

**Minutes of the Eighty-first (Special) Meeting of
The Equal Opportunities Commission
held on 25 June 2009 (Thursday) at 2:30 p.m. in the
Equal Opportunities Commission's Conference/Training Room**

Present

Mr. Raymond TANG Yee-bong	Chairperson
Ms CHOI Hing-shi	
Mrs. CHONG WONG Chor-sar, M.H., J.P.	
The Hon FUNG Kin-kee, Frederick	
Mr. LEE Luen-fai	
Mr. LUI Tim-leung, Tim	
Ms NG Wing-mui, Winnie	
Mr. Saeed UDDIN, M.H.	
Dr. TSE Wing-ling, John	
Ms WONG Ka-ling, Garling	
Mr. Michael CHAN Yick-man	Secretary Director, Planning & Administration [DPA]

Absent with apologies

Ms CHAN Ka-mun, Carmen, J.P.
Ms CHAN Man-ki, Maggie
Prof. Randy CHIU
Ms CHIU Lai-kuen, Susanna
Dr. LAW Koon-chui, Agnes, J.P.
Mr. Amirali Bakirali NASIR, J.P.
The Hon TSE Wai-chun, Paul

In attendance

Mr. Joseph LI Siu-kwai	Director, Operations [D(Ops)]
Mr. Herman POON Lik-hang	Chief Legal Counsel [CLC]
Dr. Ferrick CHU	Head, Policy and Research [HPR]
Ms Shana WONG	Head, Corporate Communications and Training [HCCT]
Miss Gloria YU	Senior Equal Opportunities Officer, Administration & Personnel [SAP]

I. Introduction

1. The Chairperson (C/EOC) welcomed and thanked all Commission Members (Members) to the 81st Meeting which was a Special Meeting convened to discuss the Code of Practice on Employment under the Race Discrimination Ordinance (RDO).

2. Apologies for absence were received from Ms Carmen CHAN Ka-mun, J.P., Ms Maggie CHAN Man-ki, Prof. Randy CHIU, Ms Susanna CHIU Lai-kuen, Dr. Agnes LAW Koon-chui, J.P., Mr. Amirali Bakirali NASIR, J.P. and The Hon Paul TSE Wai-chun due to being indisposed/clash of meetings/out of town/other business engagements.

3. Before proceeding to the discussion on the Code of Practice on Employment under the RDO, C/EOC informed Members that there were two documents tabled for Members' reference, namely a confidential letter dated 4 June 2009 from the Secretary for Constitutional and Mainland Affairs on Report No. 52 of the Director of Audit on the EOC

and a discussion paper prepared by the EOC office summarizing the views expressed by Members at the 80th EOC Meeting held on 18 June 2009 on “Separation of Posts of Chairperson and Chief Executive Officer”. Members were reminded to return the confidential letter to the Secretariat before leaving the meeting if they decided not to take it away.

II. Code of Practice on Employment under the Race Discrimination Ordinance

(EOC Paper No. 14/2009, Agenda Item No. 1)

4. C/EOC informed that EOC Paper No. 14/2009 reported to Members on the progress relating to issuing the Code of Practice on Employment (Code) under the Race Discrimination Ordinance (RDO). The views of deputations invited by the Subcommittee on Race Discrimination (Formal Investigations) Rules, Race Discrimination (Investigation and Conciliation) Rules and Code of Practice on Employment under the RDO in the Legislative Council under the House Committee (Subcommittee) and EOC’s responses submitted were at Annex I and a marked up copy of the Code, as amended, taking into account the views from deputations was at Annex II to the EOC paper. In addition, a document summarizing the major views and concerns raised in the consultation process of the Code and EOC’s responses, with a table showing details of the public consultation meetings held was also tabled for Members’ reference.

5. CLC was invited to brief Members on the salient points of the EOC paper and to highlight chapter by chapter the major revisions to the Code since the Board’s last consideration and what major suggestions and views received that were not accepted. He went over with

Members the major revisions to the Code as marked up in Annex II, major views and suggestions not accepted and the reasons why. He added that, apart from a few exceptions (such as some of the views and suggestions submitted by the Law Society of Hong Kong), the great majority of the views and suggestions received were accepted and incorporated into the amended Code as at Annex II.

6. In response to a question from a Member, CLC said that all the changes in the amended Code at Annex II were on the wordings and the presentation, such as the inclusion of more encouraging wordings to promote racial harmony in the workplace and rearranging the sequence of topics presented (vide paragraphs 4.2.4 and 5.3.14 respectively). These changes did not affect the operation of the relevant law and the basic principle involved.

7. A Member located a missing word in line 2 of paragraph 4.2.5 of the Chinese translation of the amended Code and advised that some of the Chinese translation, such as paragraph 4.2.4 was difficult to understand. She suggested more detailed scrutiny on the Chinese translation. CLC noted her suggestion and responded that much effort had been devoted to improve the wordings to make the Code easier to understand. The LegCo Secretariat had also been assisting in this matter.

8. In response to a question raised by a Member, CLC said that though the equal pay for work of equal value principle had much to do with the Sex Discrimination Ordinance, it also applied to other discrimination ordinances, such as the DDO and the RDO. Although there were suggestions from some lawyers' and employers' groups to

delete the relevant paragraphs (paragraphs 5.3.10 (4) to (8)) from the Code, there were also strong voices from other organizations and ethnic minorities' groups to retain them.

(Dr John TSE joined the meeting at this juncture.)

9. In response to a question raised by another Member, CLC said that excluding domestic helpers from the proposed statutory minimum wage bill could be a case of indirect race discrimination. However, as he understood the government had sought legal advice in this respect in drafting the relevant bill, he could not make further comment without the related details. C/EOC added that if there was a related case filed in court, the EOC might be invited to provide views as amicus curiae.

10. On inclusion of more cases to help explain the meaning of race under the RDO, particularly on the topics of Religion and Language in paragraphs 2.2, 2.3 and 5.3.12, Members noted that it would be difficult to do so due to the lack of enforcement experience locally and that there were not many relevant decided cases from overseas. On the other hand, a Member commented that inclusion of cases in the Code could be dangerous as circumstances of specific case could be very unique. He opined that more detailed explanations on the RDO could be given through EOC's education and training programmes instead, with more operational experience.

11. Members raised no further comments. The amended Code as in EOC Paper No. 14/2009 was approved by the EOC Board. It was noted that the Secretary for Constitutional Affairs would move a motion in the Legislative Council for its approval of the Code as amended, with a view

for it to be effective in early July 2009.

III. Any Other Business

Summary of the Views expressed by Members at the 80th EOC Meeting on “Separation of Posts of Chairperson and Chief Executive Officer tabled

12. A Member suggested changing the words “兼職” to “義務” or “非全職” in point 5 of page 2 of the Chinese version of the Summary of the Views expressed by Members at the 80th EOC Meeting on “Separation of Posts of Chairperson and Chief Executive” tabled.

13. There being no other business, the meeting was adjourned at 4:10p.m.

IV. Date of Next Meeting

14. The next meeting would be a regular meeting to be held on 17 September 2009 (Thursday) at 2:30p.m.

Equal Opportunities Commission
July 2009