

立法會
Legislative Council

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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 Thursday, 19 April 2001 at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Cyd HO Sau-lan (Chairman)
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
- Member Attending** : Hon Michael MAK Kwok-fung
- Member Absent** : Hon CHOY So-yuk
- Public Officers Attending** : Mr Charles CHAN
Principal Assistant Secretary for Home Affairs (3)
- Miss Linda LEUNG
Assistant Secretary for Home Affairs (2)
- Mr Eddy CHAN
Commissioner for Television and Entertainment Licensing

Mr IP Lup-ng
Principal Entertainment Standards Control Officer (Film)
Television and Entertainment Licensing Authority

Miss Eliza YAU
Principal Assistant Secretary for Security (E)

Mr Eric CHAN
Acting Principal Assistant Secretary for Health and
Welfare (Medical)²

Dr LIU Shao-haei
Senior Executive Manager (Professional Services)
Hospital Authority

Dr LIN Che-kit
Hospital Chief Executive
Hong Kong Red Cross Blood Transfusion Service

Attendance by Invitation : Equal Opportunities Commission

Ms Anna WU
Chairperson

Miss Alexandra PAPADOPOULOS
Legal Adviser

Mr C K WONG
Senior Equal Opportunities Officer (Gender)

Ms Cynthia LAM
Equal Opportunities Officer (Policy Support and Research)

Mr George BISAS
Special Projects Manager

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

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

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The Chairman welcomed representatives of the Equal Opportunities Commission (EOC) and the Administration to the meeting.

I. Matters arising from the last meeting

[Paper Nos. CB(2)981/00-01(01) - (02) and CB(2)1002/00-01(01)]

Meeting with EOC and the Administration

Film Censorship

2. Members noted the list of posters disapproved under section 15K(5) of the Film Censorship Ordinance [Paper No. CB(2)1297/00-01(04)] and the 2000 Public Opinion Survey on Film Classification System [Paper No. CB(2)1297/00-01(05)] provided by the Administration.

3. Mr Albert CHAN requested the Administration to provide further clarifications about the decision of the Film Censorship Authority to disapprove the advertising poster for the film "Better than chocolate". Commissioner for Television and Entertainment Licensing (CTEL) clarified that in approving an advertising poster for a Category III film, the Film Censorship Authority would not consider whether the content of films or the posters was related to homosexuality or heterosexuality. It would consider whether the picture and image depicted or portrayed by the poster had created an overall dominant effect which was not in line with the prevailing standards of morality, decency and propriety accepted by reasonable members of the community. For example, the poster for the Category III film "Happy together" which was about homosexuality was approved. Referring to the last public opinion survey conducted by the Television and Entertainment Licensing Authority (TELA) on the film classification system, CTEL informed the meeting that some 21% of the respondents considered the current film classification standards just right, 17% a bit strict and 42% a bit lenient. Despite these views, 94% of the respondents considered that overall the current film classification standards were acceptable.

4. Mr MAK Kwok-fung enquired about the standards and criteria for assessing the overall dominant effect of a poster. He suggested that the Film Censorship Authority should consider setting objective criteria for the assessment. CTEL responded that the overall dominant effect of a film poster should be

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determined by criteria generally in line with the moral standards of the community. He pointed out that obscenity and indecency were not matters of exact science and the accepted standards of propriety in the community might change over time. A subjective element in the assessment process was unavoidable. He added that TELA had also consulted the public on the standards and criteria for 10 selected Category III film posters in the last public opinion survey. The results of the survey had indicated that the majority of respondents were agreeable to the decision of the Film Censorship Authority on nine of these posters.

5. The Chairman considered that the allegation that the Film Censorship Authority had not applied the same set of criteria in considering advertising materials for films about homosexuality for approval arose from the fact that only advertising materials for Category III films were subject to the regulation of the Film Censorship Ordinance. She suggested that members might wish to follow up the matter at a future meeting of the Panel on Information Technology and Broadcasting. Ms Emily LAU shared the Chairman's view. She urged that the Administration should ensure that there was no discrimination in the process of disapproving any advertising materials for display in public places.

Legal age of consent to homosexual and heterosexual buggery
[Paper No. CB(2)1297/00-01(02)]

6. At the request of the Chairman, Principal Assistant Secretary for Security(E) (PAS/S(E)) briefed members that sections 118C and 118D of the Crimes Ordinance stipulated that the legal age of consent to both homosexual and heterosexual buggery was 21. Under existing provisions which were contained in the Crimes (Amendment) Bill 1991, if a man committed buggery with another man aged below 21, both persons were guilty of the offence of buggery. On the other hand, if a man committed buggery with a girl under the age of 21, only the man was held liable but not the girl. She also explained that such differential treatment derived from the community's acceptance of the need to render protection to women or girls from sexual exploitation and corruption.

7. Ms Emily LAU noted that the Crimes (Amendment) Bill 1991 was enacted when the Hong Kong Bill of Rights (BOR) had not been introduced. She asked whether EOC considered that such differential treatment for the offences of homosexual and heterosexual buggery had constituted discrimination against homosexuals, in the light of the changing social circumstances and community expectations.

8. In response, the Chairperson of EOC said that Article 1 of BOR stipulated that the rights recognised in BOR shall be enjoyed without distinction of any kind or status. She held the view that imposing differential treatment for the offence of

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buggery on the basis of sex was not compatible with the BOR and the principle of equal opportunities. Since the BOR was enacted after non-criminalisation of homosexual buggery and the commencement of the Crimes (Amendment) Ordinance 1991, the Administration should review sections 118C and 118D of the Crimes Ordinance in the light of the prevailing social circumstances.

Adm 9. PAS/S(E) responded that the Administration agreed that legislation should be reviewed in the light of the changing social circumstances and the community's values and moral standards as a whole. She undertook to consult the Department of Justice as to whether sections 118C and 118D of the Crimes Ordinance were compatible with the BOR.

10. Legal Adviser of EOC pointed out that setting the ages of consent at 16 for vaginal intercourse and at 21 for buggery might constitute indirect discrimination against homosexuals. PAS/S(E) responded that there was a fundamental difference between heterosexual sex and homosexual sex, and the difference was largely accepted by the community. The Administration so far had not received plenty of community feedback against the existing age of consent for buggery.

11. Ms Emily LAU asked whether setting the age of consent for buggery at 21 would constitute indirect discrimination against homosexuals. The Chairperson of EOC responded that the perception of direct and indirect discrimination would vary from persons to persons. It would constitute discrimination against homosexuals if the age of consent for buggery was set targeting at homosexuals because of their sexual orientation.

12. Members queried the premise adopted by the Administration that legislation for the protection of vulnerable minorities should be adopted primarily on the basis of public opinion surveys, i.e., based on majority views. Ms Emily LAU pointed out that Government had made use of the results of the surveys on sexual discrimination in June 1996 and on racial discrimination in June 1997 to justify its inaction on relevant anti-discrimination legislation. She questioned whether the Administration in doing so had failed to meet its obligations under the BOR which bound the Government, all public authorities and their agencies.

13. PAS/S(E) responded that Government would be attentive to the climate of public opinion in order to strike a balance between conflicting views at a particular time. Without the support of the community, implementation of anti-discrimination legislation which intimately impinged on the daily lives of ordinary people would not be smooth and effective.

14. Mr Albert CHAN said that the Administration should review the existing legislation with a view to protecting the lawful rights of the minorities and where

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appropriate, putting forward legislative proposals for public consultation. He pointed out that the views of the majority in relation to discriminatory issues were not necessarily correct.

15. The Chairperson of EOC said that legislation against discrimination on grounds of race and sex orientation would continue to be debated in the community. She pointed out that legislation should not be dictated by standards accepted by the majority of the community. She added that for the year 2000, EOC had received over 70 specific enquiries on discriminatory issues relating to these two grounds.

16. The Chairman and Ms Emily LAU asked whether the Administration had comprehensively examined the compatibility of existing legislation with the BOR. PAS/S(E) responded that when the BOR was enacted, the then Attorney General's Chamber had identified some legislation which were incompatible with the BOR and proposed amendments accordingly. She agreed that there might be changing circumstances which justified a review of the compatibility of certain legislation with the BOR. Such review would be conducted on a needs basis.

Adm 17. At Ms Emily LAU's request, the Chairman asked and PAS/S(E) undertook to ascertain the views given by the Department of Justice to justify the consistency of the Crimes Ordinance with the BOR. PAS/S(E) agreed to revert to the Subcommittee before the end of the current legislative session. At Ms LAU's suggestion, the Chairperson of EOC agreed that EOC would give its view on the Administration's response as appropriate.

Guidelines for blood donation

18. Members noted the Administration's paper [Paper No.CB(2)1297/00-01(03)] and the EOC's paper [Paper No.CB(2)1297/00-01(01)] on the subject.

19. At the Chairman's invitation, Hospital Chief Executive of the Hong Kong Red Cross Blood Transfusion Service (HCE/BTS) said that BTS had the responsibility to ensure the safety of blood products in order to prevent the transmission of communicable diseases through blood transfusion. It would collect information on the health history and life styles of prospective donors and examine their suitability to donate blood. These donors would also be reminded to inform BTS if they felt on reflection that the blood they had donated could be of risk to recipients. After the blood donation, BTS would conduct pre-transfusion screening tests in accordance with internationally accepted practices and procedures, which included tests for Syphilis, Hepatitis B and C, Human Immunodeficiency Virus (HIV), Cytomegalovirus and Human T-lymphotrophic virus. He pointed out that because there was a window period for detection of

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transfusion transmissible infections, pre-transfusion tests could not ensure complete safety of blood products. BTS was dependent on prospective donors to provide voluntary and honest information during donor screening to ensure blood safety. It would continue to reinforce public education on safe blood donation and make use of the latest technologies for pre-transfusion screening tests.

20. HCE/BTS stressed that the donor screening was not intended to discriminate against certain groups of persons in the community. He added that international communities on blood transfusion services considered it necessary to defer certain types of "high-risk" groups from donating blood, as a necessary precaution against transmission of communicable diseases through blood transfusion.

21. The Chairperson of EOC said that since the 1980s, blood collected was screened for the HIV virus in many countries and that blood donation guidelines were adopted to defer certain types of high-risk sexual and intravenous behaviours in donor screening. In general, unprotected penetrative anal sex was considered as carrying higher risk of HIV infection than unprotected vaginal intercourse. Although anal sex was not uncommon in heterosexual or bisexual contact and proper use of condom offered protection against infection, homosexuals were commonly viewed as a target group for preclusion of blood donation. As at September 2000, about 20% of the total reported HIV/AIDS cases were believed to be due to homosexual contact, 5% to bisexual contact and 60% to heterosexual contact. However, HIV infection from heterosexual exposure had demonstrated a rising trend and the cumulative total of such cases had risen from 46.1% in 1996 to 58.9% in 2000. In contrast, transmission through homosexual and bisexual contacts in the same period had dropped from 28.3% to 19.5% and 9.3% to 5.0% respectively.

22. The Chairperson of EOC pointed out that the International Federation of Red Cross and Red Crescent Society recommended that governments and blood donation bodies should set up a national blood policy for preclusion of blood donation by way of statutory instruments or guidelines. In Hong Kong, there were no such regulations but self-deferral was encouraged through public education programmes. Donor screening was largely dependent on voluntary and honest reporting by prospective donors. For this reason, an effective prompting system and a good blood screening test were equally important to ensure blood safety. The Hospital Authority had established an Expert Panel of Blood and Blood Product Safety to give professional advice on matters related to blood donation, including the use of Nucleic Acid Testing (NAT) on a trial basis.

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23. The Chairperson of EOC stressed that EOC recommended that donor screening should be based on "high-risk sexual behaviour" which were objectively described, and not "high-risk groups" as perceived by the community as a whole.

24. Ms Emily LAU asked whether BTS would consider the recommendation of EOC to carry out donor screening with emphasis on "high-risk sexual behaviour" rather than "high-risk groups". She acknowledged the difficult situation encountered by BTS, but considered that BTS should strive to refine the wording in its blood donation registration form which might constitute discrimination against male homosexuals.

25. HCE/BTS responded that both the local Expert Panel of Blood and Blood Product Safety and the Expert Panel of International Federation of Red Cross had considered a number of alternatives including the EOC's suggestion to eliminate any element of discrimination against male homosexuals. However, they held the view that it would be difficult for prospective blood donors to recall whether they had unprotected sex in the last few years or a longer period. Moreover, screening by specifying a list of high-risk sexual behaviours might also create an impression to donors that other sexual behaviours were absolutely safe. He stressed that BTS had no intention to say that heterosexual sex was definitely safe and that homosexual buggery was definitely unsafe. It had only stipulated that a person having male-to-male sex was not suitable for blood donation, given the fact that homosexuals who practised anal sex still had relatively higher prevalence of HIV/AIDS. Based on medical opinions, international communities on blood transfusion services considered it necessary to continue to defer male who had sex with another male from donating blood. In fact, such deferral criteria had been re-confirmed at the meetings of the International Federation of Red Cross and Red Crescent Societies' Seven International Colloquium on the Recruitment of Voluntary, Non-remunerated Blood Donors held in June 1999 in Switzerland. The same decision was reached at the meeting of the Expert Panel of International Federation of Red Cross and Red Crescent Societies held in July 2000 in Austria.

26. The Chairman considered that some heterosexuals might also have "high-risk sexual behaviours" which should be excluded by the screening process for blood donation as well. She asked whether international communities on blood transfusion services were aware that deferral of male homosexuals from donating blood might constitute discrimination. She suggested that the local Expert Panel of Blood and Blood Product Safety should comprise human rights experts and representatives of EOC to improve its transparency and objectivity.

27. HCE/BTS pointed out that there were questions on other "high-risk sexual behaviours" in the blood donation registration form. A prospective blood donor was required to reply to questions including having sex with persons suspected to

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have been infected with HIV, bisexuals, sex workers or anyone who had a history of drug abuse, etc. He stressed that BTS had maintained close contacts with concerned organisations and had revised the presentation of the registration form in the light of feedback from donors to remove any possible misinterpretation in relation to discrimination as perceived by different social groups and donors. He added that both the Expert Panel of Blood and Blood Product Safety and BTS welcomed comments from EOC on the presentation and expressions in the registration form and/or the screening process.

28. The Chairperson of EOC responded that she understood the possibility of infecting HIV/AIDS through transfusion of HIV-infected blood was around 90%, and for this reason a meticulous screening system to prevent the transmission of communicable diseases through blood transfusion was definitely necessary. She reiterated that EOC recommended the adoption of objectively described “high-risk behaviours” to replace the existing deferral clause targeting at male homosexuals. She also suggested that BTS should consider reinforcing public education and adopting additional measures to enhance safety of blood products, such as allowing donors to make further reports to BTS within a 24-hour period after blood donation.

29. HCE/BTS pointed out that over the years, BTS had established a very reliable screening mechanism to prevent infection through blood transfusion, which included the distribution of information leaflets and provision of contact telephone numbers for donors to make further reports to BTS after donation of blood. At the Chairman's request, he tabled a revised blood donation registration form which would be adopted by BTS for donors screening shortly. The revised blood donation registration form was subsequently issued to absent members vide LC Paper No. CB(2)1322/00-01.

30. Mr Michael MAK enquired about the duration of window period for detecting HIV virus and the deferral period for blood donation based on sexual behaviours. HCE/BTS responded that the average window period of HIV virus infection was 21 days, but individuals might have a window period as long as ten years. As part of its ongoing quality improvement exercise, BTS would keep abreast of the latest blood screening technology to facilitate the timely introduction of cost-effective and reliable tests to further minimise the risk of infection through blood transfusion. The Chairperson of EOC supplemented that individual countries had prescribed different deferral periods for different categories of persons. For persons who had male-to-male sex, the duration ranged from a year to lifelong.

31. Members unanimously acknowledged the importance of BTS's responsibility to ensure the safety of blood products in order to protect blood

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recipients, but pointed out that the current presentation of its guidelines to defer male homosexuals from donating blood might give rise to discrimination against male homosexuals. In this connection, Ms Emily LAU enquired whether BTS fell within the purview of the Hong Kong Bill of Rights Ordinance.

32. The Chairperson of EOC said that the Hong Kong Bill of Rights Ordinance bound the Government and all public authorities; and any person acting on behalf of the Government or a public authority. Although the Hong Kong Red Cross was not a public organisation, its main function was to coordinate blood donation from the community. In view of the complexity of the issue, the Chairperson of EOC suggested and members agreed that the Administration should seek legal advice from the Department of Justice and provide the Subcommittee with a written response. At Ms Emily LAU's request, HCE/BTS undertook to provide a copy of the legal advice sought by the Hospital Authority which confirmed that the proposed blood donation registration form was consistent with the BOR. The Administration also agreed to consult the Department of Justice on the matter.

[*Post-meeting note* : The written responses of the Administration and the Hospital Authority were subsequently forwarded to members vide LC Paper No. CB(2)1725/00-01 on 5 June 2001]

II Any other business

Difficulties experienced by homosexual organisations in booking venues for their activities

33. The Chairman referred to the information provided by the Che Heng Foundation [Paper No. CB(2)1322/00-01(01)] and said that homosexual groups had encountered considerable difficulty in seeking appropriate exhibition venues because of alleged discrimination by major developers. In particular, the Satsanga had not been successful in booking a shopping mall four months in advance for a government-funded exhibition to address misconceptions about homosexuality. She urged the Administration to follow up with the complaints. Ms Emily LAU agreed that the Administration should investigate why the commercial organisations had turned down the booking applications from homosexual groups.

34. In response, Principal Assistant Secretary for Home Affairs (3) said that the Administration would welcome the homosexual groups concerned to provide details of the incidents for follow-up. He noted that some homosexual groups had been able to book venues in Hong Kong Exhibition Centre, Hong Kong Arts Centre and the Methodist Church for holding exhibitions and activities relating to the theme of homosexuality.

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35. There being no other business, the meeting ended at 12:55 pm.

Legislative Council Secretariat

5 July 2001