

立法會
Legislative Council

LC Paper No. CB(2) 2142/00-01
(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 Monday, 26 March 2001 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Cyd HO Sau-lan
Hon Margaret NG
Hon James TO Kun-sun
Hon Howard YOUNG, JP
Hon LAU Kong-wah
Hon Audrey EU Yuet-mee, SC, JP

Member absent : 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 C

Ms Winnie NG
Assistant Secretary for Security C

Mr Anthony WU
Deputy Law Officer (Civil Law)

Mr Gilbert MO
Deputy Law Draftsman

Dr C M LAU
Chief Chemist

Dr LAW Man-ye, Betty
Senior Chemist

Mr LAW Yiu-tung
Assistant Director of Immigration (Visa & Policies)

Mr TSOI Hon-kuen
Assistant Director of Immigration (Personal Documentation)

Attendance by Invitation : Professor Tony FUNG
Associate Dean, Faculty of Social Science and
Professor, Department of Statistics and Actuarial Science
University of Hong Kong

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

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I. Meeting with Professor Tony FUNG
(LC Paper No. CB(2) 1093/00-01(01))

Professor Tony FUNG presented his submission and concluded that conducting genetic tests for members of the same family unit in two laboratories located in different places was an acceptable procedure which was reasonable and usually very reliable. He said that in order to better protect the rights of an applicant and minimise the chance of a true parentage being mistaken as no parentage, a re-test could be

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conducted in cases where DNA analysis indicated no parentage.

2. Ms Audrey EU said that a prerequisite of conducting genetic tests for members of the same family unit in two places was that the two laboratories adopted the same procedures, used the same reagents and received the same accreditation. She asked whether the designated laboratory in the Mainland had received any accreditation. Miss Margaret NG expressed concern that one could not know of the standard and hence the reliability of the test result of a laboratory if it had not received any accreditation. She considered that there should at least be some indication that the laboratory had attained a certain standard.

3. Professor Tony FUNG responded that his views were given on the assumption that both the Government Laboratory and the designated laboratory in the Mainland would use the same reagents and adopt the same technology and procedures meeting international accreditation standard. To his knowledge, the Government Laboratory was accredited by the American Society of Crime Laboratory Directors for forensic serology and DNA analysis, which covered parentage testing. The designated laboratory in the Mainland had not received any accreditation. However, he was aware that some sizeable laboratories in the Mainland were of a very high standard. They should possess the technical capability to conduct the specified test even though there was no accreditation. He added that the Government Laboratory and the designated laboratory in the Mainland had agreed that "blind tests" and proficiency tests would be conducted on a regular basis to ensure quality.

4. Mr Howard YOUNG asked whether there were different international standards in respect of parentage testing. He also asked whether conversion of data could be made between different international standards. Professor Tony FUNG responded that if the same reagent, equipment and procedures were used by both laboratories, the results obtained from DNA analysis should not need any conversion. He added that it was not difficult to attain a certain level of standard in parentage testing.

5. In response to Mr LAU Kong-wah's question about paragraph 2 of the submission, Professor Tony FUNG said that the margins of error for a claimed parentage to be wrongly confirmed and for a true parentage to be wrongly rejected were quoted from a previous paper provided by the Administration. The figures were statistical estimates based on certain assumptions.

6. Mr LAU Kong-wah asked whether the retest as suggested by Professor Tony FUNG involved performing DNA analysis again using the original samples or taking further samples from an applicant and his claimed parents. He also asked about the probability of a true parentage being wrongly rejected both in a test and the subsequent retest.

7. Professor Tony FUNG responded that the taking of further samples would not

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be necessary, if the original samples had been taken properly in accordance with established procedures. If there were worries about possible error in the sample-taking process, further samples could be taken for the retest. He added that the probability of a true parentage being wrongly rejected in the same manner both in a test and the subsequent retest was virtually zero.

II. Meeting with the Administration

(LC Paper Nos. CB(2) 929/00-01(01), CB(2) 831/00-01(01) and CB(2) 1000/00-01(01))

8. Members noted the Administration's response to the points raised in the letter dated 3 February 2001 from Miss Cyd HO. Members also noted a letter dated 8 February 2001 from the Legal Service Division of the Legislative Council (LegCo) Secretariat and the Administration's response to the issues raised in the letter.

9. In response to Miss Margaret NG's question about the meaning of "other things" as referred to in the last paragraph of page 1 of the Administration's response, Deputy Secretary for Security 3 (DS for S3) said that "other things" covered the other factors, which could be positive or negative, considered by the Director of Immigration (D of Imm) in processing a Certificate of Entitlement (C of E) application. Assistant Director of Immigration (Personal Documentation) (AD of Imm(PD)) added that as the factors considered by D of Imm varied from one case to another, it was not possible to provide an exhaustive list of factors.

10. Miss Margaret NG asked whether an adverse inference would be drawn from the failure of an applicant or his claimed parent to undergo a genetic test specified by D of Imm. DS for S3 responded that D of Imm could draw any inference as he considered proper, but that the decision of D of Imm was not final, as one could lodge an appeal against D of Imm's decision. Any inference as D of Imm considered proper had to be able to withstand legal challenges.

Other issues

11. In response to Ms Audrey EU's question about the number of designated laboratories in the Mainland, DS for S3 said that the Criminal Technology Division of the Guangdong Provincial Public Security Department (the Criminal Technology Division) would be the only designated laboratory in the Mainland. He stressed that the Government Laboratory and the Criminal Technology Division would adopt the same technology and procedures meeting international accreditation standard in conducting genetic tests.

12. Ms Audrey EU expressed concern that the fee for a genetic test and the Criminal Technology Division being designated as the laboratory for conducting

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genetic test in the Mainland were not provided for in the legislation. She also expressed concern that there was no provision in the Bill to safeguard personal privacy.

13. DS for S3 said that the fee for a genetic test in the Mainland would be roughly about RMB 1,000 per person. He pointed out that the Administration and the relevant Mainland authorities had agreed on the testing fee, which was determined on the basis of full recovery of cost. He added that the subject of genetic test fee and designated laboratory in the Mainland could be followed up by the LegCo Panel on Security, if necessary.

14. On the question of privacy, Principal Assistant Secretary for Security C informed members that the Government had to abide by the Personal Data (Privacy) Ordinance (PD(P)O). She informed members that the tissue specimens taken would only be used for the verification of a claimed parentage in a C of E application. The tissue specimens would be disposed of once a decision was made on the application. The applicants and their claimed parents would be informed of these arrangements in writing.

15. Ms Audrey EU said that if there was only one designated laboratory in the Mainland, there should not be difficulty in setting it out in subsidiary legislation or in a schedule to the principal legislation.

16. Deputy Law Officer (Civil Law) (DLO(CL)) responded that as the matter was a procedural one, it should not be dealt with in the legislation. This principle was also applied in many other legislation. Deputy Law Draftsman (DLD) added that there were many examples in other legislation where administrative arrangements and forms were not set out in the legislation but usually specified by general notices published in the Gazette. He added that if the name of the designated laboratory in the Mainland was set out in the legislation, any change of the designated laboratory would necessitate an amendment of the legislation.

17. Miss Margaret NG said that there were both examples where procedural matters were set out as legislation or by notice published in the Gazette. She requested that the name of the designated laboratory in the Mainland be set out in a piece of subsidiary legislation.

18. DLO(CL) responded that the court had recently stated in cases related to right of abode that the Gazette notice as referred to in section 2AB(4) of IO had legal effect although the Gazette notice was not subsidiary legislation. In this connection, Miss Margaret NG declared interest as a legal representative of overstayers involved in cases relating to the execution of removal orders by D of Imm against 17 Mainland overstayers who claimed to be permanent residents of HKSAR under Article 24(2) of the Basic Law. She said that she did not consider the court to be very satisfied about the fact that the Gazette notice was not subsidiary legislation.

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19. DS for S3 said that the Administration had no intention to set out the name of the designated laboratory in the Mainland in a piece of subsidiary legislation. The proposed procedures, which were drawn up after thorough consideration having regard to convenience in administration and operation, were already sufficient. As regards the question of personal privacy, he pointed out that besides the protection provided by PD(P)O, pamphlets on the procedure would be distributed and applicants and their claimed parents would be informed of their rights and responsibilities through the issue of individually addressed letters if they are asked to take the test.

20. Miss Cyd HO expressed concern that the designated laboratory in the Mainland might impose charges on various services provided and contract out the genetic tests to other laboratories.

21. DS for S3 reiterated that as an agreement had been reached with the Mainland on the procedures and the testing fee, he believed that the Mainland would adhere to the agreement. AD of Imm (PD) added that the proposed procedures and arrangements were agreed by the Administration and the Mainland side after lengthy discussions. Such procedures and arrangements might be reviewed after implementation. In this connection, Miss Cyd HO and Miss Margaret NG requested that the Administration should provide members with its records of discussions with the Mainland. DS for S3 responded that the Administration was not in a position to provide members with the records of discussions which were confidential documents.

22. Ms Audrey EU clarified her request that the genetic testing fees as well as the mechanism for revision of fees, the name of the designated laboratory in the Mainland and the privacy measures be set out in subsidiary legislation. Her request was supported by Miss Margaret NG.

23. DS for S3 responded that it was inappropriate to set out procedures in legislation. The Criminal Technology Division had already undertaken to adopt the same technology and procedures adopted by the Government Laboratory. He hoped that the Bill could be passed early so that the proposed arrangements could be implemented as soon as possible.

Clause-by-clause examination of the Bill

24. Members then proceeded to examine the Bill clause-by-clause.

Clause 1 (Short title and commencement)

25. Members made no particular comments on the clause.

Clause 2 (Certificate of entitlement)

26. DS for S3 informed members that in response to a member's suggestion at the

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previous meeting, a Committee Stage amendment would be moved to amend the word "require" in the proposed section 2AB(7)(a) to "request". Similarly, the word "requires" in the proposed section 2AB(9) would be amended to "requests".

27. Members noted the Administration's proposed amendments to the proposed section 2AB(8) and the proposed addition of a new section 2AD(6A) issued vide LC Paper No. CB(2) 701/00-01(01) on 15 January 2001.

28. In response to Miss Margaret NG's question about the proposed addition of a new section 2AD(6A), DLO(CL) said that the proposed section was added in response to the suggestion of the Hong Kong Bar Association (the Bar). It sought to clarify that the Immigration Tribunal (the Tribunal) might draw any inference as it considered proper from the failure of an applicant or his claimed parent to undergo the prescribed genetic test in the manner specified by the D of Imm. He added that the word "required" in the proposed section would be amended as "requested". Miss Margaret NG said that to her knowledge, the Bar was most concerned about the use of the words "adverse inference" in the proposed section 2AB(8). As "adverse inference" would be amended to "any inference", the proposed section 2AD(6A) was no longer needed. Ms Audrey EU shared the same view. DS for S3 agreed to consider whether it was necessary to add a new subsection (6A) to section 2AD.

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29. Ms Audrey EU said that the proposed section 2AB(8) as presently drafted might give one the impression that an inference must be drawn by D of Imm. She considered that "any inference" should be amended as "an inference, if any". Miss Margaret NG pointed out that it was a principle in law drafting that unnecessary words should be avoided. She considered that as D of Imm was responsible for drawing an inference even without the provision, the proposed section 2AB(8) was not needed.

30. DLD responded that as the word "may" was used, the proposed section 2AB(8) did not impose a responsibility on D of Imm to draw an inference. He added that express provisions to allow D of Imm and the Tribunal to draw an inference was consistent with the principle of maintaining clarity in law. He added that the proposed section 2AB(8) would have to be read in conjunction with the proposed section 2AB(9). Without the proposed section 2AB(8), the provision would have to be set out in the proposed section 2AB(9). DS for S3 said that the Administration considered it not necessary to introduce further amendments to the proposed section 2AB(8).

31. Assistant Legal Adviser 5 said that as the notices as referred to in the proposed section 2AB(7)(a) and 2AB(11) would be published in the Gazette, members might wish to request the Administration to provide a copy of the draft Gazette notice(s), if available. In response to members' request, DS for S3 undertook to provide the draft Gazette notice(s).

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32. Miss Margaret NG said that she might propose a Committee Stage amendment

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to amend the notices as referred to in the proposed section 2AB(7)(a) and 2AB(11) as subsidiary legislation.

III. Date of next meeting

33. Members agreed that the next meeting be scheduled for 24 April 2001 at 8:30 am to continue discussion with the Administration.

34. The meeting ended at 4:40 pm.

Legislative Council Secretariat

10 July 2001