

Panel on Information Technology and Broadcasting
Meeting on Monday, 12 March 2007

Submission from the Equal Opportunities Commission on
“Issues Relating to the Editorial Independence of the RTHK
and the Yardsticks of the BA in Imposing Sanctions”

Introduction

1. In connection with the recent findings of the Broadcasting Authority (BA) on a television programme “*An Autumn’s Tale*” and another programme “*Hong Kong Connection*” of the Radio Television Hong Kong (RTHK), the Panel on Information Technology and Broadcasting will discuss the item of “*Issues Relating to the Editorial Independence of the RTHK and the Yardsticks of the BA in Imposing Sanctions*” at its meeting to be held on Monday, 12 March 2007. The Panel invited the Equal Opportunities Commission to send representative to attend the meeting and to provide written views on the issues for members’ reference. Written views of the Commission are provided hereunder.

Roles and functions of the Commission

2. The Commission is a statutory body responsible for administering three pieces of anti-discrimination laws in Hong Kong: the Sex Discrimination Ordinance (SDO), the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO). The Commission is charged with the responsibility of eliminating discrimination on the grounds of sex, marital status, pregnancy, family status and disability, eliminating sexual harassment and disability harassment and vilification, and promoting equality between men and women, between persons with disabilities and without disabilities, and persons with family status and without family status.

Views on the case “An Autumn’s Tale”

3. The BA ruled that the television programme “An Autumn’s Tale”, a “PG” (Parental Guidance Recommended) programme broadcasted outside the family viewing hours (FVH), contained some coarse and offensive expressions that were unacceptable for broadcast on television at all times. The television broadcasting company concerned was advised to observe more closely paragraph 6 of Chapter 4 of the Generic Code of Practice on Television Programme Standards prohibiting the use of offensive expressions.

4. It would appear that the matter is outside our remit in that the Commission is not the appropriate authority to determine whether the expressions concerned are coarse or offensive in the overall context of a cinematographic production. In handling complaints of sexual harassment or disability harassment, which sometimes involve allegations of use of offensive language, the Commission’s role is to investigate into the matter and endeavour settlement through conciliation. In applying the “reasonable person test” to an investigation (per s.2(5)(a) of the SDO), the Commission would approach the interaction in the context of a “two-person encounter” (as opposed to an audience viewing a television programme) and take into account available jurisprudence from decided court cases. Should conciliation fails the complainant may institute proceedings in the District Court, which is the authority to decide on a case.

Views on the case “Hong Kong Connection”

5. The BA considered the programme produced by RTHK entitled “Gay Lovers”(“同志、戀人”) presented only the merits of homosexual marriage and featured only the views of three homosexuals on the legislation of homosexual marriage, rendering the presentation unfair, partial and biased towards homosexuality and having the effect of promoting the acceptance of homosexual marriage. The BA also considered the programme unsuitable for broadcast within the FVH as children and young viewers watching the programme might have no knowledge of homosexuality and might be adversely affected by the partial contents of the programme if parental guidance was not provided.

6. The present anti-discrimination legislation administered by the Commission does not cover discrimination on the basis sexual orientation. Notwithstanding the fact that this matter is, again, outside the remit of the Commission, we note that the problem of

discrimination faced by homosexuals is real. According to findings of a *Survey on Public Attitudes towards Homosexuals* commissioned by the Home Affairs Bureau in 2006, as high as 29.7% of the 2,040 respondents considered that at present, homosexuals are discriminated against in Hong Kong because of their sexual orientation.

7. The depiction of same-sex relationships in the “Gay Lovers” programme, according to some sexual minority groups, highlighted the difficulties homosexual couples face every day which the general public might be largely unaware of. Against the background that the Government is taking a non-legislative approach to address the problem of social discrimination faced by homosexuals, producing a documentary programme about the controversial issues of homosexuality and same-sex marriage seems to be in line with the educational approach adopted by the Government to raise public awareness.

8. The Commission also notes BA’s concern that the programme presented only the merits of homosexual marriage and featured only the views of three homosexuals on the legislation of homosexual marriage. However, whether diverging or opposing views in such a controversial topic should be, or could be, presented in a single programme, or alternatively in a series of programmes, is a matter for stakeholders and other experts in the industry to consider.

Equal Opportunities Commission
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