

立法會
Legislative Council

LC Paper No. CB(2)1411/99-00
(These minutes have been
seen by the Administration)

Ref : CB2/BC/17/98

Legislative Council
Bills Committee on Elections (Corrupt and Illegal Conduct) Bill

Minutes of the 18th meeting
held on Tuesday, 19 October 1999 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Hon Ronald ARCULLI, JP (Chairman)
Hon Cyd HO Sau-lan
Hon NG Leung-sing
Hon Mrs Selina CHOW, JP
Hon Gary CHENG Kai-nam, JP
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP
Dr Hon TANG Siu-tong, JP
Hon CHOY So-yuk

Members Absent : Hon LEE Wing-tat
Hon CHAN Yuen-han
Hon Andrew WONG Wang-fat, JP
Hon Emily LAU Wai-hing, JP

Public Officers Attending : Mr Robin IP
Deputy Secretary for Constitutional Affairs

Mr Bassanio SO
Principal Assistant Secretary for Constitutional Affairs

Mr James O'NEIL
Deputy Solicitor General (Constitutional)

Mr Michael LAM
Government Counsel

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Meeting with the Administration

The Administration's response to concerns raised at the meetings on 4 and 5 October 1999
(LC Paper No. CB(2)84/99-00(01))

Clause 31

Following up the discussion at the last meeting, the Administration advised that the policy intent of clause 31 was that a person could apply to the Court for a relief order subject to the grounds specified in the clause, even when a prosecution for an offence under the Bill had been or was about to be brought against him. The Court could hear the application and grant the order if it saw fit. However, the relief would not be available if there was already a conviction of the person for an offence. Where a court order under clause 31(1) was granted, there would be full relief from the consequences of certain illegal conduct at an election, including the penalties and disqualifications under an electoral law that would otherwise arise from a conviction. The Administration added that there had been a precedent case where the application to the Court for relief was made after the commencement of criminal proceedings against the applicant. As a matter of practice, the Court would first deal with the application for relief, and the criminal proceedings would be stayed pending the hearing of the relief application.

2. Mrs Selina CHOW was concerned whether the relief available under clause 31 would provide a "backdoor escape" for people who were the subject of prosecution for certain illegal conduct at an election. The Administration responded that clause 31 was intended to deal with illegal conduct at an election which was not materially serious, such as inadvertent acts or omissions not done in bad faith. An order granted under clause 31 would not be applicable to corrupt conduct at an election.

3. The Chairman suggested that clause 31 might be recast to reflect more clearly the policy objective that once an application for an order under clause 31 was made, any criminal proceedings against the applicant would be stayed. The applicant would be relieved of any criminal liability if the order was granted. The Administration

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agreed to review the drafting.

Clauses 31 and 34

Adm 4. Members noted that the offence under clause 34(4) was neither a corrupt nor an illegal conduct that would give rise to disqualification of an elected candidate. However, the offence was taken to be an illegal conduct for the purpose of a person's application to the Court for relief under clause 31. The Administration agreed to put forward an amendment to remove this anomaly.

Clauses 35 and 36

Adm 5. 1. The Administration clarified that as stipulated in clause 4(c), the Bill would also apply to an election to elect members of the Election Committee. To clearly reflect this, the Administration would amend the definition of "appropriate authority" and "returning officer" in clause 2. Clause 35(a) would also be amended to include the reference to "the Election Committee" to make clear that the relevant provisions were also applicable to candidates in the subsector elections of the Election Committee.

Clauses 36 and 39

6. Members noted that in the 1998 Legislative Council election, there were 26 cases in which the candidates failed to include copies of receipts for expenditure in their election returns. The Electoral Affairs Commission (EAC) referred all these cases to the Independent Commission Against Corruption (ICAC) for investigation. Before contemplating prosecution in substantiated cases, ICAC usually drew the candidates' attention to a Court order to except innocent act under section 26 of the Corrupt and Illegal Practices Ordinance. In these 26 cases, no candidate was prosecuted for failing to include a copy of receipt in his election return.

Adm 7. Having regard to the views expressed by members at the last meeting, the Administration agreed to propose an amendment to clause 39 to enable a candidate to apply to the Court for an order to relieve him of the liability for failing to include the documents required under clause 36(2)(b) due to a reasonable cause. The grounds for granting a court order would be the same as those for correcting errors in an election return as set out in clause 39(4).

Clauses 37 to 39

8. In reply to members' enquiries, the Administration advised that the offence provisions in clause 37(1) relating to failure to lodge election return applied to all candidates, regardless of whether the candidates were elected or not. A candidate would be permitted to correct any error or false statement in an election return already submitted to the appropriate authority, provided that the 30-day period specified under

clause 36(2) had not expired.

9. On clause 39(1), the Administration advised that the policy intent was that a candidate could apply to the Court for an order before the permitted period for lodging an election return under clause 36(2) expired, if he had reasonable grounds to believe that he could not lodge the return within the permitted period. The relief granting provisions in clause 39 would operate in the same way as clause 31.

10. In response to Mrs Selina CHOW, Deputy Secretary for Constitutional Affairs (DS/CA) said that it was not practicable to specify a permitted period for the making of an application under clause 39(1), in view of the varying circumstances which might bear on the timing of an application. Indeed, the Court would take into account all the relevant factors in individual cases in determining whether an order to extend the period for lodging an election return should be granted.

Adm 11. At the request of members, the Administration agreed to improve the drafting of clauses 38 and 39 to make it clear that -

- (a) a candidate could apply for a court order under clause 39(1) for an extended period for lodging an election return before the permitted period specified in clause 36(2)(a) expired; and
- (b) an elected candidate could participate in the affairs of the body to which he was elected, pending the determination of an application made under clause 39(1).

Clauses 31 and 39

12. Clauses 31(2)(a), 39(2) and 39(4) set out the grounds for which the Court must be satisfied before granting an order. Members noted that the Administration would propose an amendment to substitute the reference to "some other reasonable cause" with "any other reasonable cause". The Chairman considered and Assistant Legal Adviser agreed that from a statutory interpretation point of view, both "any other reasonable cause" and "some other reasonable cause" carried the same implied meaning that this other cause must be of a similar nature to the other grounds set out in the clauses. The Chairman suggested to replace "some other reasonable cause" with "any reasonable cause". The Administration agreed to consider the proposal.

Adm

Clause 42

13. The Chairman said that provisions similar to clause 42 which codified the offence of attempts were rare in existing ordinances. In response, Deputy Solicitor General (Constitutional) (DSG(C)) said that the intent of clause 42 was to ensure that the penalties and disqualifications that flowed from the conviction of any substantive offence under the Bill would also apply to an attempt to commit the offence. The use

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of clause 42 could avoid the repetition of making reference to the offence of attempts in each substantive offence provision in the Bill.

14. The Chairman was concerned that many election campaign activities conducted with the purpose of persuading electors to vote or not to vote for a candidate or group of candidates could be caught by the offence of attempts. DSG(C) replied that clause 42 intended to cover attempts to do an act which was materially of a corrupt or illegal nature, for example, attempts to offer a bribe etc. Clause 42 was not meant to apply to conduct such as words spoken for the purpose of canvassing support for a candidate or candidates.

Adm 15. The Chairman considered and Assistant Legal Adviser agreed that clause 42 might be improved to reflect more clearly the policy intent that an attempt to commit a substantive offence carried the same penalties and disqualifications imposed under an electoral law as a substantive offence. The Administration agreed to reconsider the drafting.

Clause 46

Item 6 - section 67 of Legislative Council Ordinance

Item 7 - section 53 of District Council Ordinance

Adm 16. Members noted that the Administration would amend the relevant clauses to clarify that the Court was required to submit the report to the Director of Public Prosecutions at the end of the trial.

Administration's response to concerns raised at the meeting on 14 October 1999
(LC Paper No. CB(2)128/99-00(01))

Inducement for a candidate not to use best endeavours at election

Adm 17. Members noted that the Administration was considering an amendment to clause 7 to introduce a new offence element of offering or accepting an advantage as an inducement or reward for not using best endeavours in campaigning at an election.

"Tendered" ballot papers

18. Members took note of the information provided by the Administration on the four complaint cases concerning the issuing of "tendered" ballot papers in the 1998 Legislative Council election.

19. Mr NG Leung-sing said that the investigation of the complaints had failed to reveal how ballot papers under the same name of the complainants were issued before the complainants turned up to vote. He opined that the procedural arrangements for voting should be thoroughly reviewed and new measures be introduced to guard against future recurrences. He also queried whether the issuing of tendered ballot

papers to the complainants which would not be counted as a valid vote was the most appropriate measure to deal with the situation.

20. The Chairman added that the issue of a tendered ballot paper would likely to cause resentment in a situation where the complainant was able to prove that he had not previously turned up to vote.

21. DS/CA said that EAC had put in place various measures in previous elections to prevent human errors in issuing ballot papers. Before the polling day, briefing was given to all polling officers on the procedures they should follow in issuing ballot papers. Two polling officers would work in pair to check the identity of the voters and cross out their names in the Final Register. The Presiding Officers in charge of the polling stations were also briefed on the importance of supervising the polling officers closely. Furthermore, the polling agents of the candidates and the candidates themselves monitored the voting closely at the polling stations. He said that a tendered ballot paper could not be counted because there could not be more than one valid vote under the name of the same voter.

22. DS/CA further advised that to ensure fairness in an election, the electoral laws had provided a mechanism for a candidate to question the election results by an election petition which might be based on various grounds including a material irregularity occurred in relation to the polling. If the results were affected materially by the issue of tendered ballot papers, a candidate could seek redress by way of an election petition.

Adm 23. DS/CA agreed to convey members' concerns to EAC for consideration.

Unspent election donation

Adm 24. DS/CA advised that having regard to members' views expressed at previous meetings, the Administration would propose an amendment to clause 19 to simplify the disposal of any unspent election donation by requiring that all such donations were to be given to a charitable institution.

Application for a court order under section 26 of the Corrupt and Illegal Practices Ordinance (an equivalent of clause 31 of the Bill) to except innocent acts in relation to unauthorized election expenses

25. Members noted that according to information available from the Department of Justice, there were two such applications in the 1995 Legislative Council election, two applications in the Municipal Council elections in 1995 and three applications in the 1994 District Boards election.

Clauses 29 and 30

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Adm 26. Members noted that as a result of the discussion at the last meeting, the Administration would revise the wordings used in these two clauses to remove the ambiguities and overlapping between clauses 29(2) and 30(1).

(Post-meeting note : The Administration's response to the concerns raised at this meeting has been circulated to members vide LC Paper No. CB(2)271/99-00(01) dated 3 November 1999.)

Proposed Committee Stage amendments (CSAs) by the Administration

Adm 27. In response to the Chairman, DS/CA said that the Administration would be able to submit a set of proposed CSAs in the following week for members' consideration.

(Post meeting note : The Administration's proposed CSAs have been circulated to members vide LC Paper No. CB(2)271/99-00(02) dated 3 November 1999.)

Voluntary service and election advertisement

Clerk 28. The Chairman requested the Secretariat to prepare position papers to set out the major deliberations of the Bills Committee concerning voluntary service and election advertisement for members' reference. The papers would be discussed at the next meeting with a view to arriving at some consensus views of the Bills Committee.

(Post meeting note : The papers have been issued vide LC Paper Nos. CB(2)272/99-00(02) and (03) dated 5 November 1999.)

II. Date of next meeting

29. The next two meetings were scheduled for 9 November 1999 at 2:30 pm and 12 November 1999 at 10:45 am respectively.

30. The meeting ended at 10:30 am.

Legislative Council Secretariat
16 March 2000