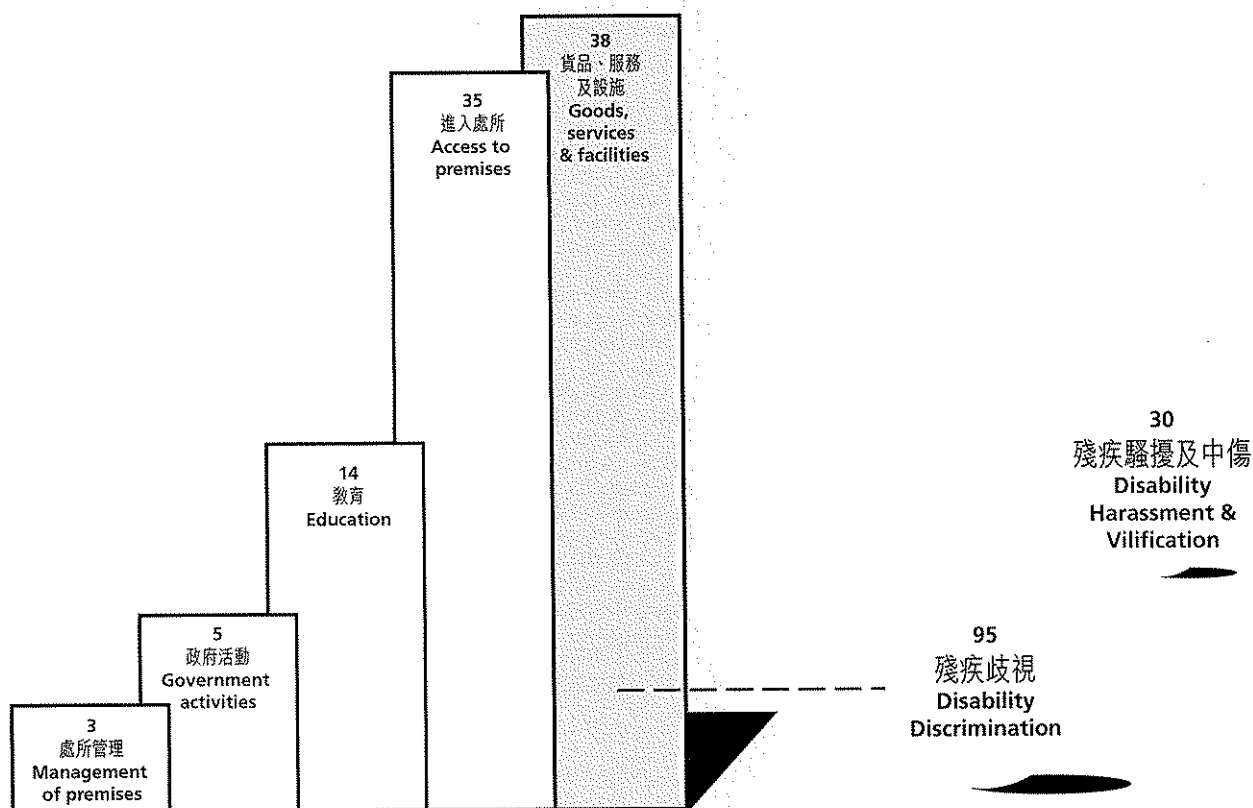
*Under the Disability Discrimination Ordinance (DDO), it is unlawful to discriminate against another person on the ground of disability in the provision of goods, services or facilities. It is also unlawful for a service provider to harass another person with a disability who wants to acquire the services.*

按《殘疾歧視條例》需作出調查及調解的投訴個案分類(一九九八年四月一日至一九九九年三月三十一日)  
Breakdown of Complaints Handled under the DDO (1 April 1998 to 31 March 1999)

與僱傭有關的殘疾歧視投訴  
Employment Related Complaints  
(總數 Total : 195)



非僱傭範疇的殘疾歧視投訴  
Non-employment Related Complaints  
(總數 Total : 125)



## Legal Action Commenced by the EOC

Pursuant to sections 43 of the SDO and the DDO, and section 31 of the FSDO, it is unlawful to publish discriminatory advertisements. Publishers of such advertisements and persons who cause them to be published may be equally liable. The Commission has powers under each of the ordinances to bring legal proceedings against publishers and advertisers. In one case in 1998, the court found a particular advertisement advertising positions for several pretty female reporters to report on social functions not discriminatory because it was capable of an alternative meaning in Chinese.

This decision was appealed by the Commission and on 27 November 1998 the Court of Appeal held in favour of the Commission and found that the publisher had, in fact, published a discriminatory advertisement.

## Formal Investigation into the Secondary School Places Allocation System

The Secondary School Allocation System (SSPA) is used by the Education Department to allocate places for Primary Six pupils into Secondary Schools. The system has been in operation since 1978 with no major changes.

In July 1998, the Education Department made public for the first time the banding of individual pupils. Comparison of the banding led to public concerns about the System with respect to the issue of sex discrimination.

The Commission launched a Formal Investigation under the SDO into the SSPA System on 21 September 1998. The Legal and Complaints Committee of the EOC was delegated the responsibility for the monitoring of the investigation; an Investigation Team was formed and an Expert Panel was appointed.

The terms of reference of the Formal Investigation were set out in the Notice published in the Government Gazette on 18 September 1998. The Investigation enquires:

"into the Secondary School Places Allocation System, the manner in which primary six pupils are assessed and placed into secondary schools, and the rationale for such a system, including:

- (a) how the internal assessment system in schools was developed and how it operates in practice;
- (b) how the external academic aptitude test (AAT) was developed and how it operates in practice;
- (c) the practice of banding pupils; and
- (d) how places are allocated under the Secondary School Places Allocation System as a result of the assessment and banding,

with specific reference to the law and practice of equal opportunity to ensure the maximum educational benefit for boy and girl pupils, and with a view to making appropriate recommendations for the promotion of equality of opportunity between boys and girls generally in relation to such assessment and placement methods."

The Investigation Team went to three sources for information. For better understanding of the system, the Education Department was approached for documents and answers to specific questions. Focus groups were convened of teachers and principals to seek the opinions of educators in the field. A survey of parents was conducted to learn of the parents' understanding of the system.

After analyzing the information collected, the Investigation Team presented its initial findings to the Commission in March 1999. A full report on the Formal Investigation will be released in the summer of 1999.