

立法會
Legislative Council

LC Paper No. CB(2)528/07-08

Ref : CB2/BC/2/06

**Bills Committee on
Race Discrimination Bill**

**Minutes of meeting
held on Monday, 29 October 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** :
- Hon Margaret NG (Chairman)
 - Hon Abraham SHEK Lai-him, SBS, JP (Deputy Chairman)
 - Hon LEE Cheuk-yan
 - Hon Martin LEE Chu-ming, SC, JP
 - Dr Hon LUI Ming-wah, SBS, JP
 - Hon James TO Kun-sun
 - Hon CHEUNG Man-kwong
 - Hon Bernard CHAN, GBS, JP
 - Hon Jasper TSANG Yok-sing, GBS, JP
 - Hon Howard YOUNG, SBS, JP
 - Dr Hon YEUNG Sum, JP
 - Hon Emily LAU Wai-hing, JP
 - Hon CHOY So-yuk, JP
 - Hon LI Fung-ying, BBS, JP
 - Hon Albert CHAN Wai-yip
 - Hon Audrey EU Yuet-mee, SC, JP
 - Hon Jeffrey LAM Kin-fung, SBS, JP
 - Hon Alan LEONG Kah-kit, SC
 - Dr Hon Fernando CHEUNG Chiu-hung
 - Hon WONG Ting-kwong, BBS
- Members absent** :
- Hon CHAN Yuen-han, SBS, JP
 - Hon Daniel LAM Wai-keung, SBS, JP
 - Hon Ronny TONG Ka-wah, SC
 - Hon TAM Heung-man

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)2

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

Ms Joanne MAK
Senior Council Secretary (2)2

Ms Anna CHEUNG
Legislative Assistant (2)2

Action

I. Way forward

[LC Paper No. CB(2)2501/06-07(01) - the Legislative Council Secretariat's paper on "Scrutiny progress of the Bill"]

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

2. Members agreed that, notwithstanding the divergence of views between the Bills Committee and the Administration on the four fundamental issues of concern set out in the paper entitled "Scrutiny progress of the Bills Committee" prepared by the Legislative Council (LegCo) Secretariat [LC No. CB(2)2501/06-07(01)], the Bills Committee should continue with the scrutiny of the Bill and seek to amend relevant provisions for the purpose of enhancing the protection against racial discrimination.

3. At the invitation of the Chairman, members discussed various possible options listed in paragraph 30 of the LegCo Secretariat's paper to amend Clauses 3, 4, 8 and 58.

ALA6

4. The legal adviser to the Bills Committee was requested to prepare for members' consideration at the next meeting draft Committee Stage amendments (CSAs) for the various options, with the exception of re-drafting Clause 4 from the perspective of equality of results as it might require the re-drafting the whole Bill. The Chairman invited members to put forward any other options to amend the relevant Clauses, or CSAs other than those related to the four fundamental issues.

Members

5. At the suggestion of the Chairman, members agreed that a second round of consultation with deputations should be conducted after the Bills Committee had discussed relevant draft CSAs to be proposed.

Action

Clerk

6. To facilitate members' consideration of the possible charging effect of the draft CSAs within the meaning of Rule 57(6) of the Rules of Procedure, the Clerk was requested to circulate relevant President's rulings on proposed CSAs to the Interception of Communications and Surveillance Bill for members' reference.

II. Any other business

Date of next meeting

7. In order to allow more time for the preparation of draft CSAs, members agreed to re-schedule the meeting from 7 November at 8:30 am for 21 November 2007 at 8:30 am. Members also agreed that the Bills Committee would discuss the Administration's responses to Professor Carole Petersen's paper entitled "Hong Kong's Race Discrimination Bill: A Critique and Comparison with the Sex Discrimination and Disability Discrimination Ordinances" [LC Paper No. CB(2)173/07-08(01)] as well as other outstanding issues, if available, at the next meeting.

8. There being no other business, the meeting ended at 9:55 am.

Council Business Division 2
Legislative Council Secretariat
5 December 2007

**Proceedings of the meeting of Bills Committee on
Race Discrimination Bill
on Monday, 29 October 2007, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000650	Chairman	Opening remarks	
000651 - 001159	Dr YEUNG Sum Mr Jasper TSANG Deputy Chairman Mr Jeffrey LAM Ms Emily LAU Chairman	<p>Members' views that the Bills Committee should continue with the scrutiny of the Bill and seek to amend relevant provisions for the purpose of enhancing the protection against racial discrimination.</p> <p>Dr YEUNG Sum's suggestion that deputations could be invited to give their views on the relevant Committee Stage amendments (CSAs) when available.</p> <p>Ms Emily LAU's suggestion that the legal adviser to the Bills Committee should be requested to prepare draft CSAs on issues over which members had in general reached a consensus.</p>	
001200 - 001257	Mr Martin LEE	Mr Martin LEE's expression of dissatisfaction with the Administration's response to the concerns raised by the Bills Committee, and his view that the Administration should be reprimanded. His suggestions that, while the Bills Committee should continue with the scrutiny of the Bill, the Bills Committee's concerns and dissatisfaction should be relayed to the United Nations (UN) Committee on the Elimination of Racial Discrimination, and members should strive for the passage of necessary amendments to improve the protection afforded by the Bill.	
001258 - 001407	Dr LUI Ming-wah Chairman	Dr LUI Ming-wah's view that the Bills Committee should continue with the scrutiny of the Bill. His suggestions that the Administration should be invited to explain in greater detail its policy stance and the Bills Committee should make reference to relevant overseas legislation.	

Time marker	Speaker	Subject	Action required
001408 - 001649	Dr Fernando CHEUNG Chairman	Dr Fernando CHEUNG's view that the Bills Committee should continue with the scrutiny of the Bill as the spirit of the proposed legislation was positive. His suggestion that the Chairman should write to the UN Committee on the Elimination of Racial Discrimination on its various concerns about the Bill. The Chairman's view that this should be discussed at a later stage after further discussion conducted by the Bills Committee.	
001650 - 001830	Mr Albert CHAN Chairman	Mr Albert CHAN's view that given the divergence of views between the Administration and the Bills Committee on fundamental issues, he would not raise objection if the Bills Committee intended to discontinue the scrutiny of the Bill.	
001831 - 001859	Ms Audrey EU	Ms Audrey EU's indication that the Civic Party considered that the Bills Committee should continue the scrutiny of the Bill and seek to improve it by moving amendments.	
001900 - 002054	Mr CHEUNG Man-kwong Chairman	Mr CHEUNG Man-kwong's concern that discontinuing scrutiny of the Bill might result in delaying the Administration's discussion with the institutions funded by the University Grants Committee on the feasibility of accepting alternative qualifications in Chinese.	
002055 - 002133	Ms LI Fung-ying	Ms LI Fung-ying's expression of concurrence with the majority view expressed.	
002134 - 002346	Chairman ALA6	Briefing by the legal adviser to the Bills Committee on the three possible options to be considered in relation to Clause 3 based on previous discussion of the Bills Committee.	
002347 - 004100	Chairman ALA6 Ms Audrey EU	Ms Audrey EU's expression of disagreement with the legal adviser's view that an amendment to Clause 3 to the effect that the enacted Ordinance applied to the Government without exception would probably have a charging effect within the meaning of Rule 57(6) of the Rules of Procedure.	Clerk to provide the President's rulings on proposed CSAs to the Interception of Communications and Surveillance Bill which had involved

Time marker	Speaker	Subject	Action required
		<p>Legal adviser's explanation of his view. The Chairman's explanation of the rationale of the President's rulings in this respect.</p>	<p>consideration of charging effect issues (para. 6 of minutes)</p>
004101 - 004829	<p>Mr Martin LEE ALA6 Chairman Ms Audrey EU</p>	<p>Mr Martin LEE's request for a comparison between Clause 3 and relevant amendments to the English Race Relations Act (RRA)1976 as amended by the Race Relation (Amendment) Act 2000 (RR(A)A).</p> <p>Legal adviser's elaboration that the English RRA 1976 had been amended in 2000 to include new provisions, in particular section 19B which extended the application of RRA to the performance of functions and duties by public authorities and section 76 which concerned the making of appointments by government.</p> <p>Mr Martin LEE's view that the binding effect on the UK Government under the English RRA 1976 as amended by RR(A)A 2000 was greater than the binding effect on the Hong Kong Government under this Bill.</p>	
004830 - 005152	<p>Mr Howard YOUNG Chairman</p>	<p>Mr Howard YOUNG's expression of support for imposing appropriate control on the Government by this Bill. His initial view that option (b) was acceptable.</p>	
005153 - 005401	<p>Mr CHEUNG Man-kwong</p>	<p>Mr CHEUNG Man-kwong's view that the enacted Bill at least should not result in undermining the Government's liabilities under existing legislation as far as racial discrimination was concerned.</p>	
005402 - 005653	<p>Deputy Chairman Chairman</p>	<p>Deputy Chairman's suggestion that the Administration be requested to brief members on its paper [LC Paper No. CB(2)173/07-08(01)] at the next meeting.</p>	
005654 - 010007	<p>Dr YEUNG Sum ALA6 Chairman</p>	<p>Dr YEUNG Sum's enquiry of the implications of option (b) as compared with option (a).</p> <p>Legal Adviser's response that implications of option (b) should be much less than option (a). The Chairman's view that the Bills Committee needed not be too</p>	

Time marker	Speaker	Subject	Action required
		<p>concerned about the charging effect of various options at this stage. Her suggestion that members should strive to reach a consensus on what effect desired to be achieved by this Bill.</p>	
010008 - 010146	Chairman	Two possible options to be considered in relation to Clause 4.	
010147 - 010750	Mr Howard YOUNG ALA6 Chairman	<p>Mr Howard YOUNG's concern about whether it would be possible to complete scrutiny of the Bill within the current legislative session if option (b) was adopted.</p> <p>Legal Adviser's response that the Bill had been drafted in line with existing anti-discrimination ordinances. His view that redrafting of Clause 4 from the perspective of equality of results, i.e. the approach adopted for the relevant legislation in some foreign jurisdictions, might require the redraft of the whole Bill.</p> <p>The Chairman's view that redrafting Clause 4 by adopting a new approach did not necessarily require the redraft of the whole Bill.</p> <p>Legal Adviser's explanation of the purpose achieved by the new sections 1(1A)-(1C) of RRA as amended by RR(A)A.</p>	
010751 - 010940	Chairman	Two possible options for addressing the issue of "New arrivals from the Mainland".	
010941 - 011212	Chairman	Two possible options for addressing the issue of "The language exemption".	
011213 - 011540	Mr Howard YOUNG ALA6 Chairman	<p>Mr Howard YOUNG's enquiry of whether option (a) would be simpler than (b) from the drafting point of view. Legal Adviser's reply in the affirmative.</p> <p>The Chairman's recapitulation on the consensus previous reached by the Bills Committee over the language exemption, which was that the major service providers in the public sector, e.g. medical services,</p>	

Time marker	Speaker	Subject	Action required
		vocational training institutions, etc. should be required to take measures to meet the language needs of users irrespective of their races. Mr Howard YOUNG's initial view that option (a) was preferred.	
011541 - 012328	Chairman Dr YEUNG Sum Ms Emily LAU ALA6	Date of next meeting	ALA6 to prepare draft CSAs for members' consideration at the next meeting (para. 4 of minutes)

Council Business Division 2
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