

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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LegCo Panel on Home Affairs

**Subcommittee to study
discrimination on the ground of sexual orientation**

**Minutes of meeting
held on Tuesday, 6 March 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Cyd HO Sau-lan (Chairman)
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Albert CHAN Wai-yip
- Member Attending** : Hon MAK Kwok-fung
- Public Officers Attending** : Mr Charles CHAN
Principal Assistant Secretary for Home Affairs (3)
- Miss Linda LEUNG
Assistant Secretary for Home Affairs (3)2
- Miss Helen TANG
Assistant Commissioner (Entertainment)
Television and Entertainment Licensing Authority
- Mrs Justina HO
Chief Social Work Officer (Family and Child Welfare) 1
Social Welfare Department

Mrs LAI NG Suet-mui
Chief Housing Manager/Applications
Housing Department

Mr LEUNG Siu-keung
Chief Curriculum Development Officer
Education Department

Miss Bertha W Y CHENG
Senior Labour Officer
Labour Department

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2)2

Staff in Attendance : Mr Stanley MA
Senior Assistant Secretary (2)6

Action

I. Confirmation of minutes
[LC Paper No. CB(2)790/00-01]

The minutes of the meeting held on 10 January 2001 were confirmed.

II. Meeting with the Administration
[Paper No. CB(2)981/00-01(01)]

2. The Subcommittee noted that the Administration had responded to the comments made by concern groups and members of the Panel on Home Affairs at its meeting on 12 December 2000 [Paper No. CB(2)981/00-01(01)]. A gist of the discussion on the Administration's response is summarised in paragraphs 4-19.

3. Members also noted the submission of Rainbow Action [Paper No. CB(2)981/00-01(02)] and the submission of Horizons dated 5 March 2001 which were tabled at the meeting [Paper No. CB(2)1002/00-01(01)].

Action

Film censorship

4. Mr Albert CHAN was of the view that the advertising poster for the film "Better than chocolate" which depicted two naked embracing females was less indecent than the posters for the films "Pink Lady" and "Naked Killer 3" which also depicted nudity. However, the former poster was disapproved while the latter two posters were approved for display in public places. He considered that the Film Censorship Authority (FCA) (i.e. the Commissioner for Television and Entertainment Licensing) had prejudiced against homosexuality and asked whether FCA had consistently applied the same set of criteria in approving advertising materials relating to films.

5. Assistant Commissioner (Entertainment) of the Television and Entertainment Licensing Authority (AC(E)/TELA) confirmed that FCA had consistently applied the same set of censorship guidelines in considering advertising materials relating to Category III films submitted for approval, regardless of whether the Category III films were about homosexuality, heterosexuality, or others. She explained that section 15K of the Film Censorship Ordinance (FCO) was amended in 1995 which required that all advertising materials of Category III films had to be submitted to FCA for approval. The amendment aimed to provide better protection to children and young persons from exposure to advertising materials which were offensive to public morality, decency and ordinary good taste while under display in public places. FCA would consider factors as laid down in section 10(2) and 10(3) of the FCO, i.e., whether the film portrayed, depicted or treated cruelty, torture, violence, crime, horror, disability, sexuality or indecent or offensive language or behaviour; and whether the film denigrated or insulted any particular class of the public by reference to the colour, race, religion, beliefs or ethnic or national origins or the sex of the members of that class. In deciding whether a poster was suitable for display in public places, FCA would have regard to the following -

- (a) standards of morality, decency and propriety which were generally accepted by reasonable members of the community;
- (b) the dominant effect of the matter as a whole;
- (c) the location where the matter was likely to be displayed in public and the persons likely to view such matter; and
- (d) any artistic, educational, literary or scientific merit it might possess.

6. Mr Albert CHAN said that although FCA had set out the legal requirements and censoring guidelines for approving advertising materials for Category III films,

Action

individual censors and advisers appointed by the FCA to view films with censors and advise on film classifications would have different values and judgements. He illustrated such difference in values by referring to the decisions of FCA in respect of the posters for five film posters, namely, "Better than chocolate", "Lady in heat", "Naked Killer 3", "Conspiracy" and "Love in the river". He asked why the poster for the film "Better than chocolate" was disapproved but not the other four posters which, in his opinion, were apparently more offensive to decency and ordinary good taste for display in public places.

7. In response, AC(E)/TELA said that FCA had no prejudice over homosexuality in its censoring process as it had approved the poster for the film "Lady in heat" which was about homosexuality in 1999. She pointed out that the films "Conspiracy", "Love in the river" and "Naked Killer 3" were Category IIB films. Hence, in accordance with the FCO, there was no need for relevant advertising materials to be submitted to FCA for approval. She added that the poster for the film "Naked Killer 3" referred to by Mr Albert CHAN was not used in Hong Kong.

8. Mr Albert CHAN was disappointed at the Administration's response. He considered that the FCA should take preventive actions against the display of any posters irrespective of the categorisation of the films in public places which carried offensive effects. He urged that the FCA should review its decision of rejecting the poster for the film "Better than chocolate" for display in public places.

9. AC(E)/TELA responded that in disapproving a poster for display in public places, FCA would give reasons for its rulings. Besides, a person who was aggrieved by a decision of the FCA or a censor made under the FCO in respect of an advertising material such as a poster might by notice in writing requested the Board of Review to review the decision.

10. In response to the Chairman's enquiry about the criteria and statutory mechanism for prohibiting the display of advertising materials for Categories I and II films, AC(E)/TELA explained that advertising materials for Categories I and II films should fall within the jurisdiction of the Obscene Articles Tribunal (OAT) which was set up under the Control of Obscene and Indecent Articles Ordinance (COIAO). OAT was a judicial body responsible for, and had exclusive jurisdiction in, determining whether an article was obscene, indecent or neither. Under the COIAO, an article might be classified as Class I (neither obscene nor indecent) which could be published without restrictions, Class II (indecent) which must not be published or sold to persons under the age of 18, or Class III (obscene) which were prohibited from publication. She added that FCA would consider referring the two posters for the films "Conspiracy" and "Love in the river" to the OAT for classification upon receipt of complaints from members of the public.

Action

11. The Chairman expressed reservations about whether FCA had exercised equal treatment and adopted the same criteria for censoring films about homosexuality. ACE/TELA stressed that FCA would apply the same set of censorship guidelines for classification of films under the FCO, be it a homosexual or a heterosexual film. She cited a few examples of Category IIB films about homosexuality and said that there was no need to submit related advertising posters to FCA for approval. She also quoted examples of Category III films on homosexuality, posters of which had been approved by FCA.

12. The Chairman queried whether the Administration had adopted a set of consistent criteria and standards for approving posters for films about homosexuality. She suggested that the Administration should review the film classification system with a view to facilitating fair censorship of films of all themes. She also considered that the Administration should review control measures against obscene and indecent articles so as to include advertising materials for Category IIB films.

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13. AC(E)/TELA responded that the Administration would conduct a large-scale public opinion survey on the film classification system on a biennial basis to assess the community's acceptance of the existing film classification system (including film classification standards). It also conducted regular reviews of the operation of the COIAO in the light of the changing needs and expectations of the community. At the request of the Chairman, she undertook to provide the Subcommittee with a copy of the full report of the 2000 Public Opinion Survey on Film Classification System. At the request of Ms Emily LAU, AC(E)/TELA also agreed to provide a full list of posters which had been disapproved under section 15K of the FCO.

Legal age of consent to homosexual and heterosexual buggery

14. Ms Emily LAU enquired about the application of the offences of homosexual and heterosexual buggery. She pointed out that under existing legislation, if a man committed buggery with another man aged below 21, both persons were guilty of the offence of buggery, but if a man committed buggery with a girl under the age of 21, only the man was held liable. She asked whether the different treatment for different sex would constitute discrimination against male homosexuals.

15. Principal Assistant Secretary for Home Affairs (3) (PAS/HA(3)) responded that sections 118C and 118D of the Crimes Ordinance stipulated that the legal age of consent to both homosexual and heterosexual buggery was 21. The fact that the legal age of consent to heterosexual acts was 16 and that to buggery was 21

Action

Adm was based on the need to protect persons aged over 16 and under 21, regardless of their sex or sexual orientation. He undertook to relay Ms Emily LAU's query to the Security Bureau for clarifications at the next meeting.

Guidelines for blood donation

16. Members noted that the Hong Kong Red Cross Blood Transfusion Service (BTS) had included a man having sex with another man, anyone having injected with drugs and commercial sex workers as "high-risk" groups in formulating the guidelines for blood donation. Mr MAK Kwok-fung considered that heterosexuals frequently had sex with sex workers were more "high-risk" than homosexuals. In response to Mr MAK's query about the definition of "high-risk" behaviours, PAS/HA(3) pointed out that potential donors should ask the nursing staff of BTS on the spot for any clarifications about the interpretation of the definition and other provisions of the guidelines.

17. Mr Albert CHAN asked whether the Home Affairs Bureau (HAB) considered that the guidelines for blood donation was discriminatory against homosexuals. PAS/HA(3) pointed out that at the two international conferences of the International Federation of Red Cross held in June 1999 and July 2000 in Switzerland and Austria respectively, the Hong Kong Red Cross representatives had raised for discussion the issue of whether certain deferral criteria might be construed as discriminatory against certain "at risk" groups of potential donors. The conclusion at both conferences was that the current deferral criteria used by BTS were necessary and should be continued. PAS/HA(3) added that the international blood donation guidelines were subject to constant review, and the Hong Kong Red Cross would continue to reflect the community's concerns and suggestions on appropriate occasions.

18. Mr Albert CHAN expressed dissatisfaction with the Administration's response. He considered that HAB being the policy bureau for discrimination issues should have its own position about the guidelines for blood donation. He also pointed out that if other "high-risk" behaviours such as frequent sex with sex workers were not included in the guidelines, BTS could be regarded as discriminatory against male homosexuals who were classified as "high-risk" in the guidelines.

19. Ms Emily LAU enquired about the availability of statistics supporting the rejection of certain "high-risk" groups or individuals from blood donation. PAS/HA(3) responded that on one hand BTS respected the rights of individuals to donate blood, on the other hand, it had the responsibility to ensure the safety of blood products so as to protect blood recipients. The current practice to defer persons of certain behaviours which carried a relatively higher risk of transmitting

Action

Adm infectious viruses was in line with international practices. In fact, similar deferral criterion for a male having sex with another male was adopted in Australia, Singapore, the United Kingdom and the United States. He undertook to liaise with Hong Kong Red Cross for the provision of relevant statistics to the Subcommittee.

20. Responding to members' query about the role of HAB in ensuring equal opportunity in blood donation, PAS/HA(3) said that in view of the need to protect blood safety, HAB considered the practice of BTS in donor screening compatible with the principle of equal opportunities. He pointed out that the Hospital Authority would continue to collaborate with the Hong Kong Red Cross in respect of the necessary procedures to protect blood safety, as well as to review and update the guidelines for blood donation.

Adm 21. In concluding the discussion, the Chairman reiterated members' concerns expressed and requested the Administration to provide written responses for discussion at the next meeting.

III. Any other business

Date of next meeting

22. Members agreed to hold the next meeting at 10:45 am on Wednesday, 28 March 2001. Members also agreed to invite the Equal Opportunities Commission to attend the next meeting of the Subcommittee to give their views on discrimination on the ground of sexual orientation and the guidelines for blood donation in particular.

[*Post-meeting note* : The next meeting was subsequently rescheduled for Thursday, 19 April 2001.]

23. There being no further business, the meeting ended at 5:45 pm.

Legislative Council Secretariat

4 July 2001