

立法會
Legislative Council

LC Paper No. CB(2)2164/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/3/98

**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the 25th meeting
held on Monday, 17 January 2000 at 8:30 am
in Conference Room B 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 LAW Chi-kwong, JP

Members Absent : Hon Ambrose LAU Hon-chuen, JP
Hon YEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP

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

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

Miss Frances HUI
Government Counsel

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

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Ms Joanne MAK
Senior Assistant Secretary (2) 4

I. Meeting with the Administration
(LC Paper No. CB(2)866/99-00)

As invited by the Chairman, Deputy Secretary for Health and Welfare 1 (DSHW1) briefed members on the revised draft Committee Stage amendments (CSAs) to be moved by the Administration. He highlighted that the long title and clauses 13, 21, 27, 30 and 31 had been suitably amended pursuant to members' requests raised at previous meetings.

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2. Members considered that the revised draft CSAs were in order except for the CSA to clause 13(5) which, as pointed out by Mr LAW Chi-kwong, would lead to a problem that persons who were not the parties to a marriage would be forbidden from donating sperms. DSHW1 said as he agreed that the meaning of "reproductive technology procedure" should not exclude donations of sperms, the Administration would re-consider the drafting of the proposed CSA to address the problem pointed out by Mr LAW. The revised CSA would be provided to the Bills Committee as soon as possible.

3. Dr LEONG Che-hung was concerned whether the court, notwithstanding the CSA to clause 31, could still order the Council on Human Reproductive Technology to disclose the identity of a donor in the case that the court was satisfied that it was compelled to do so in the interests of justice. In response, Senior Assistant Law Draftsman invited members' attention to the Administration's proposed CSA to clause 32(1) which had specified that disclosure of such information by the Council would be forbidden in all circumstances.

Follow-up to previous meetings

4. Members noted that during the clause-by-clause examination of the Bill conducted at previous meetings, some members had expressed concerns about the

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following provisions and considered that they should be further discussed -

- (a) Clause 35(2)(b)(i) and (ii) - Power of authorized persons to enter premises;
- (b) Clause 37 - Consent to prosecution; and
- (c) Clause 42(7) - Regulations-general.

Clause 35(2)(b)(i) and (ii) - Power of authorized persons to enter premises

5. DSHW1 said that pursuant to members' request, the Administration had consulted the Department of Justice (DJ) which had advised that the commissioning couple could apply to the court to seek permission for them to retrieve gametes or embryos stored in a reproductive technology centre which was under investigation. He said that in respect of whether photographs of gametes and embryos could be treated as legal evidence, DJ had advised that this would depend on the circumstances of the cases in question. In response to the Chairman's question, Principal Medical and Health Officer 3 (PMHO3) pointed out that the embryo (or gametes) seized by the police as evidence could be frozen to stop it (them) from growth.

(Post-meeting note : the advice sought from DJ was circulated to members under LC Paper No. CB(2)1070/99-00 dated 14 February 2000.)

Clause 37 - Consent to prosecution

6. Senior Assistant Legal Adviser advised that the effect of this provision was to require that all decisions to prosecute would be made by the Secretary for Justice. In practice DJ would study the findings of the investigation conducted by the police / the Council on Human Reproductive Technology for each case of alleged malpractice. DJ would then decide whether proceedings should be instituted for each case having regard to the merits of the case. Members had no question on the proposed arrangement.

Clause 42(7) - Regulations-general

7. Dr LEONG Che-hung was concerned that, in the case of a continuing offence as mentioned in clause 42(6), whether the imposition of a daily penalty on the licensee concerned would have sufficient deterrent effect on him/her. In response, DSHW1 advised that the imposition of a daily penalty only applied to cases where the licensee concerned had contravened regulations made by the Council on Human Reproductive Technology. He explained that for serious offences committed such as those constituting a breach of the licensing requirements, the licensee concerned would be deemed to have contravened clause 11 and would be liable to the more severe

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penalties as set out under clause 36.

The way forward

- Adm 8. Members agreed that if the revised draft CSA to clause 13(5) to be provided by the Administration was in order, the Chairman would make a verbal report to the House Committee on 21 January 2000 to release a slot for activating the next Bills Committee on the waiting list. The Administration would notify the date for resumption of the Second Reading debate on the Bill in due course.
- Adm 9. At the request of members, the Administration agreed to provide a marked-up copy of the Bill for members' reference.
10. The meeting ended at 10:10 am.

Legislative Council Secretariat

30 May 2000