

立法會

## *Legislative Council*

LC Paper No. CB(2)1444/02-03

(These minutes have been  
seen by the Administration)

Ref : CB2/BC/11/01

### **Bills Committee on Evidence (Miscellaneous Amendments) Bill 2002**

#### **Minutes of first meeting held on Friday, 14 February 2003 at 2:30 pm in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)  
Hon Cyd HO Sau-lan  
Hon James TO Kun-sun  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon CHAN Yuen-han, JP  
Hon Andrew WONG Wang-fat, JP  
Hon Miriam LAU Kin-ye, JP
- Public Officers attending** : Mr Stephen WONG  
Deputy Solicitor General
- Mr Patrick CHEUNG  
Senior Assistant Director of Public Prosecutions
- Mr Llewellyn MUI  
Senior Government Counsel, Legal Policy Division
- Mr Peter KAM  
Government Counsel, Legal Policy Division

Miss Selina LAU  
Government Counsel, Law Drafting Division

**Clerk in attendance** : Mrs Percy MA  
Chief Assistant Secretary (2)3

**Staff in attendance** : Miss Kitty CHENG  
Senior Assistant Legal Adviser 5

Mr Paul WOO  
Senior Assistant Secretary (2)3

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**I. Election of Chairman**

Miss Margaret NG was elected Chairman of the Bills Committee.

**II. Meeting with the Administration**

(The Bill circulated vide LC Paper No. CB(3)632/01-02; the Legislative Council Brief issued by the Department of Justice (File Ref : LP911/00/1C/LP911/00/2C); LC Paper Nos. LS99/01-02; CB(2)1167/02-03(01); 1168/02-03(01) to (05); 1169/02-03(03) and 1199/02-03(01))

2. The Administration tabled at the meeting a comparison of the provisions of the Evidence (Miscellaneous Amendments) Bill 2002 with the Criminal Procedure (Amendment) Bill 1990 on competence and compellability of spouses in criminal proceedings (circulated after the meeting vide LC Paper No. CB(2)1199/02-03(01)). The comparison was produced at the request of the legal adviser to the Bills Committee.

3. The Bills Committee deliberated (index of proceedings attached at **Annex**).

4. The Administration was requested to -

*Part I of the Bill*

- (a) explain why the age of "a child of the family" to whom the proposed section 57 of the Criminal Procedure Ordinance applied should be set at the age of under 16 years, and why the new section did not apply to a person who was over the age of 16 years but not in a position to give evidence, e.g. mentally incapacitated persons;

Action

- (b) provide more information on the case "*Trezesinski v Daire (1986) 21 A Crime R*" in South Australia which the court had refused to grant exemption to the spouse of the accused from the obligation to give evidence against the accused (Administration's information note on experience in overseas common law jurisdictions in Appendix III of LC Paper No. CB(2)1167/02-03(01) refers);
- (c) respond to a member's opinion that the proposed section 57(3) of the Criminal Procedure Ordinance might not be necessary in view of the proposed section 57A which provided for the right of the spouse of an accused to apply to the court for exemption from obligation to give evidence for the prosecution;

*Part II of the Bill*

- (d) explain whether the same threshold (proposed section 79I(2) of the Criminal Procedure Ordinance) would be adopted by the court in granting permission for the giving of evidence by way of live television link in both civil and criminal proceedings, and if not, what were the differences;
- (e) provide the number of cases (both civil and criminal) in the past three years where a party had requested to obtain the evidence of an overseas witness;
- (f) address members' concern about the rights and immunities of and safeguards provided to overseas witnesses giving evidence via live television link; and
- (g) provide information on the rules to be made by the Chief Justice under proposed section 79L of the Criminal Procedure Ordinance concerning the giving of evidence by way of a live television link.

*(Post-meeting note - The Administration's responses were circulated vide LC Paper Nos. CB(2)1446/02-03(01) and (02) respectively on 12 March 2003.)*

5. The Bills Committee agreed that the Hong Kong Bar Association should be invited to submit written views on Part II of the Bill concerning proposals for a Hong Kong court to take evidence from witnesses overseas via live television link in criminal proceedings.

*(Post-meeting note - A letter dated 10 March 2003 from Mr Andrew BRUCE on behalf of the Bar Association was circulated vide LC Paper No. CB(2)1446/02-03(03) on 12 March 2003.)*

Action

**III. Date of next meeting**

6. The second meeting of the Bills Committee was scheduled for 14 March 2003 at 2:30 pm.
7. The meeting ended at 10:40 am.

Council Business Division 2  
Legislative Council Secretariat  
12 March 2003

## Annex

### **Proceedings of first meeting of the Bills Committee on Evidence (Miscellaneous Amendments) Bill 2002 on Friday, 14 February 2003 at 2:30 pm in Conference Room A of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000059	Ms Cyd HO/ Ms Audrey EU/ Miss Margaret NG	Election of Chairman of the Bills Committee	
000100 - 001807	Chairman/ Administration	Introduction on the Evidence (Miscellaneous Amendments) Bill 2002	
001808 - 001823	Chairman	Arrangement for a visit to the Technology Court	
001824 - 002002	Administration	Advantages of the arrangement for giving of evidence via live television link	
002003 - 002133	Chairman	Discussion papers issued to members for the meeting	
002134 - 003334	Ms Audrey EU/ Chairman/ Administration	Whether the same threshold specified in proposed section 79I(2) of the Criminal Procedure Ordinance (CPO) would apply to both civil and criminal proceedings in respect of giving of evidence by way of live television link	Admin to explain the difference, if any
003335 - 003559	Ms Audrey EU/ Chairman	The Hong Kong Bar Association to be invited to provide views on Part II of the Bill	Clerk to invite submission from Bar Association
003600 - 003644	Ms Audrey EU/ ALA5	Comparison of the provisions of the Evidence (Miscellaneous Amendments) Bill 2002 with the Criminal Procedure (Amendment) Bill 1990 on competence and compellability of spouses in criminal proceedings (LC Paper No. CB(2)1199/02-03(01))	
003645 - 005228	Ms Audrey EU/ Chairman/ Administration	Different legislative requirements regarding compellability of a spouse to give evidence for the accused or a co-accused	
005229 - 010618	Ms Cyd HO/ Administration/ Chairman/	Why the age of "a child of the family" under proposed section 57 of CPO should be set at the age of under 16 years; and  Number of cases where a party had requested to obtain the evidence of an overseas witness	Admin to respond in writing

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
010619 - 012241	Mr Jasper TSANG/ Administration/ Chairman	Compellability of a spouse to give evidence for the accused or the co-accused and authority of the court to grant exemption from obligation to give evidence for the co-accused	
012242 - 012423	Ms Cyd HO/ Administration	Why proposed section 57 of CPO did not apply to persons over the age of 16 years and incapable to give evidence, e.g. mentally incapacitated persons	Admin to respond in writing
012424 - 012831	Chairman/ Administration	Similar provisions to proposed section 57A of CPO in overseas legislation	
012832 - 013219	Administration/ Chairman	The case " <i>Trezesinski v Daire (1986) 21 A Crime R</i> " in South Australia (quoted in Appendix III of LC Paper No. CB(2)1167/02-03(01)) in which the court refused to grant exemption to the spouse of an accused from the obligation to give evidence	Admin to elaborate on the case in writing
013220 - 015049	Mr James TO/ Administration/ Chairman/	Proposed section 57A(5) of CPO; and  Concern about the rights and immunities of overseas witnesses giving evidence via live television link and how to ensure that adequate safeguards were provided to such witnesses	Admin to address the concern
015050 - 015443	Chairman/ Ms Cyd HO	Scope of the rules to be made by the Chief Justice under proposed section 79L of CPO	Admin to provide information on the rules
015444 - 015808	Mr Jasper TSANG/ Administration	Misleading example given in paragraph 3 of Legislative Council Brief prepared by the Administration on the Bill as compellability of spouses to give evidence for the prosecution would not be applicable to murder cases which were outside the scope of proposed section 57(3) of CPO	
015809 - 015959	Mr Jasper TSANG/ Administration	Proposed section 57(3) of CPO might not be necessary in view of proposed 57A	Admin to respond in writing
020000 - 020420	Chairman/ Mr Jasper TSANG / Ms Cyd HO/ Administration	Date of next meeting	