

立法會
Legislative Council

LC Paper No. CB(2)2531/99-00
(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 fourth meeting
held on Tuesday, 30 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 Christine LOH
Hon CHAN Yuen-han
Hon Jasper TSANG Yok-sing, JP

Members Absent : Hon Margaret NG
Hon Ambrose LAU Hon-chuen, JP
Hon CHOY So-yuk

Public Officers Attending : Mr Stephen WONG
Deputy Solicitor General

Mr Darryl SAW, SC
Deputy Director of Public Prosecutions

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. Meeting with the Administration

(LC Paper Nos. CB(2)2077/99-00(01) to (03) and CB(2)2153/99-00(01))

Members noted that Hong Kong Federation of Women had provided a written submission to the Bills Committee.

2. Deputy Solicitor General informed members that late in the previous evening, the Equal Opportunities Commission (EOC) had forwarded a further submission to the Administration. At the Chairman's invitation, DSG briefed members on the salient points of the paper. He said that EOC in its submission had quoted some statements made by legal scholars and judges, which showed that they had a gender bias against women and a belief that the evidence of women was inherently unreliable.

3. Ms Christine LOH requested the Administration to sum up the views of the Hong Kong Bar Association (the Bar) on the proposed abolition of the corroboration rules. The Chairman recalled that part of the reasons of objection given by the Bar was that there was no right to jury trial by the accused person in Hong Kong. Moreover, the maximum penalties for the seven sexual offences for which corroboration was statutorily required in Hong Kong were higher than those in England. DSG added that one of the Bar's arguments was that the corroboration warning was not necessarily complex and inflexible as it argued that there was actually no rigid requirement in the form of words to be used in the warning given to the jury. The Bar was also of the view that given the high education level of the Hong Kong jury who were required to be at least matriculated, there should be no problem for them to understand a trial judge's direction in relation to corroboration.

4. However, DSG pointed out that in Hong Kong during the trial of a sexual offence in the High Court, the trial judge was required not only to give a corroboration warning but also to explain what was meant by corroborated evidence and what kinds of evidence constituted corroboration. Should the judge fail to give a warning when needed or should he give a misstatement to

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the jury about corroboration, it would usually result in a conviction being reversed on appeal. The appeal court could order a retrial or even an acquittal.

5. DSG said that another point raised by the Bar was that the proposed abolition of the rules would leave defendants of sexual offences inadequately protected. DSG explained that with the abolition of the rules, the judge, just like what he would do in treating the evidence of other kinds of offences, would still have to carefully evaluate the evidence and judge whether the complainant was telling the truth. He reiterated that there was no justification to single out victims of sexual offences and impose additional requirements on their evidence. He then referred to the case where a victim of rape was also robbed at the same time, as cited by the Deputy Director of Public Prosecutions (DD(PP)) at the last meeting. He said that as the case revealed, the absurdity arising from the rules was that the existing law required only the victim's evidence of the rape, but not her evidence of the robbery, to be corroborated.

6. DSG also invited members to note that in England, the corroboration rules in respect of sexual offences had already been abolished in 1994. No report of an upsurge in cases where people had been wrongly accused had since been found.

7. DD(PP) said that the Administration had well considered the views of the Law Commission in the United Kingdom (UK) on the subject. He reiterated that the underlying proposition of the corroboration rules was that women were fanciful and were likely to make up stories of sexual abuse. However, it had already been concluded in other jurisdictions that there was no justification for the retention of this proposition and therefore they had already abrogated the rules. DD(PP) said that if the rules were retained in Hong Kong, it was no different from suggesting that Hong Kong women were more prone to making up allegations of this nature than women in the rest of the common law world. He further highlighted that Hong Kong had already dispensed with the need for the corroboration warning with respect to children and accomplices, who were equally described as "suspect" witnesses.

8. The Chairman asked if it was true that the abrogation of the rules would not preclude judges from administering caution in any cases with respect to the need for corroboration. DD(PP) replied in the affirmative, adding that if it was established in the context of a particular case that there was a reason to give a warning about the witness, the judge concerned was duty-bound to give the warning. He said that this was manifested in some cases in England after the abolition of the rules.

9. Miss CHAN Yuen-han noted that the Bar and the Law Society of Hong Kong had a strong view that the current proposals should be referred to the Law Reform Commission (LRC) first and asked why the Administration did not do so. DSG replied that back in 1993/1994 when the Administration prepared legislative amendments for the abolition of the corroboration rules in respect of

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the evidence of an accomplice and of a child witness, the Administration had already reviewed the case in respect of victims of sexual offences as well. The Administration again made considerable studies on the subject when it prepared amendments to the Evidence Ordinance for the abolition of corroboration in respect of sexual offences in 1995. In a survey conducted by the Administration with about 40 organizations on the current proposals, it was found that a majority of them had expressed support for the proposals. DSG said that the Administration did not think that referring the matter to LRC would help generate any new information on the subject. It was of the view that LegCo Members should be able to make a decision on the Bill based on the abundant information made available by the Administration.

10. However, Miss CHAN Yuen-han said that although she was supportive of the Bill, she considered that the Administration should have referred the matter to LRC some years ago. The Chairman further asked how long it would take for LRC to finish discussing these proposals if it was requested to review the matter. In response, DSG reiterated that although LRC had not deliberated the proposals, extensive study had been made on the subject by the Administration with reference to overseas experience and the Department of Justice had also conducted a prolonged study on it. As the Administration had already specifically addressed the points raised by the Bar, it was of the view that there was no need to refer the matter to LRC. In fact, DSG considered that compared with the abolition of the corroboration rules in respect of the evidence of accomplices and children, there was even a sounder case for the proposed abolition of the rules in respect of victims of sexual offences. As he noted that LRC had a long list of other issues for its discussion, he estimated that the proposed abolition would have to be deferred by a few years if it were referred to LRC. He also reminded members that since LRC was independent of the Government, the Administration could not ask it to give priority to the proposals.

11. DD(PP) supplemented that actually the matters raised by the Bar in its written submission were matters which had specifically been addressed in detail by the UK Law Commission in 1994. He pointed out that the Bar's objections to this proposal were not going to be resolved by the Hong Kong LRC and he believed that it would just come to the same conclusions as those of the UK Law Commission. He advised that the proposed abolition would be deferred by two to three years if the proposals were referred to LRC.

12. After deliberation, members accepted the Administration's explanation and agreed not to insist on referring the matter to LRC. They also expressed unanimous support for the Bill.

Clause-by-clause examination of the Bill

13. Referring to clause 3 of the Bill, the Chairman said that the Bills Committee had all along considered that the proposed abolition of the statutory

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requirement for corroborated evidence should not be effected by way of consequential amendments. He pointed out that in UK, the statutory requirements for corroborative evidence in similar sexual offences had been abolished by a substantive provision rather than by way of consequential amendments. DSG replied that it was because the sections to be repealed were those under the Crimes Ordinance (Cap. 200). On the other hand, it was necessary to amend the Evidence Ordinance (Cap. 8) in order to abolish the common law requirement for a corroboration warning. He invited members to note that as two separate Ordinances were involved, to repeal the statutory requirements for corroborative evidence in sexual offences by a substantive provision would mean that the Administration had to introduce two separate bills for the abolition. Senior Government Counsel added that if members were satisfied that there was a correlation between clauses 2 and 3 in the Bill, the proposed arrangement of effecting the abolition of the statutory requirements for corroborative evidence in sexual offences by way of consequential amendments was perfectly acceptable. Assistant Legal Adviser 3 (ALA3) confirmed that the effect achieved by this arrangement would be the same as that by abolishing the statutory requirements by way of principal legislation.

14. ALA3 informed members that she had earlier clarified with the Administration as to the need of adding savings provisions to the Bill to stipulate that the abolition of the statutory requirements for corroborative evidence in specific sexual offences under Cap. 200 would not apply to trials and committal proceedings that had commenced before this Bill came into effect. She said that the Administration's reply was that savings provisions were not necessary because as a matter of general principle of statutory interpretation, unless otherwise expressly provided for, an enactment (especially one affecting criminal liability) did not have retrospective effect. This principle was also reflected in section 23(c) of the Interpretation and General Clauses Ordinance (Cap. 1).

II. Way forward

15. Members and the Administration agreed that the Second Reading debate on the Bill should be resumed on 21 June 2000.

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

Legislative Council Secretariat

4 August 2000