

# The Education, Training and Language Provisions in Hong Kong's Race Discrimination Bill

Kelley Loper

Faculty of Law, The University of Hong Kong

[kloper@hku.hk](mailto:kloper@hku.hk)

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# Vocational Training (Section 20(1))

Prohibits discrimination by providers of vocational training against persons “seeking or undergoing training which would help to fit him or her for employment”:

- in the terms ... [of] access to any training course or other facilities concerned with such training;
- by refusing, or deliberately omitting to afford ... such access;
- by terminating the training; or
- by subjecting the ... person to any other detriment during the course of his or her training.

# Vocational Training (20(2))

“Nothing in subsection (1) is to be construed as requiring a person who provides, or makes arrangements for the provision of, facilities for such training –

- (a) to modify for persons of any racial group its arrangements regarding holidays or medium of instruction; or
- (b) to make different arrangements on those matters for persons of any racial group.”

# Education (26(1))

- Similar to SDO, FSDO, and DDO
- Prohibits discrimination:
  - in the terms of admission
  - by refusing or omitting to accept an application for admission
  - in access to any benefits, facilities or services as a student or
  - by expelling the person

# Education (26(2))

“Nothing in subsection (1) is to be construed as requiring the responsible body for an educational establishment –

- (a) to modify for persons of any racial group arrangements of the establishment regarding holidays or medium of instruction; or
- (b) to make different arrangements on those matters for persons of any racial group”

# Clause 58: Exception for Languages

- (1) Nothing in section 20, 21, 26, 27, 28, 29, 35 or 36 renders unlawful the use of, or the failure to use, any language in any circumstances relevant for the purposes of the section.
- (2) For the avoidance of doubt, nothing in subsection (1) affects the Official Languages Ordinance (Cap. 5) or provisions on the use of language contained in any other enactment.
- (3) In this section, a reference to the use of, or failure to use, a language includes a reference to the provision of, or failure to provide, a translation, interpretation or transcription into the language.

# *Lau v Nichols\**

“We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.”

“It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program.”

\*414 U.S. 563 (1974)

# *Eldridge v British Columbia\**

“Effective communication is quite obviously an integral part of the health care delivery”

\*1997 Sup. Ct. Canada



# CERD Concluding Observations on Mongolia's Report

“... while appreciating the State party's efforts to provide Kazakh children with education in their native language, [the Committee] is also concerned about the lack of measures to ensure that children whose mother tongue is a minority language ... are provided with adequate opportunities to learn Mongolian as a second language (art. 5 (e) (v) and (vi))”

# CERD Concluding Observations on Estonia's Report

“The Committee ... remains concerned at the high rate of unemployment among members of minorities ... The Committee reiterates its previous concern that the scope of the requirement of Estonian language proficiency, including in the private sector, may have a discriminatory effect on the availability of employment to members of this community (art. 5 (e) (i))”

# Hong Kong's Second Report to the CESCR\*

“language ... is the core  
difficulty from which all others  
flow”

\*June 2003, para 13.22

# Conclusions

- Existing obligations
- Already a justifiability test
- Overly broad exemptions
- Limits discussion
- Potentially entrenches discrimination
- Suggest deleting

Thank you!