

Chapter 5

Problems Encountered by the EOC

Introduction

5.1 Chapter 4 deals with the appointment and resignation of Mr Michael WONG. This chapter focuses on problems encountered by the EOC that have impaired its credibility. These problems broadly cover allegations against the EOC and the EOC's operational issues. As indicated in the media reports and written submissions to the Panel, there is a unanimous view that these problems have an adverse impact on the public perception of the EOC. If they are not properly addressed, they will continue to impact negatively on staff morale and the EOC's credibility. Against this background, we consider it appropriate to present some facts and observations in relation to the substantive issues of the allegations, in the hope that the facts will clear the air where there are false or misleading reports, or identify areas for improvement where there are legitimate concerns.

Overview

Allegations against the EOC

5.2 The most widely reported allegation against the EOC was the article on "Six Allegations" published in EastWeek on 12 November 2003²⁵. The so-called "six allegations" were not independent of allegations against the EOC, mostly anonymous ones, over the years. Between 1996 and 2004, the EOC received 79 complaints, 23 being anonymous ones, against the EOC or individuals related to the EOC. Details are set out in Table 5.1.

²⁵ The article was published in Chinese. The title is "砌胡紅玉「六宗罪」".

Table 5.1:

Number of complaints against the EOC or individuals related to the EOC between 1996 and 2004

	Names given and persons identified				Anonymous (Sources based on what the senders claimed themselves to be or the guesses of the EOC's Office)				Total
	Staff/ Ex-staff	Clients	Others	Sub- Total	Staff/ Ex-staff	Clients	Others	Sub- total	
1996	-	-	-	-	-	-	-	-	-
1997	-	1	-	1	-	-	-	-	1
1998	2	7	-	9	8	-	1	9	18
1999	6	8	-	14	5	-	1	6	20
2000	-	3	-	3	2	-	-	2	5
2001	-	5	-	5	-	-	-	-	5
2002	-	8	-	8	1	-	-	1	9
2003	1	8	-	9	1	1	-	2	11
2004	2	5	-	7	3	-	-	3	10
Total	11	45	-	56	20	1	2	23	79

Source: the EOC Office

5.3 These allegations and complaints centered on internal management issues such as staffing and operations. Sometimes, they were directed against the management or specific individuals in the management team. These allegations were supported by specific details, which would normally be inaccessible by outsiders. On more than one occasion, the authors claimed to have access to confidential documents leaked by insiders. The article on “six allegations” shared the common features identified above. It was alleged that there was a draft document setting out the following six allegations against the EOC -

- (a) unchecked expansion of the EOC and hiring friends and relatives;
- (b) dismissal of many employees as a result of internal disputes;
- (c) too many legal proceedings and unsuccessful lawsuits;
- (d) manipulation of complaint figures;
- (e) offering favours to lawyer friends; and
- (f) unauthorized disclosure of personal data.

5.4 The article aroused controversies not only because of the so-called “smear campaign” against the EOC and a former EOC Chairperson, Ms Anna WU, but also because it suggested serious flaws in the internal operation of the EOC.

The EOC’ s Response

Findings

5.5 When the article was published on 12 November 2003, Mr Michael WONG, former EOC Chairperson, had already resigned. There was a vacuum in leadership as there was neither a deputy chairperson nor a senior EOC staff acting as the policy and executive head pending the appointment of a new chairperson. The EOC had neither a contingency plan nor a media policy to handle matters of a controversial and urgent nature. At that juncture, some EOC management staff were concerned that the rumours spreading in the community would damage the EOC’ s image and undermine their work. Whilst waiting for the appointment of a new Chairperson, the EOC management team took the initiative to review facts, figures and issues within the EOC’ s operation and presented an information paper to the EOC.

5.6 The paper was discussed at the EOC meeting on 4 December 2003 under “Any Other Business”. Members were invited to note the information and decide whether the EOC should make clarifications in the media. Whilst a member commented that the EOC had the responsibility of refuting false reports by the media, other members had different views -

- (a) Members had not been involved in the daily operation of the EOC, it might be inappropriate for them to speak to the media on behalf of the EOC using the information in the paper. It was therefore suggested that all media enquiries should be dealt with by the EOC’ s public relations staff.
- (b) Very often, responses by concerned parties did not help to clarify the issue, and the matter might get even worse.
- (c) It was not necessary to answer the media on each rumour, because there were hundreds of rumours spreading on the internet, making it impossible for the EOC to respond to each one of them.

5.7 After discussion, the Commission noted the contents of the paper but decided not to release the information as a response to the media. The Commission also agreed that the document should be kept in confidence. Since then, the EOC has neither conducted any investigation nor held further discussion on the allegations. Nevertheless, during the EOC's annual press briefing in February 2004, the immediate past EOC Chairperson Mrs Patricia CHU, took the opportunity to present some facts and figures, which indirectly clarified some of the issues mentioned in the allegations.

The Panel's Observations

5.8 There were mixed views on whether the EOC should have issued a formal response to the media based on the paper prepared by the management team. Some thought that the EOC should have done so to refute the allegations and contain the damage to the EOC's credibility. Others appreciated the limitations within which the EOC was operating at that juncture -

- (a) There was a vacuum in leadership in the Commission and the EOC administration, and the EOC was expecting the announcement of a new Chairperson any time.
- (b) EOC Members were not involved in the daily operation of the EOC. Furthermore, eight of the sixteen EOC Members were newly appointed in 2003. They did not have sufficient knowledge of the operation of the EOC to comment on the internal operation. The rapid development of the incidents in late 2003 aggravated the situation, making it even more difficult and sensitive for them to comment on the case.
- (c) There was no formal investigation involving independent EOC Members. They were not in a position to assess whether the facts and figures presented in the paper had adequately addressed the concerns raised in the allegations.

5.9 In a similar incident when the EOC indeed issued a legal letter to rebut allegations in a magazine article in September 2002, the magazine simply did not publish the letter or issue any apology or corrigendum.

5.10 Building on the information in the paper prepared by the management team for the EOC meeting on 4 December 2003 and based on further inputs from the EOC Office, we will present the facts and figures in response to the six allegations in the following paragraphs.

We will first recapitulate the allegations in the article²⁶ and then set out our findings and observations.

Six Allegations and Other Operational Problems

First Allegation – Unchecked Expansion of the EOC and Hiring of Friends and Relatives

Allegation

5.11 The first allegation mentioned in the article was about the rapid expansion of the EOC. It was alleged that the unchecked expansion of the EOC during the tenure of Ms Anna WU, a former Chairperson, resulted in a sharp increase in expenditure. On the one hand, she deleted the post of Chief Executive and took up the duties herself. On the other hand, she created more than 20 posts of different ranks and brought in a number of overseas consultants. Staff dared not speak out and they did not trust one another. As a result, the EOC had an extremely high turnover of staff in the past few years. Owing to the high turnover rate, the EOC had to conduct frequent recruitment exercises during the tenure of Ms Wu. However, more often than not, the posts were not filled by open recruitment or internal promotion, but through internal referral, i.e. friends and relatives were recommended for the jobs.

Findings

Staffing and Finance

5.12 As at 31 March 2004, the EOC had 71 permanent staff, representing an 8% increase over 66 staff in 1997. There were short-term positions, ranging from one in 1996 to 13 positions in 2002. During the same period, the workload of the EOC had increased. The scope of the EOC's work was broadened to cover the Family Status Discrimination Ordinance in 1997. The number of complaints and enquiries doubled from 495 and 6605 in 1997 to 1032 and 13626 in 2003 respectively. Applications for legal assistance soared by thirteen times from five in 1997 to 71 in 2003. The EOC also ventured into new areas of work in 2002 by establishing the Training and Consultancy Unit.

²⁶ The article was written in Chinese. The text quoted in this report is the English translation of relevant extract of the article. The allegations are recapitulated under the heading "Allegation", and they are included in this report for the sole purpose of providing the context for the presentation of facts and analysis.

5.13 In June 2000, the post of Chief Executive was deleted²⁷ following the resignation of the post-holder in May 2000. This decision was endorsed by the Commission to revise the organizational structure with a view to streamlining the EOC's operation and to providing better support for the EOC's vision and mission. The EOC Chairperson became more involved in the operational matters and responsible for the EOC's overall administration and management. The savings of \$2.4 million were redeployed to other areas including the upgrading of the DPA post and the setting up of the Training & Consultancy Unit.

Table 5.2:

The staffing and financial situation of the EOC between 1997 and 2004

For the year ending on 31 March	1997	1998	1999	2000	2001	2002	2003	2004	2004 vs. 1997
Staff									
Establishment	66	68	68	70	69	72	71	71	8%
Change	--	3%	0	3%	-1%	4%	-1%	0	
Strength									
Established post	63	67	68	64	67	71	70	65	3%
Short-term post ⁽¹⁾	1	2	5	4	10	13	12	8	700%
Total	64	69	73	68	77	84	82	73	14%
Change	--	8%	6%	-7%	13%	9%	-2%	-11%	--
Funding									Total
Government subvention (\$m)	36 ⁽²⁾	63	69	94	86	81	78	77	584
Change			10%	36%	-9%	-6%	-4%	-1%	--

Source: the EOC Office

Notes:

- (1) "Short-term post" does not include secondees.
- (2) The operation of the EOC commenced on 20 September 1996. The first fiscal year 1996-97 covered about six months only.

5.14 Government recurrent subvention for the EOC was \$63.4 million in 1997-98. It peaked at \$94.1 million in 1999-2000 and had since dropped by 17% to \$77.5 million in 2003-04. The EOC also embarked on fee-charging services and has accumulated a healthy surplus of \$28.8 million since 1996.

²⁷ According to the minutes of the EOC meeting on 21 June 2000, Members endorsed the recommendation not to replace the Chief Executive post. The post was deleted and savings were redeployed within the EOC.

Table 5.3:

Funding and expenditure of the EOC between 1997 and 2004

For the year ending on 31 March	1997	1998	1999	2000	2001	2002	2003	2004
<i>Government subvention⁽¹⁾</i>								
Subvention (\$m)	36 ⁽⁴⁾	63	69	94	86	81	78	77
Change over previous year ⁽²⁾			10%	36%	-9%	-6%	-4%	-1%
<i>Expenditure</i>								
Staff salaries (\$m)	19.2	42.4	35.0	37.5	39.2	42.5	44.0	39.5
Staff gratuity and benefits, etc		-	10.4	32.6	22.2	17.4	17.1	14.8
Staff unutilized leave (\$m)							1.6	0.2
<i>Sub-total</i>	19.2	42.4	45.4	70.1	61.4	59.9	62.7	54.5
Change over previous year		121%	7%	54%	-12%	-2%	5%	-13%
Legal fees ⁽³⁾ (\$m)		0.078	0.297	2.5	5.6	1.9	6.1	0.8
Publicity and education (\$m)	5.6	8.6	7.6	5.4	6.1	3.6	5.6	3.4
Rent and rates (\$m)	4.1	5.1	6.9	6.3	5.7	5.8	5.4	5.5
<i>Total⁽⁶⁾</i>	35.8	64.4	66.3	88.6	87.8	75.4	83.5	68.3
Change over previous year		80%	3%	34%	-1%	-14%	11%	-18%
<i>Surplus (\$m)</i>	0.1		3.4	6.4		8.3 ⁽⁵⁾		10.6

Source: the EOC Office

Notes:

- (1) Apart from Government subvention, which is the EOC's major source of income, the EOC also has interest income, sundry income and reimbursement of costs from legal litigation, which are not detailed in this table.
- (2) The considerable increase in 1999-2000 is attributable to the lump sum gratuity subvention of \$15.6m received in 1999-2000 when most staff's first 3-year contracts were completed. From 2000-01 onwards, the Government provides gratuity subvention on a monthly basis.
- (3) This item refers to the amount of legal assistance for complainants, and it does not include EOC's legal expenses in lawsuits against the EOC by former staff. The latter amount was \$8.98 million, of which \$3.31 million was charged to the Legal Litigation Reserve.
- (4) The operation of the EOC commenced on 20 September 1996. The first fiscal year 1996-97 covered about six months only.
- (5) The Government allowed the EOC to retain \$8.2 million, which was transferred to the EOC's Legal Litigation Reserve and General Reserve. The remaining \$75,000 was returned to the Government.
- (6) They are grand totals, and include miscellaneous expenditure not indicated in the table.

Recruitment

5.15 According to its recruitment procedures, the EOC's intention is to fill vacancies from within the organization whenever possible and initiate external recruitment only if the vacancy cannot be filled from within the EOC. Aspiring to be a role model, the EOC sets out in its human resource management manual the principle to select an eminently suitable candidate regardless of sex, pregnancy, disabilities and family status, race, colour, religion, age, national origin, citizenship and sexual orientation.

5.16 The EOC recruits suitably qualified candidates in three ways -

- (a) internal recruitment through vacancy notice and selection interviews;
- (b) external recruitment through advertisements or for senior appointments through executive search firms; and
- (c) infrequently through review of unsolicited applications/enquiries if recruitment is extremely urgent and recruitment difficulties have been encountered in the recent past.

Secondments and Consultancies

5.17 As the Australian equal opportunities legislation is the closest to Hong Kong's, the EOC has arrangements with two Australian Equal Opportunity Commissions (AEOCS) on secondment. These placements seek to make use of skills and expertise not available in Hong Kong or to undertake tasks in newly developed areas or of urgent nature. Under these arrangements, the EOC has sent eight staff on short-term overseas placements. It also engaged seven AEOCS commissioners/staff and one consultant from the Human Rights Commission of New Zealand through short-term secondments or consultancy. All except two placements were temporary, ranging from a few weeks to a few months. According to the EOC, AEOCS normally solicit intent and openly select from their staff and then recommend eminently suitable staff for the EOC's consideration.

5.18 Whilst placements are intended to be short-term, two placements turned out to be relatively long-term appointments. The first one was an experienced staff from the AEOCS who was engaged as a training consultant. He later helped establish and head the TCU. He joined the EOC in April 2000 on a one-year contract. His contract was subsequently renewed three times until he left in October 2004. The

second secondee was invited to facilitate the implementation of the merger of two operations divisions and improvement in case management. In July 2002, she joined the EOC as Consultant. She later became Gender Division Manager with an expanded portfolio covering most executive duties of the Director (Gender) and the Director (Disability) following their successive resignations. Between June and August 2003, she was Acting Director (Operations).

5.19 Apart from hiring staff and external consultants, the EOC runs a summer student programme and placement/internship scheme. The EOC may solicit applications through local universities. It may also consider open enquiries, unsolicited applications, referrals and recommendations. The EOC also engages persons for volunteer work from time to time. Persons with a relevant background in equal opportunities or human rights or have a strong interest in these areas will be given priority. Referral is possible. Since 1996, the EOC has had four summer students and nine volunteers.

The Panel's Observations

Staffing and Finance

5.20 Overall speaking, the increase in the EOC's permanent staff establishment was modest and gradual. The increase in short-term posts was also reasonable, given that these positions were only temporary and that the EOC's workload had increased significantly during the same period. On finances, Government recurrent subvention for the EOC had in fact decreased from \$94 million in 1999-2000 to \$78 million in 2003-04. Expenditure on staff salaries remained broadly the same over the years, although the expenses on staff gratuity and benefits experienced a surge in 1999-2000 when the first batch of three-year contracts expired.

Recruitment

5.21 Overall speaking, the EOC's recruitment procedures were similar to those of major public bodies. The Panel has not examined each case to check whether these procedures have been duly complied with. The EOC's recent human resources management review noted allegations about the existence of favouritism. During the course of our inquiry, there appears to be a lingering feeling amongst certain staff members about the possibility of favouritism in filling vacancies, granting training opportunities and handling performance management. To demonstrate that the procedures and their actual implementation are transparent and

fair, we **recommend** that the EOC should keep these procedures under constant review and promulgate clearer guidelines among all staff.

Secondments and Consultancies

5.22 There are merits in introducing secondment with organizations of similar nature as it will allow cross-fertilization of ideas and enable the EOC to benefit from the wealth of experience of jurisdictions that are more advanced in the development of equal opportunities. Nevertheless, we notice some concerns on these secondments and consultancies, particularly the process and manner of their appointment -

- (a) Under the present system, the appointments and renewal of appointments of secondees, irrespective of salary and seniority, are approved by the EOC Chairperson whereas the appointments and re-appointments of senior permanent staff (MPS point 45 and above) have to be approved by the A&FC.
- (b) There were two occasions where secondees were first engaged as consultants but subsequently performed executive or statutory functions.
- (c) There is no formal secondment policy in the EOC. It is advisable to enhance the communication with the staff concerning secondment policies and practices and the secondees' interface with staff with a view to cultivating team spirit within the EOC.
- (d) As the secondment or short-term appointments sought to transfer knowledge and skills not available to the EOC, the EOC should have a clear programme to achieve this goal, as highlighted in the consultancy report on complaints handling²⁸—

“Officers who are not permanent residents of Hong Kong are recruited on the basis that they have the expertise that the Commission requires but that is not available locally. They may be particularly useful in assisting the Commission to develop new areas of activity or new ways of working. They are recruited for two purposes: to make their expertise available to the Commission and to transfer that expertise to the Commission staff and other relevant Hong Kong residents.

²⁸ This is extracted from “*Report of a Review of Complaint Handling and Related Matters*” published in February 2002 by two external consultants engaged by the EOC.

For these purposes to be realized, the Commission needs to ensure that the persons recruited have the expertise that it requires and that they work to a program for the transfer of skills and their phased replacement with local staff. In general at this stage of its development, the Commission should require only short-term support from overseas experts.”

5.23 We encourage the EOC to continue the secondment arrangements with organizations of similar nature. To ensure that future secondments and consultancies achieve their intended purposes, we **recommend** that -

- (a) The EOC should formulate clear guidelines on the engagement of consultants and secondees. The guidelines should cover the objectives, operation and the interface with the EOC staff.
- (b) The EOC Office should submit regular reports to the A&FC²⁹ on the engagement of consultants and secondees so that the A&FC can have a full picture of the staffing support of the EOC.
- (c) In line with the recommendation in paragraph 5.22(d) above, the EOC should ensure that the persons recruited have the expertise that it requires and that they work to a programme for the transfer of skills and their phased replacement with local staff.

5.24 As regards the engagement of summer students, interns and volunteers, the procedures are, understandably, less formal. We **recommend** that the EOC should keep these procedures under constant review and promulgate clearer guidelines so as to preserve the integrity and credibility of the EOC.

Second Allegation - Internal Disputes Leading to the Dismissal of Ten Employees

Allegation

5.25 The second allegation in the article was that there were serious internal disputes in the EOC. It was alleged that some former employees

²⁹ For details on the role and functions of the A&FC, please refer to paragraph 2.5.

of the EOC had lodged complaints against the EOC about their being dismissed unreasonably. Some of them even initiated legal action against the EOC. Since the establishment of the EOC, more than 10 staff members in the Legal Service Division, the Planning and Administration Division and the Operations Division had been dismissed or forced to leave. Two of them took legal action against the EOC while others sought redress through other avenues.

Findings

Staff Turnover

5.26 Among the 70 staff who left the EOC between 1996 and 2004, there were 48 resignations, termination of 11 contracts and non-renewal of 11 contracts. Details are set out in Table 5.4.

Table 5.4:

Staff establishment, strength and attrition from 1997 to 2004

For the year ending on 31 March	1997 ⁽²⁾	1998	1999	2000	2001	2002	2003	2004	2004 vs. 1997
Establishment	66	68	68	70	69	72	71	71	8%
Strength (total)	64	69	73	68	77	84	82	73	14%
Staff Leaving the EOC									Total
Termination by employer	1	3	0	1	3	3	0	0	11
Non-renewal of contract ⁽¹⁾	0	0	0	6	2	0	1	2	11
Resignation	3	10	2	2	7	8	5	11	48
Total	4	13	2	9	12	11	6	13	70
<i>Percentage of total strength</i>	6%	19%	3%	13%	16%	13%	7%	18%	

Source: the EOC Office

Notes:

- (1) Non-renewal of contract means all departure cases upon expiry of contract including new contract offered but not accepted.
- (2) Operation of EOC commenced on 20 September 1996. The first fiscal year 1996-97 covered about 6 months only.

5.27 According to the EOC Office, four out of the 11 cases were terminated within the probation period. Of all the 11 cases, the terminated staff concerned had either been warned, counseled or advised on work deficiencies and necessary improvements prior to termination of their employment. The EOC has established guidelines on the authority and procedures for the termination of staff. The authority for the termination of staff at MPS Point 45 or above is vested with the A&FC. For the rest of the staff, the authority is vested with the EOC Chairperson.

5.28 Two former EOC employees instituted legal proceedings against the EOC. The first case related to non-renewal of contract. The employee sued the Commission, a former EOC Chairperson and some EOC staff for disability discrimination and harassment. The court ruled in favour of the EOC. In the second case, the decision to terminate this employee's contract and the actual termination took place during the tenure of the first EOC Chairperson. The trial is pending.

Staff Relations and Morale

5.29 Based on the written submissions and interviews with staff, we were given to understand that the working environment of the EOC was not very harmonious. Its staff has a diverse background. It also has overseas consultants and secondees whose terms of employment range from a few weeks to a few years. When the staff first joined the EOC, the equality of opportunities was a novel concept in Hong Kong. They had their own vision, mission, values and background. According to Ms Anna WU, former Chairperson, team building exercises and staff events were organized specifically with a view to fostering a harmonious and effective working environment. There was once a staff club, but was dissolved due to insufficient support from the staff and the management. In the recent review of EOC's human resource management policies, procedures and practices (HRM Review), the Review Committee notes that there is a lack of trust amongst management and staff, and amongst colleagues.

The Panel's Observations

5.30 Given that the EOC is a relatively new organization tasked to perform specialized statutory functions hitherto uncommon in Hong Kong, a turnover rate of 3% to 19% is understandable. Staff members need to ascertain whether the job nature matches their expectation and skills. At the same time, the EOC needs to constantly review the staffing structure

and the attributes expected of the staff to ensure that the EOC is capable of meeting the organizational objectives and the changing needs of the community. The present arrangements of having three-year renewable contracts allow both the staff and the EOC the flexibility to review the appointment periodically, although there are concerns that the system of fixed-term contract does not provide sufficient job security.

5.31 In order to enable the EOC to achieve its mission and vision for the benefit of Hong Kong as a whole, the EOC should enjoy the full rights and responsibilities of an ordinary employer to make employment decisions, including non-renewal of contracts and termination of appointments. The EOC should adopt a merit-based system to select and retain only those employees who have the commitment, knowledge and skills to contribute to the EOC's organizational goals. In the HRM Review, it was recommended that EOC management should ensure that the intake subscribe to the belief of equal opportunities.

5.32 The EOC is expected to exercise its discretion on termination and non-renewals in a just and fair manner. The affected parties should be given due process to redress their grievances, if any. Up to December 2004, the EOC has spent \$9.13 million in defending itself in two lawsuits initiated by two former employees. The EOC has not made any attempt to conciliate and settle with the former staff³⁰. It is conceivable that the cost could have been reduced had the EOC adopted a more sensitive approach in handling termination and non-renewal of staff. After all, the EOC should strive to be a model employer who acts not only lawfully but also reasonably and rationally. In this connection, we **recommend** that -

- (a) The EOC should improve its staff performance management system, cultivate a merit-based culture and give sufficient warnings and signals to under-performed staff so that the eventual decision regarding their termination or non-renewal will not be taken by surprise.

³⁰ The Legal Adviser of the EOC explained that the EOC was obliged to encourage conciliation and settlement when handling its statutory complaints functions. However, this approach did not apply to the two lawsuits, which were not complaints lodged under the anti-discrimination legislation. According to Ms Wu, during her tenure as Chair, the litigation was dealt with in accordance with independent legal advice.

- (b) As mentioned in the HRM Review, the EOC should reaffirm the importance of the commitment to equal opportunities as a core competency for staff at all levels. It should recruit and retain staff who subscribe to the belief of equal opportunities. It should provide comprehensive induction programme and regular staff training in this respect.
- (c) The EOC should improve its grievance handling system.
- (d) The EOC should enhance its skills in managing the exit of staff. For instance, as recommended in the HRM Review, it should provide proper training on staff counseling, disciplinary actions and termination of employees.
- (e) The EOC should take positive steps to cultivate team spirit within the EOC.

Third Allegation – Too Many Legal Proceedings and Many Cases Were Lost

Allegation

5.33 The third allegation in the article was that the EOC deliberately encouraged complainants to institute legal proceedings, resulting in a surge in legal costs. However, many of these lawsuits were unsuccessful. One of the missions of the EOC was to clear up misunderstanding and encourage conciliation through education. However, the EOC, under the management of Ms Wu, deviated from this course by encouraging complainants to initiate legal proceedings. Over the years, many cases were taken to court and the legal costs which were paid out of the public purse were substantial. Yet many of these litigation cases were either unsuccessful or could not proceed further. By encouraging the complainants to take the cases to court, this not only caused a waste of resources, but also led to social polarization.

Findings

Handling Complaints

5.34 There have been conscious efforts to institutionalize “conciliation” into the EOC’s complaints handling operation. First, it is a statutory requirement for the EOC to conduct an investigation into the complaint and endeavour, by conciliation, to settle the matter. Secondly, the EOC’s manual on internal operating procedures also states that it is

incumbent upon the EOC to endeavour to conciliate.³¹ The manual further sets out three objectives of conciliation -

- (a) to assist both parties to understand the facts and circumstances of the case;
- (b) to identify forms of redress or settlement satisfactory to both parties; and
- (c) to reach an amicable settlement.

5.35 Thirdly, the EOC introduced a system of “early conciliation” in 1998 whereby parties to the complaint were encouraged to enter into conciliation before starting the formal investigation. This measure sought to facilitate parties in resolving the matter as soon as possible, and had been formalized in the internal manual.

5.36 Fourthly, it is only when conciliation fails will the EOC consider granting legal assistance under normal circumstances. However, the EOC is obliged to consider all applications for legal assistance and exercise its discretion having regard to the statutory right of all complainants to resort to legal action. In the light of the above institutional arrangements, it is a sweeping statement to say that the EOC encourages litigations rather than conciliation.

5.37 Statistics show that most complaints received by the EOC were settled without legal action. Since its establishment and up to end December 2004, the EOC had received 6 367 complaints, of which 3 375 (53%) were related to the Sex Discrimination Ordinance, 2 778 (44%) related to Disability Discrimination Ordinance and the remaining 214 (3%) related to Family Status Discrimination Ordinance. Of these complaints, 5 395 cases were lodged by individual complainants for investigation and conciliation. Among them, 516 (9%) were settled through “early resolution” whereby the cases were resolved before investigation by parties concerned themselves through their own initiatives or alternative channels such as the Labour Tribunal and internal grievance mechanisms. 2 420 cases (44%) were discontinued pursuant to statutory provisions. The EOC made conciliation attempts on 2 389 cases (43%), of which 1 452 (61%) were successful whereas 937 (39%) were unsuccessful.

³¹ Section 4.1.2 of the EOC Manual on Internal Operating Procedures (September 2003) states that “the responsibility of the EOC is a two-fold one, involving the process of investigation and the process of conciliation. It is incumbent upon the EOC to investigate. It is also incumbent upon it to endeavour to conciliate.”

Investigation work on 210 cases (4%) continued whereas investigation on five cases could not be pursued further for various reasons.

Table 5.5:

Percentages of complaints concluded through conciliation and settlement

Distribution of Cases	1997	1998	1999	2000	2001	2002	2003	2004	1997-2004	
									%	No.
Early resolution	14%	10%	5%	3%	7%	11%	3%	2%	9%	516
Discontinued	16%	20%	22%	20%	33%	33%	37%	36%	44%	2,420
Conciliation attempted	23%	32%	36%	32%	13%	39%	36%	38%	43%	2,389
Investigation not pursuable	0	0	0	0	0.1%	0.1%	0	0	0	5
<i>Sub-total</i>	52%	62%	63%	56%	53%	82%	76%	76%	96%	5,330
Under investigation as at end of period	48%	38%	37%	44%	47%	18%	24%	24%	4%	210
Conciliation successful	74%	65%	62%	61%	67%	61%	53%	61%	61%	1,452
Conciliation not successful	26%	35%	38%	39%	33%	39%	47%	39%	39%	937

Source: the EOC Office

5.38 Another batch of 833 cases did not involve a complainant but were either identified by, or reported to, the EOC for follow-up action. Among these cases, 629 (76%) of these cases were resolved, 183 (22%) did not require further action and only 18 (2%) involved consequential legal action.

Application for Legal Assistance

5.39 Applications for legal assistance (LA) have to be vetted and approved by the Legal and Complaints Committee (LCC), an EOC sub-committee made up of EOC Members. As shown in Table 5.6, the EOC granted legal assistance for 126 cases (42%) out of 300 applications between 1997 and 2004. Whilst the number of approved LA applications soared from three cases in 1997 to 71 in 2003, the ratio of approved LA cases as a percentage of total LA applications in fact decreased from 60% in 1997 to 32% in 2003.

Table 5.6:

Percentage of LA cases received and approved

	1997	1998	1999	2000	2001	2002	2003	2004	Total
Legal Assistance (LA) applications									
<i>Received</i>	5	19	21	41	33	60	71	51	300
<i>Approved</i>	3	9	10	26	15	12	23	28	126
<i>Approval rate %</i>	60%	47%	48%	63%	45%	20%	32%	55%	42%

Source: the EOC Office

5.40 The EOC made ongoing attempts to settle the case before or during legal proceedings. Of the 126 LA cases, 31 (25%) were terminated when the applicants withdrew their applications or when the requisite legal advice had been tendered. Fifty-four cases (43%) were settled.

Table 5.7:

Percentage of LA applications terminated and settled

	1997	1998	1999	2000	2001	2002	2003	2004	Total
Approved LA cases	3	9	10	26	15	12	23	28	126
Total LA cases being processed *	3	11	18	33	38	26	35	30	
Termination									
<i>Number</i>	0	1	4	4	6	1	11	4	31
<i>%</i>	0%	9%	22%	12%	16%	4%	31%	13%	25%
Settlement of LA cases before or after legal proceedings									
<i>Number</i>	0	1	2	3	5	13	11	19	54
<i>%</i>	0%	9%	11%	9%	13%	50%	31%	63%	43%

Source: the EOC Office

* The figure includes newly approved cases and cases brought forward from previous years.

5.41 In terms of court action, the EOC issued 36 writs³² between 1997 and 2004. Excluding the ten writs which are under processing as at 31 December 2004, 15 (58%) of the remaining 26 court cases were settled before trial and 11 cases were concluded. The EOC was successful on nine out of the 11 cases, recording a success rate of 82%. Only two cases were dismissed, and they related to sexual harassment cases in which there were no witnesses.

³² In terms of court action, the number is calculated with reference to the number of writs issued. One writ may cover several LA applications against the same respondent involving essentially the same basic facts.

Table 5.8:
LA cases involving court action

	1997	1998	1999	2000	2001	2002	2003	2004	Total
Writs issued	1	1	6	4	6	6	3	9	36
Court cases handled in the year*	1	2	8	9	12	13	10	14	
Court cases settled before trial	0	0	1	0	1	5	5	3	15
% of settlement	0%	0%	13%	0%	8%	38%	50%	21%	42%
Court cases concluded	0	0	2	3	4	1	1	0	11
Successful court cases upon trial	0	0	2	3	2	1	1	0	9
Success rate	-	-	100%	100%	50%	100%	100%	-	82%

Source: the EOC Office

* The figure includes new writs issued and court cases brought forward from previous years.

The Panel's Observations

5.42 The above findings show that the third allegation is unfounded. The EOC has a built-in mechanism to encourage conciliation, and the EOC achieves an overall conciliation rate of 61%³³. It should be noted that the success of conciliation attempts is not entirely within the EOC's control. Nevertheless, the overall conciliation rate will be enhanced through staff training in conciliation and mediation skills. We **recommend** that -

- (a) To further institutionalize "conciliation" as part of the core function of the EOC, the EOC may consider the possibility of adopting "conciliation rate" as a performance indicator for the staff and the EOC as a whole.
- (b) The EOC should step up staff training in conciliation and mediation practices.

5.43 The EOC has a clear, independent and established mechanism to vet and approve LA applications. Whilst there was an increase in the absolute number of legally-assisted cases, the percentage of approved

³³ The conciliation rates varied from year to year. The success rates were 74% in 1997, 65% in 1998, 62% in 1999, 61% in 2000, 67% in 2001, 61% in 2002, 53% in 2003 and 61% in 2004.

application had been declining. For the 11 concluded court cases, the EOC also achieved a remarkable success rate of 82%. Viewed in this light, the EOC is not as litigious as depicted in some media reports. Nevertheless, EOC court cases tend to attract media attention. In particular, the landmark case where the EOC successfully challenged the Secondary School Places Allocation (SSPA) system remains highly controversial, as some people are not convinced that the legal challenge is the most appropriate way to handle the matter. The fact that the EOC won the case has not changed this perception. Without doubt, this case has made a lasting impression in the minds of the community. However, in fairness to the EOC, irrespective of our stance on the SSPA case, we should not allow this high profile court case to overshadow the EOC's ongoing efforts in facilitating conciliation.

The Fourth Allegation - Manipulating Statistics to Exaggerate the Numbers of Complaints

Allegation

5.44 The fourth allegation in the article was that the EOC was suspected of manipulating statistics in order to exaggerate the numbers of complaints. It was alleged that during her four years' tenure of office, Ms Wu encouraged the EOC staff to push up the complaint figures by persuading complainants to split one single case into several separate cases. Such practice amounted to fabricating the figures. Under such circumstances, the complaint figures published by the EOC every year could hardly reflect the actual situation. By pushing up the complaint figures, the EOC could bid more resources. Similarly, by exaggerating the seriousness of discrimination, the EOC could urge employers to join its fee-charging courses, which could serve as a ground of defence in complaint cases. However, this dealt a severe blow to the employers of small and medium enterprises and directly affected the investment environment of Hong Kong.

Findings

Counting Rules

5.45 Handling complaints is one of the EOC's core duties. It is important to count complaints in an appropriate way to facilitate accurate performance measurement, proper reporting, appropriate follow-up action and research. There has been considerable discussion within the EOC about how best to record complaint figures. Theoretically, a person may

lodge complaints against different respondents (e.g. the persons directly involved in the unlawful act and their respective companies) for different unlawful acts (e.g. unfavourable treatment and victimization) on different grounds (e.g. gender, disability or family status). Broadly speaking, the EOC has adopted three different methods at various stages of its history -

- (a) ***Based on the number of complainants.*** At first, the EOC recorded the number of complaints based on the number of complainants. For instance, where a sexual harassment case involves two harassers in the same organization, it is counted as one complaint.
- (b) ***Based on the number of respondents.*** At one stage, the EOC decided to count the number of complaints based on the number of respondents. For instance, where a sexual harassment case involves two harassers in the same organization, it is counted as three complaints (i.e. the first harasser, the second harasser and the employer who has vicarious liability).
- (c) ***Based on the number of allegations.*** With effect from January 2003, the EOC started to standardize the practice in case counting and “opening” of complaints based on the number of respondents and allegations. For instance, where a sexual harassment case involves two harassers in the same organization, it is counted as four complaints (i.e. the first harasser, the second harasser, the employer who has vicarious liability for the first harasser and the employer who has vicarious liability for the second harasser). Another example is a pregnant woman who may file five complaints if she complains against her employer and the company (being vicariously liable) for unfavourable treatment under sex discrimination (because of her gender), disability discrimination (because of her sickness arising from her pregnancy) and family status (if there are hints that she needs more time to take care of her family). An internal EOC document mentions that the new system of counting complaints will allow the Commission to “capture the largest pool”.

5.46 According to Ms Anna WU, there are different reasons for the counting method. One administrative reason was to ensure that when one aspect was resolved, officers did not forget that there remained “live”

aspects. Another administrative reason was that multi-party complaints involved greater complexity and time allocation and counting methods should reflect this element particularly when it came to allocation of workloads to different officers. Another reason is statistical - a multi-party complaint might be resolved in more than one way, i.e. conciliated in one aspect and discontinued in another. Counting the aspects separately facilitated recording the different modes of analysis of the nature of the complaints, success and failure rates of conciliation and discontinuations, etc. It would also facilitate comparison to be made with statistics from other jurisdictions. Furthermore, there are three Ordinances involved and where a multi-party complaint relates to more than one of them, the counting method must enable this to be reflected in statistics. There were also legal reasons for this method of counting. The EOC had legal advice to the effect that each complaint must be registered and clearly identified. Apart from being obvious good sense, this would avoid arguments with complainants over what their complaints were and whether the EOC had fulfilled its obligations under the law. Furthermore there were time limits to be observed and these could be different with regard to the different aspects of a multi-party dispute. In addition, separate recording of the different aspects of a multi-party dispute facilitated identification of the need for legal assistance.

5.47 The underlying reason for the third counting method is also set out in an EOC internal paper -

“The EOC cannot subvert or undermine complainants’ wishes to pursue their rights. Alternative Dispute Resolution (ADR), as a mode of resolving disputes, is a process largely directed by the person bringing the complaint. How a complaint is framed must be decided by the complainant, after being properly informed of their rights under the law. This is how the process is designed to operate. Any suggestion that such an approach persuades complainants to make more complaints completely misunderstands the administration of a statutory ADR process by an administrative statutory body.”

Coercing Employers to Receive Training

5.48 The EOC established its Training and Consultancy Unit (TCU) in 2001, as part of its efforts to launch educational activities to promote equal opportunities and eliminate discrimination. Given that 80% of the complaints received by the EOC are related to discrimination in the

workplace, the EOC has developed training programmes for employers and employees. The TCU provides free training on the law and complaint process, free training kits for small and medium enterprises and fee-paying training and consultancy services. Between 2001 and June 2004, there were 451 training workshops conducted or confirmed and 23 special training projects. The training workshop fee is \$550 per person, and the EOC has generated a fee income of \$1.42 million. The demand for such services is increasing. Starting in September 2002, the TCU also handles requests for consultancy services from human resource personnel about their company policies and assists in the review of equal opportunities policies on a fee-charging basis. These training and consultancy services are not tied with the EOC's complaint handling functions. Similar services are provided in the market, targeting businesses and organizations seeking training to demonstrate that they have taken the necessary steps to discharge their vicarious liability should they in the future be the subject of complaint before the EOC. The EOC service is intended to offer a choice to these organizations.

The Panel's Observations

5.49 The fourth allegation is basically unsubstantiated. The three counting methods reflect different perspectives and objectives. There is no absolute right or wrong. In the interest of conciliation, the primary goal of complaint handling is to heal the relationship between parties. The more the people and issues are drawn into the dispute, the more difficult it will be to disentangle these issues and reach settlement. A smaller number of focused complaints will have a definite advantage over multiple complaints. On the other hand, some people may consider it necessary to provide the complainants with comprehensive information and a full range of options available for the complainants to make their own choices about what action they may take. There is always a fine line between providing comprehensive information to the complainants to make informed decisions on the one hand and proactively steering the complainants to register multiple complaints on the other. Given a choice, complainants are inclined to go for the maximum number of complaints. An underlying issue is what role the EOC should play in handling complaints. Should it be an impartial honest broker between the complainant and the respondent? Or should it stand on the side of the complainant and advocate on his/her behalf to secure the maximum options available to redress his/her grievances? This is an issue that

requires detailed research³⁴ and we will return to this subject in Chapter 6.

5.50 As shown in the Table 5.9, a complainant, on average, lodged 1.4 complaints to the EOC in 2000. This ratio peaked at 1.9 in 2001 and dropped to 1.3 in 2004. The ratio of complaint per respondent has been relatively stable at 1.1 and 1.2.

Table 5.9:

Number of complaints, complainants and respondents (cases for investigation and conciliation)

	2000	2001	2002	2003	2004	1997-2004
No. of complaints	686	1,622	757	915	566	4,546
No. of complainants	494	873	430	497	445	2,739
No. of respondents	647	1,524	651	777	533	4,149
No. of complaints per complainant	1.4	1.9	1.8	1.8	1.3	1.7
No. of complaints per respondent	1.1	1.1	1.2	1.1	1.1	1.1

Source: the EOC Office

5.51 To enable the public and stakeholders to have a full picture, it would be preferable for the EOC to indicate not only the number of complaints but also the number of complainants and the number of respondents. This will also facilitate comparison with the EOC's performance in previous years as well as the performance of comparable organizations in Hong Kong and in the region. We are pleased to note that the EOC will present these figures in greater detail in its coming annual report. According to Ms Anna WU, she asked for the figures to be set out in that manner but was not in a position to complete the implementation during her tenure.

5.52 There is no evidence showing that the complaint figures have any direct bearing on the amount of government resources allocated to the EOC and individual divisions. Given the unique circumstances relating to the EOC's counting rule, the number of complaint cases should not be relied upon as the only indicator to measure the EOC's workload.

³⁴ The subject is discussed in a recent research. See Petersen C.J., *Conflicting Expectations and the Role of Alternative Dispute Resolution in Hong Kong Anti-Discrimination Law, Enforcing Equal Opportunities in Hong Kong: An Evaluation of Conciliation and Other Enforcement Powers of the EOC*. The University of Hong Kong, Hong Kong, Centre for Comparative and Public Law, 2003, also available at the website: [www.hku.hk/ccpl/pub/conferences/documents/14062003a-Carole Petersen.pdf](http://www.hku.hk/ccpl/pub/conferences/documents/14062003a-Carole%20Petersen.pdf)

5.53 As regards the training and consultancy services, the EOC does not have statutory power to require employers to attend training. There is no evidence of any correlation between the complaint figures and the demand for training courses. A fee of \$550 for training workshop can hardly be described as prohibitive or having an adverse impact on Hong Kong's investment environment. We observe that training and consultancy services are increasingly popular preventive measures to eliminate discrimination. We **recommend** that the EOC should expand such services to the community at large. After all, prevention is better than cure! We also welcome the EOC's initiative to introduce fee-paying services to meet market demand. The fee income will not only increase the resources available to the EOC to further its mission and objectives but also prevent any abuses in using the services.

The Fifth Allegation - Suspected of Offering Favours to Lawyer Friends

Allegation

5.54 The fifth allegation in the article was about the EOC's lack of a proper mechanism for outsourcing litigation cases, which might have involved abuses and favouritism. It was alleged that although the EOC had a Legal Adviser (remunerated at D2 level in the Directorate Pay Scale), three lawyers and an officer in its legal division, it had outsourced most cases to local or overseas lawyers. Only in less than seven cases did the EOC initiate proceedings by itself, and even in these cases, outside legal service had to be sought. Despite this, the EOC repeatedly criticized the Government for not providing sufficient fund for litigation. Indeed, the EOC failed to make full use of its existing manpower resources and to put in place an effective outsourcing mechanism.

Findings

5.55 According to the EOC's policy, the Legal Service Division (LSD) handles all legally assisted cases in terms of advice and preparation work up to the trial stage. LSD lawyers also appear in court as counsel unless they do not have a right of audience or their current work commitments do not permit them to do so. The approval of the Legal and Complaints Committee (LCC) has to be sought for the instruction of external counsels. Under such circumstances, the LSD plays the solictorial role, both in preparation for trial and during trial as instructor to the counsel.

5.56 Since 1996, the EOC has handled 30 court cases and concluded 25 cases. LSD handled the solicitorial work in all cases. Nine cases involved external counsels to do the appearance work, three of which were related to matters that the EOC lawyers did not have a right of audience. For the remaining six cases which the EOC lawyers had a right of audience but in which external counsels were briefed, prior consent of the LCC was obtained. The following is a summary of the six cases -

- (a) **Case One.** An external senior counsel was engaged for the first sexual harassment case given the sensitivity of the subject matter.
- (b) **Case Two.** An external junior counsel was briefed because the client received an anonymous letter containing allegations against some LSD staff. The counsel was identified through referral and word of mouth, and the EOC staff did not have any knowledge of him before the first brief. The EOC has since engaged his service again.
- (c) **Case Three.** An external expert was engaged in this case involving six clients who all resided outside Hong Kong. The engagement was made because of the volume of work and the desirability of obtaining expertise in the subject.
- (d) **Case Four.** One senior counsel and one junior counsel were briefed in a case related to the recruitment policy of the disciplined services because of the sensitivity of the issue concerned and the absence of authoritative cases elsewhere on the issue.
- (e) **Case Five.** The subject matter of the fifth case was similar to Case Four. The same junior counsel for Case Four was engaged in this case.
- (f) **Case Six.** An external counsel was briefed when it became apparent that this case (with legal assistance from the EOC) would be consolidated with a case funded by the Legal Aid Department and outside the EOC's jurisdiction. It was considered more appropriate to have the same counsel to appear before the court.

5.57 Unlike the Legal Aid Department, the EOC does not have a "panel" of counsels to whom it pays a fixed fee scale. The EOC identifies the external counsel through word of mouth and review of track

record. It adopts the following criteria -

- (a) Does the counsel have any relevant expertise?
- (b) Does the counsel have any special skills/ability/experience that would benefit the case?
- (c) Has the counsel done any similar work for the EOC (or similar body)?
- (d) Will the counsel be able to represent the interests of the client and the interests of the EOC in carrying out its statutory duties?

5.58 The EOC also highlights the following considerations in engaging external counsels -

- (a) The equal opportunities legislation is relatively new in Hong Kong. The EOC wants to try out various counsels to see if they are competent in respect of EOC cases.
- (b) To the EOC, it is not just about “winning” the case for the plaintiff. The EOC cases are often taken on a “strategic” basis, and have an educative role to enable the EOC to eliminate discrimination and promote equality of opportunity. The fees charged by the counsel should not be the only consideration.
- (c) Invariably, the EOC is looking for lawyers who are not only excellent in terms of experience, knowledge and practical skills but also sensitive in helping the clients and handling the subject matter.

The Panel’s Observations

5.59 The EOC has a sound mechanism, involving its LCC, in determining when to instruct an external counsel. The system for selecting the external counsel in legally assisted cases or engaging external legal adviser in other cases is less than clear. Two external lawyers were engaged on more than one occasion on the basis of their experience and expertise. Having accumulated more than seven years of practical experience, the EOC is now in a better position to refine the system for the procurement of external legal service to enhance its transparency and fairness.

The Sixth Allegation - Unlawfully disclosing Personal Data

Allegation

5.60 It was alleged that during her tenure, Ms Anna WU, in the name of research, handed over the entire files of complaint cases to outsiders on many occasions without obtaining the approval of the relevant complainants, respondents and other parties concerned. They would never know that their data had been disclosed to outsiders without their authorization. Worse still, the parties concerned in certain cases were actually working in the same organization or even acquainted with those who took part in the research. The disclosure of confidential information contravened the Personal Data (Privacy) Ordinance.

Findings

5.61 The allegation is apparently related to a research study that assessed the expectations and the role of alternative dispute resolution in Hong Kong's anti-discrimination law. The study relied on three main sources of data, namely, data obtained from a sample of 451 complaints filed with the EOC, interviews with complainants, respondents or their representatives who were willing to participate in such interviews, and finally interviews with relevant EOC officers³⁵. In mid-2001, the EOC passed 451 complaint files to a researcher. The EOC did not obtain the prior authorization from the relevant individuals. However, the EOC had never had a complaint about parties being contacted by researchers. The EOC Office also obtained a detailed confidentiality undertaking from the University in question.

5.62 As part of its statutory functions, the EOC may participate in academic research. The Personal Data (Privacy) Ordinance recognizes the need for bodies such as the EOC to engage in research. The Ordinance exempts personal data used for preparing statistics or carrying out research, where the data is not used for other purposes and the results do not identify the individuals or organizations. If there is any suspected breach of rules under the Personal Data (Privacy) Ordinance, the aggrieved party may seek the assistance of the Privacy Commissioner. In conducting research, the EOC should ensure that necessary steps are taken to protect the privacy and data of persons involved.

³⁵ Please see the conference paper mentioned in Footnote 34.

The Panel's Observations

5.63 There is a well-established statutory mechanism to handle complaints relating to disclosure of personal data. The EOC has procedures on data protection. Given that the EOC is entrusted with sensitive personal data on a daily basis, it is important that the EOC should constantly review its policies and practices on data protection and enforce these practices with rigour, whether in its daily operation or in the pursuit of other noble causes such as research.

Other Allegations

Findings

5.64 Apart from the six allegations, there have been a few media reports containing detailed allegations against the EOC and some of its staff members. Like the “six allegations”, these reports centre upon internal issues such as staffing and operations. Some of these reports suggest the existence of favouritism, abuses and power struggle within the EOC. A careful examination of the so-called “six allegations” indicates that those allegations are not fresh allegations against the EOC. Most of them already appeared in previous media reports, magazine articles and anonymous letters, but were repackaged and reproduced in the article with an added connection with Mr Wong's resignation.

The Panel's Observations

5.65 The fact that the allegations resurface time and again is undesirable. A lay person cannot distinguish whether and when rumours have been allowed to masquerade as facts. The meticulous details of the half truths and rumours in the media reports seem to impress and confuse readers as credible information.

Security of Information and Documents

Findings

5.66 Apart from various allegations, the EOC is plagued by leakage of internal documents containing confidential or sensitive information to the media. Some even clearly show a copy of the confidential documents. There are at least five incidents of serious leakages -

Date of report	Summary of report
August 2003	An employer of a complainant accused the EOC of breaching the confidentiality of a complaint case by arranging a media interview with the complainant.
October 2003	An extract of an internal document was faxed to the media, indicating that Mr Patrick YU's name was referred to the executive search firm. Incidentally, the document also included the names of candidates short-listed for the final interviews for the post of Director (Operations).
October 2003	A newspaper disclosed an internal document showing an explanation given by the Legal Advisor of the EOC on how a staff member was appointed.
February 2004	A newspaper reported on the discussion of the Legal and Complaints Committee regarding a legal assistance application on a SARS-related complaint case.
July 2004	An internal document regarding the EOC Office's response to a magazine article was published.

5.67 In April 2004, the EOC Office appointed an investigatory team, comprising two independent EOC Members and the Director of Planning and Administration, to find out the source of the leak in one of the above cases and to recommend courses of action to be taken against those responsible for the leak. The team was also tasked to review the existing policy and procedures concerning office security, management and protection of confidential information and to recommend if improvements are necessary. As part of the review, the team requested the Independent Commission Against Corruption (ICAC) to conduct a review on the EOC's handling of confidential information and documentary control. The team had endorsed the ICAC's recommendations in principle and would discuss whether and how they should be adopted for implementation. These recommendations covered, among other things, the handling of confidential information, means to heighten the alertness of the EOC Members and staff, periodic stock checks of confidential files, etc. The EOC Office is also exploring the possibility of proposing legislative changes to make the leakage of confidential information a criminal offence.

The Panel's Observations

5.68 The above-mentioned leakages reflect a lack of sensitivity and respect towards the persons involved. They also undermine the credibility of the EOC. These serious breaches require immediate and high-profile action. We applaud the EOC's efforts in conducting investigation in this area. We **recommend** that the EOC should examine and, where appropriate, implement the recommendations of the ICAC and the review team as soon as possible.

Overall Observations and Recommendations

5.69 The so-called "six allegations" were not independent of previous allegations, mostly anonymous ones, against the EOC over the years. These allegations were not fresh allegations against the EOC. Most of them already appeared in previous media reports and anonymous letters, but were repackaged and reproduced in the article with an added connection to Mr Wong's resignation. As explained in paragraphs 5.11 to 5.63, the allegations were either unsubstantiated or exaggerated.

5.70 Negative reports have, to varying degree, undermined the credibility of the EOC and damaged staff morale. The EOC should not allow the situation to go unchecked, lest both the EOC and its staff would continue to be a victim of false and misleading information. Perceptions, once formed, are difficult to alter; reputation, once impaired, is difficult to restore.

5.71 To date, the EOC has not been able to obtain concrete evidence about the source of the allegations or leakage. Judging by the level of details in the reports, the source is likely to be insiders or people close to insiders. They may have arisen from different sources at different times.

5.72 We are pleased to note that the EOC, in the spirit of continuous improvement, has recently completed the HRM Review and an overall organizational review. These reviews not only provide excellent expert advice but also serve as a healing process through which the staff can ventilate their feelings and share their concerns. There is a lot of wisdom in the reports. If the recommendations are implemented, it will go a long way to address some of the long-standing issues facing the EOC and enhance the effectiveness of the EOC as an institution. We **recommend** that the EOC should examine the recommendations of the HRM Review and, where appropriate, adopt for implementation as soon as possible.

5.73 We further **recommend** that -

- (a) The EOC should formulate and promulgate a media policy to enable it to respond promptly to the media, particularly in face of reports having negative impact on its credibility.
- (b) The EOC should identify the source of leakages, if possible.
- (c) As a deterrent against possible leakages in the future, the EOC should demonstrate its resolve to crack down on leakages by issuing periodic reminders to alert EOC Members and staff in the proper handling of sensitive or confidential information, strengthening the record management system and imposing hefty penalties on breaches. In this connection, the EOC should, as soon as possible, examine and implement the recommendations of the ICAC and the review team where appropriate and practicable. In particular, the EOC should consider the possibility and desirability of making it a statutory offence to disclose confidential information and personal data in the custody of the EOC along the lines of similar provisions applicable to other statutory agencies.