

立法會
Legislative Council

LC Paper No. CB(2)875/07-08
(These minutes have been seen
by the Administration)

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Friday, 7 December 2007, at 3:00 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Abraham SHEK Lai-him, SBS, 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, 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 CHOY So-yuk, 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
Dr Hon Fernando CHEUNG Chiu-hung
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Member attending** : Hon LEUNG Kwok-hung

- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon Daniel LAM Wai-keung, SBS, JP
Hon WONG Ting-kwong, BBS
- 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. Meeting with the Administration

Action

Outstanding issues to be discussed

The Administration introduced to members the following papers responding to issues raised by members at previous meetings -

- (a) Paper entitled "Equality protection under Article 22 of the Hong Kong Bill of Rights" [LC Paper No. CB(2)513/07-08(01)]; and
- (b) Paper entitled "Response by the Administration to the outstanding issues raised by Bills Committee Members in relation to Clause 3" [LC Paper No. CB(2)513/07-08(02)].

Admin

2. With reference to paragraph 9 of the Administration's paper [LC Paper No. CB(2)513/07-08(01)], the Chairman requested the Administration to provide a paper detailing the legal proceedings that might be instituted by the victim alleging breach of Article 22 of the Hong Kong Bill of Rights in the hypothetical case concerned.

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

Clause-by-clause examination of the Bill

ALA6

3. The Bills Committee started to examine the Bill clause by clause in its English version. The legal adviser to the Bills Committee was requested to examine the Chinese version of the Bill from the drafting point of view. The Bills Committee examined the long title and Clause 1 to Clause 7 of the Bill.

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

4. Referring to the list of questions raised by Hon CHOY So-yuk on specific provisions of the Bill [LC Paper No. CB(2)1249/06-07(01)], the Chairman said that members were welcome to follow up on any of those questions during the clause-by-clause examination.

Admin

5. The Chairman requested the Administration to provide a written response to the paper entitled "Views received from deputations/individuals on specific clauses of the Bill" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)160/07-08(01)]. The Chairman said that the Bills Committee would revisit the relevant clauses when the Administration's response was available.

Clause 1

Admin

6. The Administration informed members that it would move a Committee Stage amendment (CSA) to Clause 1(2) to substitute "Secretary for Home Affairs" with "Secretary for Constitutional and Mainland Affairs" as the policy responsibility on human rights had been transferred from the Home Affairs

Action

Bureau to the Constitutional and Mainland Affairs Bureau since 1 July 2007.

Clause 2

Admin

7. The Administration was requested to -

- (a) follow up on the concern raised by the Hong Kong Bar Association regarding the definition of "club" which required that the association had to sell or supply liquor for consumption on its premises and thus would have the effect of excluding clubs or associations catering for a membership that shared the Muslim faith;
- (b) to review the definition of "estate agent" for consistency with the definition of the same term in the Estate Agents Ordinance (Cap. 511), and to consider making the same amendment to the Sex Discrimination Ordinance (Cap. 480);
- (c) to consider some members' views that the definition of "near relative" was self-contradictory as it included "brother or sister...(by affinity)" but excluded parents-in-law; and
- (d) to review relevant provisions in the existing anti-discrimination ordinances on which the drafting of Clause 2(5) and Clause 56 was modeled, and to consider whether the relevant provisions should be amended to the effect that the "requirement" in Clause 56 would not be restricted to requirements of existing statutory provisions only, but should include future legislation.

Clause 4

Admin

8. With regard to Clause 4(6), the Administration was requested -

- (a) to discuss with the Equal Opportunities Commission (EOC) as to whether relevant guidelines regarding the interpretation of the term "segregation" could be included in the future codes of practice and report to members on the discussion; and
- (b) to consider deleting the expression "It is declared that," ("現宣布：").

Clause 5

Admin

9. The Administration was requested to consider deleting Clause 5 to avoid causing confusion arising from the unclear meaning of "near relative".

Action

Clause 7

Admin

10. The Administration was requested to address the following concerns -
- (a) reference to "near relative" might cause confusion; and
 - (b) the express reference to the test of a reasonable person in Clause 7(1) would exclude the feeling of the victim from being considered by the court in considering whether there was an act of racial harassment.

II. Any other business

Meeting schedule

Clerk

11. Members endorsed the proposed meeting schedule which was issued vide LC Paper No. CB(2)513/07-08 on 5 December 2007. Members also agreed that the Bills Committee would receive views from the 34 deputations which attended the meeting on 3 March 2007 on the discussion drafts of CSAs prepared by the legal adviser to the Bills Committee [LC Paper No. LS14/07-08] at the meeting scheduled for 10 January 2008 from 9:00 am to 12:00 noon. The Chairman said that members could inform the Clerk of any other deputations they would like to invite.

12. Members noted that the next meeting would be held on Thursday, 11 December 2007, at 8:30 am to continue with clause-by-clause examination of the Bill.

13. There being no other business, the meeting ended at 4:50 pm.

Council Business Division 2
Legislative Council Secretariat
18 January 2008

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Friday, 7 December 2007, at 3:00 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 001239	Chairman Clerk Deputy Chairman	<u>Meeting schedule and invitation of deputations to attend the meeting scheduled for 10 January 2008</u>	Clerk to invite deputations to attend the meeting on 10 January 2008 (para. 11 of minutes)
001240 - 001915	Admin Chairman ALA6	<p><u>Briefing by the Administration on its paper</u> [LC Paper No. CB(2)513/07-08(01)]</p> <p>The Chairman's enquiry about the legal proceedings that might be instituted by the victim alleging breach of Article 22 of the Hong Kong Bill of Rights in the hypothetical case described in the Administration's paper. The Administration's agreement to provide a paper on the issue.</p> <p><u>Briefing by the Administration on its paper</u> [LC Paper No. CB(2)513/07-08(02)]</p> <p>The Administration's explanation that the situation in Hong Kong was different from the background in the United Kingdom (UK) leading to the addition of section 19B to the Race Relations Act (RRA) in 2000 as described in paragraphs 7 to 13 of the paper because there was no evidence suggestive of the existence of institutional racism within the Government and the number of complaints against racial discrimination was small in Hong Kong.</p> <p>ALA6's provision of further background information leading to the 2000 Amendments to the UK RRA as follows -</p> <p>(i) the then UK Commission for Racial Equality recommended to amend RRA in 1985 and</p>	Admin to provide a paper on the legal proceedings that might be instituted by the victim in the hypothetical case concerned (para. 2 of minutes)

Time marker	Speaker	Subject	Action required
		<p>1992 but the Conservative Party in power at that time had taken no action; and</p> <p>(ii) when the Inquiry Report on the case of Stephen Lawrence was released in 1999, the Labour Party which had undertaken to amend RRA when coming to power in 1997 agreed to take forward the recommendations to amend RRA put forward by the then UK Commission for Racial Equality after the review made in 1998, but only limited to those also recommended in the Inquiry Report.</p>	
001916 - 003317	<p>Mr LEUNG Kwok-hung Dr Fernando CHEUNG Dr YEUNG Sum Admin Chairman</p>	<p>Mr LEUNG's view that the Administration's claim that racial discrimination in Hong Kong was not serious was unfounded.</p> <p>Dr CHEUNG's query about the basis of the Administration's claim that there was no existence of institutional racism within the government in Hong Kong.</p> <p>The Administration's confirmation that it had not conducted any research study or investigation on the existence of institutional racism within the government in Hong Kong.</p> <p>Dr YEUNG's view that the Administration should not easily come to the conclusion that there was no institutional racism within the government in Hong Kong merely on the basis of absence of racial riots.</p> <p>The Administration's view that problems generally encountered by ethnic minorities were about obstacles to their integration into the community, e.g. the language barrier, rather than institutional racial discrimination problems and that, based on feedback from various sectors, the situation in Hong Kong was clearly different from that in the UK.</p>	
003318 - 003655	<p>Chairman Admin</p>	<p><u>Clause-by-clause examination of the Bill</u></p>	<p>ALA6 to examine the Chinese version of the Bill (para. 3 of</p>

Time marker	Speaker	Subject	Action required
		<p><i>The long title</i></p> <p>The Administration's explanation that the Bill also made related amendments to the Sex Discrimination Ordinance (SDO) to extend unlawful sexual harassment to cover rendering the environment in which a person worked, studied or underwent training sexually hostile or intimidating.</p> <p>The Chairman's suggestion that members could follow up on any of the questions raised by Miss CHOY So-yuk in her letter with the Administration during the clause-by-clause examination.</p>	minutes)
003656 - 003828	Chairman Admin ALA6	<p><i>Clause 1</i></p> <p>The Administration's intention to move a Committee Stage amendment (CSA) to substitute "Secretary for Home Affairs" with "Secretary for Constitutional and Mainland Affairs" in Clause 1(2) to reflect the transfer of policy responsibility on human rights from the Home Affairs Bureau to the Constitutional and Mainland Affairs Bureau with effect from 1 July 2007.</p>	<p>Admin to propose a CSA for Clause 1(2) (para. 6 of minutes)</p>
003829 - 005019	Chairman Admin ALA6	<p><i>Clause 2</i></p> <ul style="list-style-type: none"> - Concern of the Hong Kong Bar Association that definition of "club" in the Bill would exclude effectively clubs or associations catering for a membership that, for example, share the Muslim faith. - ALA6's advice that the Administration had agreed to amend the definition of "estate agent" in the Bill and in SDO for consistency with the same term in the Estate Agents Ordinance. - queries about the definition of "near relative" <p><i>Clause 2(5) and Clause 56</i></p> <p>ALA6's concern that, as these two clauses as currently drafted would restrict the "requirement" in Clause</p>	<p>Admin to review the definition of "club" (para. 7(a) of minutes)</p> <p>Admin to review the definition of "estate agent" in the Bill and SDO (para. 7(b) of minutes)</p> <p>Admin to respond to ALA6's concern about</p>

Time marker	Speaker	Subject	Action required
		<p>56 to requirements of existing statutory provisions only, difficulty would arise if any future legislation imposed a requirement which came into conflict with any provision in Part 3, 4 or 5 of the Bill.</p> <p>The Administration's response that the drafting of these two clauses was modeled on relevant provisions of the existing anti-discrimination ordinances.</p> <p>The Administration's agreement to consider whether the two clauses as well as relevant provisions of the existing anti-discrimination ordinances should be amended to cover future legislation.</p>	<p>Clause 2(5) and Clause 56 (para. 7(d) of minutes)</p>
005020 - 005039	Chairman	<p><i>Clause 3</i></p> <p>The Chairman's remark that there had been detailed discussion on Clause 3 at previous meetings.</p>	
005040 - 005426	Chairman ALA6 Admin	<p><i>Clause 4</i></p> <p>ALA6's comment that Clause 4(2)(a) which applied a more stringent test might not be effective because a requirement or condition would be able to satisfy the test of "reasonable practicability" under Clause 4(2)(b) even if it could not satisfy the rationality and proportionality test under Clause 4(2)(a).</p> <p>His advice that the current UK RRA did not include provision similar to Clause 4(2).</p> <p>The Administration's explanation on the justification for including Clause 4(2)(b) and why it would not create a loophole as follows -</p> <ul style="list-style-type: none"> (i) Criterion for assessment of justifiability similar to the reasonable practicability test could be found in overseas precedents; (ii) Clause 4(3) elaborated on the reference to "reasonably practicable" in Clause 4(2)(b); (iii) Clause 4(4) provided further guidance and spelt out the 	<p>Admin to provide response to the paper on "Views received from deputations/individuals on specific clauses of the Bill" (para. 5 of minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>more common aspects and issues which normally ought to be considered in determining for the purposes of Clause 4(2)(b); and</p> <p>(iv) including both Clause 4(2)(a) and Clause 4(2)(b) was to avoid unnecessary litigations.</p> <p>The Chairman's comment that the criteria of assessment under Clause 4(2)(a) and under Clause 4(2)(b) were conceptually different.</p> <p>The Chairman's request for the Administration to give response to the paper on "Views received from deputations/individuals on specific clauses of the Bill".</p>	
005427 - 011357	<p>Ms Emily LAU ALA6 Chairman Admin Mr LEUNG Kwok-hung</p>	<p>Ms LAU's enquiry of the difference in the criteria of assessment between Clause 4(2)(a) and Clause 4(2)(b) and ALA6's further explanation.</p> <p>Ms LAU's enquiry and ALA6's response that the current UK RRA did not contain provisions similar to Clause 4(2) to Clause 4(5).</p> <p>Discussion about the application of Clause 4(2)(b).</p> <p>The Chairman's initial view that Clauses 4(2)(b), 4(3) and 4(4) should be deleted, as the provisions would create a loophole in the Bill and defeat the purposes of Clause 4(2)(a).</p>	
011358 - 012315	<p>Miss CHAN Yuen-han Admin Ms Emily LAU ALA6 Mr LEUNG Kwok-hung</p>	<p>Miss CHAN's enquiry about the use of the expression "It is declared that," ("現宣布：") in Clause 4(6) and whether it was a common drafting approach.</p> <p>The Administration's response that Clause 4(6) was in line with the Race Relations Act 1976 (UK) and the Administration's agreement to consider whether or not the phrase could be deleted.</p> <p>Ms LAU's enquiry about the meaning of "segregate" in the context of Clause 4(6).</p> <p>The Administration's response that,</p>	<p>Admin to address Miss CHAN's concerns (para. 8(b) of minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>while a definition on "segregate" was not provided in the Bill, reference could be made to case law for the meaning of "segregate".</p> <p>ALA6's provision of court precedents regarding the interpretation of the word "segregation".</p> <p>The Administration's agreement to discuss with the Equal Opportunities Commission (EOC) as to whether relevant guidelines could be included in the future codes of practice and provide a paper reporting on the discussion.</p>	<p>Admin to follow up with EOC and provide information to members (para. 8(a) of minutes)</p>
012316 - 013346	<p>Admin Chairman ALA6 Miss CHOY So-yuk Ms LI Fung-ying Mr LEUNG Kwok-hung</p>	<p><i>Clause 5 and Clause 2</i></p> <p>Members' general concern about exclusion of parents-in-law from the definition of "near relative".</p> <p>The Chairman's suggestion of deleting Clause 5, as the policy intent should be to prohibit discrimination on the ground of association with another person not of the same racial group and, to this end, Clause 4(1)(a) would suffice.</p> <p>ALA6's advice that Clause 5 had no equivalent in UK RRA and was not necessary. It served the purpose of a restriction on Clause 4.</p> <p>Ms LI's view that the definition of "near relative" was self-contradictory as it included "brother or sister...(by affinity)" but excluded parents-in-law.</p> <p>The Administration's response that the definition of "near relative" was in line with the definitions in existing anti-discrimination ordinances.</p>	<p>Admin to review the definition of "near relative" and to consider deleting Clause 5 (para. 7(c) and 9 of minutes)</p>
013347 - 014241	<p>Chairman ALA6 Admin Dr YEUNG Sum</p>	<p><i>Clause 6</i></p> <p>ALA6's advice that there was no reference to "the third person" in the relevant provision under the UK RRA and his concern that such inclusion would expand the scope of the provision.</p> <p>The Administration's explanation</p>	

Time marker	Speaker	Subject	Action required
		<p>that -</p> <ul style="list-style-type: none"> (i) the drafting of the provision was modeled on relevant provisions of the existing anti-discrimination legislation; (ii) the provision sought to provide better protection to third parties; and (iii) Clause 6(1)(a) contained the phrase "by reason that" and would only apply when it could be proved that the less favourable treatment was given "by reason that" the circumstances described in Clause 6(1)(a)(i) to (iv) had occurred. 	
014242 - 015410	<p>Chairman ALA6 Admin Dr YEUNG Sum</p>	<p><i>Clause 7</i></p> <p>ALA6's advice on the differences between Clause 7 and relevant provision in the UK RRA that in the latter -</p> <ul style="list-style-type: none"> (i) there was no reference to "near relative"; (ii) the expression "unwanted conduct" was used instead of "unwelcome conduct"; and (iii) there was an reference to "engages in unwanted conduct which had the purpose or effect of violating another person's dignity". <p>The Administration's response that "engages in unwelcome conduct.... would have anticipated that the other person would be offended" could have the similar effect of violating another person's dignity.</p> <p>ALA6's concern that the express reference to the test of a reasonable person would exclude the perception of the victim from being considered by the court.</p> <p>The Administration's explanation that -</p> <ul style="list-style-type: none"> (i) the drafting of the provision was modeled on relevant provisions of the existing 	<p>Admin to review Clause 7(1) to address concerns raised by members and ALA6 (para. 10 of minutes)</p>

Time marker	Speaker	Subject	Action required
		<p>anti-discrimination legislation;</p> <p>(ii) the provision as currently drafted sought to provide for an objective basis for determining whether any circumstance would constitute racial harassment; and</p> <p>(iii) the feeling of the victim could be shared by a reasonable person, e.g. it might be common knowledge that certain behaviour was offensive to a particular racial group or the victim might have complained that similar incidents in the past were offensive.</p>	
015411 - 015523	Chairman Ms Emily LAU	Date of next meeting.	

Council Business Division 2
Legislative Council Secretariat
18 January 2008