

立法會
Legislative Council

LC Paper No. CB(2)1117/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/3/98

**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the twenty-first meeting
held on Wednesday, 22 December 1999 at 10:45 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 YEUNG Yiu-chung
Hon Ambrose LAU Hon-chuen, JP
Hon LAW Chi-kwong, JP

Member Absent : Dr Hon TANG Siu-tong, JP

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

Mr Eddie POON
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)

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Mr G A FOX
Senior Assistant Law Draftsman

Miss Frances HUI
Government Counsel

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

Referring to the Committee Stage amendments (CSAs) drafted by the Administration (issued under LC Papers Nos. CB(2)684/99-00(01) - (03)), the Chairman said that since there had been a lot of discussions on the issues involved at previous meetings, she suggested that the meeting should focus on the drafting aspect of the CSAs presented at this meeting. Members agreed.

CSAs to be moved by Miss CHAN Yuen-han
(LC Paper No. CB(2)684/99-00(03))

2. Miss CHAN Yuen-han thanked the Administration and Senior Assistant Legal Adviser (SALA) for their assistance rendered in drafting the CSAs to be moved by her. She considered that it was not a suitable timing at this stage to pass a law to regulate surrogacy arrangements when surrogacy was still not much known by the society nor had it been widely discussed by members of the public. Furthermore, she considered that there would be enforcement problems to regulate surrogacy arrangements. She therefore proposed to delete from the Bill all the provisions related to the regulation of surrogacy arrangements. She suggested that the Administration should promote general awareness of surrogacy and its implications first before introducing a new bill to regulate surrogacy arrangements.

3. In response to Mr Michael HO Mun-ka's question, SALA advised that there was no existing legislation to regulate surrogacy arrangements and part of the provisions of

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the Bill aimed at prohibiting commercialization of surrogacy arrangements. He pointed out that if the CSAs to be moved by Miss CHAN Yuen-han were passed, the effect was that the status quo was maintained, and surrogacy arrangements of any kind would not be subject to any regulation.

4. In response to members' questions, SALA advised that the purpose of clause 14 was to prohibit any commercial dealings in "prescribed substance", which was defined in clause 14(3) as meaning "a gamete or embryo; or fetal ovarian, or fetal testicular, tissues." Principal Medical and Health Officer (3) (PMHO(3)) added that the meaning of "embryo" in this Bill was also defined in clause 2(7). Mr LAW Chi-kwong considered that if the CSAs to be moved by Miss CHAN Yuen-han got through, it would be more necessary for the term "prescribed substance" to include meaning "a placenta" to prevent commercialization of reproductive technology (RT) procedures. He suggested to add clause 14(3)(c) to include "a placenta". To facilitate members' deliberations, Senior Assistant Law Draftsman (SALD) agreed to look at the Surrogacy Arrangements Act of the United Kingdom (UK) to see whether RT procedures could be provided on a commercial basis for surrogacy arrangements in the UK.

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CSAs to be moved by Dr LEONG Che-hung
(LC Paper No. CB(2) 684/99-00 (02))

5. SALD said that he had made reference to the UK legislation and proposed to add "nominal" before "licensee" in the Bill to specifically describe a licensee who was not concurrently the "person responsible". He said that since the person responsible and the licensee could be two separate persons, it was necessary to introduce the term "nominal licensee" to distinguish that they were two different persons as opposed to the situation when they were the same person. SALA pointed out that with this amendment made, the term "licensee" in the Bill would be replaced by "nominal licensee".

6. The Administration agreed with SALA that "nominal" should be added before the term "licensee" in clause 31(12)(a). However, since the Administration would move a CSA to amend the entire clause 31, SALD would take it into consideration when preparing the CSAs for Dr LEONG.

7. Dr LEONG Che-hung thanked the Administration and SALA for drafting the CSAs for him.

CSAs to be moved by the Administration
(LC Paper No. CB(2) 684/99-00 (01))

8. Deputy Secretary for Health and Welfare 1 (DSHW(1)) informed members that the CSAs introduced by the Administration did not include any amendment to specify

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that RT procedures would be provided to infertile couples only. He explained that this was due to difficulty in defining "infertility" and the need to make exceptions for some fertile couples (such as for the avoidance of a serious sex-linked genetic disease). He said that although members had agreed that, to resolve the problem of defining "infertility", medical certifications should be required in some cases to confirm that a couple had genuine need for the service, there would be practical problems for doctors to do the assessment and provide such certifications. He pointed out that it would be difficult for a doctor to judge whether a couple really had genuine need for the service especially if psychological factors were involved in the case. DSHW1 also pointed out that it would not be a practical approach to list in the Bill all the circumstances under which exceptions could be allowed for fertile couples to use RT procedures. The Administration considered that it would be more appropriate to reflect the principle that RT procedure should be provided to infertile couples in the Code of Practice (COP) and the licensing conditions. It also suggested that any fertile couples who had genuine need for the use of RT procedures could apply to the future Council on Human Reproductive Technology. The Administration considered that such an arrangement would be more flexible and would also be able to cater for the various circumstances under which exceptions would have to be allowed.

9. Dr LEONG Che-hung agreed that it would be difficult to state the principle in the law and many exceptions would have to be made for fertile couples to use RT procedures. However, he considered that it was necessary to state in an ordinance its legislative intent and, in this Ordinance, clarity of its legislative intent could help prevent abuses of RT. In response to DSHW1's suggestion that the Administration could confirm the principle in its speech on the resumption of the Second Reading debate, Dr LEONG considered that it was inadequate and could not serve the purpose. He took the view that if the principle that RT procedure should only be provided to infertile couples was merely laid down in the COP, doctors would still face the difficulty of judgment as mentioned by DSHW1. Dr LEONG took the view that it would be in the interests of doctors if the principle was clearly laid down in the law rather than in the COP. As he might consider moving an amendment to the long title of the Bill, he requested the Administration to provide him with the relevant CSAs which stated this principle, if they had ever been drafted, for his reference. DSHW1 agreed.

(Post-meeting note : information provided by the Administration pursuant to Dr LEONG Che-hung's request was circulated to members under LC Paper No. CB(2) 724/99-00(01) dated 28 December 1999.)

10. Mr Michael HO Mun-ka considered that there was no need to rigidly stipulate the principle in law and supported the Administration's proposal. He said he was not worried that there would be serious abuses of the use of RT procedures. He considered that this matter involved a moral judgment and he felt that members actually held different views on it. He further considered that the Bills Committee

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had not reached a consensus as to whether the legislative intent of this Ordinance really included restricting the provision of RT procedures to infertile couples only.

11. Members agreed to discuss the matter again after receiving the draft amendment to the long title to be provided by Dr LEONG Che-hung.

12. Members noted the revised definition of "surrogate mother" and had no comments.

13. Members agreed to the proposed deletion of clause 7(2). They noted that clause 7(8) had already mentioned that the welfare of the child born in consequence of RT procedures was of paramount importance and this was the fundamental principle in the provision of RT procedures.

Date of next meeting

14. Members agreed to meet on 23 December 1999 at 8:30 am to continue the discussion.

15. The meeting ended at 12:45 pm.

Legislative Council Secretariat

16 February 2000