

立法會政制事務委員會會議
2016年6月20日
回應劉慧卿議員的提問

Meeting of the Constitutional Affairs Panel of the Legislative Council
Responses to the questions raised by The Hon Emily LAU

1. 陳教授剛接任平機會主席，報章便披露他涉嫌隱瞞嶺南大學，為民建聯區議員鄭琴淵女士報讀的菲律賓太歷國立大學博士課程擔任論文導師，並向她收取指導費，鄭女士更可於一年便完成博士課程，令學術界嘩然。嶺大稱陳教授收取的酬金未有超出大學規定之每年上限，因此不會追究，但事件令陳教授的學術操守和誠信備受質疑。當傳媒詢問陳教授有關這問題，其答覆更前言不對後語，很多市民表示難以接受一個缺乏操守和言辭矛盾的人擔任平機會主席。陳教授怎樣回應這些指責及如何挽回社會的信心？

就有關誠信的質詢，本人在五月十七日已經回應由十五個團體提出的二十項提問，並提供詳細資料，本人亦於五月廿三日把回應放上本人面書以供公眾參閱（面書網址：https://m.facebook.com/profile.php?id=100012281257844&_rdr）。

本人在香港及國際的衛生、福利、長者及少數族裔等領域，擁有三十多年專業及公共服務經驗。憑著過去的專業訓練、知識及跨文化的經驗，我在這時刻接受新的挑戰，決心推動香港的平等機會發展。本人將繼續與不同團體及持份者會面，加強溝通，並向他們重申，平機會必定全力以赴地履行職責，推動香港的平等機會發展。

With regard to the query about my integrity, I have already responded on 17 May with detailed information to the 20 questions raised by 15 organizations. I have also posted my response on my facebook page on 23 May.

(facebookpage: https://m.facebook.com/profile.php?id=100012281257844&_rdr)

I have over 30 years of experience in the fields of health, welfare, as well as services for the elderly and ethnic minorities in both Hong Kong and the international arena. With my professional training, knowledge and

cross-cultural experiences, I decided that this is the right moment to take up this new challenge, and am committed to promoting the development of equal opportunities in Hong Kong. I shall continue to meet with various groups and stakeholders to enhance communication with them and to reiterate to them that the Commission will do its best to perform its duties and promote equal opportunities in Hong Kong.

2. 陳教授接受傳媒訪問時指出，香港已有法例保障性小眾的權利，當時的平機會主席周一嶽醫生指出說法有誤，陳教授更曾稱同性戀者為「老同」，亦被同志平權組織評批對性小眾有誤解，無法有效維護弱勢的基本權益。陳教授有否就同志平權團體對其批評作出反省，及有何措施和行動，以改變其偏頗的態度和思想，盡力加深了解不同性傾向人士面對的問題，和會否積極向政府倡議訂立性傾向反歧視法例？

答2：本人在未上任平機會主席之前，接受了一些傳媒訪問，由於那時本人對平等機會的條例認識未夠深入，再加上表達不夠清晰，引致了一些誤解，本人深感抱歉。自上任平機會主席兩個月以來，本人已經與三十多個團體會面，當中包括持不同意見的團體，亦出席了「世界不再恐同日」活動，深深體會性小眾人士在不同範疇受到歧視的問題。

本人支持政府應該盡快就保障性小眾免受歧視進行公眾諮詢及立法，但在立法的形式、內容、細節及豁免範圍方面，仍有待各界人士討論。平機會希望在這個議題上，可以協調不同意見的持份者，促進不同界別的意見交流，一起探討有關議題。

I accepted a few media interview requests before assuming office as the EOC chairperson. The interviews took place at a time when I had not yet gained a thorough understanding of the anti-discrimination ordinances, and since I did not explain things clearly enough, I regret that there were misunderstandings which have arisen from them.

In the two months since I assumed office as the EOC Chairperson, I have met with more than 30 organizations, including groups that are of different views. I also attended an International Day against Homophobia

and Transphobia (IDAHOT) event and gained a much deeper awareness about the discrimination faced by sexual minorities in various areas.

I agree that the Government should conduct a public consultation exercise on and legislate for the protection of sexual minorities from discrimination as soon as possible. But the format, content, details and exemption areas are yet to be discussed by various parties. The Commission hopes to co-ordinate stakeholders with different views on this issue and promote communication and discussions between them.

3. 聯合國人權事務委員會曾多次建議特區政府按照《巴黎原則》成立一個法定、獨立、自主和具廣泛職權的人權委員會，確保該委員會處理人權議題的獨立性，有效防止政府的干預，加深市民對自身人權的了解，以及尊重他人的權利。平機會會否促請政府當局接受聯合國人權委員會的建議，並協助推動成立該委員會，以保障市民的平等權利。

答 3：聯合國人權事務委員會和平機會曾多次作出有關成立人權委員會的建議。平機會在 2014 年進行的歧視條例檢討，收到的諮詢意見方面，大多數機構同意建議。當中尤以服務婦女、少數族裔和從事人權事務的非政府組織以至法律機構最為支持。鑑於問題的範圍廣闊也複雜，政府宜就有關問題另行進行詳細的研究和公眾諮詢。平機會的歧視條例檢討—向政府提交的意見書內，第 60 項建議，已清楚列出：平機會建議政府應考慮設立人權委員會，並就有關問題另作詳細研究和公眾諮詢。

雖然，政制及內地事務局在 5 月 11 日回覆張超雄議員的提問時，已經作出書面答覆，對成立人權委員會的建議有所保留，認為現有的制度行之有效，沒有需要另外設立一個人權委員會，重複或取代現有機制的工作。平機會將會繼續向政府就成立人權委員會反映意見，希望政府能就這建議作廣泛諮詢及討論。

The United Nations Human Rights Committee and the EOC have made recommendations on the establishment of a Human Rights Commission on many occasions. During our public consultation on the Discrimination Law Review conducted in 2014, most of the submissions received by the EOC from organizations were in favour of the recommendation. In particular, NGOs serving women, ethnic minorities and those working on

human rights showed the greatest support. In view of the wide scope and complexity of the issue, the Government should separately conduct detailed research and consult the public on it. Our recommendation 60 in our “Discrimination Law Review – Submissions to the Government” states that: It is recommended that the Government should give consideration to the establishment of a Human Rights Commission by conducting separate detailed research and public consultation on those issues.

The Constitutional and Mainland Affairs Bureau (CMAB) provided a written response in relation to a question raised by Dr Hon Fernando CHEUNG Chiu-hung, on 11 May, stating that it had reservations about the establishment of a Human Rights Commission; that the current mechanisms had proven effective; and there was no need to establish a Human Rights Commission which would duplicate or replace the work of the existing mechanisms. Nevertheless, the EOC will continue to convey our views on the establishment of a Human Rights Commission to the Government, in hopes that the Government will conduct an extensive public consultation and further discussions on this issue.

4. 平機會有何工作計劃推動市民認識反歧視法例和有關投訴程序，並做到深入淺出地協助求助人明白相關法例和程序，以及向投訴人作出支援？

答 4：平機會一直透過不同的方法及各種渠道，向市民解釋處理投訴程序。平機會的網頁設有十種語言，包括中文、英文、印度語、斯里蘭卡語、巴基斯坦語、尼泊爾語、印尼語、菲律賓語、泰語及旁遮普語，介紹反歧視法例和投訴程序。此外，平機會網站亦設有短片(包括手語版)，深入淺出地解釋投訴程序，市民除了可以親身到平機會作出投訴外，亦可透過電郵、傳真、電話或填寫網上的投訴表格，務求方便市民作出投訴。平機會亦在網站內定期更新處理及成功調停的歧視個案，並出版個案實錄，闡述平機會處理投訴的方案和手法，讓市民更為理解我們的工作，增加透明度。

平機會不時透過 YouTube 短片，電視實況劇、電視宣傳短片、電台節目及電台宣傳片段，簡介投訴程序及處理投訴的方法。平機會在這個財政年度亦會加強在不同媒體，例如：電台及網上媒體，宣傳平機會的工作，令市民更為了解投訴程序及平機會如何協助投訴人討回公道。

平機會將會繼續聆聽市民的意見，有需要時加強宣傳，提升市民對投訴程序之認識，並檢討處理投訴程序，改進我們的服務。

The Commission has explained to the public our complaint handling procedures through various means and channels. The EOC website offers explanations about the anti-discrimination ordinances and the complaint handling procedures in 10 languages, including Chinese, English, Hindi, Bahasa Indonesia, Sinhalese, Nepali, Punjabi, Tagalog, Thai, and Urdu. Besides, the EOC website also offers short videos (available in sign language version as well) that explain our complaint procedures in simple terms. Apart from lodging a complaint in person, members of the public may also lodge a complaint by email, fax, phone or by filling out an online complaint form. The Commission also regularly updates the discrimination case register, which discusses cases that have been successfully conciliated, and publishes an Equal Opportunities Casebook, which illustrates how the Commission approaches and handles complaints, so as to ensure transparency in our work.

Introduction to our complaint mechanism and our complaint handling procedures are made via YouTube videos, docu-drama series, TV APIs, radio programmes, and radio promotional clips from time to time. In this financial year, we will also step up our efforts in promoting our work through various media channels, such as radio and online media, to enhance public understanding of our complaint procedures and the ways we help complainants to obtain redress.

The Commission will continue to listen to public views. Promotional efforts will be strengthened when necessary, in order to enhance public understanding of our complaint mechanism, and review our complaint handling procedures in order to improve our services.

5. 平機會處理投訴的程序無論涉及投訴人和答辯人均缺乏上訴機制，被關注團體批評為欠缺程序公義，平機會會否就此作出檢討和改善？

答 5：平機會接到市民的投訴後，投訴事務科的職員是會按平機會處理投訴程序，處理有關投訴。投訴事務科的職員在處理投訴時，必須通過一定的程序，經不同職級的職員商討、批准及核實，確保公平、公正地處理每一宗投訴。投訴人亦可與負責處理投訴的職員，互相交流意見。

假如，投訴人和答辯人對平機會的決定有任何疑問，平機會隨時樂意向他們解釋有關的決定，並作出其他的協助。如果投訴人或答辯人能提供補充資料，平機會將會再次審視有關個案，並跟進個案。

When a complaint is received, our Complaint Services Division (CSD) will handle it according to the Commission's complaint handling procedures. CSD officers, when handling complaints, must go through a set of procedures, discuss with officers of different ranks, and obtain necessary approvals and verifications in order to ensure that every complaint is handled in a just and fair manner. The complainant can also exchange views with the case officer concerned.

If a complainant or a respondent has any queries about the Commission's decisions, the Commission is always willing to explain our decisions to them and offer other assistance. If a complainant or a respondent can provide supplementary information, the Commission may review and follow up their case.

6. 香港並無專門和便捷處理歧視爭議的審裁處，只能靠法院處理，審理該等案件時間甚長，更減少投訴人以訴訟方式處理個案審議的意欲。平機會如何評價需要長時間處理歧視訴訟的問題，及會否倡議成立處理歧視爭議的審裁處，以加快處理投訴案件？

答 6：平機會早於 2009 年已向政府當局提出建議，設立平等機會審裁處，以提供一個簡單方便、非正式的模式，讓訴訟各方可以迅速有效地處理申索案件。平機會理解到政府對建議有所保留，其中考慮的因素包括：

The Commission made proposals for the establishment of an Equal Opportunities (EO) Tribunal back in 2009, which will offer the parties involved a quick and informal way to resolve claims in a swift and

effective manner. The Commission is aware that the Government has reservations about the proposal. Their concerns include:

- 平等機會的申索關乎對公眾有重要性的原則，在性質上可能複雜，設立專責審裁處亦不能保證可以迅速解決有關申索； EO claims involve principles of public importance, which may be complicated in nature. Establishing a specialized tribunal would not necessarily lead to a speedy resolution of claims;
- 由於平等機會案件的數量偏低，在過去平均每年只有十數宗平等機會申索提交法院處理，從資源角度，並不足以構成設立專責審裁處的理據； With only an average of 10 EO cases brought to court each year, the small caseload does not justify the establishment of a specialized tribunal, because it would not be conducive to the efficient deployment of resources;
- 再者，當局在過去數年對民事司法制度作出了改革，採取了不同措施簡化所涉的法律程序*，因此政府認為未有需要設立平等機會審裁處。 Besides, the civil justice reform has been implemented in the past few years. Civil procedures have been streamlined through various measures*. Therefore, the Government considers that there is no need to establish an Equal Opportunities Tribunal for the time being.

雖然如此，平機會將繼續監察現行司法框架下處理平等機會申索的情況，包括改革措施施行後的成效，並繼續向政府提出建議，如何進一步簡化法院審裁平等機會申索的程序。

Nevertheless, the Commission will continue to monitor the situation of how EO claims are handled under the existing legal framework, including the results of the reform measures, and continue to make recommendations to the Government on how to further streamline the court procedures pertaining to EO claims.

[*參考：政府於 2014 年 6 月 6 日將《2014 年區域法院平等機會（修訂）規則》（修訂規則）刊憲，並於 6 月 11 日提交立法會進行先訂立後審議的程序。其中一項主要修訂，是以格式限制較為寬鬆的申索及

回應表格，取代須符合技術細節的狀書。司法機構亦同時為平等機會申索擬訂實務指示，詳列在簡化法律程序下的細節安排。]

[* for reference: The District Court Equal Opportunities (Amendment) Rules 2014 (the Amendment Rules) were published in the Gazette on 6 June 2014, which was tabled in the Legislative Council for negative vetting. One of the key proposed amendments was to replace technical pleadings with more informal claim and response forms. The Judiciary was also preparing a new practice direction to provide for the details of the relevant court process under the streamlined procedures for EO claims.]

7. 平機會主席的遴選程序一直為社會詬病，因為由政府委任的遴選委員會代表性不足，成員更欠缺促進人權和平等機會的背景，更未有包括來自人權和反歧視工作的非政府組織、弱勢社群及服務提供者的代表，亦未有婦女及少數族裔的代表。平機會有否研究遴選主席的方式是否恰當，及會否促請政府檢討遴選機制，並在過程加強公眾參與，確保平機會有多元聲音，而遴選委員會的成員亦應包括民間社會、服務受眾和其他相關專業組織的代表，遴選主席的準則應該包括深入認識人權和消除歧視議題的人士，讓合適的人領導平機會的工作？

答7：根據《性別歧視條例》，平機會的主席和委員均由特區行政長官任命。平機會認為管治委員會的成員包括主席，應具備合適和多方面經驗，且能代表平機會消除歧視工作所涉及的不同群體。雖然遴選主席乃政府的責任，平機會原則上支持政府在遴選及委任過程加強透明度以及公民社會的參與。

事實上，平機會在《歧視條例檢討 一向政府提交的意見書》內，便建議政府在反歧視條例內加入條文，指明平機會應維持獨立，不受政府左右。

至於管治委員會委員的委任，平機會亦建議加入條文，指明接受公開申請或由獨立委員會負責管治委員會委員的任命；並訂明任命為管治委員會委員的人士應具備在不同界別推動平等的相關經驗。

According to the Sex Discrimination Ordinance, the EOC Chairperson is appointed by the Chief Secretary of the HKSAR. The Commission considers that Members of the EOC Board, including the Chairperson,

should have suitable experience in relevant areas and represent different groups of interests in relation to the EOC's work to eliminate discrimination. Although the Government is responsible for the selection of the Chairperson, the Commission agrees in principle that transparency and participation from civil society should be improved in the selection and appointment processes.

As a matter of fact, in the "Discrimination Law Review - Submissions to the Government", the Commission has recommended that a provision should be included in reformed discrimination laws providing for the maintenance of the independence of the EOC from the Government.

Regarding the appointment of the EOC Board Members, the Commission has also recommended that a provision be included to provide for open recruitment or appointment by an independent search panel; and that Board Members should have relevant experience in promoting equality in different sectors.

8. 我們留意日前行政會議成員兼前平機會主席胡紅玉女士接受《南華早報》訪問時建議，當局應改革委任人士出任法定機構和諮詢委員會的機制，她建議效法英國的做法，委任一位獨立的公職委任專員，確保當局透過一個公平、公正和有透明度的程序，委任能幹的人士出任公職，一些主要職位的委任更要通過國會專責委員會的聆訊。我們希望平機會能促請政府確立一個透明和公平的遴選機制及程序，讓法定機構和諮詢委員會的人選具備認受性，對一些主要公職的委任，應受立法機關監督。

答8：作為消除歧視、推動平等的法定機構，平機會支持當局透過公平、公正和具透明度的程序，委任社會上合適的人士出任公職。

至於委任獨立的公職委任專員，以處理法定機構和諮詢委員會的任命事宜，這個建議不單與平機會有關，亦與所有公共機構有關，我們認為政府宜作廣泛諮詢，聽取社會上不同界別的意見，以作考慮。

As a statutory organization tasked with the elimination of discrimination and promotion of equal opportunities, the Commission supports the appointment of suitable candidates to public office through just, fair and transparent procedures.

Regarding the appointment of an independent Commissioner for Public Appointments to handle matters concerning the appointment of public officers to statutory bodies and advisory committees, the proposal is not only related to the EOC, but all public organizations as well. We consider that the Government should conduct an extensive consultation to listen to the views of various sectors in society for reference.
