

立法會
Legislative Council

LC Paper No. CB(2)2638/06-07

(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Thursday, 31 May 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon Emily LAU Wai-hing, JP
Hon LI Fung-ying, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man

Members absent : Dr Hon LUI Ming-wah, SBS, JP
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon CHOY So-yuk, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon Daniel LAM Wai-keung, SBS, JP

Public Officers attending : Mr Donald TONG
Deputy Secretary for Home Affairs(1)

Mr Victor NG
Principal Assistant Secretary for Home Affairs (4)

Ms Roxana CHENG
Senior Assistant Solicitor General

Miss Betty CHEUNG
Senior Government Counsel

Miss Shandy LIU
Senior Government Counsel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Joanne MAK
Senior Council Secretary (2)2

Miss Kiwi NG
Legislative Assistant (2)2

Action

I. Confirmation of minutes

[LC Paper No. CB(2)1991/06-07]

The minutes of the meeting on 19 April 2007 were confirmed.

II. Meeting with the Administration

[LC Paper No. CB(3)176/06-07 - The Bill

LC Paper No. CB(2)1994/06-07(01) - Paper entitled "Discrimination which the Bill applies"]

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

Action

Paper entitled "Discrimination which the Bill applies" prepared by the
Legislative Council Secretariat
[LC Paper No. CB(2)1994/06-07(01)]

Admin

3. The Administration undertook to -
- (a) confirm whether the set of circumstances in paragraph 5(c) of the paper would constitute indirect discrimination under the Bill as soon as possible;
 - (b) provide a written response to members' concerns and suggestions set out in paragraphs 12 to 14 of the above paper;
 - (c) consider Mr Howard YOUNG's suggestion that a provision should be made requiring universities to apply a less stringent Chinese Language entry requirement to non-Chinese speaking (NCS) students and, in this regard, reference should be made to similar measures in the United Kingdom where only non-local students were allowed to sit for the General Certificate of Secondary Education examination;
 - (d) liaise with the Education and Manpower Bureau (EMB) for the timeframe of reverting to the Bills Committee on the outcome of EMB's discussion with the universities on the feasibility of accepting alternative qualifications in Chinese;
 - (e) explain the differences between the test of "reasonable practicability" under Clause 4(2) of the Bill and the defence of "unjustifiable hardship" in the Disability Discrimination Ordinance and, and the reasons for the differences; and
 - (f) set out the major policy measures or concrete sets of circumstances which would be covered by the exceptions provided for under Clauses 8(2) and (3).

Way forward

4. At the Chairman's suggestion, members were of the view that, to facilitate the Bills Committee's decision on the way forward for its scrutiny work, the Administration needed to resolve some fundamental issues raised in the following clauses -

- (a) Clause 3 regarding the application of the Bill to the Government;
- (b) Clause 4 regarding the distinction between direct and indirect discrimination;

Action

- (c) Clause 8 regarding the exclusion of new arrivals from the Mainland from the scope of the Bill; and
- (d) Clause 58 regarding the exception for languages.

Mr Howard YOUNG reiterated that the Liberal Party did not support the view that the scope of the Bill should be extended to cover new arrivals from the Mainland.

Clerk

5. The Chairman suggested that, given the divergence of views between the majority of members and the Administration over the fundamental issues, and as the policy responsibility on the Bill would be transferred to the future Constitutional and Mainland Affairs Bureau on 1 July 2007, the Bills Committee should review its scrutiny progress and decide on its way forward at the next meeting. To facilitate the discussion, the Clerk should prepare a paper setting out members' major concerns on the above fundamental issues as well as possible options to address such concerns. Members agreed.

Admin

6. The Chairman requested the Administration to provide written responses or interim replies to all the outstanding issues raised by members at previous meetings, particularly the concern about Clause 3, before the next meeting.

Admin

7. At the Chairman's request, the Administration agreed to inform the Bills Committee in writing of the changes in the government officials to be in charge of the Bill after the re-organisation of the Government Bureaux.

8. Members in general were of the view that, after holding the next meeting to review the scrutiny progress, the Bills Committee should not hold further meeting until around autumn in 2007. The Chairman suggested that the Bills Committee should make a decision at the next meeting. Members agreed.

III. Any other business

Date of next meeting

9. Members agreed to cancel the meeting originally scheduled for 18 June 2007. Hence, the next meeting would be held on Tuesday, 26 June 2007 at 10:45 am.

10. There being no other business, the meeting ended at 12:26 pm.

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Thursday, 31 May 2007, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000309	Chairman	Confirmation of minutes of meeting	
000310 - 001319	Chairman Dr YEUNG Sum Admin	<p>The Administration's preliminary response to paragraphs 12 to 14 of the paper on "Discrimination to which the Bill applies"[LC Paper No. CB(2)1994/06-07(01)] as follows -</p> <p>(a) it was necessary to distinguish two forms of discrimination, i.e. direct and indirect discrimination;</p> <p>(b) the relevant provisions (section 1(1)(b)) of the Race Relations Act 1976 (RRA) of the United Kingdom (UK) should be adopted as those provisions were well-tested in various court cases in UK and their effect well-understood, which could serve as a useful reference for the courts and the Equal Opportunities Commission (EOC); and</p> <p>(c) the UK circumstances leading to the addition of the new subsections (1A)-(1C) to RRA in 2003 were different from the situation in Hong Kong.</p> <p>Dr YEUNG Sum's criticism that Clause 4(1)(b) was still modeled on section 1(1)(b) of RRA, which was made in 1976 and was outdated.</p>	Admin to provide a written response to the Secretariat's paper (para 3(a) and (b) of minutes)
001320 - 002714	Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's question of whether the sets of circumstances in paragraphs 5(a)-(c) of the paper would be regarded as indirect discrimination under the Bill, if Clauses 8 and 58 had not been included.	

Time marker	Speaker	Subject	Action required
		<p>The Administration's explanation that it would depend on the actual circumstances of each case, having regard to -</p> <p>(a) whether the test under Clause 4(1)(b)(i) and (iii) was satisfied; and</p> <p>(b) if affirmative, whether the test of "justification" under Clause 4(1)(b)(ii) as elaborated in Clause 4(2) could be met to establish the defence of justifiability.</p>	
002715 - 003347	Mr Ronny TONG Chairman	<p>Mr Ronny TONG' view that -</p> <p>(a) there was no need to draw distinction between direct discrimination and indirect discrimination artificially given the difficulties to differentiate between "treating a person less favourably" and "applying an unjustified requirement or condition to a person"; and</p> <p>(b) the Bill should achieve the policy objectives of ensuring the enjoyment of equal opportunities among people of different races and their protection from any discrimination on the ground of race.</p>	
003348 - 003954	Mr Howard YOUNG Admin Chairman	<p>Mr Howard YOUNG's suggestion that a provision should be made requiring universities to apply a less stringent Chinese Language entry requirement to non-Chinese speaking students and in this regard reference should be made to similar measures in UK where only non-local students were allowed to sit for General Certificate of Secondary Education (GCSE) examination.</p> <p>The Administration's responses that -</p>	<p>Admin to consider Mr YOUNG's suggestion (para 3(c) of minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>(a) flexibility had been exercised by universities to accept alternative qualifications of a second language (e.g. French) and which would also admit students who failed in Chinese Language but excelled in other subjects; and</p> <p>(b) the Education and Manpower Bureau (EMB) was discussing ways with the universities on the feasibility of accepting alternative qualifications in Chinese.</p>	
003955 - 004459	Dr YEUNG Sum Admin Chairman	<p>Dr YEUNG Sum's view that the Administration's failure to give a definite answer as to whether the set of circumstances in paragraph 5(c) of the paper would constitute indirect discrimination had reflected the inadequacies of the Bill.</p> <p>The Administration's reiteration that indirect discrimination was a less obvious form of discrimination and EOC in future would draw up detailed code of practice for reference of the public.</p>	
004500 - 005422	Ms LI Fung-ying Admin Chairman	<p>Ms LI Fung-ying's query whether the Bill as presently drafted would bring about concrete improvements to the problem of racial discrimination in Hong Kong, given its inclusion of many exception provisions.</p> <p>The Administration's response that discrimination in the public sector had been prohibited by the Hong Kong Bill of Rights Ordinance. Discriminatory acts by individuals/organisations in the private sector would also be prohibited with the enactment of the Bill.</p>	
005423 - 010111	Deputy Chairman Admin	<p>Deputy Chairman's suggestion that the new fee-charging policy referred to in paragraph 5(b) of the paper should be withdrawn in response to the general concern that the policy might constitute indirect discrimination.</p> <p>The Administration's undertaking to convey the suggestion to relevant policy bureau for consideration.</p>	

Time marker	Speaker	Subject	Action required
		<p>Deputy Chairman's concern about ways to address the problem faced by NCS students in paragraph 5(c) of the paper.</p> <p>The Administration's briefing of the progress of the discussion between EMB and the universities on the feasibility of accepting alternative qualifications in Chinese.</p> <p>The Administration's undertaking to request EMB to provide a timeframe for reverting to the Bills Committee on the outcome of its discussion with the universities.</p>	<p>Admin to liaise with EMB for a timeframe of reverting to the Bills Committee on the outcome of its discussion with the universities (para 3(d) of minutes)</p>
010112 - 011701	Miss CHAN Yuen-han Admin Chairman	<p>Miss CHAN Yuen-han's concern about the difficulties faced by ethnic minorities who had difficulties with both Chinese and English when receiving vocational training.</p> <p>The Administration's briefing of the efforts being made by vocational training institutions in offering English programmes for the NCS community, including relevant measures recently taken by the Employees Retraining Board.</p> <p>The Chairman's concern that while the Bill can make certain individual discriminatory acts on the ground of race unlawful, it would not be able to prohibit longstanding discriminatory practices in the public sector arising from the implementation of Government policies and measures.</p> <p>Miss CHAN's request for a comparison between the test of "reasonable practicability" under Clause 4(2) of the Bill and the defence of "unjustifiable hardship" in the Disability Discrimination Ordinance (DDO) and the reasons for any differences.</p> <p>The Administration's brief explanation of the differences and its undertaking to provide a written explanation.</p>	<p>Admin to provide a written explanation on the differences between the test of "reasonable practicability" under Clause 4(2) and the defence of "unjustifiable hardship" in DDO (para 3(e) of minutes)</p>

Time marker	Speaker	Subject	Action required
011702 - 012118	Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's concerns that Clause 8(2) and (3) would provide broad exemption for the Government to continue the implementation of many existing measures which were of a discriminatory nature on the ground of race (e.g. two weeks rule).</p> <p>The Administration's undertaking to coordinate a written response with relevant bureaux and departments.</p>	<p>Admin to provide the requisite information suggested by Mr LEE (para 3(f) of minutes)</p>
012119 - 012932	Dr Fernando CHEUNG Admin Chairman	<p>Dr Fernando CHEUNG's enquiries about the Administration's responses to outstanding issues raised by members at previous meetings on Clauses 3 and 4, and the implications of the re-organisation of policy bureaux of the Government Secretariat on the scrutiny work of the Bills Committee.</p> <p>The Administration's initial response that this Bill would be taken over by the future Constitutional and Mainland Affairs Bureau, if the proposed re-organisation of policy bureaux was implemented.</p>	<p>Admin to issue a letter to Chairman of the Bills Committee on changes in officials to be in charge of the Bill after the re-organisation of policy bureaux (para 7 of minutes)</p>
012933 - 014210	Dr YEUNG Sum Mr Ronny TONG Chairman Mr Howard YOUNG Chairman Clerk	<p>Members' elaboration of their major concerns about the Bill which remained unresolved.</p> <p>The Chairman's suggestion that given the divergence in views between the majority of members and the Administration over some fundamental issues, and the imminent changes in officials to be in charge of this Bill, the Bills Committee should not hold meetings temporarily after the next one until around autumn in 2007.</p>	<p>Admin to provide outstanding written responses to issues raised at previous meetings (para 6 of minutes)</p> <p>Clerk to prepare a paper for discussion at the next meeting (para 5 of minutes)</p>