

立法會
Legislative Council

LC Paper No. CB(2)3319/03-04
(These minutes have been
seen by the Administration)

Ref : CB2/BC/4/02

**Bills Committee on
Education (Amendment) Bill 2002**

**Minutes of meeting
held on Tuesday, 6 July 2004 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon SZETO Wah
Hon Tommy CHEUNG Yu-yan, JP

Member attending : Hon Martin LEE Chu-ming, SC, JP

Members absent : Ir Dr Hon Raymond HO Chung-tai, JP
Hon YEUNG Yiu-chung, BBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Public Officers attending : Mr Andrew POON
Principal Assistant Secretary for Education and
Manpower (Quality Assurance)

Mrs YU LAW Siu-man
Senior Education Officer (School Registration and
Compliance)
Education and Manpower Bureau

Mr Gilbert MO
Deputy Law Draftsman (Bilingual Drafting and
Administration)
Department of Justice

Mr Peter H H WONG
Senior Assistant Solicitor General
Department of Justice

Mr W L CHEUNG
Senior Government Counsel
Department of Justice

Clerk in attendance : Ms Doris CHAN
Chief Council Secretary (2)2

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Stanley MA
Senior Council Secretary (2)6

I. Meeting with the Administration

[LC Paper Nos. CB(2)3018/03-04(01)-(02), CB(2)2989/03-04(01) and CB(2)3026/03-04(01)]

The Bills Committee deliberated (Index of proceedings at **Annex**).

Comparison between the existing school-governance regime for aided schools and the proposed regime under the Bill

2. The Administration explained the major differences between the existing school-governance regime for aided schools and the proposed regime under the Bill as tabulated in LC Paper No. CB(2)3026/03-04(01) to sustain its view that the Bill did not give rise to material changes in the existing practices of religious bodies in managing their aided schools.

3. Mr CHEUNG Man-kwong considered that the Bill, which specified that school sponsoring bodies (SSBs) could appoint not more than 60% of IMC managers, might to a certain extent change the previous practice of SSBs in the management of their aided schools. He pointed out that most managers submitted their applications for registration, which were subject to the approval of the Permanent Secretary for Education and Manpower, at the invitation of SSBs. While applications for registration as manager were endorsed by the management committee, the SSB might express its views on registration matters and such views, if different from that of the management committee, would prevail.

Articles 141 and 136 of the Basic Law
[LC Paper No. CB(2)3018/03-04(01)]

4. Members expressed concern as to whether the Bill was consistent with Article 141 of the Basic Law. The Administration explained that Article 141(3) should be interpreted in the light of its context and purpose and read in conjunction with other relevant provisions on education in the Basic Law. Most importantly, Article 136 provided that on the basis of the previous educational system, the Government of Hong Kong Special Administrative Region shall, on its own, formulate policies on the development and improvement of education including policies regarding the educational system and its administration.

5. The Administration pointed out that it had been laid down by the Court of Final Appeal that a purposive approach should be applied in the interpretation of the Basic Law [*see Ng Ka Ling v Director of Immigration (1999) and Director of Immigration v Chong Fung Yuen (2001)*]. In the light of this approach, BL141(3) should not be construed in isolation. Insofar as it permitted religious organizations to run schools according to "their previous practice", it should be read in conjunction with other relevant provisions on education, notably Article 136 of the Basic Law.

6. Mr CHEUNG Man-kwong considered that the mandatory requirement that SSBs had to establish an IMC but appoint not more than 60% of its managers in their aided schools during the transition period might change "the previous practice" of religious bodies in the management of their aided schools. In response to Ms Emily LAU, Assistant Legal Adviser 1 advised that she would supplement the information presented in the Administration's paper [LC Paper No. CB(2)3018/03-04(01)] as follows:

- (a) In the case of CHONG Fung-yuen, the Court of Final Appeal held that extrinsic materials relevant to the interpretation of the Basic Law were pre-enactment materials brought into existence prior to or contemporaneous with the enactment of the Basic Law. The observations of Professor WANG Shu-wen were published in 2000 and should only be regarded as academic materials; and
- (b) In the 2001 case of Equal Opportunities Commission and the Director of Education, the Court referred to Article 136 of the Basic Law in that the Article entrusts to the Government of Hong Kong (and not the Legislative Council) the formulation of policies on the development and improvement of education.

7. The Administration cited the case of *Lau v SJ HCAL 177/2002* to explain the concept of "previous system" in the context of the maintenance of

the pre-1997 public service system (Article 103 of the Basic Law) as explained by the Court of First Instance. At the request of the Chairman, the Administration undertook to provide a paper on the matter.

[Post-meeting note : The Administration's response was issued to members vide LC Paper No.CB(2)3042/03-04(01) on 7 July 2004.]

Sample constitution for IMCs

8. The Chairman suggested that deliberation of the sample constitution should be referred to the Panel on Education for discussion in the first session of the new term. Members raised no objection.

II. Any other business

9. There was no other business, the meeting ended at 4:00 pm.

Council Business Division 2
Legislative Council Secretariat
21 September 2004

**Proceedings of the meeting of the Bills Committee on
Education (Amendment) Bill 2002
on Tuesday, 6 July 2004 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subjects	Action required
0000 - 1910	Chairman Admin Mr CHEUNG Man-kwong Mr LEE Cheuk-yan	Briefing on the Administration's paper which compared the existing school-governance regime for aided schools and the proposed regime under the Bill [LC Paper No.CB(2)3026/03-04(01)]	
1911 - 4900	Mr CHEUNG Man-kwong Chairman Admin Mr LEE Cheuk-yan	Existing practice and arrangements for appointment of school managers and supervisors, and the views of SSB shall prevail if SSB and the management committee held different views. Whether the Bill had changed the existing practice of religious bodies in management of their schools.	
4901 - 5900	Chairman Admin	Briefing on the Administration's response to members' concerns as to whether the Bill was consistent with Article 141 of the Basic Law [LC Paper No.CB(2)3018/03-04(01)]	
5901 - 013114	Chairman Admin Mr CHEUNG Man-kwong Mr Martin LEE Ms Emily LAU ALA1 Mr LEE Cheuk-yan	Consistency of the Bill with Articles 141 and 136 of the Basic Law. Sample constitutions for IMCs.	See para 7 and 8 of the minutes
013115 - 013139	Chairman	Concluding remark	

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20 September 2004