

President's Ruling

Equal Opportunities (Family Responsibility, Sexuality and Age) Bill

Mr LAU Chin-shek has presented me with a Member's bill, entitled Equal Opportunities (Family Responsibility, Sexuality and Age) Bill (the Bill), which he intends to introduce into the Council. He has requested me to give my opinion on whether or not the Bill, which seeks to render unlawful discrimination on the grounds of family responsibility or family status, sexuality and age in various areas and to make provision for remedies for such discrimination, has a "charging effect" under Standing Order No 23.

2. The views of the Secretary for Home Affairs have been sought twice in this regard and Mr LAU has been invited to respond twice to the views. I have also taken into consideration the opinion of the Counsel to the Legislature
3. Having taken into account all the views expressed, I am of the opinion that Mr LAU's bill does not have a "charging effect" for the purposes of Standing Order No 23.
4. The Secretary for Home Affairs considers that the Bill has a "charging effect" as it introduces new categories of cases which, as provided in Clause 92, the District Court has jurisdiction to hear and determine. Because legal aid may be provided in civil proceedings in the District Court, High Court and Court of Appeal, the Secretary considers that Government would be obliged to grant legal aid in respect of these new categories of cases to persons who pass the means and merits tests,

and that there would therefore be additional legal aid expenses, estimated to be around \$27.78 million a year.

5. The Secretary has cited as precedents Mr Simon IP's proposal in June 1995 to amend the Legal Aid (Amendment) Bill 1995 and Mr Bruce LIU's proposal in January this year to introduce the Hong Kong Bill of Rights (Amendment) Bill 1996, both of which were ruled to have a "charging effect".

6. To recapitulate, Mr IP's proposed amendment to the Legal Aid (Amendment) Bill 1995 was ruled to have a "charging effect" as it would have had the direct effect of extending supplementary legal aid to all categories of professional negligence actions and not merely medical, dental and legal professional negligence as the Government had originally proposed. Mr IP's proposed amendment had both the direct "object" and "effect" of creating a charge on public funds.

7. As regards Mr LIU's proposed Bill of Rights (Amendment) Bill 1996, it was ruled to have a "charging effect" as it sought to extend the binding effect of the Bill of Rights Ordinance to cover all authorities and persons acting in a private capacity. It has been decided that that bill sought to create a new generic class of enforceable rights (i.e. all inter-citizen rights) under the Ordinance, hence a new generic class of civil litigation based on claims under the Ordinance. That was a proposal seeking a certain, direct, fundamental and wide ranging extension of the Bill of Rights coverage and would have significant impact on the existing legal system. The effect of that bill on the funding for legal aid would be immense for the screening processes under section 5 (means

tests) and, particularly, section 5AA (discretionary waiver of the means tests) of the Legal Aid Ordinance.

8. It is relevant to state again the test principles with regard to the "object and effect" of bills and motions etc in relation to "charging": in order to constitute a charge upon public funds, the bills etc must have the object and effect of creating expenditures which are new and distinct and are payable out of general revenue/public moneys, and the charge must be effectively imposed. However, not all matters which prima facie involve expenditure are "charges". The fact that a proposal may result in some utilisation of the time, energies and resources of the public service does not in itself make it a "charging" one.

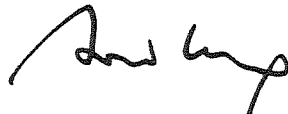
9. The object of Mr LAU's bill is to seek to render unlawful three specific areas of discrimination and to make provisions for enforcing the legal rights in those three areas. As such, it would have the effect of widening the jurisdiction of the District Court and, consequently, of increasing the costs of the administration of justice. But I am persuaded by the practice in the UK House of Commons that where sufficient statutory authority exists, such expenditure is not a charge and does not require authorisation (Erskine May pp 717, paragraph (c)).

10. The Secretary for Home Affairs agrees that the creation of new causes of action which fall to be litigated within the existing courts system does not create a "charging effect", but argues that the resulting greater expenditure of public money on legal aid has a "charging effect".

11. It is conceded that Mr LAU's bill, if enacted, may have the incidental effect of increasing the expenditure on the administration of the legal aid system. However, the question I have asked is: Are such expenditures new and distinct? Schedule 2 of the Legal Aid Ordinance provides that legal aid may be given in civil proceedings in any of the Court of Appeal, High Court and District Court. This provision is, in my opinion, wide enough to encompass the kind of likely actions incidental to the enactment of Mr LAU's bill. Any expenditure incurred cannot therefore be regarded as new and distinct.

12. Lastly, I am also of the view that the Administration has not demonstrated compelling reasons explaining why the assessment of the "charging effect" of the Bill should be different from that in regard to the Equal Opportunity (Family Responsibility, Sexuality and Age) Bill introduced by Ms Anna WU in 1995. Mr LAU's bill is identical in all material respects to Ms WU's bill which was assessed by the Administration as having no charging effect and it was so ruled by my predecessor.

13. Accordingly, I rule that Mr LAU's Bill does not have a charging effect for the purposes of Standing Order No 23.



(Andrew WONG)
President
Legislative Council

7 June 1996