

**Minutes of the Seventy-third Meeting of
The Equal Opportunities Commission
held on 19 June 2008 (Thursday) at 2:30 p.m. in the
Equal Opportunities Commission's Conference/Training Room**

Present

Mr. Raymond TANG Yee-bong	Chairperson
Ms CHAN Ka-mun, Carmen, J.P.	
Ms CHAN Man-ki, Maggie	
Dr. CHENG Kwok-kit, Edwin	
Prof. Randy CHIU	
Ms CHOI Wai-kam, Virginia	
Mrs. CHONG WONG Chor-sar, M.H., J.P.	
Mrs. KOO CHEUNG Man-kok, Christine	
Dr. LAW Koon-chui, Agnes, J.P.	
Mr. LEE Luen-fai	
Mr. LIU Luk-por, Desmond	
Mr. Saeed UDDIN, M.H.	
The Hon TAM Heung-man, Mandy	
Ms WONG Fung-yee, Margaret	
Mr. YIP Kin-man, Raymond	
Mr. Michael CHAN Yick-man	Secretary [Director, Planning & Administration]

Absent with apologies

Miss LAM Kam-yi
Dr. LO Wing-lok, J.P.

In attendance

Mr. Josiah CHOK Kin-ming	Acting Director, Operations [Ag. D(Ops)]
Mr. Herman POON Lik-hang	Chief Legal Counsel [CLC]
Dr. Ferrick CHU	Head, Policy and Support [HPR]
Ms Shana WONG	Head, Corporate Communications and Training [HCCT]
Ms Kerrie TENG	Accountant [ACCT]
Miss Gloria YU	Senior Equal Opportunities Officer, Administration & Personnel [SAP]

I. Introduction

1. The Chairperson (C/EOC) welcomed all Commission Members (Members) to the 73rd Meeting.

2. Apologies for absence were received from Miss LAM Kam-yi and Dr. LO Wing-lok due to clash of meetings/out of town engagements.

(Ms Virginia CHOI who had sent in her apology for absence before the meeting was able to join the meeting at around 5:00pm.)

3. C/EOC informed the meeting that a press release would be issued after the meeting to highlight major areas of work carried out since the last meeting. In future, press briefings would be held if there was news which warranted press attention; if not, press release would be issued instead.

II. Confirmation of Minutes
(Agenda Item No. 1)

4. The Minutes of the 72nd Meeting held on 20 March 2008 were confirmed without amendments.

III. Matters Arising
(Agenda Item No. 2)

Formal Investigation on Accessibility in Certain Publicly Accessible Premises
(Para 5 – 10 of Minutes of the 72nd Meeting)

5. The progress of the investigation would be reported by Ag. D(Ops) under the new agenda item (agenda item no. 3) (EOC Paper No. 7/2008).

(The Hon TAM Heung-man, Mandy joined the meeting at this juncture.)

IV. New Agenda Items

Update on Progress of Formal Investigation on Accessibility in Certain Publicly Accessible Premises
(EOC Paper No. 7/2008; Agenda Item No. 3)

6. Ag. D(Ops) provided an update to Members on the progress of the Formal Investigation on Accessibility in Certain Publicly Accessible Premises (Formal Investigation) as stated in EOC Paper No. 7/2008. He said that site inspection of the 60 Target Premises had been completed with technical inspection reports on individual sites submitted

to the EOC for review. The EOC Office had finished commenting. A draft Summary Inspection Report for consumption of general readers had also been submitted to the EOC, which was currently under review by the EOC Office. Extracts of the Summary Inspection Report were attached to EOC Paper No. 7/2008 for Members' initial reference. Some editing work to enhance the presentation and readability would be required.

7. Members noted that managers of the Target Premises and government policy bureaux had been asked to provide information on accessibility enhancement programmes, budget allocation, policies/guidelines on accessibility. Eight of them had provided information in response to EOC's request, and three of them had requested more time to provide their replies. The EOC Office was now in the course of writing up the Formal Investigation Report, taking note of the findings and observations from the access audit, information from focus group discussions with stakeholders, information/feedback from managers of Target Premises, advice from Members given at various EOC and Legal and Complaints Committee (LCC) meetings, and EOC's enforcement experience. Members were informed that the draft Formal Investigation Report would first be discussed by the Working Group on Formal Investigation (Working Group) before submitting to the EOC Board for comments.

(Mr Desmond LIU, Mr LEE Luen-fai and Mr Saeed UDDIN joined the meeting at this juncture respectively.)

8. Ag. D(Ops) added that some Members had suggested the Working Group to make reference to the latest deliberations of the

LegCo on the Building (Planning) Regulations 2008 before the final Formal Investigation Report was released. There was also a suggestion in a previous LCC meeting for the Working Group to include a comparison between ‘stair lift’ and ‘stair climber’ in the Formal Investigation Report to see which of these two facilities would be more helpful to wheelchair users. Members expressed their views on the suggestion for making reference to the Building (Planning) Regulations 2008 and inclusion of a comparison particularly on two specific facilities in the Formal Investigation Report. Some Members were concerned that such comparison and inclusion in the Formal Investigation Report would be seen as EOC’s stance on specific requirements or facilities for disabled persons, which might then have a bearing on the complaint cases currently being handled by the EOC. Ag. D(Ops) and CLC clarified that these information would be for general reference only and would not form EOC’s stance on specific facilities or requirements. C/EOC said that the Working Group could obtain the relevant information as suggested for internal reference before considering whether it was appropriate to include them in the Formal Investigation Report.

9. In response to a question raised by a Member, Ag. D(Ops) said there was a focus group to consider the presentation and contents of the final report in which users’ opinion could be included. C/EOC added that the focus group could, after reviewing the advice from the experts/professionals of the Working Group, consider including other concerns as well as users’ opinion in an appendix to be attached to the final report. In response to another question from another Member, Ag. D(Ops) replied that the final report was expected to be published by the

end of the year. Two other Members enquired about the likely responses from concern groups when the Formal Investigation Report was released and the liaison with government on the required improvement works. In reply, C/EOC expected that the report would be supported by user groups when released with a public focus on the required improvement works on the part of the government. He also informed that liaison had started with government departments concerned to follow up on improvements. Members' advice would be sought again when the final draft of the Formal Investigation Report was ready.

10. Members noted the latest update as reported on the Formal Investigation on Accessibility in Certain Publicly Accessible Premises and the information as contained in EOC Paper No.7/2008.

Equal Pay for Work of Equal Value
(EOC Paper No. 8/2008; Agenda Item No. 4)

11. DPA highlighted to Members the salient points as contained in EOC Paper No. 8/2008, which detailed the progress of work on Equal Pay for Work of Equal Value (EPEV) undertaken by the EOC Office after the release of the Consultant's Report on 23rd November 2006. Members noted that after the release of the Consultant's Report in November 2006, the EOC was to follow up on EOC's recommendations to enhance public understanding on the subject matter and encourage compliance by employers. To this end, the EOC Office has formed an internal task force to develop a Guide to Employers (the Guide) and an easy read guide targeting large and medium corporations and small

employers respectively with a view to encouraging and helping them to practise Equal Pay for Equal Work (EPEW) and EPEV. Before the guides were made available for public consumption, sharing forums would be organized for large, medium and small corporations from different sectors with a view to explaining the concept of EPEV and sharing best practices for fine tuning of the final version. Additionally, subject to Members' availability, a half-day briefing session, tentatively scheduled for 4 July 2008 would be arranged for all Members. C/EOC encouraged all Members to join the briefing session so as to provide inputs/guidance on the draft guides before the internal task force finalized the guidebooks hopefully by the end of July 2008.

12. Members deliberated on the subject. A Member said that it did not appear that Equal Pay was a serious issue and asked whether EOC's promotional efforts would create undue concern particularly for the employers. He also raised the point on whether the subject of Equal Pay was covered under the existing legislation. DPA said that it was Government's view that EPEV was enshrined in the Sex Discrimination Ordinance (SDO) and that EOC had agreed previously following the release of the Consultant's Report to enhance public understanding on the subject matter and to encourage compliance by members of the public.

13. CLC added that since the existing SDO was not particularly designed to handle EPEV cases and there was no specific provision or separate legislation as in some overseas' jurisdictions, such as the UK, there might be technical difficulties for the EOC in handling complaints of this nature.

14. A Member enquired if the EOC would consider making a recommendation to the Government for amending the existing law before stepping up promotional and educational efforts. DPA responded that EOC had provided its views to the Government previously and as mentioned earlier, it was Government's views that EPEV was already covered under the SDO. He added that there was no specific EPEV complaint case received by the EOC in the past. Nonetheless, the EOC has a duty to look into case relating to terms of employment under the SDO. If there was an equal pay complaint, the EOC would have to deal with it accordingly.

15. A Member remarked that if there were enforcement issues in EPEV cases under the SDO, there could be backfire from the community after the guides were released and public's expectation raised. Additionally, with the anticipated enactment of the Race Discrimination Ordinance (RDO) which would involve a lot of publicity in the near future, publicizing both the RDO and EPEV at a similar time might create confusion for the public. Another Member said that it was her understanding that the publicity of best practice guides should be regarded more as an educational initiative. A third Member appreciated EOC staff's effort on this subject as this was not an easy task. She commented that the EOC should be proactive and at the same time taking the subject matter forward one step at a time. She suggested Members could first take a look at the draft guides before providing further advice and as long as the work was in line with EOC's mission, there was no need to be too concerned about the possibility of any backfire from any particular group.

16. C/EOC concluded that the subject of EPEV would be taken

forward step by step. Any equal pay cases would be handled as for other complaint cases in accordance with EOC's internal operating procedures. Should there be issues in future which warranted legislative amendment, the matter would be raised with the Government. Again, he encouraged Members to join the briefing session tentatively scheduled on 4 July 2008. Members noted EOC Paper No. 8/2008.

[Post-meeting note: The briefing session originally scheduled on 4 July 2008 was re-scheduled and held on 24 July 2008.]

(As The Hon Mandy TAM had to leave the Meeting earlier, she requested and the Meeting agreed to consider "Open Contract Employment for EOC Staff" under agenda item 9 at this juncture.)

Open Contract Employment for EOC Staff
(EOC Paper No. 13/2008; Agenda Item No. 9)

17. C/EOC outlined the background information on offering Open Contract Employment to EOC staff as detailed in EOC Paper No. 13/2008 and the discussions made at the recent 48th Administration and Finance Committee meeting held on 4 June 2008. Members' views were sought on Open Contract Employment offered to EOC staff.

18. Some Members did not agree to the views expressed in paragraphs 19 and 20 of the paper on double benefits and security of tenure. Members concerned viewed that under Open Contract terms, if gratuity was to be offered as in Fixed-term Contracts, it was a double benefit since gratuity was a form of compensation for the Fixed-term employment, payable upon satisfactory completion of service for the

period of employment in question and upon expiry of the fixed-term contract. On the other hand, there was no end date in an open contract which offered much better security of tenure. One Member also remarked that this view was shared by some Members in the 48th A&FC Meeting and not only by just ‘a Member’ as stated in the first line of paragraph 17 of the same paper.

19. Another Member expressed that she had reservations in the Open Contract terms as it would be viewed as offering better salary and more benefits. She would not agree to any change now and that Fixed-term Contracts should continue be offered to all EOC staff. C/EOC clarified that there was no change in salary nor was there any addition of benefits in the Open Contract terms.

(The Hon Mandy TAM left the meeting at this juncture.)

20. On the issue of gratuity, a Member opined that generally speaking, gratuity would be payable upon cessation of employment. If Open Contracts were to be offered to staff, the Commission might wish to consider setting up a retirement or provident fund scheme (in place of gratuity payment), which was quite common in the market place. It was however, pointed out that due to the Commission’s size and funding capacity, the establishment of such schemes might not be an easy option.

21. Another Member said that while the subject of Open Contract Employment as recommended in the HRM Review was reported in EOC’s 70th Meeting in December 2007, there was no in depth discussion made on the details and technical issues involved at that meeting. In response, C/EOC said that conversion arrangements from fixed term

contracts to open contract terms were outlined under the Progress Report on the follow up actions on the recommendations of the 3 review reports of the EOC, although not under an individual agenda item and questions raised by Members regarding terminal gratuity were answered. Nevertheless, if Members did not agree to the rationale for conversion, they could provide their views for consideration.

22. Members further deliberated on this subject. After deliberations, Members were in principle supportive of the spirit of offering Open Contracts to EOC staff to recognize their long and loyal service. However, details of the terms under the Open Contracts, like the issue of gratuity which was offered under the existing fixed term contracts and viable alternative arrangement had yet to be considered or resolved first. The Administration and Finance Committee (A&FC) could follow up to consider further refinements on the terms under the Open Contract having regard to staff's views on this matter.

23. The Meeting also noted that a few staff who had been offered Open Contracts were all willing to revert back to the original Fixed-term Contracts. As such, the Meeting unanimously decided that all EOC staff should be offered the existing Fixed-term Contract before further refinements on the terms of the Open Contract were confirmed. For those staff who had been offered the Open Contract terms, they should be offered a reversion to the original Fixed-term Contracts with retrospective effect to the start date of their relevant contract.

(Ms Carmen CHAN, Ms Maggie CHAN and Mrs Christine KOO left the meeting at this juncture respectively.)

[Post-meeting note: All EOC staff who had been offered the Open Contract had accepted and reverted back to Fixed-term Contracts with retrospective effect to the relevant contract start date pursuant to the decision by the EOC Board. The Open Contract previously offered was superseded in its entirety by the Fixed-term Contract.]

(Ms Virginia CHOI joined the meeting whereas Mr. Desmond LIU and Mrs. CHONG WONG Chor-sar left the meeting respectively at this juncture.)

Reports of the Legal & Complaints Committee, Community Participation & Publicity Committee, Public Education & Research Committee and Administration & Finance Committee

(EOC Paper No. 9/2008; Agenda Item No. 5)

24. Members noted the information on the work of the respective EOC committees as contained in EOC Paper No. 9/2008.

EOC's Thematic Work Plan for 2008/2009

(EOC Paper No. 10/2008; Agenda Item No. 6)

25. C/EOC briefed Members that EOC's Work Plan for 2008/09 had been considered at the 72nd EOC Meeting held on 20 March 2008 (EOC Paper No. 2/2008). Based on comments and advice from Members at that meeting and other comments at respective committees, the Work Plan had now been revised using a thematic and goal attainment approach. DPA then outlined to the Meeting the changes made and other updates to the Work Plan.

26. A Member appreciated the follow up actions in revising EOC's Work Plan using a thematic approach. In response to a question from the same Member regarding follow up actions on EO Awareness Survey 2007, C/EOC confirmed that while the differences were insignificant, more emphasis would be placed on promoting EO targeting the two respondent groups, namely the older generation and the single parents groups who considered equal opportunities relatively less important and were less supportive of EOC's work for the purposes of mainstreaming equal opportunities in Hong Kong. In response to another question raised by the same Member, HCCT informed that there was an initial plan to promote Family Friendly Employment Policies and Practices (FEPP) and work/life balance through co-organizing a seminar/forum with Radio Hong Kong 2 (RTHK2) in October 2008, in which senior management of different enterprises would be invited to share their experiences. She said that the benefit of co-organizing the programme with RTHK2 was that the seminar/forum could be edited and shown on television afterwards. Members who were interested in this subject were welcomed to participate in the planning process.

27. Members noted EOC Paper No. 10/2008.

Protection of Members and Staff of the Commission
(EOC Paper No. 11/2008; Agenda Item No. 7)

28. C/EOC briefed that EOC Paper No. 11/2008 was to seek Members' views related to the current practice on protection of Members and staff of the Commission on legal cost indemnity, and asked for the

existing practice to be formalized in a Resolution. He said that the protection was particularly important for Members and staff with no legal background.

29. CLC said that the protection would be provided to individual Members or staff on condition that their defence provided would have to be consistent with EOC's position and they agreed to have the matter dealt with by lawyers instructed by the EOC, and to have the same strategy, direction and position with the EOC. C/EOC added that the general requirement that Members/staff should be acting in good faith in the performance of the Commission's functions should also apply.

30. In response to a question raised by a Member, C/EOC confirmed that the protection was subject to there being no conflict between the Members/staff's defence and the EOC's own defence. CLC supplemented that if the Members/staff concerned were acting in good faith, he perceived that there should be no conflict between theirs and the EOC's defence. However, if it happened that the individuals concerned had not in fact been acting in good faith, the EOC reserved the right to recover such costs from them.

31. The resolution in the terms of the drafted annexure to EOC Paper No. 11/2008 was unanimously agreed by the Meeting. In addition to the Chairperson, the Convenor of the Administration and Finance Committee (A&FC), Dr. Edwin CHENG and the Convenor of the Public Education and Research Committee (PERC), Dr. Agnes LAW were nominated and signed on the Resolution document to formalize the current practice.

Six Monthly Report of EOC's Financial Position as at 31 March 2008

(EOC Paper No. 12/2008; Agenda Item No. 8)

32. ACCT briefed Members the EOC's Financial Position as at 31 March 2008 as contained in EOC Paper No. 12/2008.

33. Members noted the paper.

Any Other Business

(Agenda Item 9)

34. There being no other business, the meeting was adjourned at 5:18pm.

V. Date of Next Meeting

35. The next meeting would be held on 18 September 2008 (Thursday) at 2:30pm.

Equal Opportunities Commission
August 2008