

立法會
Legislative Council

LC Paper No. CB(2)1115/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/3/98

**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the nineteenth meeting
held on Tuesday, 14 September 1999 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Cyd HO Sau-lan (Chairman)
Hon Michael HO Mun-ka
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung
Hon Ambrose LAU Hon-chuen, JP
Hon LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP

Public Officers Attending : Mr Gregory LEUNG Wing-lup, JP
Deputy Secretary for Health and Welfare 1

Miss Kinnie WONG
Acting Principal Assistant Secretary for Health and Welfare (Medical) 3

Mr Rick CHAN
Assistant Secretary for Health and Welfare (Medical) 6

Dr Thomas CHUNG Wai-hung
Principal Medical and Health Officer (3)

Mr G A FOX
Senior Assistant Law Draftsman

Ms Carman CHU
Senior Government Counsel

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Joanne MAK
Senior Assistant Secretary (2) 4

I. Meeting with the Administration to continue clause-by-clause examination of the Bill

Members continued the clause-by-clause examination of the Human Reproductive Technology Bill (the Bill) from clause 33.

Follow-up to last meeting

2. In response to members' requests raised at the previous meeting, Principal Medical and Health Officer (3) (PMHO3) said he had checked with the Hong Kong Red Cross Blood Transfusion Service regarding its policy on the disclosure of information for cases involving sensitive information. (For example, cases in which donors' blood was found HIV positive). He said the policy of Hong Kong Red Cross Blood Transfusion Service was that it would inform the concerned donors of the outcome of their blood tests.

3. In reply to Dr LEONG Che-hung's question, Senior Assistant Law Draftsman (SALD) confirmed that the Bill had been considered acceptable to the Privacy Commissioner.

Clause 34 - Power of authorized persons to enter premises to which licence relates

4. Dr LEONG Che-hung was concerned about the possibility that damages might be caused to the embryo or gametes under the seizure of an authorized person in the context of clause 34(1)(a). Deputy Secretary for Health and Welfare (1) (DSHW1) explained that the Administration had to strike a balance having regard to

Action

the need for the embryo or gametes to be used as evidence and the possible risk pointed out by Dr LEONG. DSHW1 highlighted out that clause 34(1)(a) stipulated that the authorized person could take possession of embryo or gametes found inside any premises only if he had reasonable grounds to believe that they were required for being used as evidence in any proceedings for an offence against this Ordinance. Dr LEONG Che-hung considered that the Administration should ensure that the authorized person in this context would exercise due care in handling the embryo or gametes under his seizure. He suggested the Administration to make provisions in the Bill to bind the authorized persons to observe this requirement. The Chairman supported Dr LEONG's suggestion. DSHW1 agreed to re-consider the drafting of this clause having regard to members' views.

Clause 35 - Power of authorized persons to enter premises

5. Dr LEONG Che-hung asked in the case that an embryo/gametes was seized by the police as evidence, whether the commissioning couple who were waiting urgently to use the embryo/gametes could apply to take it back even though the relevant court proceedings had not yet completed. Mr Michael HO Mun-ka took the view that the embryo or gametes seized should not be frozen for an indefinite period of time as he believed that there should be other substitutes available to be used as evidence in the relevant proceedings. Dr LEONG Che-hung pointed out that the Administration should take into consideration the needs of the commissioning couple as the woman of the couple might not be able to conceive if the RT procedure was deferred. DSHW1 agreed to seek advice from the Department of Justice on the relevant criminal procedure rules relating to the handling of evidence for members' reference. The Chairman directed that this point should be discussed again at a future meeting.

Clause 37 - Consent to prosecution

6. SALD advised that this provision was quite common in other ordinances. He explained that if a client of a RT centre wanted to initiate civil prosecution against the centre for any malpractice, he should report the case to the Council on Human Reproductive Technology (the Council) and/or the police which would conduct investigation. The findings of the investigation would be submitted to the Department of Justice, which would study the merits of the case and decide whether proceedings should be instituted against the concerned licensee. On the other hand, if the Council and the police, for whatever reasons, did not carry out any investigation, the client could not initiate prosecutions against the RT centre as restricted by this clause. Assistant Legal Adviser 4 (ALA4) advised that this provision was not made in all ordinances. The effect of having this provision was that in the future the Department of Justice would be required to decide whether proceedings would be instituted for each case having regard to the merits of the case. If this clause were removed, the enforcement department itself could institute

Action

Bills
Committee proceedings against the owner of the RT centre involved in accordance with this Ordinance. Members in general expressed reservations about this clause and considered that it should be discussed again later.

Clause 39 - Power of Council to specify forms

7. DSHW1 said that samples of all the forms would be given in the code of practice of the Council.

Clause 41 - Regulations - fees

8. DSHW1 said that the regulations to be made to prescribe the fees to be paid to the Council would be set out under the subsidiary legislation.

Clause 42 - Regulations - general

9. Referring to clause 42(2)(e), DSHW1 said that the circumstances, in which a RT procedure might continue to be provided to persons who had previously been parties to a marriage, would be further specified under the subsidiary legislation. Members suggested that it should also be specified in the subsidiary legislation that a licensee would be required to display his licence at a prominent place at his RT centre. DSHW1 agreed to consider the suggestion.

Adm

10. In response to Dr LEONG Che-hung, DSHW1 said that the criteria governing the Council in making the exemptions from the regulations as mentioned in clause 42(5) would be set out in the subsidiary legislation.

11. Referring to clause 42(5)(b), the Chairman considered that the discretionary power vested with the Secretary for Health and Welfare would be made too large by this clause. SALD explained that the same sort of arrangements had been made in many other ordinances and he agreed to provide examples to members at the next meeting. He explained that the proposed arrangement was necessary in order to cater for different situations of individual cases.

Adm

12. Referring to clause 42(6), Dr LEONG Che-hung asked whether the Council or the enforcement department could order shutting down the premise in the case of a continuing offence. DSHW1 explained that actually additional penalties could be imposed such as revocation of licence other than a daily penalty in the case of a continuing offence. He pointed out that in such a case if the licence was really revoked, an order for closure of the premise would then be made. However, Dr LEONG was concerned whether it would take a long time before the Council decided to revoke a licence and during the interim, the licensee concerned would be subject to daily penalty only which would not have much deterrent effect on him. He suggested that the Bills Committee should re-consider this point later.

Bills
Committee

Action

Action

Clause 43 - Amendment of Schedule 1

13. PMHO3 reported that pursuant to members' request, the Administration was preparing a list of sex-linked genetic diseases for inclusion into the subsidiary legislation. However, he stressed that the list would in no way be exhaustive.

Schedule 1 - Part 2 - Committees and their members

14. Dr LEONG Che-hung enquired about what kind of people the Administration intended to appoint or recruit as members of the three committees to be established under the Council, namely the Inspection Committee, Ethics Committee and Investigation Committee. In reply, SALD pointed out that as specified under clause 5(3), it would be up to the Council to decide the number of members of these committees and who to be appointed. DSHW1 added that local experts might be appointed as consultants to assist the committees in performing their functions. Overseas experts would also be considered who could help train up local experts. He agreed to provide more details to the Bills Committee on the appointment matters when they were available. In response to Miss CHAN Yuen-han's request for more details on the operation of these committees, DSHW1 agreed to provide some preliminary information of the Administration's plan in this regard.

Adm

Adm

II. Date of Next Meeting

15. Members agreed that the next meeting would be held on 22 September 1999 at 10:45 am.

16. The meeting ended at 10:30 am.

Legislative Council Secretariat

14 February 2000