

立法會
Legislative Council

LC Paper No. CB(2)1996/14-15

(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 third meeting
held on Tuesday, 12 May 2015, at 8:30 am
in Conference Room 3 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
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon CHUNG Kwok-pan
- Members absent** : Dr Hon LEUNG Ka-lau
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
- 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

Mr Gregory LEUNG Wing-lup
Chairman
Council on Human Reproductive Technology

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 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(04), CB(2)1337/14-15(02), CB(2)1426/14-15(01) and CB(3)493/14-15]

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

2. The Bills Committee noted that the Administration had joined hands with the Council of the Human Reproductive Technology to look into the need to amend the Human Reproductive Technology Ordinance (Cap. 561) having regard to the stakeholders' feedback and the Council's operating experience. No legislative timetable, however, had been set in this regard.

Admin

3. The Bills Committee requested the Administration to -

Action

- (a) consider revising the drafting of the proposed new section 15(3A) to the effect that (i) employees of parties which published or distributed, or caused to be published or distributed, an advertisement purporting to promote sex selection services; and (ii) persons whose acts of publishing or distributing, or causing to be published or distributed, an advertisement purporting to promote sex selection services were not done for the purpose of financial gain would not be held liable for the proposed offence;
- (b) provide information on the respective statistics on prosecutions initiated, parties prosecuted and judgments of the cases in relation to prohibition of advertising activities, such as those cases involving charges under the Undesirable Medical Advertisements Ordinance (Cap. 231), and advertisements on the Internet; and
- (c) provide information on the investigations and prosecutions of cases related to commercial surrogacy arrangements carried out in places outside Hong Kong.

II. Any other business

4. The Chairman said that subject to the availability of members, the next meeting of the Bills Committee would be held on 2 June 2015 at 2:30 pm. Members would be informed of the meeting arrangements in due course.

(Post-meeting note: With the concurrence of the Chairman, the fourth meeting of the Bills Committee has subsequently been scheduled for 2 June 2015 at 3:00 pm.)

5. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2
Legislative Council Secretariat
10 August 2015

**Proceedings of the third meeting of
the Bills Committee on Human Reproductive Technology (Amendment) Bill 2015
held on Tuesday, 12 May 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action required
<i>Agenda item I: Meeting with the Administration</i>			
000520 - 000711	Chairman	Opening remarks	
000712 - 001222	Chairman Admin	Briefing by the Administration on its paper entitled "Response to Bills Committee's Questions and Comments" [LC Paper No. CB(2)1426/14-15(01)]	
001223 - 001411	Chairman	Discussion arrangement	
001412 - 002638	Chairman Mr CHAN Chi-chuen The Council of the Human Reproductive Technology ("the Council") Admin	<p>Mr CHAN Chi-chuen's concern about whether the Council would provide a substantive advice within a reasonable time in response to reproductive technology ("RT") service providers' enquiries which were complicated in nature. He also sought the view of the Chairman of the Council on involving local, or overseas, RT experts in the discussion of the Council's business.</p> <p>The Council and the Administration's advice that -</p> <p>(a) it might not be appropriate for the Secretariat of the Council to provide legal advice on individual cases raised by RT service providers or users given the absence of details of the cases concerned. However, the Secretariat of the Council would, basing on the information provided by enquirer, set out the relevant provisions of the Human Reproductive Technology Ordinance (Cap. 561) ("the Ordinance") in the replies to facilitate the enquirers to seek further legal advice. It should also be noted that the power to interpret laws was vested in the courts. The Council neither had the power or ability to do so; and</p> <p>(b) 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. Given that licensing, inspection and related matters were the major business of the Council, it would be inappropriate for the person responsible under a licence or licensee to be involved in Council discussions and deliberations on grounds of conflict of interest. At present, a local RT expert who was neither a person responsible under a licence nor a licensee was a member of the Council. In addition, advice from RT experts in the local academic sector on specific issues had been sought from time to time by subcommittees under the Council as and when required.</p>	

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		<p>Mr CHAN Chi-chuen's call for the Administration to appoint specialists in reproductive medicine who were not persons responsible under, or holders of, licences granted under section 23(1)(a) of the Ordinance as members of the Council.</p>	
002639 - 004658	<p>Chairman Mr CHAN Chi-chuen The Council Admin Mr CHUNG Kwok-pan</p>	<p>The Chairman's concern that some RT service providers might refrain from performing certain RT procedures for their patients due to the ambiguities in the relevant provisions of the Ordinance and the absence of substantive advice from the Council in this regard. This might prejudice the interests of patients and was not conducive to the long-term development of the local RT services.</p> <p>The Council's reiteration of the position that it was difficult, if not impossible, for the Secretariat of the Council to provide legal advice on individual cases, as the Secretariat of the Council would not be able to get hold of all the details and factual information of the cases through exchanges of correspondence with the RT service providers. The RT service providers should seek their own legal advice and the Secretariat would facilitate the RT service provider by providing information on the relevant provisions of the Ordinance.</p> <p>Mr CHAN Chi-chuen's view that the Administration would work with the Council to conduct a comprehensive review of the Ordinance to clarify the ambiguities in the provisions; and Mr CHUNG Kwok-pan's suggestion that pending a review of the Ordinance, a committee should be set up under the Council to formulate a set of guidelines with concrete examples to provide guidance to the RT service providers on how the provisions of the Ordinance should be interpreted and applied.</p> <p>The Council and the Administration's advice that -</p> <p>(a) the Council had promulgated a Code of Practice on Reproductive Technology and Embryo Research ("the Code") to provide detailed guidelines for RT service providers and embryo researchers. A working group established under the Council was tasked to regularly review the Code and consult, among others, the RT service providers on any proposed amendments to the Code. The current edition of the Code took effect from January 2013. In addition, the Secretariat of the Council would inform all licensed centres in writing of the recommendations of the Council on the carrying out of the relevant activities under the Ordinance and/or matters requiring attention which the Council came across in handling the enquiries; and</p> <p>(b) the Administration had joined hands with the Council to look into the need to amend the Ordinance having regard to the stakeholders' feedback and the Council's operating experience. This involved not only medical technology and clinical procedures, but also wider ethical and social issues. A public consultation might be conducted to gauge the views of the public as and when appropriate.</p>	

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004659 - 005239	Chairman The Council	In response to the Chairman's enquiry, the Council's advice that those Council members who were engaged in the teaching or practice of obstetrics and gynaecology could provide advice on RT issues. That said, if required the involvement of RT specialists would be helpful to the discussion of the business of the Council. As regards the assistance that the Council could provide to reduce the time and costs on patients seeking legal advice on RT procedures through RT service providers, the Council informed that it was not desirable for the Council to advise on whether matters referred to in the enquiries from the RT service providers were permissible or not under the existing provisions of the Ordinance without knowing the full factual situation of the case.	
005240 - 011645	Chairman ALA11 Admin Mr CHAN Chi-chuen	<p>The Legal Adviser to the Bills Committee's citing of the views given by the Hong Kong Bar Association in its submission (LC Paper No. CB(2)1337/14-15(01)) that the proposed section 15(3A) would likely infringe the freedom of expression protected under the Basic Law and the Hong Kong Bill of Rights Ordinance.</p> <p>The Administration's explanation of the definition of the term "advertisement" in the Ordinance and the scope of the proposed prohibition as detailed in paragraphs 2, 9, 16 and 18 of the Administration's paper. In gist, the Administration considered that the current legislative proposal would not restrict the right of persons with genuine medical reasons to receive the necessary information as the healthcare professionals would make referrals. In addition, confining the offence to advertisements to promote sex selection services using RT procedures on non-medical grounds might create a loophole for those which sought to circumvent the proposed offence, say, by publishing advertisement which was silent on this point.</p> <p>The Chairman and Mr CHAN Chi-chuen's views that the proposed prohibition would cast the net too wide and would infringe local couples' right to receive from avenues other than their attending doctors information on sex selection services through RT procedures on medical grounds.</p>	
011646 - 012353	Chairman Admin ALA11	<p>Referring to Annex A of the Administration's paper, the Chairman's enquiry about the use of the expression "purporting to" in other ordinances. The Administration's advice that there were about 700 legislative provisions containing the expression "purporting to" and more than 500 legislative provisions which contained the expression "purporting to be".</p> <p>The Legal Adviser to the Bills Committee's remarks that many of the legislative provisions containing the expression "purporting to" were related to admissibility of documents in court proceedings which was not the situation here. If the Administration insisted on using the expression "purporting to", they might consider using "本意是" or "其用意是" instead of "看來是" in the Chinese text of the proposed new section 15(3A).</p>	

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		<p>The Administration's advice that the legislative intent was to capture those advertisements that appeared to be promoting sex selection services, without the need of considering whether those promoted services were in fact of proven or unproven effectiveness in achieving sex selection; and its citing of section 6 of the Places of Public Entertainment Ordinance (Cap. 172) to explain the appropriateness to use "看來是" as the Chinese rendition of the expression "purporting to".</p>	
<p>012354 - 015133</p>	<p>Chairman ALA11 Mr CHAN Chi-chuen Admin Ms Cyd HO</p>	<p>Referring to the mens rea for establishing the proposed offence as set out in paragraph 13(c) and (d) of the Administration's paper, the Chairman and Mr CHAN Chi-chuen's concern that in the absence of a defence for those employees who merely followed the instructions of their publisher employers to arrange for the publication or distribution of an advertisement of sex selection services, these employees would likely be caught by the proposed new section 15(3A) of the Ordinance.</p> <p>Making reference to the proposed arrangement under the Copyright (Amendment) Bill 2014, Ms Cyd HO's remarks that she might not support the Bill if conditions for limiting Internet service providers' liability in relation to advertisements on sex selection services through RT procedures posted on their service platforms were not provided for in the Bill.</p> <p>The Legal Adviser to the Bills Committee's suggestion that if the Administration refused to provide any defences to this new offence, it might then be advisable to consider revising the drafting of the proposed new section 15(3A) such that only those who had the intention to promote sex selection services through RT procedures, but not merely the intention to get the advertisement published or distributed, would be held liable.</p> <p>The Administration's advice that -</p> <p>(a) the proposed offence was generally based upon an objective judgement by a reasonable man on whether an advertisement purported to promote sex selection services. It aimed at catching those parties who caused the advertisement to be published or distributed or knowingly published or distributed such advertisement, including (i) the companies that initiated the advertising activities; (ii) the agents that assisted these companies to advertise sex selection services in Hong Kong; and (iii) the media agencies or companies that provided the platform for these advertisements (e.g. publisher of newspapers and magazines);</p> <p>(b) to establish the proposed offence, the prosecution had to prove not only the actus reus (i.e. publishing and distribution of an advertisement that promoted or purported to promote sex selection services involving the use of RT procedures or played a part in causing the advertisement to be published or distributed), but also the</p>	

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		<p>mens rea (i.e. knowledge about the content or the subject matter to be conveyed by the advertisement, intention to cause to publish or distribution the advertisement to promote or offer sex selection services), and that the actus reus and mens rea coincided. Parties which did not have the mens rea (e.g. an innocent disseminator, an Internet search engine operator or owner who merely provided a search engine for identifying or trawling online information of a topic to be specified by a user) should not be held liable. Hence, a defence was not required in such circumstances; and</p> <p>(c) there were a number of factors which the Department of Justice had to take into consideration in deciding whether or not to institute a prosecution. These factors included, inter alia, whether there was sufficient evidence to justify instituting proceedings and whether the general public interest required that prosecution be conducted. On the latter, considerations to be addressed included, among others, whether or not the offence was trivial or technical in nature and the culpability of the persons involved in the offence. The criminal responsibility would in general be imposed on the employer or the companies concerned. The provision of clauses of exemption or defences for employees might create a loophole for the real culprits of the offence to shirk responsibility to their employees in order to evade from the liability.</p> <p>The Chairman and Ms Cyd HO's view that the Administration should consider revising the drafting of the proposed new section 15(3A) to better reflect its policy intent to catch only the person-in-charge of the companies involved in causing the advertisements on sex selection services to be published or distributed, or publishing or distributing such advertisements.</p> <p>Mr CHAN Chi-chuen's request for the Administration to provide after the meeting information on judgements of cases in relation to prohibition of advertising activities. The Chairman's remarks that information on statistics on prosecutions made and parties prosecuted under the Undesirable Medical Advertisements Ordinance (Cap. 231) might serve as reference.</p>	<p>Admin</p> <p>Admin</p>
015134 - 020203	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's concern that it was not uncommon that even there was no financial gain, authors of feature articles published on the Internet or a printed media, and speakers of talks would provide factual information on the names, addresses and pricing information of the relevant service providers to facilitate the reference of readers and attendees. These persons might be held liable for the proposed offence if the subject under discussion was on sex selection technology.</p> <p>The Administration's advice that whether a party would be held liable for the proposed offence depended on the activities conducted and the availability of evidence. A feature article in which no service provider was identified nor was there any</p>	

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		<p>information that purported to promote the use of such service, and a purely academic forum on sex selection technology without any offer to provide such service should not be considered as an advertisement.</p> <p>The Chairman's suggestion for the Administration's consideration to add an element of financial gain to the proposed offence, so that a person would not be held liable for the proposed offence unless the act of publishing or distributing, or causing to be published or distributed, an advertisement purporting to promote sex selection services was done for financial gain.</p>	Admin
020204 - 020246	Chairman	The Chairman's request for the Administration to provide in writing information about the number of prosecution initiated and the parties being prosecuted in relation to advertisements on the Internet.	Admin
020247- 020602	Chairman Ms Cyd HO Admin	At Ms Cyd HO's request, the Administration's undertaking to provide after the meeting information about the investigations and prosecutions of cases related to commercial surrogacy arrangements carried out in places outside Hong Kong.	Admin
<i>Agenda item II: Any other business</i>			
020603 - 020638	Chairman	Arrangements for the next meeting	

Council Business Division 2
Legislative Council Secretariat
 10 August 2015