

立法會
Legislative Council

LC Paper No. CB(2)2508/99-00
(These minutes have been
seen by the Administration
and cleared with the Chairman)

Ref : CB2/BC/32/98

Bills Committee on Evidence (Amendment) Bill 1999

**Minutes of the second meeting
held on Monday, 15 May 2000 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Albert HO Chun-yan (Chairman)
Hon Cyd HO Sau-lan
Hon Margaret NG
Hon Christine LOH
Hon CHAN Yuen-han
Hon SIN Chung-kai
Hon Ambrose LAU Hon-chuen, JP

Members Absent : Hon Jasper TSANG Yok-sing, JP
Hon CHOY So-yuk

Public Officers Attending : Mr Stephen WONG
Deputy Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Ms Carmen CHU
Senior Government Counsel

Miss Agnes CHEUNG
Senior Government Counsel

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Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Ms Joanne MAK
Senior Assistant Secretary (2) 4

I. Withdrawal of membership

Mr SIN Chung-kai explained that due to an oversight, he had mistaken this Bills Committee for another one which he had intended to join and therefore had wrongly signed up for this Bills Committee. He requested to withdraw from the Bills Committee. The Chairman accepted Mr SIN's withdrawal.

II. Meeting with the Administration

(LC Paper Nos. CB(2)1689/99-00(01) to (03), CB(2)1701/99-00(01), CB(2)1784/99-00(01) and CB(2)1851/99-00(01))

2. The Chairman said that the object of the Bill was to -

- (a) abolish the common law requirement that a jury must be given a warning about the danger of convicting an accused charged with any sexual offence without corroborated evidence (clause 2); and
- (b) abolish the statutory requirements in relation to certain sexual offences under the Crimes Ordinance (Cap. 200) that prosecution evidence must be corroborated before an accused could be convicted (clause 3).

3. The Chairman referred to clause 3 and asked the Administration to explain why it proposed to abolish the statutory requirement just by way of consequential amendments in the Bill. He considered that the proposed abolition of the statutory requirement was a very important and substantive amendment to be made to Cap. 200 and must be deliberated very carefully. He held the view that the repeal of the relevant sections of Cap. 200 should not be effected by way of consequential amendments in the Bill.

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4. In response, Deputy Solicitor General (DSG) pointed out that the object of the Bill was to abrogate the corroboration rules in sexual offences. Therefore, the Bill sought to abolish the common law requirement in sexual offences that a warning must be given by the trial judge to the jury regarding corroboration. Based on the same principle, the Bill also sought to abolish the statutory requirements in relation to seven specific sexual offences under Cap. 200 in respect of which evidence must be corroborated.

5. Senior Assistant Law Draftsman (SALD) pointed out that the warning about convicting the accused of an offence under Part VI or XII of Cap. 200 on the uncorroborated evidence of the victim was proposed to be completely abrogated by virtue of clause 2 of the Bill. He said that the abolition was suggested to be applied across the board in respect of all offences involving a sexual element. If the consequential amendments in clause 3 were not made, the proposed clause 2 would be vitiated to a large extent. The purpose of abolishing the warning by virtue of clause 2 would be defeated if it was still maintained that the accused in certain sexual offences under Cap. 200 could not be convicted in the absence of corroborated evidence. Therefore, the amendments to be made to those sections of Cap. 200 as specified in clause 3 of the Bill were consequential amendments necessitated by the principle adopted by the Administration in proposing clause 2 of the Bill.

6. The Chairman said while he appreciated the correlation between clauses 2 and 3 of the Bill, he considered that clause 3 was substantively different from clause 2 as clause 3 was dealing with the statutory requirement for corroborated evidence for convicting the accused in specific kinds of sexual offences. He considered that the proposed consequential amendments had great impact as it would become much easier to convict a person if the statutory requirement was abolished.

7. Miss Margaret NG said that as far as the seven specific sexual offences under Cap. 200 were concerned, clause 2 was only abolishing a warning but not the requirement for corroborative evidence in respect of these offences. However, she considered that what the Administration was trying to achieve by the consequential amendments in clause 3 was much more serious. In response, Senior Assistant Solicitor General (SASG) said that the Bill was intended to abrogate the corroboration rules with respect to both the warning and also the mandatory requirement under the seven offences. He said that as already pointed out by SALD, clause 2 would be much vitiated if the consequential amendments in clause 3 were not made. He further said that the requirement for corroboration was considered counter-productive in terms of achieving justice. He said that in many circumstances, even the judge was convinced that the evidence of a victim was believable and supported by surrounding circumstances, the accused could not be convicted of the offence alleged. He considered that the corroboration rules were outdated as they were based on a perception in the early days that females were prone to lie and fantasized in sexual offence cases.

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8. Miss Margaret NG pointed out that if the requirement for corroborative evidence was removed, the warning did not arise. She considered that the relevant LegCo Brief seemed to only concentrate on the discussion of removing the warning. The Chairman said that he had also noted that the proposed abolition of the requirement for corroborated evidence was not mentioned in some of the submissions received from deputations and he suspected that they were not aware of this proposal. SALD responded that one did not need to turn to the LegCo Brief to understand the object of the Bill as it had already been summarized in the "Explanatory Memorandum" of the Bill. Miss Margaret NG said that while she was not accusing the Government of anything, it just seemed that, rightly or wrongly, members' attention had not been drawn to the proposed abolition of the statutory requirement. She considered that the Bills Committee should discuss it in detail.

9. Referring to Miss Margaret NG's comments, DSG clarified that actually the Administration had explained in the LegCo Brief both of the proposals.

10. Miss Cyd HO Sau-lan said that in her contact with women's groups, she learnt that they only demanded the abolition of the mandatory warning regarding corroboration in sexual offences. She considered that their attention should be drawn to details of the other proposal in the Bill. DSG invited members to note that the proposed abolition of the common law requirement for the warning and the proposed amendments to Cap. 200 were based on the same rationale i.e. additional requirements imposed on the evidence of victims or complainants in sexual offences should be removed. He also invited members to note that the application of the corroboration rules in respect of the evidence of an accomplice and of a child witness had already been abolished in Hong Kong.

11. The Chairman suggested that the Bills Committee could first listen to the views of the concerned organizations, especially the Hong Kong Bar Association, on the proposed abolition of the requirement for corroborated evidence before deciding whether or not the Bill could have its Second Reading debate resumed within the current session. Members supported the proposal and agreed to invite representatives from the concerned organizations to attend the next meeting to present their views on the Bill. Miss Margaret NG pointed out that actually the proposed abolition of the warning had been widely discussed. She suggested that, subject to the views of the Administration, the Bills Committee could recommend to resume Second Reading debate on the Bill with respect to clauses 1 and 2 only if members in the end did not find enough time to discuss clause 3. Clause 3 of the Bill could then be dealt with in the next LegCo session.

12. To facilitate members' deliberations, the Chairman requested the Administration to provide information on the number of prosecutions in respect of the seven sexual offences under Cap. 200 and, if possible, the number of

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acquittals due to the absence of corroborated evidence.

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13. DSG explained that it was difficult to obtain such figures as statistical figures had not been kept for individual kinds of offences. He said that in fact attempts had been made by the Administration before the meeting to obtain the figures but to no avail. Nevertheless, he agreed to try to obtain the figures again as far as possible. Miss Cyd HO Sau-lan requested the Administration to provide an information paper on the abolition of the corroboration rules in other common law jurisdictions.

14. The Chairman asked whether the proposals under discussion had been submitted to the Law Reform Commission (LRC) for consideration. In response, DSG said that the current proposals had already been thoroughly discussed when the amendments to the Evidence Ordinance for abolition of corroboration in respect of sexual offences were introduced to LegCo in 1996. Moreover, the Administration was of the view that since the relevant points of views on the issue had already been provided to members vide the Administration's information papers, members should be able to make a decision on the Bill based on the papers. The Administration did not consider it necessary to refer the issue to LRC.

15. In response to the Chairman's question, DSG said that the Hong Kong Government, as a signatory of the Convention on the Elimination of Discrimination against Women (CEDAW), was obliged to introduce measures, including by way of legislation, to eliminate discrimination. He considered that it was difficult for the Hong Kong Special Administrative Region Government to explain why it had not yet abrogated the existing corroboration rules which were indirectly discriminatory against women. In addition, he invited members to note that the Torture Committee had also expressed support for the abrogation of the corroboration rules as proposed in the Bill. He added that the corroboration rules had already been abrogated in England, Canada, Australia and New Zealand. However, Miss CHAN Yuen-han and Miss Christine LOH recalled that the United Nations Committee on Human Right had not advised that it was necessary for Hong Kong to abrogate the existing corroboration rules to fulfill its obligations under CEDAW.

III. Date of next meeting

16. Members agreed to meet again on 27 May 2000 at 11 am and 30 May 2000 at 8:30 am.

(Post-meeting note : On the Chairman's instruction, the meeting on 27 May 2000 had been re-scheduled to 19 May 2000 at 4 pm.)

17. There being no other business, the meeting ended at 9:40 am.

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Legislative Council Secretariat
14 July 2000