

**Minutes of the Seventy-fifth Meeting of  
The Equal Opportunities Commission  
held on 18 December 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 Man-ki, Maggie	
Dr. CHENG Kwok-kit, Edwin	
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	
Dr. LO Wing-lok, J.P.	
Ms TAM Heung-man, Mandy	
Mr. Saeed UDDIN, M.H.	
Ms WONG Fung-ye, Margaret	
Mr. Michael CHAN Yick-man	Secretary [Director, Planning & Administration]

**Absent with apologies**

Ms CHAN Ka-mun, Carmen, J.P.  
Prof. Randy CHIU  
Miss LAM Kam-yi  
Mr. LIU Luk-por, Desmond  
Mr. YIP Kin-man, Raymond

**In attendance**

Mr. Joseph LI Siu-kwai	Director, Operations [D(Ops)]
Mr. Herman POON Lik-hang	Chief Legal Counsel [CLC]
Dr. Ferrick CHU Chung-man	Head, Policy and Support [HPR]
Ms Shana WONG Shan-nar	Head, Corporate Communications and Training [HCCT]
Miss Kerrie TENG Yee-san	Accountant [ACCT]
Miss Gloria YU Wai-ling	Senior Equal Opportunities Officer, Administration & Personnel [SAP]

**I. Introduction**

1. The Chairperson (C/EOC) welcomed all Commission Members (Members) to the 75<sup>th</sup> Meeting. Ms Maggie CHAN had informed that she would leave the meeting earlier for other prior engagements.
2. Apologies for absence were received from Ms Carmen CHAN Ka-mun, J.P., Prof. Randy CHIU, Miss LAM Kam-yi, Mr. Desmond LIU Luk-por and Mr. Raymond YIP Kin-man due to clash of meetings/sick leave.
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 and discussed at this meeting.

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

4. The Minutes of the 74<sup>th</sup> Meeting held on 18 September 2008 were confirmed without amendments.

**III. Matters Arising**  
(Agenda Item No. 2)

**Update on Progress of Formal Investigation on Accessibility in Certain Publicly Accessible Premises**

(Para 12 of Minutes of the 74<sup>th</sup> Meeting)

5. D(Ops) provided a verbal update on the progress of the Formal Investigation on Accessibility in Certain Publicly Accessible Premises (Formal Investigation). He said that the original plan was to submit to Members the draft final report at this meeting; however, due to some overdue replies yet to be received from the management of some of the target premises and the complexity in summarizing findings for the 60 inspected sites, involving 3 sets of standards, more time was required to refine the draft final report.

*(Ms Maggie CHAN joined the Meeting at this juncture.)*

6. In response to questions raised by Members, D(Ops) informed that the outstanding replies were mainly from The Link Management Ltd and the Housing Department, with the latter constituted one third of the total inspected sites (i.e. 20 numbers). In the investigation report, the focus would be from the originally adopted 2006 building standards with an appropriate highlight on the newly passed 2008 standards, where 4 items of difference were noted between the 2006 and 2008 standards. With regard to government buildings inspected, both the relevant government departments and their respective policy bureaux had been asked to provide information on accessibility enhancement programmes hoping that the enhancement could be incorporated into their routine maintenance plans. On enforcement of improvements to accessibility following the Formal Investigation, Members noted that EOC's jurisdiction covered both public and private sectors, although in certain

cases, government buildings were exempted from the Building Ordinance, and EOC would act in accordance with the law. The draft final report would hopefully be ready for Members' advice in the first quarter of 2009.

**Equal Pay for Work of Equal Value**  
(Para 13 of Minutes of the 74<sup>th</sup> Meeting)

7. DPA updated the Meeting that subsequent to the report made at the last EOC Meeting, the Equal Pay for Work of Equal Value (EPEV) guidebooks were being finalized. It was expected that the guidebooks in both English and Chinese versions would be rolled out from December 2008. In addition, positive feedbacks were received from participants of the sharing forums held for large, medium and small organizations explaining the EPEV concept and sharing of best practice. The participants generally thought that the sharing was useful and welcomed such guidebooks to be published by the EOC. Members noted that internal training on this subject had been arranged for staff in the EOC. Meeting with human resources consultants (e.g. pay management consultants) and professional bodies (e.g. IHRM) would also be organized shortly to brief them of EOC's work in this area so that they could provide support and advice to employers who might need help on this subject.

*(Dr. LO Wing-lok joined the Meeting at this juncture.)*

**Code of Practice on Employment under the Race Discrimination Ordinance (RDO)**  
(Para 14 of Minutes of the 74<sup>th</sup> Meeting)

8. C/EOC informed that an update would be given under the new Agenda Item No. 5.

**IV. New Agenda Items**

**EOC's Recommendations to the Government on the Establishment of an Equal Opportunities Tribunal**

(EOC Paper No. 21/2008; Agenda Item No. 3)

9. CLC briefed Members that EOC Paper No. 21/2008 contained the proposed EOC's Recommendations to the Government on the Establishment of an Equal Opportunities Tribunal (EOT) for Members' approval and adoption. He highlighted that the recommendations had been considered in the 67<sup>th</sup> EOC Meeting and the revised recommendations were approved and adopted by Members in the 70<sup>th</sup> EOC Meeting. It had also been decided that a detailed document (attached to the EOC paper) would be drafted for submission to the Government and that it should be presented to Members for endorsement before it was to be issued. He then went over the salient points and the major revisions concerning EOC's recommendations as contained in the proposed document with Members.

*(Ms Margaret WONG joined the Meeting at this juncture.)*

10. With regard to one of the recommendations considered and adopted by Members in a previous EOC Meeting concerning preserving the present avenue of direct access for seeking legal redress but giving the proposed EOT discretion to refer appropriate cases to the EOC for investigation and conciliation, CLC said it was generally in line with the spirit of the current Reform of Hong Kong's Civil Justice System (CJR) which also aimed to promote more use of alternate dispute resolution methods instead of engaging in costly and lengthy litigations.

11. In response to a concern raised by a Member on whether there was any gap between the rules proposed in the EOT and the CJR, CLC

said that the Working Group on the Desirability of Establishing an EOT (Working Group) had considered the CJR in the process of drawing up the recommendations. In fact, the CJR and the proposed EOT shared a similar objective, i.e. simplifying rules and procedures, although by proposing the establishment of an EOT, there would be 2 sets of procedures for civil litigation, i.e. to go through the EOC's complaint handling mechanism first or seeking redress directly from the EOT. It was also hoped that more flexibility was allowed for the EOT in managing discrimination cases and their progress. All the recommendations contained in the proposed document were directional recommendations for the Government to consider. If the proposal was accepted, it would be the Government's responsibility to draft the detailed rules for the EOT.

12. A Member expressed that he was one of the members of the Working Group. He was in support of the spirit of the CJR and the EOT in simplifying procedures and promoting more use of alternate dispute resolution methods instead of litigations. That was why the Working Group's original recommendation was to have discrimination cases going through EOC's complaints handling procedures before commencing proceedings with the proposed EOT. From his point of view, the revised recommendation of preserving the present avenue of direct access but giving the proposed EOT discretion to refer appropriate cases to the EOC for investigation and conciliation was more a public relations initiative. He was not in favour of directly accessing the EOT for seeking redress without first going through the conciliation process.

13. Another Member did not view the revised recommendation as a public relations initiative. Instead, he considered it as a matter of

human rights, particularly on issues relating to discrimination, protecting the rights of an individual was important. It was from this perspective and from the perspective of social cost that Members in the 70<sup>th</sup> Meeting supported the revised recommendation of preserving the direct access to court while giving the proposed EOT discretion to refer appropriate cases to the EOC for handling.

14. C/EOC remarked that the proposed document was not a public document but a proposal to be submitted for the Government to consider. In addition, as discrimination disputes were related to human rights, the handling of such litigations could be different from that of commercial litigations.

15. A Member enquired if there was power for a cost order similar to the Lands Tribunal recommended in the proposed EOT. CLC replied that similar cost order was included in the recommendations for the Government to consider.

16. Another Member added that from her observation on the working of the Labour Tribunal (LT), there were cases that the LT considered to be complex and referred to the District Court for handling. However, when the cases came to the District Court, they were referred back to the LT to handle, resulting in some kind of merry-go-round. She advised that the EOC should be mindful of this.

17. Members' views were noted. Members endorsed EOC Paper No. 21/2008 for the proposed document to be submitted to the Government for consideration. Upon receipt of feedback from the Government, Members would be updated on the progress again.

*(Ms Maggie CHAN left the Meeting at this juncture.)*

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

(EOC Paper No. 22/2008; Agenda Item No. 4)

18. EOC Paper No. 22/2008 contained information on the work of the respective EOC Committees. A Member enquired about the progress of “providing the EOC with a permanent office premises” as mentioned in the 49<sup>th</sup> Administration and Finance Committee (A&FC) Meeting vide Appendix 5 to the paper. In response, Convenor of A&FC said that this issue was discussed at a recent meeting with officials from the Constitutional and Mainland Affairs Bureau (CMAB) on 5 December 2008. The EOC was advised to provide a business case including the costs and benefits of acquiring a permanent office for the Government to consider.

19. Members noted EOC Paper No. 22/2008.

**Update on Public Consultation on Code of Practice on Employment under the Race Discrimination Legislation**

(EOC Paper No. 23/2008; Agenda Item No. 5)

20. C/EOC gave an update on the public consultation on the Code of Practice on Employment (the Code) under the Race Discrimination Ordinance (RDO) as contained in EOC Paper No. 23/2008. He highlighted to Members the major concerns and views of the public on the Code and informed Members the consultation period had been extended to **19 January 2009**. (There were 2 typos in paragraphs 4 and 14 of EOC Paper No. 23/2008 in which, 19 January 2008 should be corrected to read as 19 January 2009.) Members noted that at this time



a total of 43 numbers of consultation and briefing sessions of RDO and the Code had been held with around 3700 members of the public participated. It was planned that there would be 20-30 more briefing and consultation sessions to be held by the EOC up to 19 January 2009.

21. In response to a question raised by a Member, C/EOC said that feedback collected during the briefing sessions and the written submissions received and EOC's response would be summarized into a report to be released for public information after the consultation. The same Member appreciated EOC's work in this respect and opined that a detailed listing of all the work that EOC had done on this subject would help the public better understand not only EOC's work but the careful and thoughtful considerations that had been put into the Code.

22. Another Member also expressed appreciation of EOC's work in its consultation with the Institute of Human Resource Management (IHRM) and human resources practitioners on the Code. As there were considerable challenges lately faced by practitioners in the HR field, more work to help them understand the new legislation and get their feedback on the Code would be warranted.

23. In response to a question raised by a Member, CLC replied that he was in the process of drafting a brief to seek overseas Counsel's advice on Language Requirement under the RDO. He hoped that the advice could be ready before the report on the consultation of the Code was released to the public.

24. Members noted EOC Paper No. 23/2008.

**Use of EOC's Reserves for the Increase in Rental from 1 April 2009 to 15 December 2011**

(EOC Paper No. 24/2008, Agenda Item No. 6)

25. ACCT briefed Members on the information contained in EOC Paper No. 24/2008 which Members' endorsement on the use of EOC's reserves for the increase in rental from 1 April 2009 to 15 December 2011 was sought. She also went over the details on the Estimated Balance of Reserves vide Annex to the paper with Members. Members noted that with the amount set aside for the increase in rental for EOC's office on lease renewal up to 15 December 2011 (\$6.28M) and the additional salary increment costs on revival of annual salary increment from 1 April 2010 to 31 May 2011(\$1.75M), the estimated balance of general reserves as at 31 March 2010 would be \$8.74M. On the provision of a permanent office premises for the EOC as reported at the meeting earlier, the CMAB had advised that the EOC could submit a proposal via the Resource Allocation Exercise (RAE) to bid for funding from the Government. If the proposal was supported by the Government, it would also need support and approval by the Public Works Subcommittee and the Finance Committee of the Legislative Council.

26. In response to a question from a Member, C/EOC replied that the Government would not provide additional funding to EOC for the increase in rental in view of our reserves available. It was also under the same reason that EOC was not at this stage provided with additional recurrent subvention for implementation of the Race Discrimination Ordinance, apart from \$1.05M for EOC to take over the responsibilities from the Race Relations Unit of CMAB to support programmes for public education and publicity against racial discrimination.

27. Members endorsed EOC Paper No. 24/2008 to proceed on the use of EOC's reserves for the increase in rental from 1 April 2009 to 15 December 2011.

**Six Monthly Report of EOC's Financial Position as at 30 September 2008**

(EOC Paper No. 25/2008, Agenda Item No. 7)

28. ACCT highlighted the salient points on EOC's financial position for the period from 1 April 2008 to 30 September 2008 to Members as detailed in EOC Paper No. 25/2008.

29. A Member enquired about the detailed breakdown on the budget of \$0.41M for the training module on EO for kindergarten teachers. HCCT replied that the training module was still in the planning stage. When a plan was ready, it would be submitted to the Public Education and Research Committee (PERC) for consideration. Detailed breakdown on the related budget would be available hopefully before the end of March 2009.

30. On the use of reserves, Members in general were in support of the EOC office to spend more reserves on projects of good cause. HCCT suggested giving consideration to increase the maximum limit of funding programmes as it had not been reviewed for a long time and some NGOs had expressed that the funding limit was too low to justify submission of a proposal to the EOC. C/EOC said the suggestion could be considered in the next meeting of the Community Participation and Publicity Committee.

31. In response to a question raised by a Member, DPA said that the proportion of funds spent on staffing in EOC was comparable to most

other public organizations. Other Members of the Administration and Finance Committee, who also had experience working with other public bodies echoed agreement. C/EOC supplemented that the main chunk of EOC's work was in handling of complaints investigation and conciliation instead of engaging in litigations. This kind of work was very labour intensive, therefore a significant portion of spending on human resources was quite normal.

32. Members noted EOC Paper No. 25/2008.

**Tentative EOC Meeting Schedule for 2009**  
(EOC Paper No. 26/2008, Agenda Item No. 8)

33. Members noted the tentative meeting schedule for 2009 as contained in EOC Paper No. 26/2008.

**Any Other Business**  
(Agenda Item No. 9)

**A Rejected Application for Legal Assistance**

34. At the request of a Member, CLC briefly explained a rejected application for legal assistance and circulated the relevant LCC Paper (No. 36/08) during the meeting for Members' reference. He also explained to the Meeting EOC's adopted factors for consideration in deciding whether to grant legal assistance under the 3 discrimination ordinances.

*(Mrs. Christine KOO left the Meeting at this juncture.)*

35. The Meeting noted that the applicant had not filed any appeal to the Legal and Complaints Committee's decision of not granting legal

assistance to her case. However, EOC had received a letter from a Legislative Counsellor, enquiring about the case. CLC would reply to the enquiry accordingly.

36. There being no other business, the meeting was adjourned at 5:00pm.

**V. Date of Next Meeting**

37. The next meeting would be held on 19 March 2009 (Thursday) at 2:30pm.

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*Equal Opportunities Commission  
January 2009*