

活動及成果 — 工作回顧

Activities and Achievements — A Work Review



查詢

由於委員會的工作層面不斷擴大，市民就委員會角色及活動的查詢也越趨深入和具體。在2000年4月1日至2001年3月31日期間，委員會共接獲5,935宗一般查詢，詢問有關委員會的活動、角色與職能等資料，以及索取委員會刊物。這種一般查詢的數字較前一年上升了18%。

此外，委員會共收到4,681宗具體查詢，較上年度增加87%。當中1,598宗關乎《性別歧視條例》，1,883宗關乎《殘疾歧視條例》及183宗關乎《家庭崗位歧視條例》，另有107宗關乎委員會的工作；其餘910宗涉及年齡、種族、性傾向和宗教等方面的歧視問題，並不屬於委員會權限之內(見表1)。同期，委員會網站共錄得超過169,879瀏覽人次。

需進行調查及調解的投訴

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

委員會研究每宗個案的事實後，會讓投訴雙方有機會就所指稱的事宜提出意見和回應。首先，委員會會致力透過調解方式協助雙方達致和解。假若未能和解，委員會可應投訴人的申請，考慮給予其他形式的協助。委員會會獨立考慮每宗申請，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。委員會給予的協助形式包括提供法律意見、法律協助或任何委員會認為適當的協助。



Enquiries

As the work of the Commission grows, enquiries about our role and activities have become increasingly detailed and specific. Between 1 April 2000 and 31 March 2001, there were 5,935 general enquiries requesting information on the role and functions of the Commission, activities, events and publications, representing an increase of 18% over last year.

In addition, there were 4,681 specific enquiries, a rise of 87% since the previous year. Of these, 1,598 were related to the Sex Discrimination Ordinance (SDO), 1,883 to the Disability Discrimination Ordinance (DDO), 183 to the Family Status Discrimination Ordinance (FSDO), and 107 to the work of the Commission. The remaining 910 enquiries covered areas falling outside our jurisdiction, relating to discrimination with regard to age, race, sexual orientation and religion (See Figure 1). During the same period, our web site also recorded over 169,879 visitors.

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.

After examining the facts of each case, both parties are given the opportunity to comment and respond to the allegations. As a first step, every endeavour is made to resolve the matter through conciliation, helping the parties involved to reach a settlement. If a settlement cannot be reached, we can consider other forms of assistance if the complainant makes an application to take the matter further. 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 can include advice, legal assistance or any other assistance which is considered appropriate.



經處理的投訴

在某些情況下，委員會可根據多項原因而不進行或終止某個案的調查工作，這些原因包括：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。此外，如投訴不屬於代表投訴、或委員會認為該投訴屬於瑣屑無聊、無理取鬧、基於錯誤理解或缺乏實質等，委員會亦不會對個案進行調查。

委員會本年度共接獲777宗投訴，較前一年上升63%，當中321宗投訴關乎《性別歧視條例》、433宗關乎《殘疾歧視條例》及23宗關乎《家庭崗位歧視條例》。連同上年度未完結的個案，本年度共處理了996宗投訴，較1999/2000年上升52% (詳情見表2)。

與此同時，完成處理的個案共557宗(上升27%)，當中295宗進行了調解(上升23%)。在這些個案中，203宗(69%)成功和解，92宗(31%)調解失敗，餘下的270宗個案已經根據多項原因而終止調查(詳情見表3)。

2000年4月1日至2001年3月31日的統計數字

表1. 具體事項查詢分類 (總數：4,681宗)

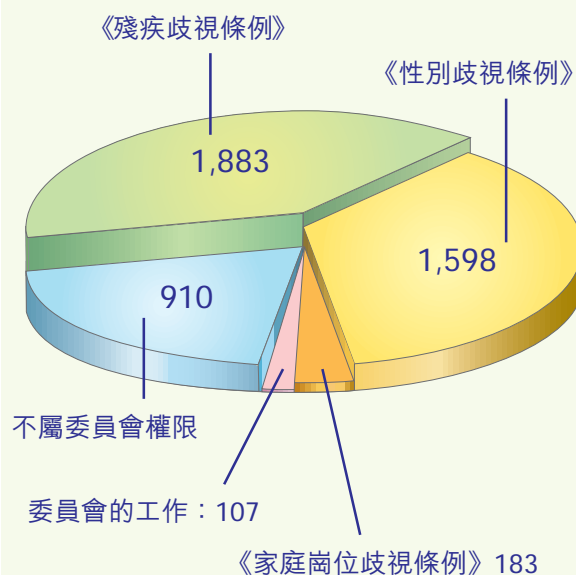
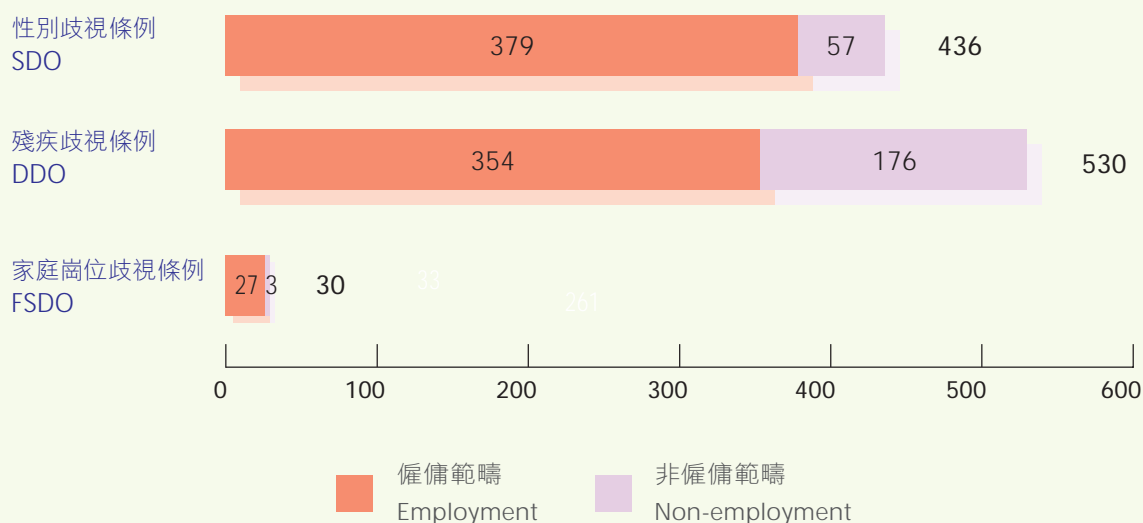


表2. 需進行調查及調解的投訴 (已處理總數：996宗)

Figure 2. Complaints for Investigation and Conciliation (Total number handled: 996)



Complaints Handled

There are times when the Commission may decide not to conduct or to discontinue an investigation for a variety of reasons — if the act in question is not unlawful, the complainant no longer wants to pursue the complaint, or if a period of more than 12 months has passed since the act was committed. Investigation may also cease if the complaint, lodged as a representative complaint should not be one, or if the EOC considers the complaint to be frivolous, vexatious, misconceived or lacking in substance.

During the year, we received a total of 777 complaints, an increase of 63% over the year before. Of this number, 321 fell under the SDO, 433 under the DDO and 23 the FSDO. Together with the complaints brought forward from previous years, we handled a total of 996 complaints during the period, representing an increase of 52% when compared with 1999/2000 (See Figure 2).

During this time, 557 cases (27% increase) were completed with 295 (23% increase) of them proceeding to conciliation. Of this number, 203 (69%) were conciliated, while conciliation was not successful in 92 cases (31%). Investigations for the remaining 270 complaints were discontinued for a variety of reasons (See Figure 3).

Statistics for the Period from 1 April 2000 to 31 March 2001

Figure 1. Breakdown of Specific Enquiries (Total number: 4,681)

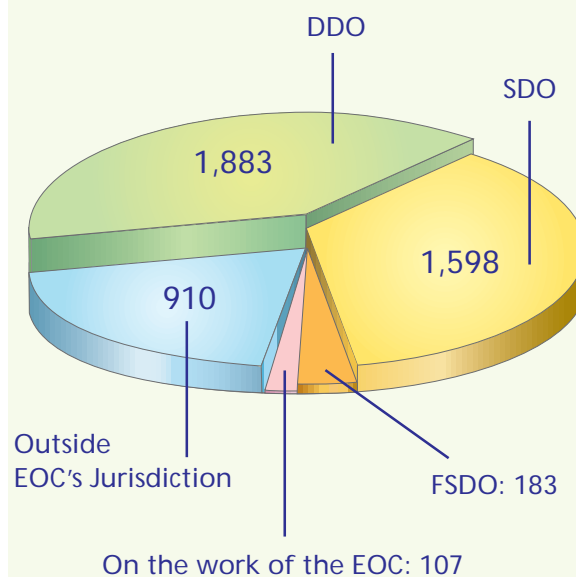


表3. 個案終止調查的原因

Figure 3. Discontinued Cases by Reason

| | 不屬違法行為 <i>No unlawful acts</i> | 瑣屑無聊或 缺乏實質 <i>Frivolous or lacking in substance</i> | 投訴人不願 繼續調查 <i>Complainants did not wish to pursue</i> | 投訴得到 提早解決 <i>Complaint resolved through early resolution</i> | 超過十二個月 <i>Beyond 12-month time bar</i> | 總數 <i>Total</i> |
|------------------|-----------------------------------|---|---|--|---|--------------------|
| 殘疾歧視條例 DDO | 16 | 64 | 65 | 7 | 1 | 153 |
| 性別歧視條例 SDO | 7 | 30 | 56 | 17 | 0 | 110 |
| 家庭崗位歧視條例 FSDO | 0 | 2 | 0 | 5 | 0 | 7 |
| 總數 Total | 23 (8.5%) | 96 (35.6%) | 121 (44.8%) | 29 (10.7%) | 1 (0.4%) | 270 (100%) |

與《性別歧視條例》相關之投訴

- 本年度處理的投訴達436宗，比前一年的311宗增加40%。
- 根據《性別歧視條例》提出的投訴中，關乎僱傭範疇的有379宗，主要涉及解僱、性騷擾、招聘和僱用條款及條件。（詳情見表4.1及4.1.1）
- 涉及非僱傭範疇的投訴個案有57宗，主要關乎提供貨品、服務或設施、教育或政府權力之行使等各方面。（詳情見表4.2）
- 根據《性別歧視條例》提出的投訴當中，數目最多的是懷孕歧視，關乎僱傭及非僱傭範疇的投訴共有161宗。

根據《性別歧視條例》提出，而獲處理的投訴個案分類(2000年4月1日至2001年3月31日)

表4.1 關乎僱傭範疇的投訴 (共379宗)

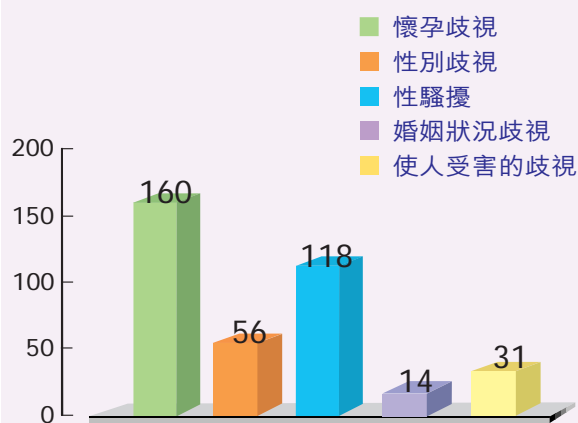


表4.1.1 懷孕歧視(關乎僱傭範疇)

- 在通知僱主懷孕後被要求自動辭職
- 產假後復職不久即被解僱
- 其他(包括在通知僱主懷孕消息後受到較差對待、因懷孕而失去升職機會及強迫調職)

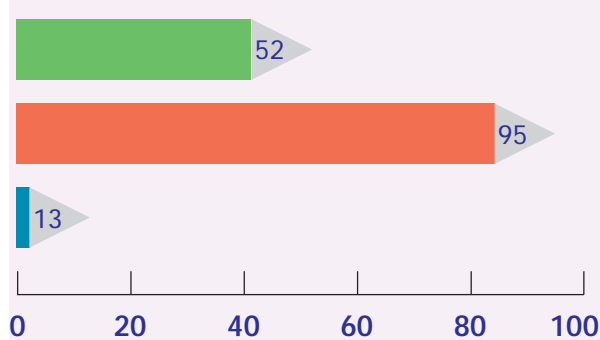
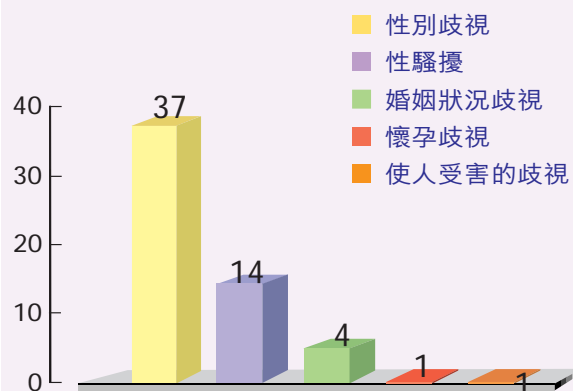


表4.2 非僱傭範疇的投訴 (共57宗)

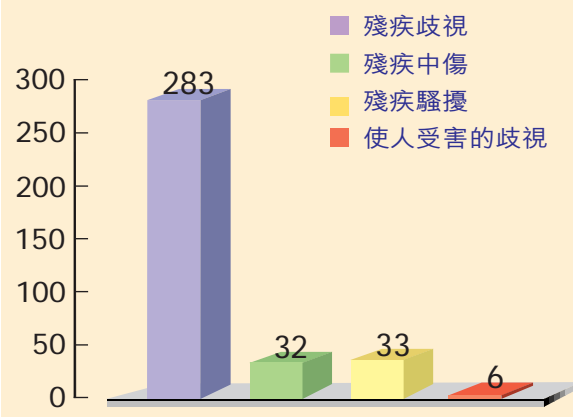


與《殘疾歧視條例》相關之投訴

- 本年度處理的投訴達530宗，比前一年的306宗增加73%。
- 根據《殘疾歧視條例》提出的投訴中，關乎僱傭範疇的達354宗，佔該條例的投訴達66.8%，大多數涉及解僱（詳情見表5.1）。前年根據《殘疾歧視條例》提出的306宗投訴中，關乎僱傭範疇有179宗（58.5%）。
- 最多提出投訴的殘疾人士類別為：肢體傷殘人士有161宗（30.4%）；長期病患者有104宗（19.6%）；和精神病患者有90宗（17%）。
- 涉及非僱傭範疇的投訴有176宗，當中81%（143宗）涉及歧視。（詳情見表5.2）

根據《殘疾歧視條例》提出，而獲處理的投訴個案分類(2000年4月1日至2001年3月31日)

表5.1 關乎僱傭範疇的投訴 (共354宗)



SDO-related Complaints

- There was a 40% increase of complaints handled rising from 311 to 436 as compared with the previous year.
- Under the SDO, there were 379 employment-related complaints, mainly due to dismissal, sexual harassment, recruitment and terms and conditions of employment. (See Figures 4.1 & 4.1.1)
- There were 57 non-employment related complaints. They concerned the provision of goods, services or facilities, education or the exercise of government power. (See Figure 4.2)
- Pregnancy discrimination was the single largest category of complaints under the SDO with 161 employment and non-employment related pregnancy discrimination complaints.

Breakdown of Complaints Handled under the SDO (1 April 2000 to 31 March 2001)

Figure 4.1 Employment Related Complaints (Total: 379)

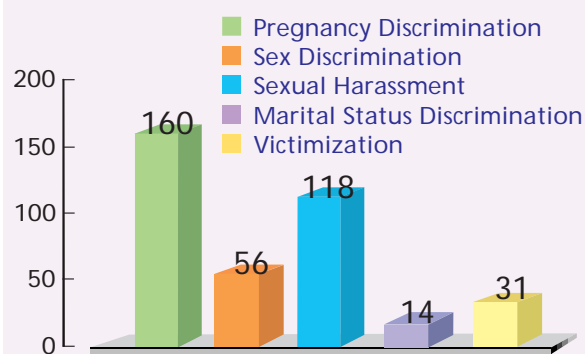


Figure 4.1.1 Pregnancy Discrimination (Employment Related)

- Asked to resign upon notification of pregnancy
- Dismissed shortly after returning to work
- Others (Including less favourable treatment after receiving notice of pregnancy, loss of promotion and involuntary transfers)

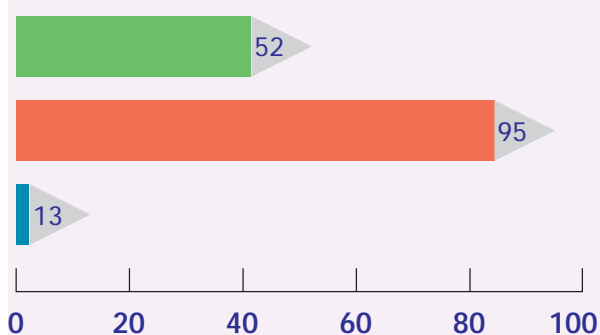
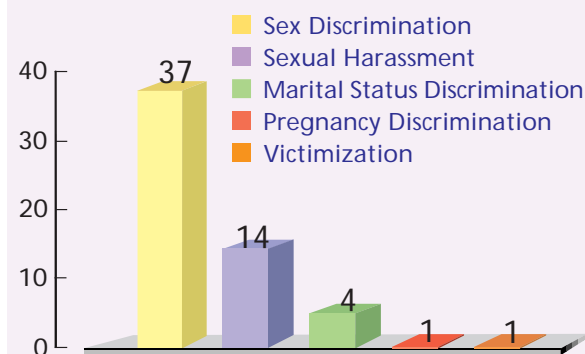


Figure 4.2 Non-employment Related Complaints (Total: 57)



DDO-related Complaints

- There was a 73% increase of complaints handled rising from 306 to 530 as compared with the previous year.
- Employment related complaints stood at 354, representing 66.8% of all DDO-related complaints, mostly involving dismissal (See Figure 5.1). This compares to a figure of 179 out of 306 (58.5%) last year.
- The top three complaint categories were lodged by persons with — physical disability 161 (30.4%), chronic illness 104 (19.6%) and mental illness 90 (17%).
- Among the 176 non-employment related complaints, 81% (143 cases) concerned discrimination. (See Figure 5.2)

Breakdown of Complaints Handled under the DDO (1 April 2000 to 31 March 2001)

Figure 5.1 Employment Related Complaints (Total: 354)

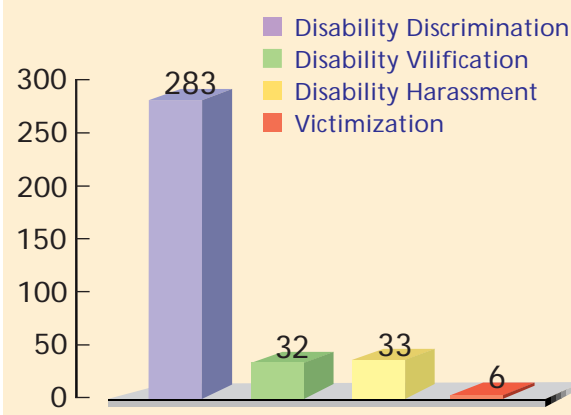
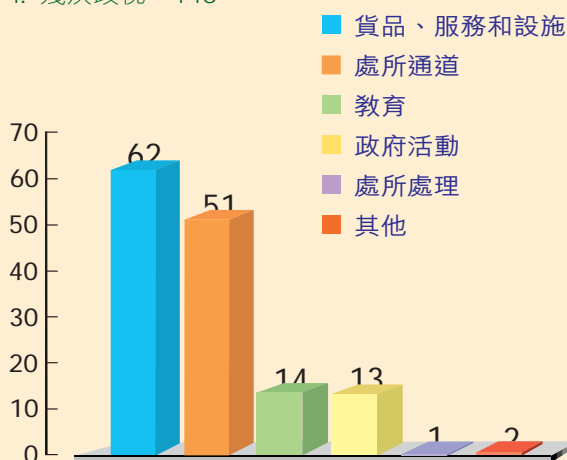


表5.2 關乎非僱傭範疇的投訴 (共176宗)

i. 殘疾歧視：143

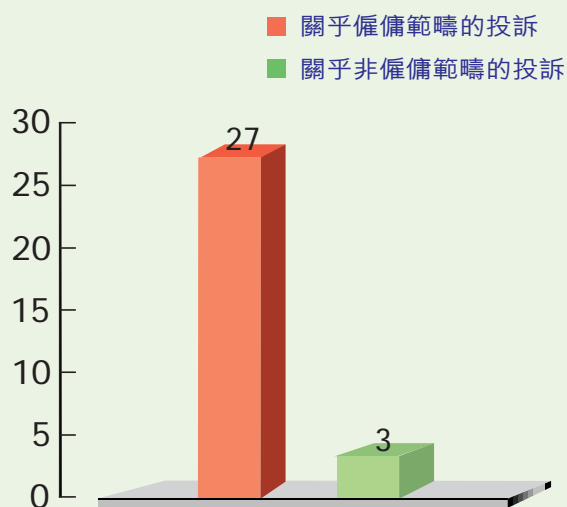


ii. 殘疾騷擾及中傷：33

與《家庭崗位歧視條例》相關之投訴

- 根據《家庭崗位歧視條例》而提出的投訴有30宗，其中27宗與僱傭範疇有關，包括解僱、晉升和調職（詳情見表6）。去年的投訴數字為39宗。

表6. 根據《家庭崗位歧視條例》提出，而獲處理的投訴個案分類 (2000年4月1日至2001年3月31日)



需跟進之投訴

對於由第三者或不想參與調查或調解的受屈人士所提出有關違法行為的投訴，委員會亦會採取行動。在這種情況下，委員會會聯絡有關人士，向他們解釋相關法例，並建議他們加以糾正。委員會於本年度處理了61宗這類投訴，其中37宗關於《殘疾歧視條例》，24宗則關於《性別歧視條例》。此外，我們也會監管帶有歧視成分的廣告，而本年度委員會便處理了3宗有關投訴。

法律協助

如投訴的調解失敗，委員會可向有意提出法律訴訟的申請人提供不同形式的協助，在2000/2001年度，有關申請共44宗，其中27宗獲給予協助。詳情請參閱第64頁附錄。與1999/2000年度相比，委員會在這方面的工作有顯著增加。

在收到申請後，委員會的律師會對申請進行評估，然後建議委員會應否給予協助。協助的形式包括由委員會的律師給予法律意見、為申請人取得進一步的資料或證據、以至由委員會律師或由委員會延聘私人執業大律師，在法律訴訟中擔任申請人的法律代表等。

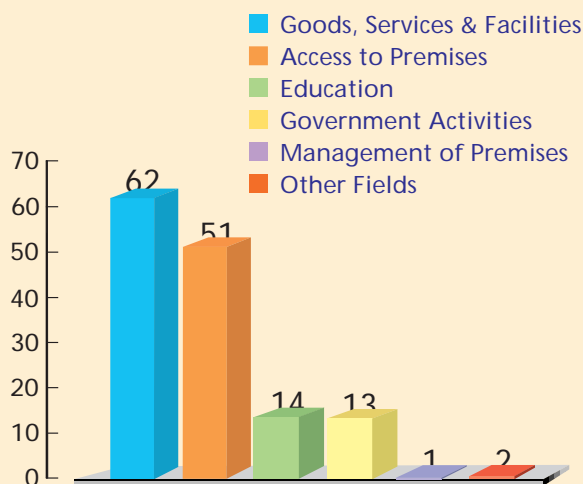
獲委員會給予法律協助的個案

在2000/2001年度，有九宗獲法律協助的個案，在未展開法律程序前已得到解決。這九宗個案包括在委員會律師主持商議下，雙方達成和解；或委員會所給予的協助並未延伸至展開法律程序階段，其後亦無給予進一步協助；或申請人不接受進一步協助。截至2000/2001年度結束為止，有14宗已獲委員會給予法律協助的個案仍在處理當中。

在此期間，區域法院聆訊了兩宗獲委員會給予法律協助的案件。其一是本港首宗懷孕歧視案件，案中原告人遞交懷孕通知書後，被要求辭職或接受降職。法院裁定原告人得直，雙方最後達成和解，賠償內容則保密。另一宗涉及一位武術教練的性騷擾個案則被法院駁回。

Figure 5.2 Non-employment Related Complaints (Total: 176)

i. Disability Discrimination: 143

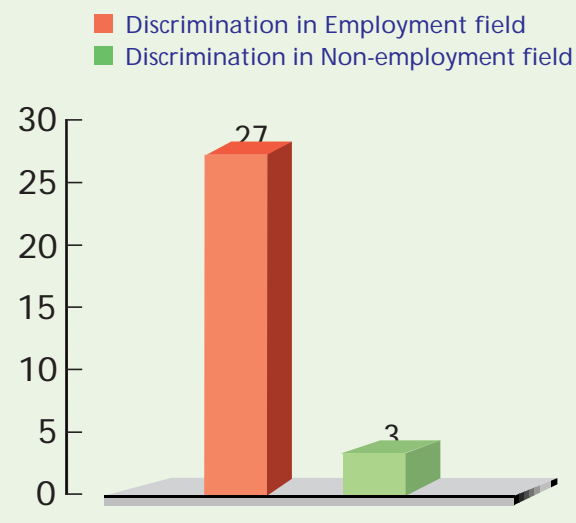


ii. Disability Harassment & Vilification: 33

FSDO-related Complaints

- There were 30 complaints under the FSDO, 27 of which were employment related involving dismissal, promotion and transfer of posts (*See Figure 6*). In the previous year, 39 FSDO cases were handled.

Figure 6. Breakdown of Complaints Handled under the FSDO (1 April 2000 to 31 March 2001)



Complaints for Follow-up Action

We also take action on complaints with regard to 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, the Commission approaches the concerned parties to explain the relevant legislation and advise them to rectify the situation. During the year, we handled 61 such complaints, 37 of which were under the DDO and 24 under the SDO. In addition, we deal with discriminatory advertisements identified through our monitoring system. There were three such cases during the year.

Legal Assistance

Where a complaint has been lodged but conciliation has not been successful, the Commission has power to grant various forms of assistance to an applicant who wishes to take legal proceedings with regard to the complaint. During 2000/2001, the Commission received 44 applications for assistance and granted assistance in 27 of them. A general breakdown of the numbers by type of case can be found on page 64. Compared to 1999/2000, there has been a significant increase in this area of the Commission's work.

When an application is received, the Commission's lawyers will conduct an assessment of the application before advising the Commission whether to grant assistance. The assistance granted by the Commission may take the form of legal advice by the Commission's lawyers, services for obtaining further information or evidence, or representation in legal proceedings by the Commission's lawyers, or by barristers in private practice briefed by the Commission.

Legally Assisted Cases

During the year, nine cases in which legal assistance had been granted were resolved without commencing legal proceedings. These cases included those in which the parties reached settlement through negotiations conducted by the Commission's lawyers, or where the assistance granted did not extend to the commencement of legal proceedings in the first place and no further assistance was given, or where the applicants declined assistance. There were 14 other on-going cases being handled by the Commission at the end of 2000/2001 in which legal assistance had been granted.

2000/2001年度獲委員會給予法律協助而展開訴訟的個案共有三宗，包括一位酒樓女侍應指稱受其經理性騷擾；某公司的退休政策涉及性別歧視；及僱傭範疇的懷孕歧視。有關懷孕歧視的個案其後在庭外和解，和解條款保密。酒樓性騷擾案在2001年6月12日才展開聆訊，但原告人在審訊期間撤銷申訴，案件因而被撤銷。至於退休政策涉及性別歧視一案正等候進行法律程序。

另兩宗於前一年度已展開的案件，至2001年3月底仍在等候進一步訴訟程序。其中一宗關乎一名的士司機殘疾騷擾其乘客的案件，上訴法院於較早時候裁定區域法院命令的士司機作出道歉是不對的，該名乘客再在委員會協助下向終審法院提出上訴。終審法院雖然駁回原告人的上訴，但卻一致裁定在其他合適的情況下，即使被告不願意，區域法院仍有權命令其作出道歉。另一宗案件則

關乎某紀律部隊招募僱員時的殘疾歧視，現正在區域法院等候審理。

由委員會展開的法律行動

在2000年，委員會就「中學學位分配辦法」尋求司法覆核，並委任英國御用大律師Lord Lester在覆核聆訊中代表委員會。高等法院在2001年6月22日的判決中裁定，「中學學位分配辦法」違反《性別歧視條例》。本案得到廣泛報道，大大加深公眾對歧視問題的認識。

委員會繼續委任一位私人執業大律師以「法庭之友」身份出席終審法院的鄉村選舉規則司法覆核上訴聆訊。終審法院於2000年12月22日的判決中，維持原訟法庭和上訴法庭的裁決，裁定與鄉村選舉有關的規則含歧視成分，屬於違法。

去年，含歧視的廣告並未構成重大的問題。因此，委員會並沒有提出任何與此有關的法律訴訟。

經委員會在2000/2001年度處理的法庭訴訟

| 不需展開法律程序而解決的個案 | 委員會繼續處理的個案 | 區域法院已聆訊的個案 | 本年度展開的法庭訴訟 | 本年度以前展開的個案 | 委員會個案 |
|----------------|------------|------------|------------|------------|-------|
| 9 | 14 | 2 | 3 | 2 | 2 |

上述個案詳情請參閱第65 – 66頁。



During this period, the District Court heard two cases in which the plaintiffs were granted legal assistance by the Commission. One of the cases, where the plaintiff was asked to resign or accept demotion after giving notice of pregnancy, was the first pregnancy discrimination case in Hong Kong. The Court found for the plaintiff in terms of liability and the parties subsequently reached a settlement on confidential terms in respect of remedies. The second case, involving sexual harassment by a martial arts instructor, was dismissed by the Court.

Legal proceedings commenced in another three cases in which the plaintiffs were assisted by the Commission in 2000/2001 — these involved claims of sexual harassment by a waitress against her manager in a restaurant, sex discrimination with regard to a retirement policy, and discrimination in employment on the ground of pregnancy. The pregnancy discrimination case was subsequently settled out of court on confidential terms. The trial in the restaurant sexual harassment case commenced on 12 June 2001, but the plaintiff withdrew her claim during the course of the trial and her case was thereby dismissed. The sex discrimination in retirement policy case is still pending further proceedings.

Two cases, which commenced before 2000/2001, were still pending further proceedings as at the end of March 2001. One of these cases was a case involving disability harassment by a taxi driver against his passenger. The Court of Appeal had ruled that the District Court was wrong to order the taxi driver to make an apology. The passenger, assisted by the EOC,

appealed to the Court of Final Appeal. The plaintiff's appeal was dismissed by the Court of Final Appeal, nevertheless, it was held unanimously that the District Court has power to order an apology even from an unwilling defendant in other appropriate circumstances. The other case is a disability discrimination case relating to the recruitment of an officer in a disciplinary service. This is still pending further proceedings in the District Court.

Legal Proceedings Undertaken by the EOC

In 2000, the Commission applied for a judicial review of the Secondary School Places Allocation System (SSPA). The Commission instructed an eminent Queen's Counsel from the United Kingdom, Lord Lester, for the review hearing. In the judgment delivered on 22 June 2001, the High Court found that the SSPA contravened the SDO. This case gained widespread publicity and has helped to raise public awareness of discrimination issues significantly in the community.

The Commission also instructed a barrister in private practice to appear as *amicus curiae* in the appellate proceedings in the judicial reviews concerning the propriety of rural elections in the Court of Final Appeal. The Court of Final Appeal in a judgment delivered on 22 December 2000 upheld the decision of the Court of First Instance and the Court of Appeal, that the rules relating to rural elections were unlawfully discriminatory.

Discriminatory advertisements did not pose a problem and no legal proceedings were instituted by the EOC in this respect during the year.

Court Cases Handled by the EOC in 2000/2001

| <i>Resolved without commencing court proceedings</i> | <i>Ongoing cases being handled by EOC</i> | <i>EOC assisted cases heard by District Court</i> | <i>EOC assisted court cases commenced during the year</i> | <i>EOC assisted court cases commenced prior to the year</i> | <i>Legal proceedings undertaken by EOC</i> |
|--|---|---|---|---|--|
| 9 | 14 | 2 | 3 | 2 | 2 |

Further details of these cases can be found on page 65–66.