

Re: Race Discrimination (Proceedings by Equal Opportunities
Commission Regulation)

Submission of the Hong Kong Bar Association

1. The Hong Kong Bar Association (“HKBA”) has been asked by the Legislative Council subcommittee on Race Discrimination (Proceedings by Equal Opportunities Commission) Regulation (“the RD Regulation”) for its views of the said regulation, particularly on the prescribed circumstances in which the Equal Opportunities Commission (“EOC”) may bring proceedings under the Race Discrimination Ordinance (Cap 602) in its own name.
2. The Assistant Legal Adviser of the Legislative Council has highlighted some differences between the RD Regulation and the Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation (“the DD Regulation”).
3. The HKBA considers that it is generally desirable to have identically phrased provisions of the “merits” threshold for the EOC to take legal proceedings. Although the HKBA considers that there should, in substance, be no material difference between the threshold of “it appears to the Commission that the claim of the person is well-founded” (as provided in the RD Regulation) and the threshold of “the Commission has reason to believe that a person has committed an act of discrimination ...” (as provided in the DD Regulation), the HKBA notes that the subjective wording of the threshold provision in the RD Regulation is liable to give an impression that the EOC is allowed more leeway in decision-making than the objectively phrased threshold provision in the DD Regulation.
4. The HKBA considers that there is no need to comment on the other differences that involve procedural requirements or prerequisites which appear in the DD Regulation but not in the RD Regulation.

Dated 3rd April 2009.

Hong Kong Bar Association