

本署檔號：OUR REF: SF2 to HAB/CR/1/20/154 Pt.6
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Mr. Stephen Lam
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Legal Service Division
Legislative Council
8 Jackson Road
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Hong Kong

Dear Mr. Lam,

Village Representative Election Bill

Thank you for your letter of 18 October 2002.

My response to the points you raised is as follows:

(a) **Sex Discrimination Ordinance**

The proposed arrangements for Village Representative elections are consistent with the provisions of the Sex Discrimination Ordinance (Cap 480).

We had not consulted the Equal Opportunities Commission on the Village Representative Election Bill before it was published in the Gazette, but we have now sent a copy of the Bill to the Chairperson of the Commission for comments.

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(b) Clause 2

In section 3 of the Interpretation and General Clauses Ordinance (Cap 1), "department", in relation to the Government, includes "bureau".

Whether a person can have two main homes at the same time will depend on the facts of the case. However, he must choose one "principal residential address" if he wishes to register as an elector. Clause 15(6) of the Bill provides that a person who "would be eligible to be registered as an elector for 2 or more Existing Villages may be registered for only one of those Villages of that person's choice".

According to section 5(1) of the Marriage Reform Ordinance (Cap 178), no man may take a concubine and no woman may acquire the status of a concubine on or after the appointed day (i.e., 7 October 1971). Thus, a "concubine" can only refer to a woman who acquired that status before that date. The dictionary meaning of "spouse" means husband and wife. We are of the view that spouse includes a "wife" or a "female partner under a kim tiu marriage" but does not include a "concubine". Accordingly, the present formulation (i.e., "spouse" includes a concubine) is appropriate.

(c) Clause 5(3)

We do not have any legal authority on the meaning of "deal with". The dictionary meaning of the two words should apply.

An Indigenous Inhabitant Representative may deal with all affairs relating to the lawful traditional rights and interests, such as certifying the indigenous status of a person for the purpose of applying for permission to build a small house under the Small House Policy. A Resident Representative may not perform such a "certification function". However, a Resident Representative may reflect views on all matters relating to affairs of the Village on behalf of the residents of the Existing Village.

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It is necessary to add "and the traditional way of life" in clause 6(4)(b) of the Bill. The "lawful traditional rights and interests" of indigenous inhabitants usually involve matters relating to land. "The traditional way of life" of an indigenous village usually involves matters such as "fung shui" and village customs.

(d) Clause 9(1)(g)

This clause is modelled on section 39(1)(i) of the Legislative Council Ordinance (Cap 542) and sections 14(1)(g), 19(1)(g), 21(1)(i) and 24(1)(g) of the District Councils Ordinance (Cap 547). In these provisions, the phrase "without paying the creditors in full" qualifies both "has obtained a discharge in bankruptcy" and "has entered into a composition with the person's creditors or a voluntary arrangement". Even though the reference to "a composition with the person's creditors" is taken out, the phrase still applies in relation to the other situations.

Yours sincerely,

(Stephen Fisher)
for Secretary for Home Affairs

c.c. DHA (Attn.: Miss Monica Chen)
D of J (Attn.: Mr. Lawrence Peng)