

立法會
Legislative Council

LC Paper No. CB (2)1399/14-15
(These minutes have been
seen by the Administration)

Ref : CB2/BC/2/14

Bills Committee on Human Reproductive Technology (Amendment) Bill 2015

Minutes of the first meeting
held on Thursday, 9 April 2015, at 10:45 am
in Conference Room 2B of the Legislative Council Complex

Members present : Dr Hon KWOK Ka-ki (Chairman)
Prof Hon Joseph LEE Kok-long, SBS, JP, PhD, RN
Hon Cyd HO Sau-lan, JP
Dr Hon LEUNG Ka-lau
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan

Members absent : Hon CHAN Han-pan, JP
Hon CHUNG Kwok-pan

Public Officers attending : Item II

Mr Davey CHUNG Pui-hong
Deputy Secretary for Food and Health (Health) 2
Food and Health Bureau

Ms Wendy AU Wan-sze
Principal Assistant Secretary for Food and Health (Health)
Special Duties 1
Food and Health Bureau

Dr Sarah CHOI Mei-yee, JP
Assistant Director of Health (Special Health Services)
Department of Health

Dr Kellie SO Pui-sheung
Principal Medical and Health Officer (3)
Department of Health

Mr Jonathan LUK King-hang
Government Counsel
Department of Justice

Clerk in attendance : Ms Maisie LAM
Chief Council Secretary (2) 5

Staff in attendance : Miss Mimi CHANG
Assistant Legal Adviser 11

Ms Priscilla LAU
Council Secretary (2) 5

Ms Michelle LEE
Legislative Assistant (2) 5

Ms Louisa YU
Clerical Assistant (2) 5

Action

I. Election of Chairman

Dr KWOK Ka-ki was elected Chairman of the Bills Committee.

2. Members agreed that the election of Deputy Chairman was not necessary.

3. The Chairman referred to the application from Mr CHAN Chi-chuen for late membership of the Bills Committee. The Bills Committee agreed that the application from Mr CHAN Chi-chuen be accepted.

II. Meeting with the Administration

[File Ref.: FH CR 1/6/3921/13, LC Paper Nos. LS53/14-15, CB(2)1188/14-15(02) to (07) and CB(3)493/14-15]

Action

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

Admin

5. The Bills Committee requested the Administration to provide the following information -

- (a) composition, membership and frequency of meetings of the Council on Human Reproductive Technology;
- (b) the statistics on the number of enforcement actions taken and prosecutions initiated under the Human Reproductive Technology Ordinance (Cap. 561) since its enactment;
- (c) offence provisions relating to Internet activities, in particular advertising on the Internet, in other ordinances, the policy intent and the penalty for contravention of each offence, and the relevant prosecution figures;
- (d) the regulatory regime governing advertisements on, and provision of services of, maternal blood testing for detecting the gender of a fetus, and the requirements imposed on importation of maternal blood into Hong Kong for sending to a laboratory for testing; and
- (e) in respect of Questions 1, 2, 4, 5, 6 and 10 raised in the Assistant Legal Advisor's letter dated 13 March 2015 (LC Paper No. CB(2)1188/14-15(02)) and the written response provided by the Administration in this regard (LC Paper No. CB(2)1188/14-15(03)), supplementary information on the following matters -
 - (i) what circumstances (i.e. what kinds of acts and mens rea) would be regarded as constituting an offence under the proposed new section 15(3A);
 - (ii) whether a sex selection service provider from a place outside Hong Kong where sex selection through reproductive technology ("RT") procedures was permitted (e.g. Thailand and the United States), who had knowingly posted an advertisement of his/her service on the Internet which was viewable by any person, would be held liable under the proposed new section 15(3A) if he/she travelled to Hong Kong;
 - (iii) the judgments of cases made by the courts at all levels,

Action

including the Magistrates' Courts, relating to the legal position of hyperlink or hypertext linking in a criminal context;

- (iv) the judgment of the Canadian case regarding the question of hyperlinks as referred to by the Administration in its answer to Question 2;
- (v) the use of the English expressions of "purportedly", "purporting to" and "purporting to be", and the Chinese expressions of "看來是", "看起來" and "看似" in other ordinances;
- (vi) whether a discussion about sex selection on the Internet, which contained not only medical information but also a hyperlink which might further link to institutes providing sex selection services, would amount to "cause to be published or distributed an advertisement purporting to promote sex selection services" within the meaning of the proposed new section 15(3A); and
- (vii) the effectiveness of enforcement against advertisements on sex selection services through RT procedures, particularly advertising on the Internet, in jurisdictions where it was unlawful to do, including whether there were any court cases relating to the advertisements on, or provision of, such services.

III. Any other business

Invitation of public views

6. Members agreed to receive views from the public on the Bill at the next meeting scheduled for Monday, 27 April 2015, at 2:30 pm. In line with usual practice, a general notice would be posted on the Legislative Council website and invitation letters would be issued to the 18 District Councils for the purpose.

(Post-meeting note: With the concurrence of the Chairman, invitation letters were also issued to the organizations on the list issued to members vide LC Paper No. CB(2)1238/14-15 on 13 April 2015.)

Action

7. There being no other business, the meeting ended at 12:25 pm.

Council Business Division 2
Legislative Council Secretariat
5 May 2015

**Proceedings of the first meeting of
the Bills Committee on Human Reproductive Technology (Amendment) Bill 2015
held on Thursday, 9 April 2015, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Election of Chairman</i>			
000114 - 000259	Prof Joseph LEE Dr Helena WONG Dr KWOK Ka-ki	Election of Chairman	
000300 - 000333	Mr CHAN Chi-chuen Chairman	Acceptance of application for late membership from Mr CHAN Chi-chuen	
<i>Agenda item II: Meeting with the Administration</i>			
000400 - 000623	Chairman Admin	Briefing by the Administration on the Human Reproductive Technology (Amendment) Bill 2015 ("the Bill")	
000624 - 000833	Chairman ALA11	Highlights by the Assistant Legal Adviser ("ALA11") on the main concerns set out in her two letters dated 13 and 31 March 2015 to the Administration (LC Paper Nos. CB(2)1188/14-15(02) and (04))	
000834 - 001445	Dr Helena WONG Chairman Admin	<p>Dr Helena WONG's enquiry as to whether the proposed new section 15(3A) intended to prohibit advertisements published or distributed outside Hong Kong (e.g. the Mainland) promoting services provided in Hong Kong for a hidden purpose of sex selection, such as maternal blood testing to detect the gender of a fetus.</p> <p>The Administration's advice that -</p> <p>(a) the Bill sought to prohibit publication and distribution of advertisements in Hong Kong that purporting to promote services provided for selecting the sex of an embryo by means of a reproductive technology ("RT") procedure as defined in the Human Reproductive Technology Ordinance (Cap. 561) ("the Ordinance"), such as in vitro fertilization and artificial insemination. The testing of maternal blood to detect the sex of a fetus did not fall within the definition of RT procedure; and</p> <p>(b) whether the prohibition in the proposed new section 15(3A) would be applicable to overseas advertisement would depend on the circumstances of individual cases.</p> <p>At the request of Dr Helena WONG, the Administration undertook to advise in writing the regulatory regime governing advertisements on, and provision of services of, maternal blood testing for detecting the gender of a fetus, and the requirements imposed on importation of maternal blood into Hong Kong for sending to a laboratory for testing.</p>	Admin

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001446 - 002036	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's enquiries about the composition and operation of the Council on Human Reproductive Technology ("the Council"); and the enforcement actions taken and prosecutions initiated against sex selection services using RT procedures on non-medical grounds.</p> <p>The Administration's advice on the composition of the Council as set out in section 4(2) of the Ordinance, and that all members of the Council were appointed by the Chief Executive. Upon receipt of complaints relating to the sex selection services using RT procedures on non-medical grounds, the Council would, if satisfied that an offence under section 15 of the Ordinance might have been committed, refer the case to the Police for investigation as appropriate. There had been no complaints received and no prosecutions made so far.</p> <p>Mr CHAN Chi-chuen's concern about the lack of representation of specialists in RT in the Council, and his view that the Bills Committee should receive views from the relevant stakeholders on the Bill.</p>	
002037 - 003043	Chairman Mr Charles Peter MOK Admin	<p>Mr Charles Peter MOK's concern about increased monitoring of Internet activities through various ordinances, and the inconsistency in the drafting of the legislative provisions relating to regulation over Internet activities; and the Chairman and Mr Charles Peter MOK's enquiry about -</p> <p>(a) the enforcement of the prohibition in the proposed new section 15(3A), particularly with regard to those advertisements on sex selection services using RT procedures being uploaded to the Internet by using overseas servers or through a cloud platform, and cached copies of relevant advertising web pages in servers of Internet service providers, that were accessible by local Internet surfers; and</p> <p>(b) whether posting a hyperlink which would further link to institutes where sex selection services were provided on an online social networking platform (e.g. Facebook) would be in breach of the proposed new section 15(3A).</p> <p>The Administration's response that -</p> <p>(a) given the increase in local press advertisements promoting sex selection services using RT procedures available in other countries in recent years, there was a call for prohibiting these activities by legislation. There were also views from the Council and some stakeholders that the prohibition should cover advertisements on Internet; and</p> <p>(b) the primary basis of criminal jurisdiction in Hong Kong was territorial. Offences committed in Hong Kong would fall within the jurisdiction of Hong Kong courts. It should be noted that whether the uploading of advertisements and related materials that purported to promote sex selection services on the Internet would constitute "publishing" and</p>	

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		<p>"distributing" for the purpose of the proposed new section 15(3A) depended on the circumstances of individual cases.</p>	
003044 - 004124	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's view that the proposed prohibition of advertising sex selection services through RT procedures on the Internet would have an adverse impact on the free flow of information on the Internet; and her enquiry about -</p> <p>(a) whether search engines (e.g. Google) would be caught under the proposed new section 15(3A) for providing links to archival copies of web pages of overseas institutes where sex selection services using RT procedures were provided; and</p> <p>(b) how to ensure effective enforcement of the prohibition in the proposed new section 15(3A), in particular if those who uploaded such an advertisement to the Internet were from jurisdictions where it was lawful to do so.</p> <p>The Administration's advice that -</p> <p>(a) for a person to be found guilty of the offence of "cause to be published or distributed" an advertisement purporting to promote sex selection services through RT procedures, there had to be evidence that the person did the relevant act knowingly or with mens rea; and</p> <p>(b) prosecution under the proposed new section 15(3A) would be instituted where sufficient evidence could be collected. There might be, however, greater difficulties in collecting evidence where overseas servers were used to post or cause to be posted the prohibited advertisements. Notwithstanding this, it was intended that the proposed amendments would create a deterrent effect to discourage advertisements in Hong Kong promoting sex selection services through RT procedures, no matter the services were provided or not.</p> <p>Sharing Mr Charles Peter MOK's concern, Ms Cyd HO's view that the drafting of legislative provisions relating to regulation over Internet activities should be consistent.</p> <p>The Chairman's request for the Administration to provide in writing information on (a) offence provisions relating to Internet activities, in particular advertising on the Internet, in other ordinances; (b) the policy intent and the penalty for contravention of each offence; and (c) the relevant prosecution figures.</p>	Admin
004125 - 004900	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's view that instead of only acting upon complaints made to it about provision of sex selection services using RT procedures on non-medical grounds, the Council should conduct proactive inspections and collect evidence by posing as customers; and his enquiry about whether a seminar on medical information about RT would constitute an advertising activity on sex selection services within the meaning of the proposed new section 15(3A) if information about such services was provided</p>	

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		<p>after the seminar through face-to-face communication.</p> <p>The Administration's advice that -</p> <p>(a) all RT treatment centres, including those providing sex selection services, were licensed by the Council under the Ordinance. These treatment centres were subject to statutory regulation and regular inspections by the Council. Upon receipt of intelligence or complaints of any suspected offence under the Ordinance, the Council would take appropriate follow-up actions and refer the case to the Police for investigation as appropriate; and</p> <p>(b) "advertisement" was defined under section 2 of the Ordinance. While an academic seminar on RT intended for professional exchange might not constitute an advertising activity on sex selection services within the meaning of the proposed new section 15(3A), those with follow-up promotional activities on sex selection services by agents within the same occasion might fall within the scope of the proposed new section 15(3A).</p> <p>At the request of Mr CHAN Chi-chuen, the Administration undertook to provide in writing the statistics on the number of enforcement actions taken and prosecutions initiated under the Ordinance since its enactment.</p>	Admin
004901 - 005942	Chairman Dr LEUNG Ka-lau Admin	<p>Dr LEUNG Ka-lau's enquiry about -</p> <p>(a) whether ultra-sound examination or maternal blood test for identifying the gender of a fetus for a hidden purpose of sex selection would be regarded as sex selection services; and</p> <p>(b) whether a sex selection service provider from a place outside Hong Kong where sex selection through RT procedures was permitted (e.g. Thailand and the United States), who had knowingly posted an advertisement of his/her service on the Internet which was viewable by any person, would be held liable under the proposed new section 15(3A) if he/she travelled to Hong Kong.</p> <p>The Administration's reply in the negative to Dr LEUNG Ka-lau's first question; and its highlights of the written response (LC Paper No. CB(2)1188/14-15(05)) it made to Question 1 raised by ALA11 in her letter dated 31 March 2015 (LC Paper No. CB(2)1188/14-15(04)). The Chairman's request for the Administration to provide a detailed written response to the scenario referred to by Dr LEUNG Ka-lau.</p>	Admin
005943 - 010614	Chairman Mr Charles Peter MOK Admin	Mr Charles Peter MOK's expression of dissatisfaction with the lack of explanations of the legislative intent of the proposed new section 15(3A) in the Administration's written response (LC Paper No. CB(2)1188/14-15(03)) to ALA11's letter dated	

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		<p>13 March 2015 (LC Paper No. CB(2)1188/14-15(02)); and his request for a further written response from the Administration on the following in respect of Questions 1, 2 and 6 -</p> <p>(a) what circumstances (what kinds of acts and mens rea) would be regarded as constituting an offence under the proposed new section 15(3A);</p> <p>(b) the judgments of cases made by the courts at all levels, including the Magistrates' Courts, relating to the legal position of hyperlink or hypertext linking in a criminal context; and</p> <p>(c) a detailed explanation as to whether a discussion about sex selection on the Internet, which contained not only medical information but also a hyperlink which might further link to institutes providing sex selection services, would amount to "cause to be published or distributed an advertisement purporting to promote sex selection services" within the meaning of the proposed new section 15(3A).</p>	Admin
010615 - 010953	Chairman Dr LEUNG Ka-lau Admin	Referring to the written response to be provided by the Administration to his cited scenario, Dr LEUNG Ka-lau's remarks that the Administration should beware that the possible difficulties in collecting evidence for those advertisements being uploaded on the Internet outside Hong Kong was related to the question of enforcement rather than the question of liability.	
010954 - 011333	Chairman Mr CHAN Chi-chuen Admin	At Mr CHAN Chi-chuen's request, the Administration undertook to provide in writing information on whether there were any court cases relating to the advertisements on, or provision of, sex selection services through RT procedures on non-medical grounds in those jurisdictions where it was unlawful to do so; as well as the composition, membership and frequency of meetings of CHRT.	Admin
011334 - 011743	Chairman Ms Cyd HO Admin	<p>Referring to the Administration's written response to ALA11's letter dated 13 March 2015, Ms Cyd HO's request for a further written response from the Administration on the following in respect of Questions 2, 4 and 5 -</p> <p>(a) the judgement of the Canadian case regarding the question of hyperlinks as referred to by the Administration in its answer to Question 2; and</p> <p>(b) information on the use of the English expressions of "purportedly", "purporting to" and "purporting to be", and the Chinese expressions of "看來是", "看起來" and "看似" in other ordinances.</p>	Admin
011744 - 012340	Chairman Mr Charles Peter MOK Admin	Mr Charles Peter MOK's view that the Administration should provide a defence for persons, such as employees of publishers and web banner designers, who took part in the advertising process and might be regarded as "knowingly" arranging for the publication or distribution of the advertisement, but they did so	

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		<p>in the course of their employment and had no reason to believe that the contravention of the proposed new section 15(3A) would occur by reason of the publication or distribution of the advertisement.</p> <p>Referring to the Administration's written response to Question 10 raised in ALA11's letter dated 13 March 2015, Mr Charles Peter MOK's request for the Administration to provide in writing information on the effectiveness of enforcement against advertisements on sex selection services through RT procedures, particularly advertising on the Internet, in jurisdictions where it was unlawful to do.</p>	Admin
012341 - 013153	Chairman Ms Cyd HO Admin	Noting that it was lawful under the Ordinance for a person to, by means of a RT procedure, select the sex of an embryo on non-medical grounds in places outside Hong Kong, Ms Cyd HO's query on the rationale to prohibit advertisements on sex selection services using RT procedures provided in those jurisdictions where sex selection through RT procedures were permitted. In her view, this was not conducive to the free flow of information.	
013154 - 013323	Chairman Mr CHAN Chi-chuen Admin	Mr CHAN Chi-chuen's concern about whether a special report on printed media covering medical information on sex selection through RT procedures and services available in other places would fall within the proposed new section 15(3A).	
<i>Agenda item III: Any other business</i>			
013324 - 013710	Chairman	Meeting to receive public views on the Bill Closing remarks by the Chairman	
013711 - 013743	Chairman Mr CHAN Chi-chuen	Timetable for scrutiny of the Bill	