

立法會
Legislative Council

LC Paper No. CB(2)2161/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/3/98

**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the 22nd meeting
on Thursday, 23 December 1999 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 YEUNG Yiu-chung
Dr Hon TANG Siu-tong, JP

Members Absent : Hon Ambrose LAU Hon-chuen, JP
Hon LAW Chi-kwong, 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)

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

Proposed amendments to the long title of the Bill

(LC Papers Nos. CB(2)724/99-00(01) - (02))

Members noted that two proposed amendments to the long title of the Bill had been separately prepared by the Administration and Dr LEONG Che-hung and were tabled at the meeting. Dr LEONG pointed out that both amendments sought to confine the provision of human reproductive technology (RT) procedures to infertile couples. However, the Administration's version proposed that the restriction of RT procedures to infertile couples was "subject to any express provision to the contrary". Dr LEONG considered that in so drafting, the Administration would need to spell out in the Bill all the circumstances under which exceptions would be allowed for fertile couples to use RT procedures. As it would be virtually infeasible to list all the circumstances, he had put forward an alternative version proposing "to restrict the provision of RT procedures to infertile couples subject to any exemptions by the Council on Human Reproductive Technology." He explained that there was no material difference between his proposed amendment and the Administration's except that his amendment suggested putting the responsibility of controlling the use of RT procedures by married couples who were not medically certified to be infertile on the Council on Human Reproductive Technology (the Council).

2. Senior Assistant Law Draftsman (SALD) said that he would take into consideration the amendment proposed by Dr LEONG and prepare a revised version as soon as possible for the consideration by the Bills Committee. Senior Assistant Legal Adviser (SALA) pointed out that the Administration's proposed amendment,

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which was to expressly lay down in law the circumstances under which exceptions were to be made, would facilitate enforcement of the relevant provisions and enable the public to know why such exemptions were permitted. Dr LEONG said he agreed with SALA but he anticipated that there would be much difficulty in listing in the Bill all the circumstances for which exemptions would be allowed. He also considered that his proposal would allow the Council more flexibility. SALD then suggested amending the long title of the Bill to stipulate that RT procedures could only be provided to couples who were not medically certified to be infertile in accordance with the Council's code of practice. Members agreed.

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

Clause 10 - Issue of certificates to authorized persons

3. Members agreed to add the proposed new clause 10(A) to the Bill to protect members of the Council or designated public officers, acting in good faith, from being personally liable for any default made in the course of performing their duties as imposed by the Council.

Clause 13 - Prohibitions in connection with embryos, against sex selection and against the provision of RT procedures to unmarried persons

4. In examining the draft CSAs to sub-clause 13(3)(a), members noted that a list of sex-linked genetic diseases was specified in Schedule 1A which was, however, by no means exhaustive. Deputy Secretary for Health and Welfare 1 (DSHW1) said that any amendments to Schedule 1A would be subject to negative vetting. Members noted that the proposed CSAs to sub-clauses 13(3)(a) and (b) sought to stipulate that sex selection was allowed only in cases where -

- (a) the purpose of such selection was to avoid a sex-linked genetic disease specified in Schedule 1A which might prejudice the health of the embryo; and
- (b) not less than two registered medical practitioners each stated in writing that such selection was for the above purpose.

Clause 27 - Temporary suspension of licence

5. Members were concerned about the arrangements for the preservation of stored embryos in the event that the licence of the clinic concerned was suspended or revoked by the Council. To address members' concerns, SALD advised that the proposed CSAs to sub-clause 27(1) sought to provide that the notice served to the clinic under this section might be subject to such conditions, if any, as the Council

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thought fit. The Council could stipulate in these conditions that the licensee had to make the necessary arrangements in winding up his business, which might include informing the owners of the stored embryos of the suspension and asking them to make arrangements for storage of their embryos at other RT clinics. If the licensee failed to make the required arrangements as specified in the conditions, he would be considered to have committed an offence under the proposed CSA to clause 36(1) and could be criminally prosecuted. At the same time, the licence might also be revoked under clause 25 whether or not any conditions specified in the notice had been contravened. SALD further suggested to define "conditions" in the Bill as "reasonable conditions in all the circumstances of the case".

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Clause 30 - Register A

6. SALD advised that the proposed CSA to clause 30 required the Council to keep information in a register (Register A) where RT procedures involved donated gametes or donated embryos, and regulated the circumstances under which information might be disclosed. In other words, Register A would only keep information relating to cases where the genetic parents of a child born in consequence of a RT procedure were not the parties to a marriage. In response to Dr LEONG Che-hung, SALD advised that Register A kept by the Council would contain information of donors in order to prevent accidental incest.

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7. In response to members' request, the Administration would move a CSA to clause 30(6) to delete "50" and substitute "80".

Clause 31 - Secrecy

8. DSHW1 invited members' attention to the proposed CSAs to clauses 31(3)(a) and (b) which had set out the policy decisions on the disclosure of identifiable information relating to the provision of a RT procedure. The Administration's proposal was that disclosure of a donor's identity in special circumstances should be allowed only if the donor, at the time of donation, had signed a document confirming that he accepted this arrangement. However, if the donor had not signed the document at the time of donation, identifiable information regarding the donor would not be released, except in circumstances spelt out in clause 31(3)(b). DSHW1 said that if members so wished, the Administration would amend clause 31(3)(b) by deleting "a person" and substituting "the Council".

9. Members expressed reservation about clause 31(3)(b) which provided that, even without the consent of the donor, disclosure of his identity could still be made if the Council was satisfied that the disclosure was necessary to save or significantly extend the life of another individual. In response to a member's question, DSHW1 said that in such a case, the Council did not need to apply for permission from court to make the disclosure.

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10. Dr LEONG Che-hung expressed strong reservation about the proposed arrangement as it would be unfair to a donor who had already indicated at the time of donation that he did not want to have his identity revealed or to be contacted in the future. He considered that it was also unfair to place a moral burden on the donor as well as on the Council in the special circumstances as envisaged. Moreover, Dr LEONG was of the view that the proposed arrangements would deter potential donors from making donations. He remained of the view that if a donor did not give consent to be approached or have his identity revealed in the future, disclosure of his identity should not be allowed in any circumstances. In response, DSHW1 explained that the law had already restricted that the Council could only disclose the donor's identity for one reason, i.e. to save or significantly extend the life of another individual. He was of the view that the Council was not compelled to make a moral judgment in the circumstances.

11. Dr LEONG Che-hung further argued that Register A kept by the Council should not contain identifiable information of donors who did not give consent to disclose their identities. This was to avoid placing a moral burden on the Council to disclose the information in the circumstances spelt out in clause 31(3)(b). He pointed out that in the case of artificial insemination, such information would be valueless since most women who became pregnant by using donated sperms would not go back to the RT clinic to report the end results. In response, SALD explained that the proposed arrangement was necessary to prevent accidental incest problems. In response to Dr LEONG's question, SALD said that there was not a mechanism for a donor to withdraw consent given by him, at the time of donation, to disclose his identity in the prescribed special circumstances.

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12. Miss CHAN Yuen-han proposed that in the circumstances described in clause 31(3)(b), the Council should first seek permission from the donor concerned for disclosure of his identity. The Chairman requested the Administration to prepare two separate versions of draft CSAs, based on the suggestions of Dr LEONG and Miss CHAN, for the consideration by the Bills Committee. Members would further decide on the matter on receipt of the draft CSAs.

Follow-up to last meeting

13. SALD supplemented that according to the UK law, surrogacy on a commercial basis was unlawful whether it involved RT procedures or not. He explained that as the Bill sought to regulate surrogacy involving RT procedures and if the Bill was passed, such surrogacy carried out on a commercial basis would be unlawful. However, surrogacy without involving RT and carried out on a commercial basis would still be lawful.

Date of further meetings

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14. Members agreed to meet on 24 and 30 December 1999 at 8:30 am to continue with the discussion.

15. The meeting ended at 10:45 am.

Legislative Council Secretariat

30 May 2000