

立法會
Legislative Council

LC Paper No. CB(2)433/98-99

(These minutes have been
seen by the Administration)

Ref : CB2/BC/3/98

**Bills Committee on
Human Reproductive Technology Bill**

**Minutes of the sixteenth meeting
held on Thursday, 27 May 1999 at 4:30 pm
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 Ambrose LAU Hon-chuen, JP
Dr Hon TANG Siu-tong, JP

Members Absent : Hon YEUNG Yiu-chung
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 Clement LAU Chung-kin
Assistant Secretary for Health and Welfare (Medical) 6

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

Mr Geoffrey 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

Action

I. Confirmation of minutes of meeting held on 23 February 1999
(LC Paper No. CB(2) 2098/98-99)

The minutes were confirmed.

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

2. The Bills Committee continued with the scrutiny of the Human Reproductive Technology Bill (the Bill) from clause 13. Members' concerns/queries raised at the meeting were out below.

Prohibitions in connection with embryos, against sex selection and against the provision of reproductive technology procedures to unmarried persons

Clause 13(5)

3. Referring to clause 13(5) which stipulated that a reproductive technology (RT) procedure should only be administered to persons who were parties to the marriage except in the circumstances specified in regulations made under clause 42(2)(e), Dr LEONG Che-hung enquired whether the circumstance where such a party had died would be specified under clause 42(2)(e).

4. Principal Medical and Health officer (PMHO) replied that the Code of Practice (COP) stipulated that the stored sperm of the deceased husband and the stored embryos of the commissioning couple could not be used by the surviving spouse to bring about a posthumous child. In his view, clause 42(2)(e) was meant for handling borderline cases such as where a husband had suddenly died while the wife was close

Action

to being successful conceiving a child from a RT procedure. PMHO further said that clause 42(2)(e) might be used to allow a woman whose marriage had ended or whose husband had died to become a surrogate mother.

Prohibition against surrogacy arrangements on commercial basis, etc.

5. In reply to the Chairman's enquiry as to why "etc." was used in the heading of clause 15, Senior Assistant Law Draftsman (SALD) said that this was to cover advertisement for surrogacy arrangement even where no money was involved.

6. Dr LEONG Che-hung said that as clause 14 and clause 15 were both concerned with prohibition against commercial dealings, he was of the view that they could be combined into one single clause. SALD responded that it was a drafting matter and he could do so if members so wished. He explained that the reason for drafting two separate clauses was because clause 14 dealt with human RT which was based on some part of the Human Organ Transplant Ordinance (HOTO), whereas clause 15 dealt with surrogacy arrangement which was based on some part of the HOTO and also the Surrogacy Arrangements Act 1985 of the United Kingdom.

7. In reply to Senior Assistant Legal Adviser (SALA)'s enquiry, DSHW said that, in his view, a publisher of an advertisement for a surrogate mother would also contravene clause 15(2).

Clause 15(1)(d)

8. Mr Ambrose LAU was of the view that extra caution should be taken before including in the legislation any provision which carried a criminal sanction. Referring to clause 15(1)(d) which stipulated that a person might be considered to have committed a criminal offence if it was proved that one "ought reasonably to know" about certain commercial dealings in a surrogacy arrangement, Mr LAU enquired how such stipulation would be used in practice.

9. SALD said that such stipulation was commonly used in other legislation to bring prosecution against a person in whose position ought to have known that a certain act had contravened the law. Deputy Secretary for Health and Welfare (DSHW) supplemented that the inclusion of the term "ought reasonably to know" was to make it easier for the prosecutor to bring prosecution against a person, having regard to the fact this type of prosecution was invariably based on circumstantial evidence. SALA shared DSHW's view.

10. The Chairman suggested that the Administration should provide examples in other legislation which stipulated that a person might be considered to have committed a criminal offence if it was proved that one "ought reasonably to know" about certain commercial dealings in a surrogacy arrangement. Members agreed. SALD

Action

Adm undertook to provide the information.

Clause 15(2)

11. Dr LEONG Che-hung opined that it would be difficult for the requesting party for a surrogate mother not to resort to advertisement to invite persons to be a surrogate mother.

12. SALD said that the reason why advertisement for surrogate mother was prohibited was because it would be inconceivable that a person would be willing to be a surrogate mother with no money involved. He further said that the Administration's thinking was that surrogacy arrangement should be a private matter whereby the requesting party would more likely to invite a close friend or relative to be a surrogate mother.

13. Dr LEONG further enquired whether a person who privately asked his/her friend to pass around his/her request for a surrogate mother would be caught by the legislation that no advertisement should be used to invite persons to be a surrogate mother.

14. Mr Ambrose LAU said that the act depicted by Dr LEONG should not fall within the meaning of advertisement. SALD concurred with Mr LAU, and further said that the word "published" used in clause 15(2) should be taken to mean publishing in the newspaper, on radio, or television and the word "distributed" should be taken to mean, say, going around putting a circular in mailboxes.

Determination of application

Clause 21(2)(a)(i) and 21(2)(f)

15. Dr LEONG Che-hung reiterated his view expressed at previous meeting that the person responsible and the licensee could be the same person, and would move a Committee Stage amendment (CSA) to the Bill to this effect. To avoid any consequential amendments which would arise if the CSA as suggested by Dr LEONG was passed by the Legislative Council, DSHW agreed to review the drafting of clause 21(2)(a)(i) and 21(2)(f) so that the word "applicant" could be applied to both conditions where the person responsible and the licensee were the same person or two different persons.

Duty of person responsible and licensee

16. In reply to Mr Ambrose LAU, SALD said that any breach of clauses 21 and 22 would not be a criminal offence, although it might give rise to revocation of licence.

Action

Clause 22(1)(e)

17. The Chairman enquired whether the licence would indicate the types of services which could be provided by the licensee. PAS(H&W) replied in the positive, and referred members to clause 42(2)(a) which stipulated that the Council on Human Reproductive Technology (the Council) might make regulation to require certain conditions to be attached to the licence.

Clause 22(2) and 22(3)

Adm

18. DSHW agreed to review the drafting of clause 22(2) and 22(3) along the lines mentioned in paragraph 16 above.

Revocation and variation of licence

Clause 25

19. Dr LEONG Che-hung enquired what compensation the person responsible would receive if the licence was revoked by the Council.

20. SALD replied that that was it would be a matter between the person responsible and the licensee. He further said that given the licensee depended on the expertise of the person responsible to run the business, the person responsible should be in a very strong bargaining position to include in his/her employment contract a compensation clause if the licence was revoked.

Temporary suspension of licence

Clause 27

21. The Chairman and Dr LEONG Che-hung enquired about the arrangement for the preservation of the stored embryos in the event that the licence was suspended or revoked by the Council.

22. DSHW said that certain condition could be stated in the licence stipulating the arrangement for the preservation of the stored embryos in the event that the licence was suspended or revoked by the Council. However, if the licensee failed to comply with such condition, it would be a matter for the commissioning couple to sue the licensee through civil proceedings.

23. Dr LEONG and Miss CHAN Yuen-han said that given that embryos were lives

Action

and could not be revived once they had deteriorated, it would be meaningless for the commissioning couple to seek legal recourse afterward.

24. SALD suggested to empower the Council to make regulations requiring the licensee to make arrangements for the preservation of the stored gametes and embryos in the event that the licence was suspended or revoked by the Council.

Adm

25. Members expressed support for SALD's suggestion. DSHW undertook to consider making provisions in subsidiary legislation to specify what the licensee should do in relation to the preservation of embryos.

Display of licence

Clause 28

26. Dr LEONG Che-hung said that in view of the fact that medical practitioners were prohibited from advertising their services, he expressed concern that the person responsible would be accused of advertising if his/her name was stated in the licence.

27. DSHW said that the Bill was silent on whether the licensees could or could not advertise their services to the public, in order to give flexibility to the Council to decide whether regulation should be made to prohibit the licensees from advertising their services. However, he was of the view that the person responsible should not be accused of self-advertisement as it was the services being offered by the licensee which were being advertised. Moreover, in his view, consumers should have the right to know who the person responsible was.

Adm

28. At the request of members, DSHW undertook to explore ways to resolve the problem raised by Dr LEONG.

29. Members adjourned the scrutiny of the Bill at clause 28.

III. Date of Next Meeting

30. Members agreed that the Bills Committee would next meet on 28 May 1999 at 8:30 am.

31. The meeting ended at 6:25 pm.

Action

Legislative Council Secretariat
19 November 1999