

## **Chapter 3**

### **Termination of the Appointment of Mr Patrick YU as Director (Operations)**

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#### **Introduction**

3.1 This chapter deals with the termination of the appointment of Mr Patrick YU as Director (Operations) of the EOC. It begins with an overview of the reasons and process of termination, followed by an elaboration of our findings and observations on each key event. The termination process was intertwined with the appointment and resignation of Mr Michael WONG as the Chairperson of the EOC, a topic to be covered by Chapter 4. We would like to point out that this chapter contains a lot of views and comments expressed by individuals. We will identify the sources where appropriate. Their presence in this report serves to illustrate our findings, and should not, in any way, be interpreted as the Panel's views or its endorsement of these views.

#### **Overview**

3.2 The termination of Mr Yu's contract was the result of a combination of events and factors. The starting point was an article in the South China Morning Post (SCMP) on 18 July 2003, one day after the announcement of Mr Yu's appointment as Director (Operations) of the EOC. A series of discussions and events took place between 1 August 2003 and 18 September 2003, culminating in a decision to terminate Mr Yu's contract. The idea of termination stemmed from Mr Wong's doubts about the suitability of Mr Yu for the Director (Operations) post and for the EOC. Mr Wong had the following specific concerns<sup>10</sup> -

- (a) Mr Yu did not fully appreciate what the role of Director (Operations) entailed, particularly in view of the press interview published in the SCMP.
- (b) Mr Wong was concerned about Mr Yu's lack of judgment and demeanor towards him and the EOC as reflected in the press interview.

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<sup>10</sup> These concerns were mentioned in two letters dated 3 and 5 November 2003 from Mr Michael WONG, former EOC Chairperson, to HAB and LegCo Panel on Home Affairs, and subsequently summarized in a letter dated 25 March 2004 from the EOC's external legal adviser to Mr Patrick YU's lawyers.

- (c) According to the feedback from the EOC staff, Mr Yu showed little interest in discussing operational issues during his visit to the EOC between 28 July and 1 August 2003.
- (d) Mr Wong wanted to ensure that the new Director (Operations) was someone who could perform the role as well as work harmoniously with him, EOC Members and staff. Mr Wong did not consider that Mr Yu fulfilled this requirement.
- (e) After reviewing Mr Yu's written summary of his experience in handling investigations and complaints, Mr Wong had serious doubts on Mr Yu's ability to address the EOC's operational needs and to focus on investigation and conciliation.

3.3 Mr Wong also took into account the practical needs of the EOC. He formed the view that, for the following reasons, termination of Mr Yu's contract should be considered -

- (a) In Mr Wong's view, there was no longer any urgency for a new Director (Operations) as the amalgamation of the Gender Division and Disability Division had already been completed before he assumed chairmanship.
- (b) There were sufficient talents within the EOC to take up the position of Director (Operations).
- (c) Serving senior staff members should, as far as possible, be given acting opportunities within the EOC to test their suitability for substantive appointment, should there be such vacancies. It would not only save costs but also boost staff morale and gave them incentives to work even harder.
- (d) It would be better to allow some room for him as the new Chairperson to consider whether to conduct recruitment.

3.4 The following events took place between late July and 18 September 2003 -

- (a) Between 28 July 2003 and 1 August 2003, Mr Yu visited the EOC Office. Mr Wong met with him on 1 August 2003.
- (b) On the instructions of Mr Wong, DPA wrote to Mr Yu on 15 August 2003, requesting a summary of his experience in handling investigations and complaints. Mr Yu provided such a written summary on 22 August 2003.
- (c) Mr Wong met with the senior staff of the EOC in August and

early September 2003. Mr Wong was informed of the discussions and meetings between Mr Yu and senior colleagues during Mr Yu's visit.

- (d) In September 2003, Mr Wong sounded out a few EOC Members on the idea of terminating the appointment of Mr Patrick YU. These Members expressed understanding and support.
- (e) In early September 2003, Mr Wong asked DPA to explore with Mr Yu the possibility of his not coming to Hong Kong. DPA contacted Mr Yu to this effect on 3 September 2003. During the conversation, Mr Yu expressed some difficulty but mentioned that he would consider 12 months' salary plus cash allowance to settle the matter amicably. (Please see paragraph 3.30.) He then went on to say that he might consider settling the matter for at least six months' salary plus allowance. DPA reported to Mr Wong accordingly. On 16 September 2003, DPA, acting on Mr Wong's instructions, informed Mr Yu that the EOC might be prepared to pay him two months' salary plus cash allowance. Mr Yu replied that he would need to consider the offer and would get back to the EOC.
- (f) On 17 September 2003, the EOC received a letter from Mr Yu's lawyers, claiming that there was a breach of contract by the EOC and that they had instructions to issue proceedings for damages for breach of contract, defamation, etc. against the EOC and Mr Wong personally.

3.5 At the EOC meeting on 18 September 2003, Mr Wong raised the issue about the suitability of Mr Yu for employment with the EOC. EOC Members discussed the matter at length for 45 minutes and passed a resolution to give the Chairperson full authority to handle Mr Yu's contract. On 20 September 2003, the EOC Office issued a letter to Mr Yu's lawyers, informing Mr Yu that the EOC Chairperson and Members had formed the view that Mr Yu was not a suitable employee for the EOC. The letter also reiterated the original verbal offer of two months' salary plus allowance as compensation.

3.6 On 23 October 2003, Mr Yu held a press conference in Hong Kong and claimed that he had been unreasonably dismissed and that this was a serious breach of contract. Subsequently there was extensive media coverage on the termination of Mr Yu's appointment and incidents relating to the EOC Chairperson and the EOC. On 6 November 2003, Mr Wong resigned.

3.7 With instructions from the Commission, the EOC Office wrote to Mr Yu's lawyers on 13 November 2003 to ascertain Mr Yu's intentions and to indicate that the EOC was prepared to settle the matter amicably. Between mid-November 2003 and April 2004, there were a series of discussions within the Commission and exchanges of correspondences between the EOC Office and Mr Yu. Following extensive discussions within LegCo on how best to conduct an inquiry into the EOC incidents, the LegCo House Committee expressed support on 20 February 2004 for SHA to appoint an independent panel of inquiry with the agreed terms of reference. The Independent Panel was appointed on 15 May 2004. In the meantime, DPA received a phone call from Mr Yu on 16 April 2004, saying that he would like to settle the matter with the EOC before the commencement of the inquiry by the Independent Panel. After several exchanges of correspondences, the EOC and Mr Yu settled the case with an agreed ex-gratia payment to Mr Yu. They issued a joint statement on 27 May 2004, announcing that they had reached a settlement of the issues related to Mr Yu's contract, and the matter was satisfactorily resolved. We will elaborate on each of the key events mentioned above and set out our observations in the following paragraphs.

## **Key Events**

### **Mr Yu's Media Interviews in July 2003**

#### ***Findings***

3.8 On 18 July 2003, a day after the EOC's announcement of Mr Yu's appointment as Director (Operations), SCMP and Ming Pao reported an interview with Mr Yu. The SCMP article mentioned, among other things, that -

“Outgoing equal opportunity commission chief Anna Wu Hung-yuk has hired a director of operations with a strong track record in human rights law, in one of her last acts before she is replaced at the end of [July 2003]. Patrick Yu Chung-yin, a former Commissioner of the Northern Ireland

Human Rights Commission, told the South China Morning Post that he would uphold the integrity and mission of the equal opportunities body when he takes up the post in November [2003] ....Mr Yu has been closely involved in racism and ethnic minority issues in Ireland, and is expected to play an important role in advising the government in these areas. As director of operations division in Hong Kong, he will oversee complaints based on both the gender and discrimination laws, but also hope to play a role in advising on the enactment of anti-racism law.”

3.9 Mr Yu was quoted as saying that -

“I must praise the Hong Kong government for heeding the United Nations and agreeing to an act in racism law and I am keen to see Hong Kong follow the international standard and set up a human rights commission. I think my experience in drafting a single bill [on anti-discrimination laws] will be very useful for Hong Kong, too, but I need to sense the situation there before making any recommendation.”

3.10 Based on information provided by the EOC staff, the EOC’s press office received several media enquiries on contacting Mr Yu for interview after the press announcement on 17 July 2003. The EOC Office informed the reporters that Mr Yu was then on vacation and the EOC could not contact him either. No EOC staff had been involved in handling the media interview for Mr Yu. According to Mr Patrick YU, the press interviews were arranged by the then Chair and her office.

3.11 The SCMP article was one of the factors prompting Mr Wong to reconsider the suitability of Mr Yu for appointment as Director (Operations).<sup>11</sup> Mr Wong considered Mr Yu’s remarks inappropriate for a number of reasons. First, Mr Yu’s remarks were not commensurate with his obligations and responsibilities as Director (Operations) or as an employee of the EOC. Secondly, the mention of involvement in the enactment of anti-racism law was outside the scope of his authority as Director (Operations) and suggested a lack of appreciation of what the post entailed. Thirdly, the fact that Mr Yu made such public comments without first consulting the Commission or the incoming Chairperson also

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<sup>11</sup> The SCMP article was one of the reasons cited by Mr Michael WONG at the EOC meeting on 18 September 2003 to demonstrate Mr Wong’s doubt about the suitability of Mr Yu for the Director (Operations) post. It was also reiterated in the letter of 20 September 2003 from the EOC Legal Adviser to Mr Yu.

reflected disrespect towards EOC Members and the Chairperson. In Mr Wong's view, the article suggested that the EOC would be involved in anti-racism legislation and human rights legislation. This deviated from Mr Wong's plan to focus on the three pieces of anti-discrimination legislation at that stage.

3.12 As part of our fact-finding efforts, we have attempted to seek clarification from Mr Yu and the relevant newspapers on the background of the interview and Mr Yu's comment on whether the press report accurately reflected the content of the interview. Mr Yu informed us that he disputed some of the material facts relating to him, particularly paragraphs 3.16 to 3.21. He commented that certain remarks were prejudicial statements. His views, if available, are presented in relevant parts of this report.

### ***The Panel's Observations***

3.13 The EOC did not have any written guidelines governing how the staff should handle the media, including the acceptance of press interviews. The understanding was that the EOC staff should direct all media enquiries and requests for interviews to the EOC press officers for co-ordination.

3.14 The two newspaper articles only received moderate attention. Many EOC Members were not aware of the articles until Mr Wong drew them to their attention. There were mixed views. Some did not show great concern. Some considered it more prudent for a new employee to familiarize oneself with the work and culture of the organization before accepting interviews.

### **Events in July and August 2003**

#### ***Findings***

#### ***Discussion between Ms Anna WU and Mr Michael WONG about the Appointment of Mr Patrick YU***

3.15 According to Mr Wong, he tried to make an appointment to meet with Ms Wu, the outgoing Chairperson, as soon as his appointment as the EOC Chairperson was announced. Apart from being courteous, Mr Wong wanted to learn from Ms Wu as much as possible about the EOC before he formally took up chairmanship. Furthermore, he also knew from informal sources that Mr Patrick YU was going to be

appointed Director (Operations) and he was anxious to understand from and discuss this matter with Ms Wu before any final decision was to be made.

Mr Yu's Visit to EOC Office between 28 July and 1 August 2003

3.16 Mr Yu visited the EOC Office between 28 July 2003 and 1 August 2003. The visit was planned by Ms Wu in early June 2003 and sponsored by the EOC. It was intended to allow Mr Yu to familiarize with the EOC's staff and work, and particularly to meet the outgoing and incoming Chairpersons as well as the Acting Director (Operations). No itinerary was planned for Mr Yu, other than on the first day when he was to meet with the EOC management team and be given a short briefing on their areas of work. Mr Yu subsequently met members of the management team individually in the following days.

Meeting between Mr Wong and Mr Yu on 1 August 2003

3.17 On DPA's initiative, Mr Wong met with Mr Yu on 1 August 2003. This was Mr Wong's first day in office as the EOC Chairperson and the last day of Mr Yu's visit to the EOC. The meeting started at around 5:00 pm and the duration was brief. DPA was also present. According to Mr Wong, he asked Mr Yu directly whether he knew the nature of his new job and the kind of work he would be expected to do. Mr Wong also expressed his concerns over the remarks made in the SCMP interview. He did not consider them appropriate comments by an employee who had not yet commenced employment. Mr Wong was concerned with Mr Yu's lack of judgment and poor demeanour towards him and the EOC. In his view, EOC directors had not given press interviews about the role they would personally play, let alone mentioned that they would be responsible for "upholding the integrity of the EOC".

3.18 He informed Mr Yu that it was important for him to understand the true nature of his work. As Chairperson of the EOC, he expected full co-operation from Mr Yu. He reminded Mr Yu that Mr Yu was not the Chairperson and he himself was and would be the Chairperson for the next three years. If there was any conflict between them, then it would be difficult for them to work together for the benefit of the public, and Mr Yu would then be the first one to go, and not Mr Wong. At the end of the meeting, Mr Wong asked Mr Yu to think carefully about the appointment and reconsider whether the job was suitable for him. The whole meeting lasted for less than 15 minutes.

3.19 According to Mr Wong, he did not express in any way that he did not want Mr Yu to take up his appointment in November 2003. At the time of that meeting, Mr Wong had not even considered fully whether Mr Yu was suitable for the post of Director (Operations). That was why he had to meet Mr Yu and to find out whether he was fully aware of what was expected of him as Director (Operations). With hindsight, Mr Wong commented that he should have used more gentle language, but the manner in which he spoke was not meant to be offensive.

3.20 Mr Yu mentioned in his press statement on 23 October 2003 that Mr Wong had clearly indicated his wish for Mr Yu not to commence employment, and that Mr Wong would also revise the duty list of Director (Operations). Based on information provided to the Panel, there has not been any attempt to revise the duty list of Director (Operations) after the meeting between Mr Wong and Mr Yu. According to Mr Wong, he asked Mr Yu to reconsider whether the job was suitable for him. Mr Yu also remarked that Mr Wong had mentioned “Your appointment is pre-empting my appointment.” However, neither Mr Wong nor DPA, who was also present, recalled Mr Wong having made such a remark.

#### Written Summary of Mr Yu's Experience

3.21 According to Mr Wong, it was after some initial reservations and hesitation that he decided to call for a written summary of Mr Yu's experience in handling investigations and complaints. He wanted to make sure that Mr Yu was suitable for the job. This was also within the authority of the EOC Chairperson. He believed that by then he already had sufficient knowledge of the work and operational needs of the division. What he perceived to be necessary and important for the Director (Operations) post was good, solid and practical experience in investigation and conciliation. Acting upon instruction, DPA sent an e-mail to Mr Yu on 15 August 2003. Mr Yu provided such written summary on 22 August 2003. In Mr Wong's view, while Mr Yu was sufficiently qualified academically and was occupying a senior position in his organization, Mr Yu's role was more administrative than operational. Whilst Mr Yu had solid experience in drafting anti-racial laws and represented his organizations in conferences and meetings, he was only occasionally involved in helping with settling disputes. His experience in investigation and conciliation was not sufficiently impressive for the post of Director (Operations). Mr Patrick YU disagreed with this view. He mentioned that his experience as outlined in his written summary to Mr Wong showed his front-line experience (both in Hong Kong and in Northern Ireland) and the two Commissions (one as chair of the legal



committee and the other as a member of legal committee with statutory responsibilities in connection with complaints and legal assistance). To Mr Yu, this issue reflects Mr Wong's prejudicial view on him and in his opinion shows Mr Wong's lack of experience in the equality field.

#### Mr Wong's Meeting with Senior Staff

3.22 After Mr Wong became the EOC Chairperson, he discussed staff matters and other EOC business with senior staff from time to time. Following these meetings, he was convinced that the focus of the new Operations Division should be on investigation and conciliation, and that there was a lot of work required to be done in respect of the EOC's complaints handling function.

3.23 According to information provided by Mr Wong and senior staff of the EOC, Mr Wong was informed that Mr Yu had only held one or two brief discussions with the Acting Director (Operations) towards the end of his one-week visit, and that Mr Yu did not allow sufficient time to meet with the Legal Adviser to discuss operational issues between the two divisions.

#### Mr Wong's Initial Observation

3.24 Mr Wong discovered that the EOC had had three operational directors in the previous six years, and a Chief Executive who resigned after less than six months in the post. He wanted to ensure that the new Director (Operations) was someone who could fulfill the role as well as work harmoniously with him, EOC Members and staff. He was concerned that the high profile Mr Yu displayed in the media interview contrasted sharply with his plan of a low-key and low-profile administration based on solid work. He had the feeling that Mr Yu might have misconceived his role in the EOC.

3.25 According to Mr Wong, after having served as the EOC Chairperson for a month and having acquainted himself with the EOC staff, he was satisfied that there was sufficient talent within the Commission to take up the position and be able to do the work properly. He believed that serving senior staff members within the EOC should, as far as possible, be given opportunities to act in higher positions if there were vacancies. It would not only save costs but also boost staff morale and give them incentive to work even harder.

3.26 He did not see any urgency in filling the post of Director

(Operations) as the merger had been completed sometime before he arrived, and there had been no change in operational needs since then.

### ***The Panel's Observations***

3.27 Mr Wong's decision to seek the termination of Mr Yu's contract was not based on the occurrence of any single incident. He had gone through a fact-finding exercise before seeking the termination of Mr Yu's contract.

### **Exploratory Attempts before the EOC Meeting on 18 September 2003**

#### ***Findings***

3.28 Mr Wong informed us that it was at the beginning of September 2003 that he decided to seek the EOC's authorization to terminate Mr Yu's contract. He examined the legal position. Mr Wong's understanding was that it would be legal for the EOC to terminate Mr Yu's contract with an offer of compensation. Similar to the provisions in the Employment Ordinance<sup>12</sup>, the employment contract between the EOC and Mr Yu provided, among other things, that -

- (a) During the first month of the trial period, the employer may terminate the employee's service at any time without notice or payment in lieu.
- (b) After the first month but before the completion of the trial period, the employer may terminate the employee's service by giving one month's notice in writing or by paying to the employee one month's salary in lieu of notice.
- (c) For an employee who has passed the trial period or who has been appointed without the requirement to serve a trial period, his/her service may be terminated by the employer by giving him/her a minimum of three months' notice or by paying him/her three month's salary in lieu of notice.

3.29 Mr Wong asked DPA to explore with Mr Yu the possibility of his going back to his original post and to see whether the matter relating to

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<sup>12</sup> Section 6(3A) of the Employment Ordinance (Cap. 57) provides that, where it has been expressly agreed that the employment is on probation and the contract makes provision for the length of notice required for its termination, the contract may be terminated by either party at any time during the first month of employment without notice or payment in lieu, notwithstanding the length of notice provided for in the contract.

his contract could be amicably resolved, rather than having Mr Yu leave his job and family in Northern Ireland, come to Hong Kong, and then have his employment terminated later. According to DPA, he contacted Mr Yu on 3 September 2003 by telephone and the main points of discussion were as follows -

- (a) Mr Yu said that his organization had already arranged for someone to act in his position and it would be difficult for him to go back to his original position.
- (b) 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 settling the matter for at least six months' salary (plus cash allowance).
- (c) Mr Yu said that what the EOC was considering was an anticipatory breach of contract.
- (d) DPA told Mr Yu that it might be difficult to consider six months' salary (plus cash allowance) as compensation. He explained that according to the terms of EOC employment contracts, when a person had started working with EOC, compensation for termination of service without notice by either the employer or employee would be a maximum of three months' salary. Moreover, during the first month of the trial period, there would be no compensation and between the second and the sixth month, compensation would be one month's salary.
- (e) DPA told Mr Yu that he would convey the conversation to Mr Wong and inform him of Mr Yu's request for compensation.

3.30 Mr Yu disputed the facts provided by DPA as presented in paragraph 3.29, in particular the reference to the 12 months' salary.

3.31 On 5 September 2003, Mr Wong asked DPA to further explore the issue of settlement with Mr Yu, and to find out if Mr Yu would be prepared to accept two months' salary (plus cash allowance) as compensation if the contract were terminated. On 16 September 2003, DPA contacted Mr Yu who said that he would consider the offer of two months' payment and get back to him.

3.32 Mr Wong also explored the issue with a few EOC Members. In the first few weeks of September, Mr Wong met with some EOC

Members on several occasions. He expressed his observations and reservations about the suitability of Mr Yu for the post of Director (Operations), and briefly sounded out Members' views on the possibility of terminating Mr Yu's contract. In addition, Mr Wong approached the Chairman and a member of the Selection Panel and indicated his intention to seek the EOC's endorsement to terminate Mr Yu's contract at the coming EOC meeting. The Selection Panel Chairman, who was also the A&FC Convenor, expressed his understanding and support.

3.33 The above exploratory attempts were relatively uneventful until 17 September 2003. Mr Wong, as the EOC Chairperson, received a letter from Mr Yu's lawyers, claiming that there had been a breach of contract by the EOC. Mr Yu's lawyers 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 Mr Wong personally. They added that unless they received a proposal to settle Mr Yu's claim within seven days they would issue proceedings without notice. After receiving the letter, Mr Wong discussed with the EOC's Legal Adviser and DPA.

#### ***The Panel's Observations***

3.34 We consider it understandable for Mr Wong to have made a series of exploratory attempts such as checking the legal position, ascertaining Mr Yu's initial responses and sounding out a few EOC Members before seeking the EOC's authority. There were comments on the appropriateness for Mr Wong to discuss with Mr Yu about the possibility of his returning to his previous job without first obtaining the endorsement of the EOC. In his written submission, Mr Wong put forward three reasons for doing so. First, it was necessary for him to have sufficient information including Mr Yu's initial response before presenting his proposal to the full Commission. Secondly, the Commission was not due to meet until 18 September 2003. Thirdly, it was part of his duties and inherent powers as the Chairperson to start making exploratory enquiries. We consider that it would be preferable for Mr Wong to inform the EOC of the outcome of these exploratory enquiries to facilitate the Commission in making the decision at the meeting.

## **The EOC Meeting on 18 September 2003**

### ***Findings***

3.35 On 18 September 2003, Mr Wong chaired his first EOC meeting since his appointment as the EOC Chairperson. Only one member was absent. Of the fifteen members present, eight members were appointed to the EOC in 2003 and four attended the EOC meeting for the first time. The meeting had a full agenda. The discussion about the suitability of Mr Yu for the Director (Operations) post was discussed under “Any Other Business”, and it lasted for 45 minutes.

3.36 As one EOC Member had to leave early, Mr Wong proceeded to “Any Other Business” so that every member had an opportunity to express views. An EOC Member brought up the issue of the recruitment of Director (Operations). Mr Wong informed Members that Mr Patrick YU had been appointed new Director (Operations) and would commence appointment on 1 November 2003.

3.37 At the outset, Mr Wong said in no uncertain terms that he had reservations about the suitability of Mr Yu as Director (Operations). His views are summarized below -

- (a) He indicated concern about an article published in SCMP on 18 July 2003. Mr Yu’s comments in the article were not related to his job duties. His comment about upholding the integrity of the EOC was not his responsibility but that of Members. Mr Wong said that Mr Yu’s responsibilities should be conducting investigations and handling complaints.
- (b) Mr Wong had asked Mr Yu to provide a written summary of his experience in handling complaints and investigation. After reviewing the information, he did not consider Mr Yu to have much experience in these areas.
- (c) Mr Wong expressed the view that Mr Yu was behaving like the Chairman of the EOC, and Mr Wong did not know how to deal with him. It would not be desirable to have internal power strife between him and Mr Yu.

3.38 Mr Wong then asked Members to give him authority to handle Mr Yu’s contract. He added that he had already discussed the matter with one member, who agreed. He then sought the EOC’s authorization to terminate Mr Yu’s contract.

3.39 During the 45 minutes of discussion, one member explicitly said that he found it difficult to agree to rescind the contract with Mr Yu before he arrived as he was properly and legally appointed. This member left the meeting without voting. Other than this member, there was no objection to the proposal of terminating the contract with Mr Yu. Some members explicitly expressed support for Mr Wong, for the following reasons -

- (a) Acknowledging that the Chairperson was a full-time chair, Members should respect him and give more room for him to select his team members and handle matters relating to his subordinate staff.
- (b) The EOC should work as a team, and Members should support the Chairperson's request to give him authority to deal with Mr Yu's contract.
- (c) From labour relations angle, team work was important to ensure the efficient and harmonious operation of the EOC. It would not be in the interest of the EOC to have tension and internal strife at senior level. If the Chairperson felt strongly that he would not be able to work with the new appointee, it would be best if he be given authority to handle the contract sooner rather than later.
- (d) From the perspective of personnel management, recruitment and termination were two different processes. It was not uncommon to withdraw or terminate an appointment if there were changes in direction and work. If the EOC's direction had changed, the Chairperson should be given authority to handle employment issues lawfully.
- (e) Termination of Mr Yu's contract was legally possible. It would be reasonable and fair to terminate the contract if the Chairperson had new objectives and goals.

3.40 During the discussion, some members enquired about the procedures for the appointment of Mr Yu. Members were advised that the A&FC had the delegated authority to appoint employees at MPS Point 45 and above, and the understanding was that Mr Yu was properly interviewed, selected and appointed<sup>13</sup>.

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<sup>13</sup> Please also refer to paragraphs 2.65 to 2.69. Upon a subsequent discovery, the EOC was informed that the Selection Panel was technically acting beyond its capacity as the appointment was made by the Selection Panel which did not have such authority. It was also noted that, at the time of the appointment, the relevant delegation instrument to the A&FC was missing.

3.41 A few members stressed the importance of having strong justifications for terminating Mr Yu's contract, particularly because Mr Yu had not commenced employment. The EOC should ensure that actions were lawful, reasonable and rational. Many members expressed views on how best to handle the termination. These views included the following -

- (a) Members discussed whether it would be better to handle Mr Yu's contract before or after he commenced employment. Some members said that early termination would be fairer and more considerate. If the inclination was to terminate his appointment someday somehow, it would be better to do it before Mr Yu took all the time and effort to relocate his family to Hong Kong and was later asked to leave. Furthermore, early termination would avoid the possibility of conflicts within the EOC.
- (b) A member supported the Chairperson to handle the case, but suggested that the Chairperson could talk to Mr Yu first, explore options and then revert to the EOC for a decision. However, another member pointed out that Mr Yu would commence duty on 1 November 2003 and there would not be sufficient time if the Chairperson had to report back to the Commission. It was therefore suggested that authority be given to the Chairperson to make a final decision.
- (c) The EOC should formulate a strategy to handle media enquiries irrespective of whether the actions involved terminating Mr Yu's contract or not.

3.42 After discussion, Mr Wong once again requested Members to give him authority to handle Mr Yu's contract. A member moved the motion giving the Chair full powers to handle Mr Yu's contract. The motion was seconded. Mr Wong asked whether there were any objections. No objections were raised by any members present. The resolution was passed unanimously.

3.43 Mr Patrick YU submitted that Mr Wong was in breach of the contract before the meeting on 18 September 2003. In his opinion, Mr Wong had dismissed him prior to the Board meeting on 18 September 2003. The meeting was basically to "rubber stamp" Mr Wong's wrong-doing and in particular it was not in accordance with good governance. There was no formal agenda to discuss this important issue

and no notification was given to the Commission of his lawyer's letter of 17 September 2003.

### ***The Panel's Observations***

3.44 After Mr Patrick YU's press conference on 23 October 2003, there were extensive media reports on what were discussed and agreed at the EOC meeting on 18 September 2003. On 24 October 2003, the EOC issued a press release, stating that "the EOC had extensively discussed issues relating to Mr Yu's contract and the Chairman of the Commission was given full powers by Members to handle Mr Yu's contract. Members of the EOC fully supported the action taken by the Chairman." However, two EOC Members were subsequently quoted by the media as saying that the EOC did not make a decision to terminate Mr Yu's employment. One member was also cited as commenting that she personally did not endorse the decision to terminate Mr Yu's employment. These reports cast doubt on the legality and appropriateness of the decision and the decision-making process because they suggested that -

- (a) The EOC did not authorize Mr Wong to terminate Mr Yu's contract.
- (b) The EOC expected Mr Wong to explore options and revert to the EOC before making a final decision.
- (c) The item was discussed under "Any Other Business" without any discussion paper.
- (d) Before the EOC meeting, Mr Wong had already started discussion and negotiation with Mr Yu on the possibility of his going back to his original position.
- (e) Mr Wong did not disclose a letter from Mr Yu's lawyers, which claimed that the EOC's action would constitute a fundamental breach of contract and that Mr Yu would issue proceedings for damages against the EOC and Mr Wong personally.
- (f) Eight EOC Members and the Chairperson were newly appointed in 2003. Four members and the Chairperson attended the EOC meeting on 18 September 2003 for the first time, and were not familiar with the procedures.



3.45 In an attempt to find out the true picture, we listened to the tape recording of the 45-minute discussion, examined the minutes of meeting and cross-checked them with the detailed summary of discussions submitted to the LegCo Panel on Home Affairs in November 2003. We also collected views through written submissions and interviews.

*Did the EOC Authorize Mr Wong to Terminate Mr Yu's Contract?*

3.46 We conclude that the EOC gave Mr Wong the authority to handle Mr Yu's contract, including termination. The motion was unanimously passed by the EOC and was properly constituted. The fact that one member subsequently expressed dissent should not affect the legality of the resolution. EOC Members should be aware that in giving the Chairperson the power to handle the contract, such powers were intended to cover "termination". The wording of the resolution was exactly the same as Mr Wong requested at the outset.

*Differences in Interpretation*

3.47 Two EOC Members<sup>14</sup> were quoted as saying that the EOC did not specifically endorse a decision to terminate Mr Yu's contract. Another member informed us that she did not believe that she was agreeing to terminate Mr Yu's employment immediately, and she expected Mr Wong to handle the matter, including the option of termination, in a reasonable, rational and lawful manner. Other members believed that they had given clear, unequivocal and absolute authority to Mr Wong to handle Mr Yu's contract, including termination and ancillary negotiation relating thereto.

3.48 There were comments that Mr Wong was expected to explore various options and report back to the EOC before making the final decision to terminate Mr Yu's contract. At the meeting, it was pointed out that the Commission only met once every three months and Mr Yu's contract would commence in November 2003 before the next EOC meeting. It was therefore suggested that full authority be given to the Chairperson to handle Mr Yu's contract. After some discussion, the resolution was passed without any condition to require the Chair to revert to the EOC for a final decision.

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<sup>14</sup> As recorded in the post-meeting note of the EOC meeting on 18 September 2003, "an EOC Member who was present at the above meeting wrote to EOC on 27 October 2003 that she did not understand there was a decision to dismiss Mr Yu at the meeting and did not agree with the decision to terminate Mr Yu's employment".

3.49 Whilst it is technically correct to say that the wording of the resolution did not specifically refer to “termination”, we observe that the resolution was passed with the understanding to terminate Mr Yu’s contract. We were also advised by one member that the wording of the resolution was intended to be sufficiently broad to give the Chairman full authority and maximum flexibility to handle the contract (including termination) and settle contractual matters without having to revert to the Commission for directions.

*Non-disclosure of the Letter of 17 September 2003 from Mr Yu’s Lawyer and Exploratory Attempts before the Meeting*

3.50 Before the EOC meeting on 18 September 2003, Members were not informed of the discussions between the EOC Office and Mr Yu and the letter dated 17 September 2003 from Mr Yu’s lawyers. However, we were advised during interviews with some EOC Members that the disclosure of these enquiries and the letter of 17 September 2003 would not have any material effect on the resolution. Nevertheless, it would be desirable for the EOC Chairperson to share such information with EOC Members to facilitate members in making decisions.

*Discussion under “Any Other Business” without any Discussion Papers*

3.51 There were comments that the discussion about Mr Yu’s contract was not a formal discussion because it was raised under “Any Other Business” without any paper or copy of the SCMP article. In fact, the EOC does not have formal procedures on how such matters should be dealt with. It is the normal practice to discuss confidential or sensitive matters about senior staff appointments under “Any Other Business” because of the need for confidentiality at that stage. The discussion about the suitability of Mr Yu lasted for 45 minutes and a resolution was passed unanimously.

*Termination of Mr Yu’s Contract Shortly after His Appointment*

3.52 The two EOC Members involved in the Selection Panel remained convinced that Mr Yu was the best candidate among the interviewees in terms of his knowledge of, expertise in and commitment to equal opportunities and human rights issues. Nevertheless, they also appreciated that organizational success depended on both the calibre of individuals and the inter-personal dynamics of the team. Acknowledging that Mr Wong had very strong views about the suitability of Mr Yu for the Director (Operations) post, both Members respected

Mr Wong's judgment and expressed their full support for Mr Wong. After all, recruitment and termination were two distinct processes. In the interest of ensuring that the EOC had a strong and harmonious team to achieve its organizational objectives, both Members supported the resolution to give Mr Wong authority to handle Mr Yu's contract, including termination.

### *Many New EOC Members Unaware of Procedures*

3.53 It is noteworthy that the Chairperson and eight members were appointed in 2003. The Chairperson and four members attended the EOC meeting for the first time on 18 September 2003. Apart from the Chair who was full-time, others might be less conversant with the operation and procedures of the Commission at that time. However, there were no signs that any new members felt inhibited to speak up. All members had solid record of public service. They were given ample opportunity to comment. Knowing that a member had to leave the meeting early, Mr Wong deliberately advanced the discussion of this item to ensure that every member had a chance to comment should he or she so wished. Indeed, many members expressed their views at the meeting. The 45-minute discussion was detailed and thorough.

### *Conclusion*

3.54 In view of the foregoing arguments, we conclude that the decision to terminate Mr Yu's contract was properly authorized. It was backed by a resolution passed by the EOC to give the Chairperson full authority to handle Mr Yu's contract. The resolution was passed unanimously without any objection from any members present at the time of voting, and was therefore properly constituted. The wording of the resolution was sufficiently broad to empower the Chairperson to terminate Mr Yu's contract. There was no requirement for Mr Wong to revert to the EOC before the actual act of termination.

3.55 The Commission did not specifically discuss the possible implications of terminating Mr Yu's contract on the credibility and the public image of the EOC. A few members added words of caution about the sensitivity of the issues and the need to handle the matter carefully. Most members were under the impression that the issue was primarily an employment issue.

## **Developments between 18 September and 22 October 2003**

### ***Findings***

3.56 Following the EOC meeting on 18 September 2003, the EOC issued a letter on 20 September 2003 to Mr Yu's lawyers to the effect that Mr Yu's comments published in the press were not commensurate with 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 disrespect towards EOC Members and Mr Wong. The letter also stated that EOC Members and Mr Wong had formed the view that Mr Yu was not a suitable employee for the EOC and that DPA had already discussed with Mr Yu the possibility of offering him two months' salary plus cash allowance in settlement of any claim. After this letter, there were no further written or verbal exchanges between the EOC and Mr Yu or his lawyers until November 2003.

### ***The Panel's Observations***

3.57 The month following the EOC meeting on 18 September 2003 was relatively uneventful. The EOC Office seemed to proceed on the basis that the matter was primarily an employment issue and action was in hand to settle the matter through legal means. Pending a response from Mr Yu, the EOC Office did not inform Members of the prior discussions with Mr Yu and developments subsequent to the meeting. With hindsight, had the EOC Office kept EOC Members posted of developments, they would not have been caught unprepared by Mr Yu's press conference on 23 October 2003.

## **Developments between 23 October 2003 and End December 2003**

### ***Findings***

3.58 On 23 October 2003, Mr Yu held a press conference in Hong Kong, claiming that Mr Wong had unreasonably dismissed him and that this was a serious breach of contract between the EOC and Mr Yu. Mr Yu demanded an open explanation from Mr Wong on the decision to terminate his appointment. He commented that Mr Wong's act was arbitrary, high-handed and contrary to the principles of natural justice. The press conference was widely reported in the media.

3.59 In response to media enquiries, the EOC issued a statement on 23 October 2003, confirming that it had terminated the contract with

Mr Yu. The matter was then in the hands of lawyers. As there might be legal proceedings, it was inappropriate to make comments at that stage.

3.60 On 24 October 2003, the EOC issued another press statement, stating that “in relation to Mr Yu's contract with the EOC, the matter was extensively discussed among Members at the EOC meeting. Having discussed the matter, the Chairman of the Commission was given full powers by Members to handle Mr Yu's contract. Members of the EOC fully support the action taken by the Chairman.” The draft press release was faxed to EOC Members for comment before issue, although not all of them were able to read and comment on the draft in time. Some requested Mr Wong to arrange an urgent meeting to brief them on the development. Mr Wong had originally planned a meeting on 5 November 2003, which was subsequently postponed. Mr Wong resigned on 6 November 2003.

3.61 In the two weeks following Mr Yu's press conference on 23 October 2003, media reports on the EOC-related issues expanded almost exponentially in terms of number and scope. The issue quickly branched out from the termination of Mr Yu's contract to issues surrounding Mr Wong and his family. During that period, some EOC Members and former EOC Members were quoted as giving inconsistent remarks as to whether the appointment and termination of the appointment of Mr Yu was properly authorized.

### ***The Panel's Observations***

3.62 Both the EOC Office and EOC Members seemed to be caught unprepared by Mr Yu's press conference. Some EOC Members were puzzled to see an internal employment matter, which should normally be settled through the legal channel, attracting public attention. As Members were unaware of the developments after the EOC meeting in September, they were not sufficiently informed to respond to the media in one voice.

3.63 With hindsight, a higher degree of transparency could have equipped members and the community with the facts and hence curtailed the proliferation of speculations about these incidents. Had the EOC decided to make public the minutes or the tape recording of the EOC meeting on 18 September 2003, the EOC might have been able to clear the air that the Commission had indeed passed a resolution to give the EOC Chairperson full authority to handle Mr Yu's contract, including termination. The EOC would have had an opportunity to present its side

of the picture so that the community would have a balanced view. As we will elaborate in Chapter 6, we **recommend** that the EOC should take positive steps to enhance transparency in its operation and deliberation so as to prevent the recurrence of similar incidents. The EOC Chairperson should share as much information as possible with EOC Members to facilitate discussions at the EOC meetings. Likewise, the EOC should enhance its transparency vis-à-vis the community.

3.64 Certain EOC Members were reported to have given inconsistent remarks. We **recommend** that the EOC should introduce a spokesperson system whereby the Chairperson or designated Members would represent the EOC in answering enquiries on designated subjects. Individual Members should refrain from expressing personal views on EOC matters in the public. This would ensure that the EOC would have a unified image and a unified voice.

3.65 We also **recommend** that the EOC should consider the possibility of asking Members to take collective responsibility for decisions taken by the Commission. Given that EOC Members represent a diverse community, differences in opinions are inevitable. However, the EOC should seek to be an exemplar in embracing unity in diversity. Once the Commission has made a decision, all Members should respect it and stand by it.

## **Settlement of the Dispute with Mr Patrick YU**

### ***Findings***

3.66 On 13 November 2003, the EOC Office wrote to Mr Yu's lawyers to ascertain his intentions and to indicate that the EOC was prepared to settle the matter amicably. On 26 November 2003, Mr Yu's lawyers advised that Mr Yu was seeking compensation of three years' salary plus cash allowance and an apology. On 18 December 2003, the EOC, through its legal representative, wrote to Mr Yu's lawyers reiterating the EOC's offer of two months' salary plus cash allowance. Mr Yu's lawyers responded in January 2004.

3.67 On 20 February 2004, the LegCo House Committee expressed support for SHA to appoint an independent panel of inquiry with the agreed terms of reference. In the meantime, the EOC and Mr Yu continued to exchange correspondences on the legal issues and the question of compensation ranging from two months' to three years' salaries. On 16 April 2003, Mr Yu rang DPA and said, among other

things, that he would like to settle his demand for compensation with the EOC as soon as possible before the commencement of the inquiry by the Independent Panel. He would be willing to settle the matter on receiving compensation from the EOC. SHA announced the appointment of the Independent Panel on 15 May 2004.

3.68 Following a series of negotiations and exchanges, the EOC and Mr Yu reached a settlement in May 2004 and agreed on the payment of an ex-gratia lump sum payment to Mr Yu, without admission of liability, as a full and final settlement of all claims against the EOC and its Members. The EOC and Mr Yu issued a joint statement on 27 May 2004, stating that -

“The EOC and Mr Patrick YU have reached a settlement on the issues related to Mr Yu’s contract, and the matter is now satisfactorily resolved. The successful settlement resulted from amicable discussions, and both parties have agreed to maintain confidentiality on the nature and content of the settlement. The Commission and Mr Yu are fully prepared to co-operate with the Independent Panel of Inquiry on its terms of reference.”

### ***The Panel’s Observations***

3.69 It has always been the EOC’s intention to have an early settlement. It is the responsibility of the EOC to promote the spirit of conciliation and settlement. The fact that the dispute between the EOC and Mr Yu was satisfactorily resolved demonstrated that the issue was, in the main, an employment issue and the matter could be amicably settled upon compensation being agreed through the legal channel between the parties concerned if they so wished.

