

立法會
Legislative Council

LC Paper No. CB(2)1589/14-15
(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 second meeting
held on Monday, 27 April 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

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

Attendance : Women's Health and Reproductive Medicine Centre Limited
by invitation

Dr Clement CHAN Leung-kwok
Director

Hong Kong Reproductive Medicine Centre Limited

Dr Louis CHAN Yik-si
Director

Hong Kong Reproductive Health Centre Limited

Dr Carina CHAN Chi-wai
Chief Executive Officer

Hong Kong Assisted Reproduction Centre Limited

Dr Tracy YEUNG Wing-yee
Consultant

The Hong Kong College of Obstetricians and Gynaecologists

Dr Ares LEUNG Kwok-ling
President

Dr Clement HO

Hong Kong Academy of Medicine

Professor Rossa CHIU
Representative

BGI HK

Mr Vincent LIN
Assistant Manager

The Women's Clinic Company Limited

Dr Milton LEONG Ka-hong
Director

The College of Surgeons of Hong Kong

Dr MAN Chi-wai
Honorary Secretary and Chairman of the Specialty Board
in Urology

Hong Kong Doctors Union

Dr YAM Chun-yin
Council Member

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

Action

I. Meeting with deputations and the Administration

[File Ref.: FH CR 1/6/3921/13, LC Paper Nos. LS53/14-15, CB(2)1188/14-15(02) to (06), CB(2)1309/14-15(01) to (04), CB(2)1328/14-15(01) to (02), CB(2)1337/14-15(01) to (02) and CB(3)493/14-15]

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

Action

2. The Bills Committee received views from nine deputations on the Bill, and noted the written submissions provided by The Law Society of Hong Kong and Hong Kong Bar Association which did not attend the meeting.

Admin 3. The Administration undertook to relay to the Council on Human Reproductive Technology ("the Council") members and deputations' views on the need to improve the communication between the Council and the reproductive technology ("RT") service providers.

Admin 4. The Administration was requested to -

- (a) explain in writing the reasons why advertisements promoting the use of RT procedures to achieve the purpose of sex selection on both medical and non-medical grounds were prohibited across the board under the proposed new section 15(3A), in particular as to whether due regard had been given to the implications of the proposed prohibition on the healthcare professionals, who might need to provide information and materials on sex selection services to individual patients with such a need and at seminars intended for academic exchange;
- (b) provide information on the number and subjects of the enquiries handled by the Council since its establishment and the average time required by the Council to provide a response; and
- (c) consider the various suggestions raised by the deputations regarding inviting specialists in reproductive medicine to assist the work of the Council.

II. Any other business

5. Members agreed to invite representative(s) of the Council to attend the next meeting of the Bills Committee to answer questions from members. Subject to the availability of the representative(s) of the Council, the next meeting would be tentatively scheduled for 12 May 2015 at 10:45 am.

(Post-meeting note: With the concurrence of the Chairman, the third meeting of the Bills Committee has subsequently been scheduled for 12 May 2015 at 8:30 am.)

Action

6. There being no other business, the meeting ended at 4:32 pm.

Council Business Division 2
Legislative Council Secretariat
29 May 2015

**Proceedings of the second meeting of
the Bills Committee on Human Reproductive Technology (Amendment) Bill 2015
held on Monday, 27 April 2015, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
<i>Agenda item I: Meeting with deputations and the Administration</i>			
000158 - 000647	Chairman	Opening remarks	
000648 - 000804	Hong Kong Reproductive Medicine Centre Limited	Presentation of views	
000805 - 001511	Hong Kong Reproductive Health Centre Limited Chairman	Presentation of views (LC Paper No. CB(2)1309/14-15(01)) The Chairman's remarks that while deputations' concerns about the composition and operation of the Council on Human Reproductive Technology ("the Council") fell outside the scope of the Bill, the Administration should consider conducting an overall review of the Human Reproductive Technology Ordinance (Cap. 561) ("the Ordinance") taking into account deputations' views.	
001512 - 001856	The Hong Kong College of Obstetricians and Gynaecologists	Presentation of views	
001857 - 001907	Dr Clement HO	No views were presented	
001908 - 002018	BGI HK	Presentation of views (LC Paper No. CB(2)1309/14-15(02))	
002019 - 002956	The Women's Clinic Company Limited Chairman	Presentation of views (LC Paper No. CB(2)1309/14-15(03))	
002957 - 003411	The College of Surgeons of Hong Kong	Presentation of views (LC Paper No. CB(2)1328/14-15(01))	
003412 - 003618	Hong Kong Doctors Union	Presentation of views	
003619 - 003806	Women's Health and Reproductive Medicine Centre Limited	Presentation of views	
003807 - 003813	Hong Kong Assisted Reproduction Centre Limited	No views were presented	

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003814 - 005409	Chairman Admin	<p>The Administration's response to the concerns and issues raised by deputations -</p> <p>(a) the prohibition in the proposed new section 15(3A) covered all advertising activities taking place in Hong Kong that purporting to promote sex selection services through reproductive technology ("RT") procedures. To narrow down the scope of prohibition to cover only advertising activities which promoted the use of RT procedures to achieve the purpose of sex selection on non-medical grounds would undermine the effectiveness as advertisements which did not specify whether the sex selection services were for patients with medical or non-medical need would not be held liable. Given that patients with genuine medical need for use of RT procedures for sex selection would be under the care of healthcare professionals, who would offer proper advice and referral to treatments available in Hong Kong or other countries as appropriate, the prohibition would not restrict the right of persons with genuine medical reasons for obtaining sex selection services to receive such information;</p> <p>(b) medical advice offered by healthcare professionals to patients on RT procedures, academic seminars on RT intended for professional exchange, and press reports on interview with an expert on RT might not constitute an advertising activity on sex selection services within the meaning of the proposed new section 15(3A);</p> <p>(c) the four members of the Council referred to in section 4 of the Ordinance could be engaged in either the teaching or practice of obstetrics and gynaecology, or any relevant activity. It should also be noted that according to Schedule 1 to the Ordinance, the person responsible under, or the holder of, a licence granted under section 23(1)(a) of the Ordinance should not be a member of the Council. They, however, could serve as co-opted members of the Ethics Committee, the Inspection Committee and the Investigation Committee established under the Council. In addition, the Council would seek expert advice from professional body, such as the Hong Kong College of Obstetricians and Gynaecologists, as and when required to facilitate execution of its functions; and</p> <p>(d) it would relay to the Council deputations' views on the need to improve the communication between the Council and RT service providers.</p>	Admin
005410 - 010220	Chairman Mr CHAN Chi-chuen Hong Kong Reproductive	In response to Mr CHAN Chi-chuen's enquiry about the communication problems between the Council and the RT service providers, representatives of the Hong Kong	

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	<p>Health Centre Limited Hong Kong Assisted Reproduction Centre Limited Admin</p>	<p>Reproductive Health Centre Limited and Hong Kong Assisted Reproduction Centre Limited cited the example that the Council had failed to provide a clear advice to repeated enquiries from RT service providers and patients as to whether it was lawful to provide RT procedures to parties to a Muslim marriage which was not monogamous and contracted outside Hong Kong.</p> <p>Holding the view that the Council did not effectively perform its functions, Mr CHAN Chi-chuen expressed concern about the enforcement of the Bill, if enacted.</p>	
<p>010221 - 011236</p>	<p>Chairman Mr CHUNG Kwok-pan Admin The Women's Clinic Company Limited</p>	<p>Mr CHUNG Kwok-pan's view that the Council should formulate a set of clear guidelines or codes of practice for reference of the RT service providers.</p> <p>The Administration's advice that under section 8 of the Ordinance, the Council had promulgated the Code of Practice on Reproductive Technology and Embryo Research ("the Code") to provide guidance for good practice in respect of staffing; facilities and equipment; assessment of clients, donors and welfare of children; obtaining of informed consent; counselling service to clients and donors; and use of gametes and embryos, etc.</p> <p>Representative of the Women's Clinic Company Limited's view that the Code should be regularly reviewed to keep up with the rapid developments of RT. The Code, however, had only been slightly revised once in 2013 since its coming into effect in 2007. This might be partly due to the lack of representatives of specialists in reproductive medicine on the Council.</p>	
<p>011237 - 012017</p>	<p>Chairman Dr Fernando CHEUNG Admin</p>	<p>Dr Fernando CHEUNG's view that the Council should enhance its communication with RT service providers, and advertisements promoting sex selection services on non-medical grounds should be prohibited.</p> <p>On Dr Fernando CHEUNG's enquiry about whether those provisions in the Ordinance which provided for prohibition of advertisements relating to commercial dealing of surrogacy arrangements contained the word "purporting" as in the proposed new section 15(3A), the Administration's advice that -</p> <p>(a) section 17(2) of the Ordinance, which provided that no person should cause to be published or distributed, or knowingly publish or distribute, an advertisement relating to surrogacy arrangements, did not contain the word "purporting"; and</p> <p>(b) in the case of section 17(2) of the Ordinance, the matter (i.e. an arrangement to carry a child for someone else) was more direct and straightforward in nature than sex selection services. Advertisements of</p>	

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		<p>sex selection services might not necessarily contain words expressly setting out provision of sex selection services, but might rather contain suggestive pictures or phrases. The word "purporting" was meant for covering such scenarios. Hence, the word would receive an objective interpretation and it would be a matter of fact and degree for the tribunal of fact.</p>	
<p>012018 - 013245</p>	<p>Chairman Dr Clement HO The College of Surgeons of Hong Kong Admin</p>	<p>The Chairman's concern as to whether an objective standard would be used to determine if an advertisement "purporting to" promote sex selection services through RT procedures; and his invitation of views from the deputations as to whether the Administration had fully consulted the stakeholders on the legislative proposal and how the Council could improve its operation.</p> <p>While it was understandable that allowing the person responsible under, or the holder of, a licence granted under section 23(1)(a) of the Ordinance to be a member of the Council might not be desirable in some circumstances, Dr Clement HO held the view that the expertise of these persons was useful to the Council and its committees in executing their functions. The Council and its committees could consider inviting specialists in reproductive medicine as consultants on a case basis.</p> <p>Representative of The College of Surgeons of Hong Kong's remarks that the Administration had not taken heed of the view put forward by the College during consultation that it was undesirable if advertisements promoting the use of RT procedures to achieve the purpose of sex selection on both medical and non-medical grounds would be prohibited across the board; and his grave concern that healthcare professionals might be caught under the proposed new section 15(3A) for offering advice to patients with genuine medical need for obtaining sex selection services using RT procedures. In his view, advertisements on sex selection services should be allowed if it had clearly stated that sex selection for non-medical reasons was prohibited in Hong Kong.</p> <p>The Administration's reiteration of the reasons why the scope of the proposed prohibition did not only cover advertisements purporting to promote the use of RT procedures to achieve the purpose of sex selection on non-medical grounds; and its undertaking to provide in writing a detailed explanation in this regard, in particular as to whether due regard had been given to the implications of the proposed prohibition on the healthcare professionals, who would provide information and materials on sex selection services to individual patients with such a need and at seminars intended for professional exchange.</p> <p>The Chairman's request for the Administration to provide information on the number and subjects of the enquiries</p>	<p>Admin</p> <p>Admin</p>

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		<p>handled by the Council since its establishment and the average time required by the Council to provide a response; and his decision that representative(s) of the Council would be invited to attend the next meeting of the Bills Committee.</p>	
013246 - 014044	<p>Chairman Mr CHAN Chi-chuen Admin</p>	<p>Mr CHAN Chi-chuen's view that the adding of the word "purporting" in the proposed new section 15(3A), and the Administration's reply in response to Assistant Legal Adviser's letter dated 13 March 2015 (LC Paper No. CB(2)1188/14-15(03)) that a person should be considered to have published the content of a secondary website if the manner of hyperlinking conveyed the content concerned would cast the net too wide.</p>	
014045 - 020152	<p>Chairman Women's Health and Reproductive Medicine Centre Limited The Hong Kong College of Obstetricians and Gynaecologists The Women's Clinic Company Limited Admin</p>	<p>The Chairman's concern that the proposed prohibition of advertisements purporting to promote sex selection services through RT procedures would adversely affect the licensed RT service providers' provision or circulation of information on RT on the Internet or in seminars intended for professional exchange.</p> <p>Representative of Women's Health and Reproductive Medicine Centre Limited's view that an exclusion clause should be provided for in the Bill to ensure that professional exchange on RT by healthcare professionals would not constitute an advertising activity on sex selection services within the meaning of the proposed new section 15(3A), and the Council could consider inviting specialists in reproductive medicine to attend its meetings in the capacity of its honorary advisors to provide, where necessary, professional advice on issues relating to the latest development of RT with a view to facilitating its making of informed decisions.</p> <p>Representative of the Hong Kong College of Obstetricians and Gynaecologists remarked that the Council should have confidence that experts in the field would provide advice to the Council in a professional manner.</p> <p>The Administration's advice that -</p> <p>(a) it would address in its written response to be provided to the Bills Committee the concern raised by members and deputations about the scope and enforcement of the proposed prohibition; and</p> <p>(b) concern about conflict of interest in appointing person responsible and licensee as members of the Council had been raised during the scrutiny of the Human Reproductive Technology Bill which was introduced into the Legislative Council in 1998. That said, the Administration would consider the various suggestions of inviting experts in reproductive medicine to assist the work of the Council.</p>	<p>Admin</p> <p>Admin</p>

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		<p>Representative of the Hong Kong College of Obstetricians and Gynaecologists' remarks that the issue of conflict of interest could be addressed by requiring members of the Council to declare their interests in relation to the issues to be discussed at meetings, the making of decisions on a collective basis and the keeping of records of meetings; and that the Council should invite local, rather than overseas, specialists in reproductive medicine to provide professional advice.</p> <p>Representative of the Women's Health and Reproductive Medicine Centre Limited's opinion that it was more appropriate for the Council to seek advice from local specialists in reproductive medicine to ensure that the advice would suit local circumstances.</p> <p>Representative of The Women's Clinic Company Limited's view that there was no cause for concern that the appointment of specialists in reproductive medicine in the Council would result in its decisions leaning in favour of the RT service providers, as the composition of the Council had already ensured a balanced representation of members from within and outside the profession.</p>	
<i>Agenda item II: Any other business</i>			
020153 - 020318	Chairman	Date of next meeting Closing remarks	