

香港特別行政區政府
保安局



The Government of
The Hong Kong Special Administrative Region
Security Bureau

香港添馬添美道 2 號

2 Tim Mei Avenue, Tamar, Hong Kong

本函檔號 Our Ref.: SB CR 1/3231/13

來函檔號 Your Ref.: CB2/PL/SE

20 March 2014

Clerk to Panel of Security
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Ms Betty Ma)

Dear Ms Ma,

**Legislative Council Panel on Security
Follow-up to meeting on 7 January 2014**

Thank you for your letter dated 13 January 2014.

The Court of Final Appeal (CFA) indicated at paragraph 141 of its judgment in the case of *W v Registrar of Marriages (FACV 4/2012)* that the impact of a legally recognized gender change on an existing marriage is one of the areas where legislative regulation by way of a gender recognition scheme would be particularly valuable, though the CFA recognized that the courts could work out the answers to questions as they arise by applying existing legal provisions.


It is noted that pursuant to section 19 of the Matrimonial Causes Ordinance (MCO) (Cap. 179), a husband or wife may present a petition for a decree of nullity to the court on any of the grounds provided in section 20 of the MCO. A decree of nullity can be sought on the ground that the marriage

is void or voidable. The grounds on which a marriage shall be void are set out in subsection (1) of section 20 while the grounds on which a marriage shall be voidable are set out in subsection (2) of section 20.

As explained at the captioned panel meeting, according to the legal advice obtained so far, a marriage should not automatically become invalid solely on the ground that one of the parties to the marriage had subsequently (i.e. after celebration in accordance with all requirements under the Marriage Ordinance (Cap. 181)) received full sex re-assignment surgery (SRS). However, a married person who had subsequently undergone full SRS after marriage (or the other party to such a marriage or on joint application by both parties) could apply for dissolving the marriage if he or she or they wished to do so.

Members may wish to note that, in connection with the CFA judgment, the Government announced on 13 January 2014 the establishment of an inter-departmental working group on gender recognition (IWG) to consider legislation and incidental administrative measures that may be required to protect the rights of transsexual persons and to make such recommendations for reform as may be appropriate. The IWG, chaired by the Secretary for Justice, will conduct a comprehensive review of the legal issues concerning the rights of transsexual persons in Hong Kong, including a comparative study of the relevant legislation, case-law and relevant schemes in other jurisdictions, with a view to making recommendations to the Administration on possible legislation and incidental administrative measures that may be appropriate. The IWG has already commenced work, and the possible legal impact of a married person undergoing SRS (together with the need, if any, to implement legislative reform) is one of the issues to be considered by the IWG.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Billy Woo', with a stylized flourish at the end.

(Billy Woo)

for Secretary for Security