

立法會
Legislative Council

LC Paper No. CB(2) 160/00-01

(These minutes have been seen by
the Administration and cleared
with the Chairman)

Ref : CB2/BC/19/98

**Bills Committee on
Interpretation and General Clauses (Amendment) Bill 1999**

**Minutes of meeting
held on Saturday, 3 June 2000 at 9:00 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Albert HO Chun-yan (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Margaret NG
Hon Jasper TSANG Yok-sing, JP

Members absent : Hon Ronald ARCULLI, JP
Hon HUI Cheung-ching

Public Officers attending : Mr R ALLCOCK
Solicitor General (Acting)

Mr Michael SCOTT
Deputy Principal Government Counsel
(Legal Policy)

Mr Geoffrey FOX
Deputy Principal Government Counsel
(Law Drafting)

Mr Thomas LEUNG
Senior Government Counsel (Law Reform Commission)

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Meeting with representatives from the Administration
(LC Paper Nos. CB(2) 1796/99-00(01) and CB(2) 2063/99-00)

The Chairman briefly summarized the views expressed by members at previous meetings. He said that many members questioned the fundamental policy objective of the Bill. The Bill, the scope of which was wide, did not render assistance in the interpretation of the Basic Law (BL). It had gone beyond codifying existing common law principles and rendered admissible a number of extrinsic materials currently not admissible in the court. There were at least three types of extrinsic materials which were currently not admissible in court but would become admissible after the Bill was passed. The main concerns expressed by members at previous meetings had not been fully reflected in the consultation paper issued by the Administration on 27 March 2000. The Bill tended to impede rather than assist the interpretation of statutes. Members also doubted whether the Bill would bring about a decrease in legal costs since it would lengthen court time. There was also no pressing need for the Bill.

2. Solicitor General (Acting) (SG(Atg)) said that the Law Reform Commission (LRC), which comprised a number of prominent members of the judiciary and legal profession, had for a number of years considered the proposal in the Bill as an area of concern. The Bill had received unprecedented support in the consultation conducted by the Administration in March 2000 with the School of Law of the City University of Hong Kong, where 11 staff members supported and no one opposed the Bill, and that of The University of Hong Kong (HKU), where 17 staff members expressed support for and no one opposed the Bill. The Law Society of Hong Kong confirmed its previous support for the Bill. The Hong Kong Bar Association (the Bar) maintained its previous position of not supporting the Bill on the basis that there was no pressing need for it. The Judiciary had made some comments on the Bill. To address the concerns of the Judiciary, a Committee Stage amendment (CSA) would be proposed along the lines set out in paragraph 4 of the Administration's paper tabled at the meeting. He suggested that the following issues be considered -

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- (a) whether the Bill was acceptable in principle; and
- (b) if it was not acceptable in its current form, whether members would accept the Bill if suitable amendments were made.

(Post-meeting note : The paper tabled at the meeting was issued to absent members vide LC Paper No. CB(2) 2241/99-00 on 7 June 2000.)

3. Mr Martin LEE expressed concern that the parties consulted by the Administration in March 2000 had not been made aware of the concerns raised by members of the Bills Committee. As a result of this, they would have no idea of the legislators' concerns and the areas that they have examined.

4. SG(Atg) said that the Faculty of Law of HKU had raised concerns about the applicability of the Bill to the interpretation of BL and subsequently accepted the Administration's view that the Bill was irrelevant to the interpretation of BL. In terms of whether the provisions set out in the Bill would assist or confuse the court, it was implicit from the views expressed by the parties supporting the Bill that it would not result in increases in legal costs. He added that the essential criticisms made by the Bills Committee had been set out in pages 15 to 20 of the Administration's consultation paper.

5. Mr Martin LEE expressed concern that the Bill had been held in abeyance at the request of the Administration for a long time and the Administration did not resume deliberations on the Bill until this very late stage when members were working on a number of bills which had to be passed in the current legislative session. He considered that there was no pressing need to consider this controversial Bill at this time when members had to concentrate their work on more urgent bills. Deputy Principal Government Counsel (Law Drafting) (DPGC(LD)) said that four meetings had already been held between the Bills Committee and the Administration. The Administration had thereafter issued a consultation paper and reverted back to the Bills Committee as soon as possible. The Chairman said that he was inclined to invite the parties consulted by the Administration to a meeting of the Bills Committee so as to gauge their views on the concerns raised by members. However, there was not much time left for convening such a meeting, as the deadline for reporting the deliberations of the Bills Committee to the House Committee was 16 June 2000.

6. Miss Margaret NG considered that the Bill should not be enacted. On the other hand, if the controversial parts of the Bill were to be deleted, what might be left was more or less the same as Pepper v Hart. As the proposals in the Bill were not academic issues, the views expressed by the Bar were important, as barristers were the people who dealt with the relevant issues on a practical level. Although the Administration said that the Bill would not be applicable to the interpretation of BL, it was not possible in practice to have two systems of construction of written legislation in one jurisdiction. She was of the view that the scope of the Bill was

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very wide and had gone much beyond codification of existing rules. She added that as the interpretation of statutes was a developing area of law, it was inappropriate to freeze the development at this point. If the Bill were to be enacted, she envisaged that much court time would be wasted in the lengthy arguments about whether a provision was ambiguous and whether certain material was capable of assisting in ascertaining the meaning of a provision.

7. Mr Martin LEE shared the views of Miss Margaret NG. He said that the common law in Hong Kong should be allowed to develop in the light of the experiences of other common law jurisdictions. He added that it would be very difficult to prevent a counsel from applying the extrinsic materials stated in the Bill to the interpretation of BL, if the Bill was passed. Referring to the proposed section 19A(3), he expressed doubt about whether the votes of the Legislative Council (LegCo) could assist in the interpretation of a statute.

8. To address some members' concern that the Bill had gone beyond codification of existing rules of interpretation, SG(Atg) asked whether the Bill would become acceptable if some proposed provisions were deleted from the Bill. He said that it was not the intention of the Bill to expand the existing rules of interpretation. The Bill would not hinder the development of the common law, as the proposed section 19A(7) provided that the provisions of the section "shall be in addition to and not in derogation from the common law applicable to the interpretation of a provision of an Ordinance".

9. Mr Martin LEE said that if the Bill was to be revised, the Administration should provide members with a paper on the revised Bill, and the parties consulted by the Administration should be invited to present their views on the revised Bill to the Bills Committee. The Chairman expressed doubt about whether the Bill would serve any useful purpose if the proposed provisions were substantially deleted. Miss Margaret NG said that the Administration could always resume Second Reading debate on the Bill without seeking the views of the Bills Committee. However, she was fundamentally opposed to the proposals in the Bill.

10. The Chairman expressed doubt about whether the court would have the power to rule that a certain committee report was inadmissible after the Bill was passed. SG(Atg) responded that the court would have the power to have regard to the committee report and to decide whether the report was of assistance to the interpretation of a statutory provision.

11. Mr Martin LEE said that as the Judiciary had expressed concerns that the Bill was too vague and the Administration had proposed amendments to address its concerns, the Judiciary should be allowed to comment on the proposed amendments. SG(Atg) responded that the Judiciary had already been provided with the proposed amendments.

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12. At the suggestion of SG(Atg), members went through subsections (a) to (i) of the proposed section 19A(2) to examine whether they were acceptable.

13. Referring to the proposed section 19A(2)(a), Miss Margaret NG said that there was currently much content with no legal effect in the loose-leaf edition of local legislation. She said that as there was a lack of discipline in respect of the loose-leaf edition, she had considerable reservations about the provision. As the loose-leaf edition of laws was not subject to scrutiny by LegCo, the Administration might exert political pressure on the court through such documents. Mr Martin LEE added that the Administration might incorporate more materials in the loose-leaf edition of laws after the Bill was passed. SG(Atg) noted the concerns of members. He stressed that the Administration had no intention to incorporate more materials in the loose-leaf edition of laws after the Bill was passed. He added that the materials that could be included in the loose-leaf edition of laws were regulated by the Laws (Loose-leaf Publication) Ordinance 1990.

14. As regards the proposed section 19A(2)(b), Miss Margaret NG expressed reservations about allowing relevant reports of a committee of inquiry or other similar body to be used in the interpretation of a provision. She expressed doubt about whether such a report had ever been used by the court in the interpretation of a statute. She said that the provision would be acceptable if only LRC reports were referred to in the proposed subsection.

15. Regarding the proposed section 19A(2)(c), Miss Margaret NG said that the scope of the provision was very wide, as it might include the report of a body from a non-common law jurisdiction. Mr Martin LEE shared the same view.

16. Referring to the proposed section 19A(2)(d), Miss Margaret NG said that "or in any material referred to in this subsection" had much widened the scope of the provision.

17. As regards the proposed section 19A(2)(e), Miss Margaret NG said that while "any explanatory memorandum relating to the Bill containing the provision" was acceptable as extrinsic material for interpretation, she had reservations about the remaining part of the draft provision. In response to the Chairman's question about the scope of the provision, SG(Atg) said that an example of the document referred to in the provision was a LegCo Brief. Miss Margaret NG said that if LegCo Brief was to be included, she would have to scrutinize every LegCo Brief in the future. She added that a LegCo Brief was not readily available to members of the public, especially a few years after its publication.

18. The Chairman said that the proposed subsections (b), (d) and (e) might be acceptable if tightened. Although the proposed subsection (f) codified the principle in Pepper v Hart, it should be noted that Hong Kong had a different constitutional setting from that in the United Kingdom. He added that members had expressed

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views about proposed subsection (g) and there should not be any objection to the proposed subsection (h). Miss Margaret NG added that she had reservations about the incorporation of "any relevant material" in the proposed subsection (i).

19. SG(Atg) asked whether it would be possible to pass the Bill if it had been amended having regard to the views expressed by members. The Chairman said that the amendments to the Bill would probably be very substantial. There would be insufficient time to consult the law faculties of local universities. Although the Administration had the right to resume the Second Reading debate on the Bill, it might be more appropriate to reintroduce the amended Bill in the next legislative session in view of the limited time remaining. Mr Martin LEE said that time would be needed for the Bills Committee to gauge the views of the parties consulted by the Administration on members' concerns. He considered that the Second Reading debate on the Bill should not be resumed, as there was no urgency to pass the Bill under such a tight time constraint. Miss Margaret NG said that she would be prepared to consider any amendments to the Bill. However, the amended Bill might entail further consultations that made it not possible to pass the Bill under the current time constraint. If all the controversial provisions were deleted, the Administration might end up with a bill that was superfluous. Mr TSANG Yok-sing said that as there were many other urgent bills that had to be passed in the current legislative session, the Administration might wish to reintroduce the Bill in the next legislative session. SG(Atg) said that he would advise the Secretariat in the following week whether the Bill would be amended for discussion at a further meeting within the current legislative session.

(Post-meeting note : The Administration subsequently advised on 5 June 2000 that it would not request a further meeting of the Bills Committee. A report of the Bills Committee was submitted to the House Committee on 16 June 2000.)

20. The meeting ended at 10:30 am.

Legislative Council Secretariat
15 September 2000