Key findings from a study of 451 complaints concluded by the EOC between 1 July 2000 and 31 March 2001

by Gabrielle Rush

I. Socio-demographic profile of complainants and respondents

Complainants

- Gender:
  - 66.8% of all complainants were women; 33.2% were men.
  - 91.7% of SDO/FSDO complainants were women; 8.3% were men;
  - 56% of DDO complainants were men; 44% were women. This roughly reflects the proportion of men and women in Hong Kong’s disabled population.

- Employment status: 87.6% of complainants were employed in the paid workforce at the time the alleged discriminatory acts occurred. By the time they filed their complaints, 47.9% were unemployed.

- Type of job:
  - 51.1% of SDO/FSDO complainants were clerical or sales and services-related workers; 13.3% held managerial or professional positions; 12.6% were semi-professionals; 10.5% were homemakers, students or retired people; 8.4% were factory or manual workers and 4.2% were civil servants;
  - 29.3% of DDO complainants were clerical or sales and services-related workers; 26.8% were factory and manual workers; 14.6% were semi-professionals; 14.6% were homemakers, students and retired people; 8.1% were managers or professionals and 6.5% were civil servants.

- Monthly income:
  - 59.2% of all complainants had a monthly income of between HK$5,000 and HK$15,000;

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- The median monthly income of SDO/FSDO complainants was HK$13,200;
- The median monthly income of DDO complainants was HK$10,000.

**Representation:** 83.6% of complainants represented themselves during the EOC process; 9.5% were represented by a parent or spouse; 3.5% were represented by a non-governmental organization; 1.6% were represented by a lawyer and a handful were represented by a friend, relative, or trade union.

**Respondents**

- **Type of respondent:** 37.2% of all respondents were individuals; 24.7% were local private sector companies; 14.7% were government departments; 13.1% were multi-national private sector companies and 10.2% were public sector organizations.
- 48.5% of SDO/FSDO complaints were filed against private sector companies and 14.8% were filed against government departments or other public sector organizations;
- In contrast, 29.7% of DDO complaints were filed against private sector companies and 32.8% were filed against government departments or other public sector organizations.

- **Gender of individual respondents:** 65.3% of individual respondents were men; 34.7% were women.

- **Size of respondent company/organization:**
  - 51% of SDO/FSDO respondent companies or organisations were small employing less than 100 people; 32.7% were large employing more than 1000 employees;
  - 31.3% of DDO respondent companies or organisations were small; 43.8% were large.

- **Representative:** The main representative of respondents in correspondence and other contact with the EOC were the individual respondent named in the complaint (35.5%); owners, directors or general managers of the company involved (24.1%); division heads or administrative officers (11.9%); personnel department officers (11.2%); senior government officials (10.4%). Only 6.9% used a lawyer as their main representative although 12% of respondents had legal representation at some stage during the EOC process.
II Nature of the Complaints

- **Ordinance:**
  - 56.3% of all the complaints in our sample were filed under the DDO;
  - 41.7% were filed under the SDO; and
  - 2% were filed under the FSDO.

- **Alleged unlawful acts:**
  - 47% of all complaints alleged disability discrimination;
  - 16.2% alleged pregnancy discrimination;
  - 12.2% alleged sexual harassment;
  - 9.5% alleged sex discrimination;
  - 7.5% alleged disability harassment;
  - 2% alleged family status discrimination;
  - 1.6% alleged marital status discrimination;
  - A small number of complaints alleged victimization or disability vilification.

- **Field of complaint:**
  - 72.3% of complaints were employment-related;
  - 10.2% concerned the provision of goods, services and facilities;
  - 8.4% concerned access to facilities or premises;
  - 6% concerned education and a small number of cases concerned government services and other fields.

- **Direct or indirect discrimination?** 92.2% of complaints alleged direct rather than indirect discrimination.

Complaints filed under the Sex Discrimination Ordinance

- **Pregnancy discrimination:** Our findings confirm that pregnancy discrimination is a severe and pervasive problem in Hong Kong. Examples include immediate dismissal from employment once an employer was advised of the pregnancy; unfavourable treatment (including demotion or lack of expected promotion) during pregnancy; and dismissal or unfavourable treatment upon return from maternity leave.

- **Sexual harassment:** The most common forms of sexual harassment alleged in our sample were unwelcome conduct of a sexual nature (oral statements) (38.2%); employers’ vicarious liability (29.1%); unwelcome physical sexual advances (14.5%); unwelcome conduct of a sexual nature (physical) (14.5%) and sexually hostile environment (14.5%).
Complaints filed under the Family Status Discrimination Ordinance

- All of the family status discrimination cases in our sample related to discrimination in employment and involved claims of dismissal or denial of promotion because of child-minding responsibilities during weekends and evenings.

Complaints filed under the Disability Discrimination Ordinance

- **Type of disability:**
  - 27.2% of DDO complaints concerned a physical disability;
  - 22.8% concerned a chronic illness;
  - 15.7% concerned a mental disorder or malfunction;
  - 11% concerned sickness;
  - 10.6% concerned a visual/hearing or speech impairment;
  - The remaining cases concerned mental retardation, HIV/AIDS, or imputed disability. In a small number of complaints the disability was not specified.

- **Type of disability discrimination:** 83.4% of DDO complaints alleged disability discrimination and 13.4% alleged disability harassment. The remaining complaints alleged disability vilification or victimization.

- **Basis of complaint:** The most common basis for complaint in DDO cases was dismissal from employment (30.3%), followed by discrimination or harassment in access to facilities or premises (15%), and disability harassment (13.4%).

Employment-related complaints

- **Status of employee:** In employment-related complaints 65.3% of complainants were employees or former employees of the respondent at the time of filing their complaint. This figure was similar under the SDO/FSDO (65.5%) and the DDO 65.2%.

- **Basis of complaint:** 43.9% of employment-related complaints alleged discriminatory dismissal and 10.1% concerned sexual harassment. The remaining cases concerned terms and conditions of employment; promotion, training and transfer; recruitment; disability harassment; vicarious liability of employers; other detriments or victimisation.

- **Discriminatory dismissal:** In cases alleging discriminatory dismissal, 29.4% of complainants were given no reasons for their dismissal and 26.6% were alleged to have a poor work attitude, performance or be involved in misconduct. Other reasons given included poor relationship with bosses or colleagues; redundancy or
expired contract; complainant not physically fit enough to work; or too much sick leave taken. In 4.9% of cases, the complainant’s gender, marital status or pregnancy were actually identified by employers as the reason for dismissal.

**Discrimination in the provision of goods, services and facilities**

- 60.9% of cases alleging discrimination in the provision of goods, services and facilities concerned public and personal services such as banking and hairdressing and 10.9% alleged sexual or disability harassment by a service provider. The remaining cases concerned transportation services; facilities in restaurants, entertainment facilities, parking buildings, retail shops or other detriments such as a different price being charged for different genders.
III. Outcome of complaints

- Of the 451 complaints in our sample:
  - 204 (45%) were discontinued;
  - 158 (35%) were conciliated;
  - 71 (15.7%) were unsuccessfully conciliated; and
  - 18 (4.2%) were resolved outside of the EOC process.

Discontinued complaints

- **Reasons for discontinuation:**
  - 45.9% were discontinued because the complainant did not wish to pursue the matter further;
  - 36.5% were found to lack substance or to be vexatious, misconceived or frivolous;
  - 7.7% alleged no unlawful act;
  - The remaining 9.9% were discontinued because they had been resolved through a mechanism outside the EOC process; were filed outside the 12-month statutory time bar; the complainant chose to take direct court action; or the respondent could not be identified or because the complainant accepted the respondent’s explanation.

Conciliated complaints

- **Remedies:**
  - 22.2% of complainants received monetary compensation;
  - 22.2% secured an apology from the respondent;
  - 17.7% of cases involved a combined settlement with a related EOC complaint;
  - 13.3% secured an agreement by the respondent to establish a new policy or amend an existing one;
  - 13.9% secured an agreement by the respondent agree to prevent similar acts from occurring again in future;
  - 10.8% involved an improvement in access or mobility or improvement in facilities;
  - 5.7% resulted in an improvement in the provision of goods, services and facilities;
  - Other remedies included a job or school interview being granted or reviewed; rehousing; an offer of promotion, training, transfer or new posting or work arrangement; provision of rights or benefits; a promise of no victimization; or other miscellaneous benefits.
- **Monetary compensation:** The average amount of monetary compensation received was HK$62,624.30. The median amount HK$20,000. The highest single award was HK$624,000 and the lowest HK$395. Compensation of over HK$100,000 was awarded in only six cases. Of those complainants that received monetary compensation, 66.7% of SDO/FSDO complainants and 100% of DDO complainants received less than HK$50,000. The median amount awarded in SDO/FSDO complaints was HK$30,000 and in DDO complaints HK$18,377.60.

Unsuccessfully conciliated complaints

- **Reasons for unsuccessful conciliation:**
  - Parties failed to agree on terms of settlement (39.4%);
  - Respondent refused to conciliate (25.4%);
  - Respondent refused to admit any unlawful act (16.9%);
  - Respondent did not respond to the EOC at any stage (11.3%);
  - Complainant refused to conciliate or agree on proposed terms of settlement (7%).

- **EOC Legal assistance** - 32 (45.1%) of the 71 complainants whose complaints were unsuccessfully conciliated applied for EOC legal assistance. Seventeen (53.1%) were granted legal assistance. Of these, nine complaints settled before any further legal action was taken; one complaint was withdrawn by the complainant; two complaints were the subject of ongoing legal proceedings at the end of our study period; and in five cases, the EOC decided not to provide further legal advice before any court action was taken.
IV. Factors that influenced the outcome of complaints

- **Ordinance:** Complaints filed under the SDO were more likely to be conciliated than complaints filed under the DDO.

- **Unlawful act alleged:** Complaints alleging sexual or disability harassment were more likely to be conciliated than complaints alleging sex, pregnancy or disability discrimination.

- **Time taken to conclude complaint:** Complaints concluded within three months of the date of filing were more likely to be conciliated than those concluded after four or more months.

- **Time taken to file complaint:** The sooner a complaint was filed after the occurrence or commencement of a discriminatory act or acts, the more likely it was that the complaint would be conciliated.

- **Complainant’s ability to articulate:** A highly articulate SDO or FSDO complainant was more likely to have their complaint conciliated than a moderately articulate or not very articulate SDO or FSDO complainant. However, a difference in ability to articulate made very little difference to the outcome of DDO complaints. Just over half of all SDO or FSDO complainants in our sample were classified as moderately articulate. In contrast, 52.8% of DDO complainants were classified as not very articulate.

- **Role played by complainant:** An SDO or FSDO complainant who played a highly active role in advancing his or her complaint through the EOC process had a 57.5% chance of securing a conciliated outcome. However, a highly active DDO complainant had a 32% chance of securing a conciliated outcome. In contrast, a moderately active DDO complainant had a 36.2% chance of securing a conciliated outcome. Passive complainants under both ordinances were unlikely to secure conciliated outcomes.

- **Type of conciliation:** Complaints subject to ‘early conciliation’, before an investigation was commenced by the EOC, were more likely to be conciliated than those subject to conciliation after an investigation had been conducted.

- A complaint had more chance of being conciliated if the parties had met in a face-to-face conciliation conference than if the EOC officers had passed offers and counter-offers between the parties without them ever actually meeting.

- **Legal representation:**
  - Only six of the complainants in our sample had legal representation at any stage of the EOC process. It was not, therefore, possible for us to determine whether the involvement of legally represented complainants affects the outcome of complaints;
Fifty four respondents in our sample had legal representation at some stage of the EOC process (41 were SDO respondents and 13 were DDO respondents). The involvement of lawyers on the part of respondents made little difference to the outcome of conciliation efforts.

- **Reaction of the respondent:** There was a much higher chance of a complaint being conciliated if the respondent co-operated with the EOC. An uncooperative respondent considerably reduced the chances of conciliation.

- Government departments and other public sector bodies were the respondents most likely to cooperate with the EOC process. Individuals and local private sector companies were the respondents least likely to co-operate.

- **Role played by the EOC officer:** Where the EOC officer assigned to a complaint was highly active in trying to progress the complaint through the EOC process, the case had more chance of being conciliated than if the EOC officer had a low level of involvement.

- **Socio-economic background:** Based on the small amount of information available to us on the socio-economic background of complainants, socio-economic background did not in itself appear to affect a complainant’s chance of securing a conciliated outcome.