

立法會
Legislative Council

LC Paper No. CB(2)738/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Wednesday, 21 November 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, SBS, JP
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum, JP
Hon Emily LAU Wai-hing, JP
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man

Members absent : Hon Abraham SHEK Lai-him, SBS, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon CHOY So-yuk, JP
Hon Daniel LAM Wai-keung, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung

- Public Officers attending** : Mr Arthur HO
Deputy Secretary for Constitutional and Mainland Affairs (1)
- Mr Victor NG
Principal Assistant Secretary for Constitutional and Mainland Affairs (5)
- Mr Stanley NG
Assistant Secretary for Constitutional and Mainland Affairs (5)A
- Ms Roxana CHENG
Senior Assistant Solicitor General
- Ms LAI Yuen-man
Senior Government Counsel
- 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
- Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Confirmation of minutes
[LC Paper No. CB(2)360/07-08]

The minutes of the meeting on 8 October 2007 were confirmed.

Action

II. Administration's responses to issues raised by members

[LC Paper Nos. CB(2)173/07-08(01), CB(2)362/07-08(01) and CB(2)377/07-08(01)]

2. The Bills Committee deliberated the following papers -

- (a) paper on "The Race Discrimination Bill and the Hong Kong Bill of Rights" [LC Paper No. CB(2)362/07-08(01)];
- (b) paper on "Application to Government" [LC Paper No. CB(2)173/07-08(01)]; and
- (c) paper on "Admission of local non-Chinese speaking students to institutions funded by University Grants Committee (UGC) and further flexibility on application of Chinese language requirement" [LC Paper No. CB(2)377/07-08(01)].

(Index of proceedings attached at **Annex**).

3. Regarding the Administration's paper [LC Paper No. CB(2)377/07-08(01)], members in general welcomed the proposed new arrangements which sought to allow further flexibility on the application of the Chinese Language requirement for university admission. The Administration was requested to -

Admin

- (a) request the UGC-funded institutions to fully implement the proposed new arrangements for university admission in 2008 and to consider whether the four non-Chinese speaking (NCS) students mentioned in paragraph 4 of the Administration's paper could be favourably considered for admission to universities in accordance with the proposed new arrangements;
- (b) provide the number of NCS students who had failed to be admitted to the matriculation stream merely on the ground of their failing to pass the Chinese Language subject in the Hong Kong Certificate of Education Examination (HKCEE);
- (c) address the concern that, before the implementation of the new academic structure comprising three-year junior secondary, three-year senior secondary and four-year undergraduate education, many NCS student would still be unable to be admitted to the matriculation stream solely due to their failing to pass the Chinese Language requirement in HKCEE;
- (d) provide the number of students who had been exempted from meeting the Chinese Language requirement for admission under the Joint University Programmes Admission System (JUPAS) and the non-JUPAS route respectively;

Action

- (e) explain the meaning of equivalent requirement referred to in paragraph 4 of the paper;
- (f) request the UGC-funded institutions to adopt similar minimum requisite grading under the alternative Chinese Language qualifications to be accepted; and
- (g) consider the suggestion of providing a standard alternative Chinese Language curriculum for NCS students.

4. Mr CHEUNG Man-kwong suggested that Ms Bernadette LINN, Deputy Secretary for Education, should also be invited to attend future meetings held to further discuss the proposed new arrangements.

Admin

5. The Administration was requested to provide a supplementary paper to confirm whether the complainant in the hypothetical case of racial discrimination described in paragraph 11 of the Administration's paper could seek remedies under Article 22 of the Hong Kong Bill of Rights [LC Paper No. CB(2)173/07-08(01)].

III. Draft Committee Stage amendments prepared by the legal adviser to the Bills Committee

[LC Paper Nos. LS14/07-08, LS48/06-07 and CB(2)2501/06-07(01)]

6. The Bills Committee deliberated the discussion drafts of Committee Stage amendments (CSAs) prepared by the legal adviser to the Bills Committee [LC Paper No. LS14/07-08] (index of proceedings attached at **Annex**).

ALA6

7. The legal adviser to the Bills Committee was requested to refine the proposed new Clause (1A) under Option A in Appendix IV to ensure that the retraining courses offered by the Employees Retraining Board were included within the meaning of "vocational training course" in the provision.

8. The Bills Committee agreed to start clause-by-clause examination of the Bill at the next meeting which would be held on Friday, 7 December 2007, from 3:00 pm (or immediately following the House Committee meeting, whichever was later) to about 5:00 pm. Members also agreed to schedule a meeting in January 2008 to receive views from deputations on the discussion drafts of CSAs.

9. There being no other business, the meeting ended at 10:05 am.

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Wednesday, 21 November 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000901	Chairman	<u>Confirmation of minutes of meeting</u>	
000902 - 001358	Chairman Admin Mr Ronny TONG	<u>Briefing by the Administration on its paper on "The Race Discrimination Bill and the Hong Kong Bill of Rights"</u> [LC Paper No. CB(2) 362/07-08(01)]	
001359 - 001927	Admin Chairman ALA6	<u>Briefing by the Administration on its paper on "Application to Government"</u> [LC Paper No. CB(2) 173/07-08(01)] ALA's advice that, as far as Article 22 of the Hong Kong Bill of Rights (HKBOR) was concerned, the provision dealt with the violation of individuals' right against racial discrimination by government policies or law, but not individual acts in the exercise of public powers and functions. The Bill, however, was specifically applicable to acts of racial discrimination committed by individuals. ALA's further advice that the Bill provided expressly for a claim to be made in respect of discrimination, harassment and vilification whereas a person could only seek financial compensation under the Hong Kong Bill of Rights Ordinance (HKBORO) if he was able to prove to the court that he had suffered loss arising from contravention of Bill of Rights.	
001928 - 003304	Admin Mr CHEUNG Man-kwong Dr YEUNG Sum Chairman	<u>Briefing by the Administration on paper on "Admission of local non-Chinese speaking students to institutions funded by University Grants Committee and Further flexibility on application of Chinese language requirement"</u> [LC Paper No. CB(2) 377/07-08(01)] Indication of support by Mr CHEUNG and Dr YEUNG for the	Admin to provide supplementary

Time marker	Speaker	Subject	Action required
		<p>proposal as detailed in the Administration's paper. Their requests for provision of supplementary information and statistical figures by the Administration.</p>	<p>information and figures (para. 4 of minutes)</p>
003305 - 003726	Mr Howard YOUNG Admin	<p>Mr YOUNG's expression of support and his suggestion of granting credits to university applicants who failed to meet the condition (a) or (b) in paragraph 6 of the Administration's paper but who could speak any language (e.g. Indian) other than Chinese or English.</p> <p>The Administration's response that there would be practical difficulties to make objective assessments for granting credits to such applicants and impact on applicants who did not speak any such language.</p> <p>Mr YOUNG's question about the phrase "the Chinese Language requirement or equivalent" in paragraph 4 of the Administration's paper.</p> <p>The Administration's agreement to explain the meaning of equivalent requirement as referred above.</p>	<p>Admin to provide information (para. 3 of minutes)</p>
003727 - 004042	Mr LEE Cheuk-yan Admin	<p>Mr LEE's view that the small number of NCS students studying Secondary 7 in the 2006-2007 school year (i.e. 23 only) reflected the fact that NCS students suffered from inequality of opportunities in education.</p> <p>Mr LEE's view that various UGC-funded institutions should adopt similar minimum requisite grading under the alternative Chinese Language qualifications to be accepted.</p> <p>The Administration's agreement to reflect Mr LEE's concern to the Education Bureau for follow-up.</p>	<p>Admin to relay Mr LEE's view to Education Bureau for follow-up (para. 3 of minutes)</p>
004043 - 004226	Miss CHAN Yuen-han Chairman	<p>Miss CHAN's enquiry of whether issues relating to vocational training and protection of new arrivals from the Mainland would be discussed at the meeting.</p>	

Time marker	Speaker	Subject	Action required
004227 - 004539	Mr CHEUNG Man-kwong Chairman	<p>Mr CHEUNG's suggestion of inviting the responsible Deputy Secretary for Education to attend future meetings of the Bills Committee for further discussion of the current proposal.</p> <p>Mr CHEUNG's concern that many NCS students would still be unable to be admitted to the matriculation stream merely on the ground of their failing to pass the Chinese Language requirement in the Hong Kong Certificate of Education Examination before the implementation of the new academic structure comprising three-year junior secondary, three-year senior secondary and four-year undergraduate education.</p> <p>The Administration's agreement to address the concern.</p>	<p>Admin to follow up. (para. 4 of minutes)</p> <p>Admin to address Mr CHEUNG's concern. (para. 4 of minutes)</p>
004540 - 004717	Dr YEUNG Sum	<p>Dr YEUNG's suggestion that a standard alternative Chinese Language curriculum should be provided for NCS students to facilitate their learning, the design of Chinese textbooks and the training of Chinese Language teachers.</p>	<p>Admin to follow up Dr YEUNG's suggestion (para. 3 of minutes)</p>
004718 - 005202	Admin Chairman ALA6	<p>Advice of Senior Assistant Solicitor General (SASG) that Article 22 of HKBOR was also applicable to acts of law enforcement officers in their performance of duties, and her reference to the comment of the Human Rights Committee contained in "CCPR General Comment No. 18: Non-Discrimination" issued on 10 November 1989 [Annex to LC Paper No. CB(2)2753/06-07(02)].</p> <p>In response to the Chairman's question about the hypothetical case in paragraph 11 of the paper [LC Paper No. CB(2) 173/07-08(01)], SASG's confirmation that, apart from lodging a complaint to the Complaints Against Police Office, the complainant could also take legal action under HKBORO.</p> <p>ALA6's view that the complainant in the hypothetical case could not seek a judicial review under HKBORO because the police</p>	<p>Admin to provide a supplementary paper (para. 5 of minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>officer involved had not breached any law in Hong Kong.</p> <p>His further view that, while the scope of application of the Bill and HKBORO might overlap, there were discriminatory acts to be covered by the Bill which would fall outside the scope of application of HKBORO.</p> <p>The Chairman's request for the Administration to provide a supplementary paper to confirm whether the hypothetical case under discussion could be dealt with under Article 22 of HKBOR.</p>	
005203 - 005517	Chairman ALA6	<p><u>Briefing by ALA6 on his paper entitled "Discussion drafts of Committee Stage amendments for Members' consideration"</u> [LC Paper No. LS14/07-08]</p>	
005518 - 005727	Mr Howard YOUNG Chairman	<p><i>Clause 3 - Application to Government</i></p> <p>Mr YOUNG's explanation of the stance of the Liberal Party which was in support of the principle that the Bill should apply equally to private persons, organisations and the Government.</p> <p>His initial view that Option B to amend Clause 3 for the application of the Bill to the Government as stated in Appendix I to LC Paper No. LS14/07-08 was preferred while Option A was also acceptable.</p>	
005728 - 010947	Chairman ALA6 Mr Howard YOUNG	<p><i>Clause 4 - Racial discrimination</i></p> <p>Mr YOUNG's view that the Liberal Party did not support amending Clause 4 as proposed in Appendix II to the paper and his concern that the proposed draft CSAs might create grey areas in the operation of small and medium enterprises.</p> <p>ALA6's view that the proposed amendments would not create more grey areas and his explanation that Option A to add new provisions to Clause 4 (Appendix II to the paper) sought to apply a less stringent threshold to prove a discriminatory</p>	

Time marker	Speaker	Subject	Action required
		act on the ground of race and would afford more effective protection.	
010948 - 011727	ALA6 Mr Howard YOUNG Chairman	<i>New Clause - New arrivals from the Mainland</i> Mr YOUNG's explanation of the Liberal Party's view that, while it supported the implementation of enhanced measures to assist the integration of the new arrivals from the Mainland into the community, these new arrivals could not be regarded as persons of a different race, and it was not appropriate to cover these new arrivals within the scope of the Bill.	
011728 - 012151	ALA6 Chairman	<i>Clause 58 - The language exemption</i> The Chairman's explanation that in view of the proposed new arrangements put forward by the Administration which should be able to address the language barrier hindering NCS students' admission to universities, application of the proposed new Clause (1A) under Option A in Appendix IV to the paper was proposed to be restricted to vocational training only. The new proposed provision could be suitably revised to cover admission to universities if members found the Administration's proposed new arrangements not acceptable.	
012152 - 012429	Mr Howard YOUNG ALA6	Mr Howard YOUNG's expression of in-principle support for the proposed new Clauses (1A)-(1C) under Option A. However, he was concerned about the possible impact on the operation of private clinics. ALA6's explanations that the scope of coverage of section 2 of Medical Clinics Ordinance did not include treatment given by a registered or listed Chinese medical practitioners, and that proposed new Clause (1C) had expressly lowered the language requirement.	
012430 - 012701	Ms LI Fung-ying ALA6	Ms LI Fung-ying's enquiry of whether reference to "vocational training course" in the proposed new Clause (1A) covered the retraining courses offered by the Employees Retraining Board.	ALA6 to refine the proposed new Clause (1A) taking into consideration Ms LI's concern (para. 7 of

Time marker	Speaker	Subject	Action required
		ALA6's view that such retraining courses would be covered if their contents were vocational training but, to allay members' concern, he suggested adding an express provision to provide specifically that the retraining courses offered by the Employees Retraining Board were included within the meaning of "vocational training course" in the proposed new Clause (1A).	minutes)
012702 - 012828	Dr YEUNG Sum ALA6	Dr YEUNG Sum's enquiry and ALA6's advice that university admission would be subject to the application of the Bill if discrimination by educational establishments was excluded from the exception for languages under Clause 58.	
012829 - 013042	Chairman Dr YEUNG Sum Mr Howard YOUNG	Members' expression of support for holding a meeting to receive views from deputations on the discussion drafts of CSAs.	
013043 - 013735	Chairman Mr Howard YOUNG Admin Ms Emily LAU	Date of next meeting and members' agreement to start clause-by-clause examination of the Bill at the next meeting.	

Council Business Division 2
Legislative Council Secretariat
 4 January 2008