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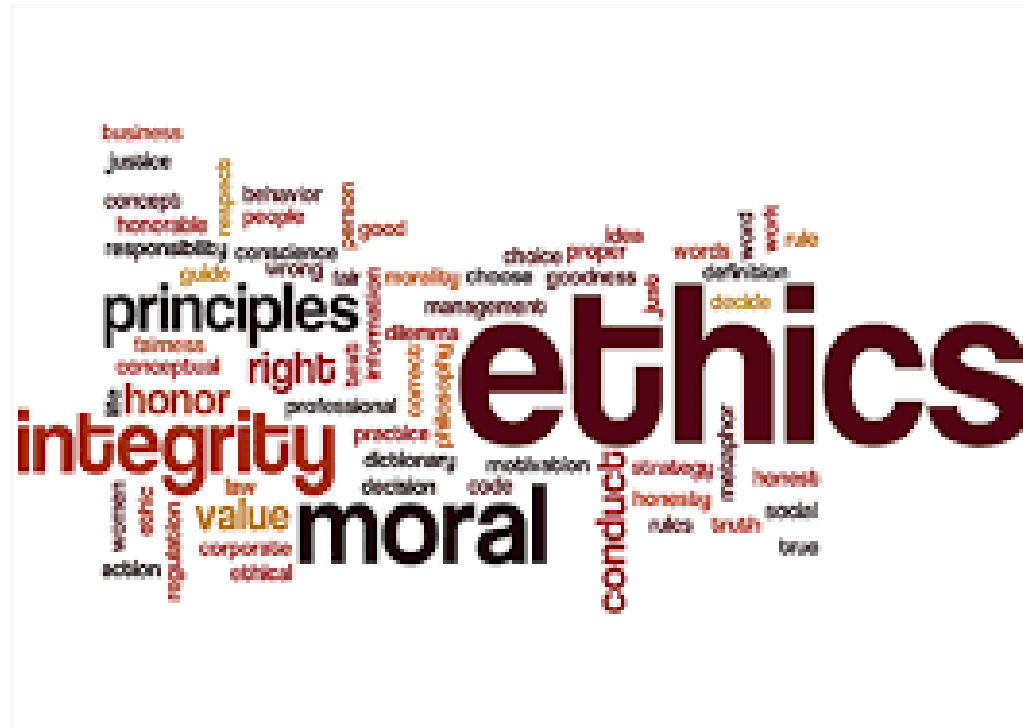
PART 1: PROFESSIONAL CONDUCT & RELATED ISSUES

PART 2: DISCRIMINATION

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PART ONE: PROFESSIONAL CONDUCT

SOCIAL WORKERS REGISTRATION ORDINANCE

社會工作者註冊條例(CAP. 505) (“SWRO”)

- Provides for the registration of social workers and disciplinary control of the professional activities of registered social workers and related matters 就社會工作者的註冊、註冊社會工作者專業活動的紀律管制及有關連的事宜，訂定條文
- Established the Social Workers Registration Board 社會工作者註冊局
 - Maintains a register of registered social workers 設置並備存一份註冊社會工作者的註冊紀錄冊
 - Sets and reviews qualification standards for registration 訂定及檢討註冊為註冊社會工作者的資格標準及有關的註冊事宜
 - Deals with disciplinary offences 處理違紀行為
 - Makes rules in respect of the conduct and discipline of registered social workers and the conduct of inquiries by a disciplinary committee and matters relating to investigations of disciplinary offences 就社會工作者的操守及紀律;紀律委員會研訊的進行及關乎指稱中的違紀行為的調查的其他事宜訂立規則

DISCIPLINARY OFFENCES (I)

- Section 25(I) SWRO:
- A registered social worker commits a disciplinary offence if he:
 - Commits misconduct or neglect in any professional respect 在專業方面有失當或疏忽行為
 - Has been convicted of an offence under SWRO 被裁定犯社會工作者註冊條例所訂的任何罪行
 - Has obtained registration by fraud or misrepresentation 以欺詐手段或失實陳述而獲得註冊
 - Without reasonable excuse, refuses or fails to attend before a disciplinary committee when summoned either as a witness or as a person in respect of whom the disciplinary committee is meeting 無合理辯解而拒絕或沒有出席紀律委員會，而當時該社會工作者是以證人身分被傳召的或紀律委員會就該社會工作者舉行會議而他是以此身分被傳召的

DISCIPLINARY OFFENCES (2)

... (cont'd)

- Has been convicted in Hong Kong or elsewhere of any offence which **在香港或其他地方被裁定犯** :
 - May bring the profession of social worker into disrepute 任何可令社會工作者專業的聲譽受損的罪行; and
 - Is punishable with imprisonment (whether or not the person was sentenced to imprisonment) 任何可判處監禁的罪行(不論該人有否被判處監禁)
- Has been convicted of offences in Schedule 2, such as:
 - Ill-treating a child
 - Sexual offences
 - Abduction of child
 - Murder
 - Manslaughter
 - Wounding with intent to cause grievous bodily harm
 - Wounding or inflicting grievous bodily harm

COMPLAINT OF DISCIPLINARY OFFENCE

- Section 25(3) SWRO:
 - Any complaint shall be made to the Registrar
 - Registrar will refer the complaint to 2 members of the Social Workers Registration Board (the “Board”)
 - The 2 members shall refer the complaint to the Board unless:
 - E.g.:
 - there is a delay in making the complaint for more than 2 years for no special reason
 - the complaint is made anonymously以匿名方式提出 or the complainant cannot be identified or traced
 - the offence complained of is trivial微不足道
 - the complaint is frivolous or vexatious瑣屑無聊或無理取鬧 or not made in good faith不是真誠地提出
 - ... Etc

DISCIPLINARY INQUIRY

- Section 25(4) SWRO:
 - Where a complaint has been referred to the Board, the Board shall, before reaching a decision or making a disciplinary order, appoint a disciplinary committee to
 - inquire into the complaint;
 - advise whether the disciplinary offence complained of has been committed;
 - if so, recommend an appropriate disciplinary order



DISCIPLINARY ORDERS

- Section 30 SWRO:
 - Order to remove the name of the social worker from the Register permanently 在紀錄冊內將該註冊社會工作者的姓名永遠註銷
 - Order to remove the name of the social worker from the Register for such period as the Board thinks fit (not being more than 5 years) 在該紀錄冊內將該註冊社會工作者的姓名註銷，為期一段註冊局認為合適的期間(但不超過5年)
 - Reprimand the social worker in writing and record the reprimand on the Register 以書面譴責該註冊社會工作者和將該項譴責記錄於註冊紀錄冊上
 - Order the Chairperson of the Board to admonish the social worker orally 口頭訓誡
- In case of disciplinary offence where the social worker is convicted of an offence in Schedule 2 – the Board shall order permanent removal of the social worker from the Register

CODES OF PRACTICE

- Section 10 SWRO:
 - For the purpose of providing practical guidance 實務指引 in respect of the professional conduct 專業操守 of registered social workers (including ethical matters relating 道德事宜 to such conduct), the Board approve and issue such codes of practice 工作守則 as in its opinion are suitable for that purpose
- Section 11 SWRO:
 - A failure to observe any provision of an approved code of practice shall not of itself be a disciplinary offence but 任何註冊社會工作者如沒有遵守經批准的工作守則的任何條文，此事本身並不是違紀行為，但
 - The Board or a disciplinary committee may, in deciding whether a disciplinary offence has been committed, have regard to any provision of an approved code of practice which appears to be relevant to the act or omission constituting the offence. 在為決定註冊社會工作者是否已犯違紀行為而根據本條例進行的任何程序中，註冊局或紀律委員會可顧及...有關的經批准的工作守則的任何條文

CODE OF PRACTICE FOR REGISTERED SOCIAL WORKERS 社會工作者工作守則(THE “CODE”)

- Primary objective:
 - For protection of clients and members of society at large 保障服務對象及社會人士
 - To enhance public trust and confidence in the social work profession 為加強社會人士對社工專業的信任和信心
- Serves as a guide to the everyday conduct of social workers 日常操守的指引
- Will be used as a basis for adjudication when the conduct of a social worker is alleged to have violated the standards specified in the Code 當社工被指控其操守違反專業標準時，註冊局將以此《工作守則》作為裁決的依據
- Represents standards of ethical behaviour for social workers in professional relationships with clients, with colleagues, with agency, with profession, and with society as a whole 列明社工與其服務對象、同工、所屬機構、專業及社會建立專業關係時的道德行為標準

THE CODE – BASIC VALUES AND BELIEFS

- Primary mission to help people in need and to strive to address social problems 首要使命為協助有需要的人士及致力處理社會問題
- Respect unique value and dignity of every human being 尊重每一個人的獨特價值和尊嚴
- Accept responsibility to:
 - Encourage and facilitate self-realisation of individuals with due regard to interest of others 相信每一個人都有發展的潛質，因而有責任鼓勵及協助個人在顧及他人權益的情況下實現自我
 - Advance social justice and safeguard the cause of human rights 維護人權及促進社會公義
 - Update, upgrade and devote their professional knowledge and skills to the betterment of individuals and society, to empower people to act on their own behalves as far as possible 更新、提升及運用本身的專業知識和技能去推動個人和社會的進步，務求每一個人都能盡量發揮自己的所能
- Recognise the central importance of human relationships and seek to strengthen relationships among people in a purposeful effort... 社工認同人際關係的重要性，會盡力加強人際關係...

THE CODE – PRINCIPLES AND PRACTICES RELATED TO CLIENT

- See Part 2 of the Code, paras 1-18. Include duties to:
- Recognise and be acquainted with ethnic and cultural diversity 認同其服務的社群在種族及文化方面存在差異
- Inform clients of their rights and encourage clients to participate as far as possible in decision-making 協助他們盡量獲取最大的自主權
- Respect clients' rights to privacy and confidentiality, subject to other statutory requirements, in particular the Personal Data (Privacy) Ordinance (Cap. 486) 尊重服務對象在保障私穩和保密個人資料方面的權利
- Not to abuse the worker-client relationship in pursuit of personal interest 不得濫用與服務對象的關係，藉以謀取私人的利
- Not to engage in sexual activities or contacts with clients; not to provide clinical services to those whom they have prior sexual relationship
- Ensure clients not denied of timely services because of financial constraints 盡量使服務對象不會因經濟能力而不能及時獲取 所需要的服務
- Adopt accurate billing practices
- Clearly inform clients of all fee rates and charges before delivering services

THE CODE – PRINCIPLES AND PRACTICES RELATED TO COLLEAGUES

- See Part 2 of the Code, paras 19-32. Include duties to:
- Respect different opinions and practices of other social workers, professionals and volunteers 尊重其他社工、其他專業人士及義務工作者不同的意見及工作方法
- Collaborate 協作 as far as possible with other social workers and colleagues from other disciplines ...
- Those who provide supervision or professional training should possess and maintain necessary knowledge, skills and methodology through appropriate education training,... provide proper supervision
- Seek advice and counsel from colleagues whenever such consultation is in the best interest of clients (providing info on need-to-know basis)
- Respect clients' right of choice – should not solicit clients of other social workers
- Not to convey to client any communications between co-workers beyond the scope of the client's particulars without explicit permission of the author of the communications 在未得到原說者明確許可之前，該社工不應向服務對象透露任何超出服務對象個人資料範圍以外的內容
- Not to engage in any sexual activities or sexual contacts with supervisees, students or trainees

THE CODE – PRINCIPLES AND PRACTICES RELATED TO AGENCY

- See Part 2 of the Code, paras 33-36. Include duties to:
- Be responsible to employing agent for efficient and effective performance of professional duties
- Act constructively and responsibly to influence and improve policies, procedures, practise of their employing agencies...作出建設性及負責任的行動，以影響並改善僱用機構的政策、程序及工作方式，務求令機構的服務水準不斷提昇...
- Make clear in any public statements or when undertaking public activities that they are acting in personal capacity or on behalf of a group or organisation應表明自己是以個人身份抑 或代表團體或機構名義行事
- Not to use institutional affiliation to recruit clients for private practice without consent of the institution不應在未經其服務機構同意下，利用機構與外界的聯繫，為個人的私人業務招攬服務對象

THE CODE – PRINCIPLES AND PRACTICES RELATED TO PROFESSION

- See Part 2 of the Code, paras 37-48. Include duties to:
- Maintain honesty誠實, integrity誠信 and responsibility盡責 in professional practice
- Uphold values and ethics, advance the knowledge of the profession
- Bring to attention of appropriate bodies any violation of the Code that may put the client at risk
- Ready to defend other social workers against unjust accusations
- Represent themselves only as competent within the boundaries of their education, license...
- Use only new approaches after being engaged in appropriate studies, training, professional consultation and supervision...
- In criticising the profession, only do so in a responsible and constructive manner
- Not to misrepresent or false claim personal particulars, professional qualifications, credentials, education...
- Those in private practice to only practise within their areas of competence
- Accept responsibility to upgrade professional skills and knowledge
- Help those entering the profession to establish, strengthen and develop their ethics, values, skills and knowledge
- Respond to calls of duty

THE CODE – PRINCIPLES AND PRACTICES RELATED TO SOCIETY

- See Part 2 of the Code, paras 49-53. Include duties to:
- Bring to attention of policy makers or general public any policies, procedures or activities of governments, societies or agencies which create, contribute or militate against the relief of hardship and suffering 當政府、社團或機構的政策、程序或活動導致或構成任何人士陷入困境及痛苦，又或是妨礙困境及痛苦的解除時，社工認同有需要喚起決策者或公眾人士對這些情況的關注
- Recognise the need to advocate changes in the formulation of policies and legislation 倡導修訂政策及法律 to improve social conditions, to promote social justice and general welfare of the society...
- Recognise the need to prevent and eliminate discrimination... ensure equal opportunities...
- Recognise the need to promote conditions that encourage respect for diversity of cultures in the society 推動大眾尊重社會的不同文化
- Recognise the need to encourage informed participation by the public in formulating and developing social policies and institutions 鼓勵社會大眾在知情的情況下參與制訂和改善社會政策和制度

GUIDELINES TO THE CODE 工作 守則實務指引

- Not a part of the Code
- Mere reference document of the Code
- The Board will not use it as basis for determining whether or not a social worker has violated professional conduct
- A disciplinary committee
 - May use the Guidelines in ways pertinent and appropriate, including analysing the various issues involved in a complaint case
 - May use Guidelines as a reference material at disciplinary hearing
- Use the Code as a guiding principle and the Guidelines as a reference



CLIENT CONFIDENTIALITY

- Do not disclose confidential information about a client to any other third party unless the client consents
- Request from police to provide personal information about a client
 - First seek consent from the client
 - Where necessary, make a professional judgment as to whether or not the provision (or non-provision) would jeopardise the personal safety or interests of clients or other people
- In case of search warrant:
 - Cooperate with the police to provide the basic information that is necessary
 - If necessary, seek prompt legal advice (e.g. make an application to set aside the warrant without lawfully obstructing its execution)
- In case of court order to disclose confidential or privileged information:
 - If such disclosure would cause harm to the client – request or apply to the court or the authorised body to withdraw or limit the order as narrowly as possible or to maintain the records under seal and unavailable for public inspection

CASE STUDY - JACK



- Client: Jack
- When you are in a meeting with him, he discloses his intention to cause harm to his colleague
- Do you report this to the police?
- If so, are you breaching your duty of confidentiality towards Jack?

GUIDELINES ON CODE OF PRACTICE FOR REGISTERED SOCIAL WORKERS

- Paragraph 7.4:
- In circumstances where there is sufficient ground that there is a real, imminent, and serious threat to the safety or interests of clients or of others who may be affected by clients' behavior, social workers should take necessary steps to inform appropriate third parties even without the prior consent of clients.

PERSONAL DATA (PRIVACY) ORDINANCE 個人資料(私隱)條例(CAP. 486) (I)

- Objective:
 - to protect the privacy rights 保障個人的私隱 of a person in relation to personal data (Data Subject 資料當事人)
- 6 data protection principles 保障資料原則 concerning:
 - Data collection
 - must be lawful and fair and directly related to the function/activity of the data user; data subject must be notified of the purpose and the classes of persons to whom the data can be transferred
 - Data accuracy and retention
 - Practical steps to be taken to ensure personal data is accurate and not kept longer than necessary to fulfill the purpose for which it is used

PERSONAL DATA (PRIVACY) ORDINANCE (CAP. 486) (2)

(...cont'd)

- Data use
 - Personal data must be used for the purpose for which it is collected; unless with consent of the data subject
- Data security
 - Data user to take steps to safeguard personal data from unauthorised or accidental access, processing, erasure or loss
- Openness
 - Data user must take practicable steps to make personal data policies and practices known to public. Regarding the types of data held and how it is used
- Data access and correction
 - Data subject must be given access to his/her personal data and allowed to make corrections if it is inaccurate.

PERSONAL DATA (PRIVACY) ORDINANCE (CAP. 486) (3)

- Exemptions:
- General exemption for personal data held for **domestic or recreational purposes** ;
- Exemptions from access requirement for certain **employment related personal data and relevant process**; and
- Exemptions from access and use limitation requirements for **data which are likely to prejudice security, defence and international relations; crime prevention or detection; assessment or collection of any tax or duty; news activities; health; legal proceeding; due diligence exercise; archiving; handling life-threatening emergency situation etc (non-exhaustive)** .
- Source:
https://www.pcpd.org.hk/english/data_privacy_law/ordinance_at_a_Glance/ordinance.html

LEGAL ACTION AGAINST SOCIAL WORKERS



- For malpractice/misconduct 專業失當
- Seeking damages
- Possible causes of action:
 - Breach of confidence 違反誠信
 - Defamation – libel, slander 誹謗
 - Negligence 疏忽
 - Breach of contract 違反合約

ACTION IN NEGLIGENCE



- A tort claim 侵權法
- Legal ingredients:
 - Existence of duty of care 謹慎責任
 - Breach of duty of care
 - Standard falling below that of a reasonable man skilled in that profession
 - The complainant suffered damage as a result of the breach (causation) 因果關係
 - The damage suffered was foreseeable 可預見的損傷

ACTION IN CONTRACT

- There was a contract between the social worker and the client
 - Eg any written form of service agreement
 - Or it could be an oral retainer
- There was breach of expressed or implied term(s) of the contract
 - Expressed terms – those terms and conditions expressly set out in the contract
 - Implied terms – those terms implied by statute or common law
 - E.g. Section 5 of the Supply of Services (Implied Terms) Ordinance 服務提供(隱含條款)條例 (Cap.457) – there is an implied term in a supply of services contract that the supplier of the service would carry out the service with reasonable care and skill 以合理程度的謹慎及技術作出服務
- The complainant suffered damage as a result of the breach (causation)
- Such damage was foreseeable

HOW TO MANAGE RISKS



- Make sure your decisions are reasonable and justifiable
 - Think before you act
 - Consult your colleagues
 - Do not make rash decisions
 - Always think about the best interests of the client
 - Always act with honesty and integrity
- Do not lie about or cover up your mistakes
 - Think about how to resolve the problem instead
- Good communication
 - Be sensitive and empathetic to client's needs, issues and priorities
 - Respond to complaints promptly but think before you act
 - Do not be afraid to be open and frank
- Keep good records
 - In writing
 - Contemporaneous
- Apology without admission of liability
 - Be careful with your choice of words
- Seek prompt legal advice
- Be insured!



PART TWO: DISCRIMINATION

CASE STUDY 2

- You are a social worker in a school catered for non-Chinese speaking students.
- Harshita is the mother of Navraj, a student studying in P4 at your school.
- Harshita made an appointment and saw you yesterday. She told you the following:
 - Navraj had been regularly bullied at school because he did not speak Cantonese well. In addition, Navraj was just diagnosed to be suffering from ADHD and may need extra care and attention at school
 - Harshita is extremely concerned about Navraj's condition and his bullying at school. In addition, she is suffering from a lot of stress lately. Earlier this month, she just found out that she was pregnant with her third child but her employer claimed that her work performance was poor and terminated her employment.
- What should you do as a social worker?

WHY IS IT IMPORTANT TO RECOGNISE DISCRIMINATION?



- Social workers have a responsibility to challenge discrimination and promote social and economic justice. To fulfill this responsibility, it must be understood how discrimination exists and the detrimental affect it has on the relationship between individuals who are disenfranchised (*targeted groups*) and individuals who have privilege, resources, and power (*advantaged groups*) (Hardiman & Jackson, 2007)

ACTIVITIES COVERED BY THE DISCRIMINATION ORDINANCES:

- Employment 僱傭範疇
- Education 教育範疇
- Provision of good, services or facilities 提供貨品、服務及設施
- Disposal or management of premises 處置或管理處
- Eligibility to vote for and to be elected or appointed to advisory bodies
- Participation in clubs
- Activities of the Government
- Access to premises 進入處所



FORMS OF DISCRIMINATION IN HK

- Sex Discrimination Ordinance 性別歧視條例: sex, marital status, pregnancy
 - marital status: the state or condition of being single; married; married but living separately and apart from one's spouse; divorced; or widowed
- Disability Discrimination Ordinance 殘疾歧視條例 - Includes:
 - Covers many types of disabilities
 - Includes disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgement or that result in disturbed behaviour
 - Includes a disability that presently exists; previously existed but no longer exists; may exist in the future; or is imputed to a person
 - Includes psychiatric or psychological illnesses
- Family Status Discrimination Ordinance 家庭崗位歧視條例 - i.e. having responsibility for the care of an immediate family member
 - i.e. someone who is related by blood, marriage, adoption, affinity
- Race Discrimination Ordinance 種族歧視條例:
 - includes race, colour, descent or national or ethnic origin 指該人的種族、膚色、世系、民族或人種

DISCRIMINATORY ACTS (I)

- **Direct discrimination** 直接歧視 - **treats another less favourably** 差於該歧視者給予或會給予其他人的待遇 on the grounds of that other person's sex, marital status, pregnancy, disability, family status or race than he would treat someone without the specified characteristic
- **Indirect discrimination** 間接歧視 - Occurs when a **person applies a requirement or condition to an individual** from a protected group which has been **applied equally to another group but the proportion of members of the first group who can comply is considerably smaller** than the proportion of members of the second group who can comply
 - such requirement or condition cannot be shown to be justifiable
 - such requirement or condition is to that individual's detriment because he could not comply with it

DISCRIMINATORY ACTS (2)

- Harassment 騷擾–
 - **Unwelcome conduct** 不受歡迎的行徑 or **hostile environment** 有敵意或具威嚇性的環境 (in relation to sex and racial discrimination)
 - Doesn't apply family status discrimination
- Vilification 中傷–
 - Disability and racial discrimination only
 - At any activity in public, **incitement of hatred** towards, serious contempt for, or severe ridicule of, a person within the protected category or members of the class of persons within the protected category 如藉公開活動，煽動對殘疾的另一人或某類殘疾人士的成員的仇恨、嚴重的鄙視或強烈的嘲諷，即屬違法

DISCRIMINATORY ACTS (3)

- Victimisation 使人受害的歧視
- If a person treats another person less favourably for one of the four reasons:
 - (1) because that other person, or any other person, has brought proceedings under one of the ordinances
 - (2) because the victimised person, or a third party, has given evidence or information in connection with proceedings under one of the ordinances
 - (3) because the victimised person has otherwise done anything under or by reference to one of the ordinances
 - (4) the victimised person has alleged that the discriminator or any other person has committed an at which (whether or not the allegation so states) would amount to a contravention of one of the ordinances

REASONABLE ACCOMMODATION 合理的遷就



- Establishments are encouraged to adopt practices to promote equality
 - E.g:
 - Wearing of turbans
 - Provide convenient access for wheelchair users
 - Offer part-time or job sharing where possible
 - Allowing employees to choose to wear appropriate clothing to work

ANY DEFENCES/EXCEPTIONS??

- There are many exceptions in the discrimination ordinances which may absolve an individual/an establishment from liability.
- Some examples:
 - SDO, DDO, RDO - **genuine occupational qualifications** 真正的職業資格 – in employment context
 - DDO - **inherent requirements** 僱用的固有要求 - i.e. if the person of disability would be unable to carry out the “inherent requirements” of the particular employment, or would “in order to carry out those requirements, **require services or facilities that are not required by persons without a disability and the provision of which would impose and unjustifiable hardship** 不合情理的困難 **on the employer**”
 - Note: concept of “unjustifiable hardship” is also applicable in other circumstances e.g. education

CASE STUDY 2 – ANY DISCRIMINATION?

- In case of Harshita
 - Family status and sex discrimination? – direct/indirect discrimination?
- In case of Navraj
 - Race discrimination – harassment?
 - He is diagnosed as suffering from ADHD – should the school make reasonable accommodation for his situation? Any unjustifiable hardship??

REMEDIES

- Note – the Employment Ordinance prohibits termination of employment on the ground of pregnancy
- Complaint to Equal Opportunities Commission
- Commence civil action for damages in the District Court
- Any criminal acts? If so –report to the police





REVIEW THE
VIDEOS –
CAN YOU
RECOGNISE THE
DIFFERENT FORMS
OF
DISCRIMINATION?