



Our Ref : L/M (8) to EOC/CR/LEG/07
Your Ref : CB2/PL/HA
Tel No. : 2106 2123
Fax No. : 2511 8224

LC Paper No. CB(2)266/03-04(01)

5 November 2003

Clerk to Panel
Panel on Home Affairs
Legislative Council Building
6 Jackson Road
Central
Hong Kong
(Attention: Ms. Joanne MAK)

Dear Sir,

Re: Panel on Home Affairs
Special Meeting on 7 November 2003

I refer to your letter dated 1 November 2003, in which you request me to provide information relating to the appointment and termination of appointment of Mr. Patrick YU Chung-yin ("Mr. YU") and decisions made thereto.

Please find as follows a chronology of the events for your information.

Feb 2002 External Consultants completed a review of EOC's complaint handling and related procedures. Recommended, inter alia, amalgamation of Gender Division and Disability into one operational division.

Mar 2002 At a regular EOC meeting, Members endorsed the amalgamation of the two operational divisions and the creation of a new Operations Division. A decision was made that open advertisement of the new post of Director (Operations) should

be undertaken.

- | | |
|----------------------|--|
| 12 May 2002 | The Director of the Gender Division resigned. |
| 8 July 2002 | An external consultant was brought in to assist in the amalgamation exercise of the two operational divisions and to review existing operational procedures and practices. |
| 31 August 2002 | The Director (Gender) left the EOC's employment. |
| Oct 2002 | The recruitment of Director (Operations) commenced after endorsement was obtained from the Administration & Finance Committee ("A&FC"), which had been delegated the task of appointment of EOC staff at MPS 45 level and above (including directorate staff). |
| Dec 2002 | An executive search firm was appointed by EOC to source suitable candidates for the post. The post was also advertised internally within the EOC and externally. The Executive Search Firm co-ordinated all applications. |
| Dec 2002 to Jan 2003 | CV's of initially shortlisted candidates were forwarded by the executive search firm to EOC for consideration. |
| 22 Jan 2003 | The Director of the Disability Division resigned. |
| late Feb 2003 | Initial screening of candidates for the post of Director (Operations) was |

conducted by Mr. Peter YEUNG (EOC Member) and Ms. Anna WU (former EOC Chairperson). Four (4) candidates were interviewed by Mr. YEUNG and Ms. WU. The Director (Planning & Administration) (“DPA”) was present at the interviews, as was a representative from the executive search firm. Of the 4 candidates, three (3) were recommended to proceed to final interview.

The amalgamation of the two operational divisions was commenced in March.

mid Mar 2003

Ms. WU asked the executive search firm to approach Patrick YU to ascertain his interest in the post. Mr. YU was unable to be contacted initially, as he was away from Northern Ireland.

(In the course of the recruitment exercise, Ms. WU also asked the executive search firm to approach a number of EOC Members for referrals and also provided a few other names to the executive search firm to follow up.)

late Mar 2003

The final shortlist of candidates was decided, including the 3 candidates recommended to proceed to final interview and one internal candidate. A&FC set up a Recruitment Board, the composition of which was approved by the then Convenor of the A&FC, Mr. Charles LEE. The Recruitment Board comprised:

Mr. Peter YEUNG (Chair)

Ms. Anna WU

Ms. HUNG Suet-lin
Professor Stevenson FUNG
Dr. Joseph KWOK

No decision concerning the appointment was made after the interviews. Members agreed that one of the external candidates interviewed would be a possibility and could be given further consideration if there were no other suitable candidates. Anna Wu explained to the Recruitment Board that Patrick Yu would be worth exploring and the Search Firm had been asked to ascertain his interest and suitability. Recruitment Board decided to consider next step after report on Patrick Yu from the Search Firm received.

24 Mar 2003

Mr. Patrick YU was interviewed over the telephone by the executive search firm. The executive search firm recommended Patrick YU for further interview by the Recruitment Board.

16 Apr 2003

Mr. Patrick YU was interviewed by the Recruitment Board through video conferencing.

22 Apr 2003

The Director (Disability) left the EOC's employment.

Apr – May 2003

Mr. Patrick YU and one (1) other external candidate were considered as suitable for the post. Both were asked to undertake a psychological test, following which the Recruitment Board decided Mr. YU should be the first choice for the post and the other external candidate

should be placed on reserve. The Board also confirmed that an offer could be made to Mr. YU.

21 May 2003

An offer of appointment was made to Mr. YU.

4 Jun 2003

The EOC's offer of appointment was accepted by Mr. Patrick YU, who advised he would commence work on 1 November 2003.

End Jun 2003

Employment reference checks on Mr. YU were satisfactorily completed.

The amalgamation exercise was completed.

2 Jul 2003

My appointment as the new EOC Chairperson was announced, effective as of 1 August 2003.

A few days later, I spoke with DPA on the phone and said I would like to pay Ms. WU a courtesy visit as soon as possible. DPA informed me that Ms. WU was on holiday overseas and would be back in the office on 17 July 2003. I asked DPA if I could meet with her on 18 July and he said he would let Ms. WU know of my request and get back to me.

I subsequently found out that Ms. WU was holidaying in Italy.

DPA subsequently contacted me and advised me Ms. WU could meet with me on 21 July 2003.

17 Jul 2003

EOC issued a press statement on Mr. Patrick YU' s appointment.

I subsequently received a call from DPA to say Ms. WU could not see me on 21 July, but that she would contact me herself when she was free.

18 Jul 2003

Mr. Patrick YU' s press interview was published in the SCMP.

22 Jul 2003

I received a call from Ms. WU, who explained she had been too busy to see me since her return. I told her I was extremely concerned that she had announced Mr. Patrick YU' s appointment in the press, without letting me know about it first. I felt that, as I was the incoming Chairperson, she should have done me the courtesy of informing me of his appointment and that there would be a press statement about it.

Ms. WU apologized and offered for me to join her at the EOC press conference she was holding on 28 July 2003, to release the EOC' s SARS report findings. She also offered to hold a joint press conference with me on 30 July 2003, to hand over the role of EOC Chairperson to me. As I had indicated from early July that I wished to meet with her as soon as possible to discuss work and hand over issues, I was very upset with Ms. WU' s attitude in offering me press interviews, and told her I had no interest in attending my own funeral. Ms. WU then got very

angry at my accusation. She said I was attacking her integrity and demanded an apology, which I gave, but I refused to attend any press interviews with her.

28 Jul – 1 Aug 2003

Mr. Patrick YU visited the EOC office in Hong Kong.

1 Aug 2003

I commenced my appointment as EOC Chairperson.

I met with Mr. YU in my office and expressed my concerns over the remarks made in the SCMP interview. I did not consider they were appropriate comments to be made by an employee who had not yet started in the job, and did not show respect to EOC Members or myself as the new Chairperson. I asked Mr. YU whether he knew the requirements of the job of Director (Operations).

Mr. YU apologized and said he had been misquoted. He said he had been in Italy on holiday when he gave the interview and perhaps there was a misunderstanding. I was concerned with his poor lack of judgment and demeanour towards me and the EOC. No other EOC director had given press interviews about the role they would personally play, let alone that they would be responsible for “upholding the integrity of the EOC”. I took this to be insulting to me and to EOC members, as well as to other senior staff within the EOC. I told Mr. YU to think carefully about the

appointment and the duties of the post.

early Aug 2003

I consulted senior managers in the EOC about the amalgamation exercise and the needs identified by that exercise and the review by the external consultant. These indicated that the focus of the new Operations Division should be investigation and conciliation, and that there was a lot of work required to be done in respect of the EOC's complaint handling function.

I also consulted senior managers about Mr. YU's visit to the EOC in the last week of July 2003. I was informed that Mr. YU did not meet with the Ag. Director (Operations) / Consultant until the last day of his visit, and showed little interest in discussing operational issues.

I also discovered that the EOC had had three Operational directors in the previous 6 years, and a Chief Executive who had resigned after less than 6 months in the post. I was concerned to ensure that the new Director (Operations) was someone who could fill the role and work harmoniously with EOC Members, EOC staff and myself.

I subsequently asked DPA to contact Mr. YU and ask him for a written summary of his investigation and conciliation experience.

22 Aug 2003

Mr. YU provided a written summary of his experience in handling investigations and complaints. Upon review of this, I

felt that Mr. YU was not suitable to focus on investigation and conciliation. I had serious doubts whether Mr. YU would be able to address the operational needs which had been reported to me following my commencement. Coupled with what I perceived to be a lack of judgment on Mr. YU's part, and a lack of respect for EOC Members and myself as Chairperson, I took the view that I would be unable to work harmoniously with him and that he was not suitable. I asked DPA to contact Mr. YU and to explore with him the possibility of his going back to his post in the Northern Ireland Council for Ethnic Minorities ("NICEM") and to see whether we could amicably resolve the matter relating to his contract, rather than having Mr. Yu leave his job and family in Northern Ireland, come to Hong Kong, and then have the position not worked out.

3 Sept 2003

DPA contacted Mr. Patrick YU and discussed my concerns with him. I was advised by DPA that:-

- (i) Mr. YU said it would be difficult for him to go back to his job at NICEM, as NICEM had arranged for someone to act in his position;
- (ii) Mr. YU mentioned he would consider 12 months' salary (plus cash allowance) as compensation to settle the matter amicably. He then went

on to say he might consider to settle the matter for at least 6 months' salary (plus cash allowance);

- (iii) Mr. YU said that what EOC was considering was an anticipatory breach of contract;
- (iv) DPA told Mr. YU it might be difficult to consider 6 months' salary (plus cash allowance) as compensation and explained the terms of the notice period and compensation payment under EOC employment contracts; and
- (v) DPA told Mr. YU he would convey the conversation to me and inform me of Mr. YU's request for compensation.

5 Sept 2003

I discussed my concerns about the appointment of Mr. YU with Mr. Peter YEUNG (the Chair of the Recruitment Board which selected Mr. YU) and that I did not consider him suitable for the post of Director (Operations). I informed Mr. YEUNG that I was considering recommending the termination of Mr. YU's contract of employment. Mr. YEUNG agreed with my proposal.

I asked DPA to further explore the issue of settlement with Mr. YU, and to find out if Mr. YU would be prepared to accept 2 months' salary (plus cash

allowance) as compensation if the contract were terminated.

16 Sept 2003

DPA contacted Mr. YU and subsequently advised me that Mr. YU said he would consider the offer of 2 months' payment and get back to us.

17 Sept 2003

EOC received an open letter from Mr. YU's solicitors in Northern Ireland, claiming that there had been a breach of contract by the EOC. Mr. YU's solicitors advised that they had instructions to issue proceedings for damages for breach of contract, breaches of the Bill of Rights and defamation of character against the EOC and me personally and – unless they received a proposal to settle Mr. YU's claim within 7 days – they would issue proceedings without notice.

18 Sept 2003

Mr. Patrick YU's suitability for the role of Director (Operations) and termination of his contract were discussed at the EOC Meeting. Members resolved that I should be given full power to handle Mr. YU's contract of employment.

(A summary of the EOC meeting will follow).

20 Sept 2003

On my instructions, the EOC's Legal Adviser issued a letter to Mr. YU's solicitors to the effect that Mr. YU's comments published in the press were not commensurate to his obligations and responsibilities as Director (Operations)

or as an employee of the EOC and suggested a distinct lack of appreciation of the job duties and / or arrogance and disrespect towards EOC Members and myself. Mr. YU's solicitors were advised that EOC Members and I had formed the view that their client was not a suitable employee for the EOC and that DPA had already discussed with Mr. YU the possibility of offering him 2 months' salary (plus cash allowance) in settlement of any claim.

23 Oct 2003

Mr. Patrick YU held a press conference in Hong Kong, claiming that I had unreasonably dismissed him and that this was a serious breach of contract.

Mr. YU demanded in press interviews that I give him an open explanation.

You will note that, as at 16 September 2003, on my instructions, Mr. Michael Chan (DPA) was still exploring with Mr. YU possible options for amicable resolution of Mr. YU's contract of employment in the event that it was terminated, and that no decision had yet been made that his employment should be terminated. The decision to terminate Mr. YU's employment contract was made following the EOC meeting on 18 September 2003.

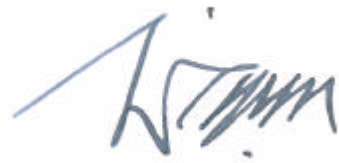
Furthermore, although Mr. YU's comments to the press from 23 October 2003 onwards have been widely reported in both the Chinese and English press, you will note that, to date, the EOC has not received any response to the letter issued by its Legal Adviser to Mr. Yu's solicitors on 20 September 2003.

I would also like to point out that, although Mr. YU demanded an open and public explanation in the press, this did not seem appropriate at the time,

given his solicitors' advice that they were instructed to issue legal proceedings against the EOC and myself.

In view of Mr. YU's recent comments in the press and his suggestion that he would not accept 2 months' salary as compensation, the EOC is now waiting for Mr. YU to advise what he is seeking.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Wong Kin-chow', with a long horizontal stroke extending to the left.

Wong Kin-chow, Michael
Chairman
Equal Opportunities Commission