

立法會
Legislative Council

LC Paper No. CB(2) 945/00-01
(These minutes have been seen by
the Administration)

Ref. : CB2/BC/1/00

**Bills Committee on
Immigration (Amendment) Bill 2000**

**Minutes of meeting
held on Tuesday, 19 December 2000 at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Cyd HO Sau-lan
Hon James TO Kun-sun
Hon Howard YOUNG, JP
Hon LAU Kong-wah

Members absent : Hon Margaret NG
Hon Andrew WONG Wang-fat, JP

Public Officers attending : Mr Timothy TONG, JP
Deputy Secretary for Security 3

Ms Linda K P SO
Principal Assistant Secretary for Security

Mr Anthony WU
Deputy Law Officer (Civil Law)

Mr Gilbert MO
Deputy Law Draftsman

Dr LAW Man-ye, Betty
Senior Chemist

Mr SIU Chung-kit
Assistant Director of Immigration

Mr TSOI Hon-kuen
Principal Immigration Officer

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Raymond LAM
Senior Assistant Secretary (2)5

Action

I. Meeting with the Administration

Members noted that a further submission of Hong Kong DNA Chips Limited had been issued vide LC Paper No. CB(2)403/00-01 on 4 December 2000.

Administration's response to issues raised at the meeting on 28 November 2000
(LC Paper Nos. CB(2) 511/00-01(01) and CB(2) 541/00-01(01))

2. At the invitation of the Chairman, Deputy Secretary for Security 3 (DS for S3) briefed members on the Administration's paper on issues raised at the previous meeting. He said that the Legislative Council (LegCo) Panel on Security had been briefed on the proposed arrangements for genetic tests in September 1999, January and June 2000. The role of the Mainland authorities and the reasons for their participation in the genetic tests had also been explained at these meetings.

3. Miss Cyd HO said that the Administration had not explained why it was necessary for genetic tests to be conducted in two places. She asked why samples taken by the Mainland authorities could not be sent to Hong Kong so that the testing of samples of a family unit could be conducted in the same laboratory.

4. DS for S3 responded that conducting genetic tests in two places was one of the viable options in terms of technology. It was proposed after considering the procedural requirements. He pointed out that the American Association of Blood Banks (AABB) had stated in its letter of 4 December 2000 that collaborative DNA

Action

testing by two or more laboratories was technologically viable and sound, although it was not usually adopted. He briefed members on the rationale for conducting the tests in two places as set out in the Administration's paper. He stressed that it was necessary for the proposed arrangements to -

- (a) be compatible with the procedures in respect of application for Certificate of Entitlement (C of E);
- (b) be closely monitored to prevent fraud; and
- (c) comply with the required technological standards.

5. DS for S3 said that although the genetic tests in respect of applications for C of E and One-way Permit could be conducted separately, this was not in the interest of an applicant because separate genetic tests would involve more cost and time. He added that the Director of Immigration (D of Imm) and the Mainland authorities responsible for processing One-way Permit applications had indicated that they would accept the result of a genetic test conducted in the prescribed manner. Miss Cyd HO asked whether the Administration had consulted C of E applicants before arriving at the conclusion that conducting genetic tests in two places was in the interest of applicants. She said that there were applicants who had undergone genetic tests in the past. These persons should therefore be consulted. DS for S3 responded that such consultation had not been made because no applicant had been required to take a genetic test in the past.

6. Miss Cyd HO said that the accreditation as referred to in the Administration's paper only covered genetic tests conducted in a single laboratory. It did not cover collaborative genetic testing by two laboratories. Referring to the third paragraph of the letter from AABB, she pointed out that AABB stated that wherever possible, the cells of all individuals in a family unit should be tested together in the same laboratory with the same trays or tray sets.

7. Senior Chemist (SC) responded that the third paragraph of AABB's letter was related to Human Leucocyte Antigens testing, which was different from DNA testing. She pointed out that AABB had stated in its letter of 4 December 2000 that collaborative DNA testing was technologically viable and sound. She said that the Government Laboratory and the Criminal Technology Division of the Guangdong Provincial Public Security Department (the Criminal Technology Division) would adopt the same technology and procedures which met international accreditation standard in conducting genetic tests.

8. Miss Cyd HO asked whether the Criminal Technology Division had received international accreditation. She said that if the public were more confident in accredited laboratories, internationally accredited private laboratories in Hong Kong should be allowed to conduct the genetic tests. The Government Laboratory should only conduct genetic tests in appeal cases. Mr LAU Kong-wah considered that

Action

genetic tests should not be conducted by private laboratories. He said that the examination of travel documents suspected to be forged was also carried out by the Government Laboratory.

9. SC responded that although the Criminal Technology Division had not received international accreditation, both the Government Laboratory and the Criminal Technology Division would adopt the same technology and procedures which met international accreditation standard. They would also adopt a comprehensive set of quality assurance measures to ensure the reliability and accuracy of results. SC said that under the proposed arrangements, the Government Laboratory and the Criminal Technology Division would adopt the following measures which were also suggested in the fourth paragraph of AABB's letter -

- (a) to use the same genetic systems, DNA technologies and reagents;
- (b) to provide training for laboratory personnel of the other side; and
- (c) to exchange 10% of the specimens for proficiency testing on an ongoing basis.

10. Mr LAU Kong-wah said that he had no doubt about the technological standard of the laboratory in the Mainland. He considered it unfair to assume that the technological standard of laboratories in the Mainland was inferior to that of laboratories in Hong Kong. Mr Howard YOUNG shared the same view. He said that conducting genetic tests in two places was an appropriate option under the principle of One Country Two Systems. It gave an applicant an additional chance to prove his claimed parentage when there was insufficient documentary evidence to substantiate his claimed parentage.

11. Mr LAU Kong-wah said that under the principle of One Country Two Systems, genetic tests had to be conducted in two places. Such an arrangement would also facilitate the monitoring of testing process by both sides. If genetic tests were to be carried out in one place, it would either be necessary to arrange family members living in the Mainland to come to Hong Kong for genetic tests or transport the samples taken in the Mainland to Hong Kong for testing. The former would involve complicated procedures whereas the latter might result in the samples being subject to variations during transportation. He recalled that the Hong Kong DNA Chips Limited had stated at the previous meeting that different conditions in the same laboratory, such as differences in time and the reagents used, might result in errors. If this were the case, the samples might be subject to more uncertainties in the transportation process. He added that the crux of the issue was whether one trusted the genetic tests conducted by both sides. In this connection, he was not entirely convinced about the reliability of the monitoring mechanism in the Mainland.

12. Miss Cyd HO said that Hong Kong DNA Chips Limited had only pointed out that differences in laboratory conditions might result in errors. It had suggested in its

Action

further submission that all samples should be transferred to a central sample collection centre in Hong Kong.

13. DS for S3 said that no mechanism could be absolutely foolproof. Nevertheless, steps would be taken to reduce errors as far as possible. He informed members that the six security measures and four safeguards to prevent fraud had already been discussed at the meeting of the LegCo Panel on Security on 1 June 2000. A certain percentage of the samples would also be exchanged for analysis by both sides. He stressed that monitoring by both sides was an important element of the proposed arrangements.

Newspaper article of Mr LEE Kwan-to

14. Members noted a newspaper article, which was provided by Miss Cyd HO and tabled at the meeting, of a biochemist Mr LEE Kwan-to. Referring to the last paragraph of the article, Miss Cyd HO said that there was a multiplying effect in respect of errors in genetic tests which resulted in an initial error of 5% becoming 34.4% at the final stage of the test. She considered that as a number of academics and professionals had cautioned that human errors might occur if genetic tests were to be conducted in two places, the Administration should provide independent opinion from academics or professionals to support that conducting genetic tests in two places was the best option.

(Post-meeting note : The newspaper article tabled at the meeting was issued to members vide LC Paper No. CB(2) 553/00-01(01) on 20 December 2000.)

15. DS for S3 said that the Administration had not stated that conducting genetic tests in two places was technologically the best option. However, it considered that the arrangement was equally viable and sound in comparison with other options. It would facilitate mutual monitoring, enable applications to be processed expeditiously and cost less for applicants. There were full justifications for conducting genetic tests in two places. He said that as the proposed arrangement would facilitate monitoring by both sides and hence prevent fraud, human errors would be reduced. On the other hand, there was no evidence that the testing of samples of a family unit in the same laboratory would necessarily reduce errors and facilitate the prevention of fraud.

16. Mr James TO requested the Administration to provide a written response to the points raised in the article of Mr Kenneth LEE. Miss Cyd HO requested the Administration to also provide a written response to the points raised in the letter of AABB. DS for S3 agreed. He hoped that members could forward questions relating to the technological aspects of the Bill to the Administration for a comprehensive written response so that discussions on the technological aspects of the Bill could be concluded at the next meeting. Mr TO said that it was inappropriate for the Administration to require the Bills Committee to conclude its deliberations on technological aspects at the next meeting, especially given that the challenge made in the article of Mr Kenneth LEE was a fundamental one.

Adm

Action

17. Mr LAU Kong-wah asked about the steps that would be taken by the relevant authorities in Hong Kong and the Mainland when there was an error in the genetic tests conducted in two places resulting in an adverse impact on the applicant. He also asked whether an applicant would be required to pay a fee for a re-test under such circumstances. DS for S3 responded that if such an error occurred, the Government Laboratory and the Criminal Technology Division would be responsible for rectifying the problem. The applicant would not be required to pay any fee for any re-test under such circumstances.

18. Mr Howard YOUNG asked whether samples would be exchanged for testing by both sides for cross checking when the results were inconsistent. SC responded that under such a situation, tests might be conducted on more loci. Whether the samples would be exchanged for testing would depend on the circumstances of each case.

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19. At members' request, DS for S3 agreed to explain at the next meeting the steps, including the re-test arrangements, that would be taken by the relevant authorities in Hong Kong and the Mainland when an error arising from genetic tests conducted in two places resulted in an adverse impact on an applicant.

20. Miss Cyd HO asked whether different types of errors in different laboratories might lead to the conclusion of no parentage. SC responded that under such a situation, the results might be inconclusive. The accumulation of errors would usually occur when the same kind of error occurred in separate tests. She added that there were a number of indicators on whether a genetic test had gone wrong. Miss HO said that professionals in the relevant field should be invited to give independent views in this respect. SC responded that AABB had already provided independent and unbiased views. It had stated in its letter of 4 December 2000 that recent advances in DNA molecular-based testing had resulted in less subjectivity and more control over results, thus making collaborative DNA testing between two or more designated laboratories technologically viable and sound. AABB had also pointed out that although collaborative testing was not a common practice, it had been accepted by courts in the United States in the past.

21. Mr James TO said that the proposed arrangement of conducting genetic tests in two places would be unacceptable if an error in the tests could result in a claimed parentage to be wrongly confirmed or wrongly denied.

Administration's position on the proposed section 2AB(8) of the Immigration Ordinance (IO)

(LC Paper No. CB(2) 328/00-01(01))

22. DS for S3 introduced the paper on D of Imm's power under the proposed section 2AB(8) of IO to draw adverse inferences against persons who refused to undergo genetic tests in the prescribed manner. He said that there was a need for a prescribed test, otherwise there would be no control over the integrity of the test

Action

procedure and reliability of test results. The proposed section 2AB(8) should therefore be retained. However, consideration could be given to amending the proposed section along the line that D of Imm might draw appropriate or reasonable inferences, including adverse inferences, from the failure of an applicant or his parent to take a genetic test in the prescribed manner.

23. Miss Cyd HO said that adverse inferences should not be drawn merely for failure to undergo genetic tests. D of Imm should at most conclude from such failure that there was insufficient evidence to substantiate the claimed parentage. Mr James TO shared the same view. He said that the Democratic Party considered that D of Imm should not draw adverse inferences on an applicant due to his parents' failure to undergo a genetic test. A person's application for C of E should not be affected by his or her claimed parent's failure to undergo a genetic test.

24. Mr James TO said that the proposed section 2AB(8) as presently drafted seemed to indicate that the results of prescribed genetic tests would be acceptable whereas the results of genetic tests conducted by private laboratories would not be acceptable.

25. Deputy Law Officer (Civil Law) said that from an evidential point of view, it would be very difficult to prove that the results of genetic tests conducted by a private laboratory were unacceptable. The proposed section sought to make it clear to applicants that those who chose not to take the prescribed test, including those who took a genetic test on their own, might result in adverse inferences being drawn by D of Imm on their applications. He added that depending on the reasons for not taking the prescribed tests, D of Imm might or might not draw adverse inferences from the non-compliance. Deputy Law Draftsman added that an applicant would not be worse off with the proposed section 2AB(8), as a genetic test would only be required when documentary evidence was insufficient to substantiate the claimed parentage.

26. Mr Howard YOUNG said that the proposed section 2AB(8) might be amended along the line that where documentary evidence was insufficient to prove the claimed parentage, an applicant could prove his claimed parentage by means of taking a prescribed genetic test. This would avoid the use of the words "adverse inferences".

II. Date of next meeting

27. Members agreed that the next meeting be scheduled for 19 January 2001 at 4:00 pm to continue discussion with the Administration.

28. The meeting ended at 12:55 pm.

Action

Legislative Council Secretariat
5 February 2001