

LC: Speech by Secretary for Justice in moving second reading of Apology Bill

Following is the translation of the speech made by the Secretary for Justice, Mr Rimsky Yuen, SC, in moving the second reading of the Apology Bill at the Legislative Council meeting today (February 8):

President,

I move that the Apology Bill (Bill) be read the second time. The objective of the Bill is to facilitate the resolution of disputes by promoting and encouraging the making of apologies by parties in disputes when they want to do so by stating the legal consequences of making an apology.

The Bill was formulated on the basis of the recommendations made by the Steering Committee on Mediation (Steering Committee) after two rounds of public consultation held in 2015 and 2016.

In a dispute following a mishap, a party may wish to convey condolences or sympathy to the other party for the loss and suffering sustained or to make an apology. However, at the moment, people are often inhibited from making an apology, and their legal advisers may also advise them not to make an apology, even if they wish to do so. This is because, under the current law of Hong Kong, an apology may be relied on by a plaintiff in civil proceedings as evidence of admission of fault or liability on the part of the defendant (i.e. the party making the apology). Further, there is a common concern against the making of an apology for fear that one's insurance company may seek to repudiate liability under an insurance policy by relying on clauses in the insurance contract that prohibit the admission of fault by an insured. Such a general reluctance to apologise is certainly not conducive to the prevention of escalation of disputes or their resolution.

Apology legislation is not something new among common law jurisdictions. The first apology legislation was enacted in Massachusetts of the United States of America in 1986. At present, over 30 American states have apology legislation. Subsequently, apology legislation was also respectively enacted in Australia, Canada and Scotland.

The Steering Committee conducted two rounds of public consultation on the proposal to enact apology legislation in Hong Kong in June 2015 and February 2016. In the first round public consultation, the Steering Committee sought the public's views on the proposal of enactment of apology legislation, its scope of application and form, etc. In the second round public consultation, the Steering Committee sought the public's views on mainly three aspects: first, whether certain proceedings such as disciplinary or regulatory proceedings should be excluded from the application of the proposed apology legislation; second, whether factual information conveyed in an apology should likewise be protected by the proposed apology legislation; and third, the draft Bill.

Having taken into account the responses received in the second round public consultation and other relevant considerations, the Steering Committee published its final report in November 2016, recommending that the proposed apology legislation should apply to all disciplinary and regulatory proceedings except proceedings conducted under the Commissions of Inquiry Ordinance (Cap 86), the Coroners Ordinance (Cap 504) and the Control of Obscene and Indecent Articles Ordinance (Cap 390). Further, a schedule of excepted proceedings, with a mechanism to allow future amendments to be made to it, should be provided for in the draft Bill to provide flexibility.

The Steering Committee also recommends that statements of fact conveyed in apologies should likewise be

protected, but the decision makers (for example, a court, a tribunal or an arbitrator, etc) in applicable proceedings should retain discretion in this matter.

The Government agrees to all the recommendations of the Steering Committee and considers that there is a need for legislation in Hong Kong defining the meaning of "apology" and providing for the legal consequences for making an apology, the effect of apologies on limitation of actions and insurance contracts, and the scope of proceedings to which the legislation is to apply.

The Bill provides for the effect of apologies in certain non-criminal proceedings and legal matters. Similar to the apology legislation enacted in other jurisdictions, the Bill is relatively short. The Bill contains 13 clauses and a Schedule. Under the Bill, an apology made by or on behalf of a person means an expression of the person's regret, sympathy or benevolence. If part of the expression is an admission of the person's fault or liability, or a statement of fact, the admission or statement is also included in the meaning of "apology". The Bill protects an apology by precluding it from constituting an admission of fault or liability, and from being taken into account in determining fault, liability or any other issue to the prejudice of the apology maker, for the purposes of applicable proceedings.

Moreover, the Bill makes evidence of an apology generally not admissible for determining fault, liability or any other issue to the prejudice of the apology maker in applicable proceedings. Nevertheless, a statement of fact contained in an apology is admissible as evidence in particular applicable proceedings at the decision maker's discretion, which may be exercised in an exceptional case and only if it is just and equitable to do so, having regard to all the relevant circumstances.

In the Bill, the expression "applicable proceedings"

refer to judicial, arbitral, administrative, disciplinary and regulatory proceedings, and other proceedings conducted under an enactment. However, they do not include criminal proceedings, or some specific types of excepted proceedings listed in the Schedule, which can be amended by the Chief Executive in Council.

The Bill also precludes an apology from constituting an acknowledgment of a right of action, and so also from extending the relevant limitation period for the purposes of the Limitation Ordinance (Cap 347). Moreover, the Bill provides that an apology does not affect any insurance cover, compensation or other form of benefit under a contract of insurance or indemnity.

To maximise the benefits of the Bill, the Bill applies to the Government.

The Department of Justice, together with the Steering Committee, provided a briefing to the Panel on Administration of Justice and Legal Services in November last year. The Panel on the whole supported the proposed apology legislation.

President, the objective of the Bill is consistent with the Government's policy to encourage the wider use of mediation to resolve disputes. The introduction of new legislation is the only option that can provide legal certainty on the implications of making an apology by a party to a dispute in Hong Kong. Further, Hong Kong will become the first jurisdiction in Asia to enact apology legislation, and this will help to further enhance Hong Kong's position as a centre for international legal and dispute resolution services in the Asia Pacific region.

With these remarks, I urge Members to support the Bill.

Thank you, President.

Ends/Wednesday, February 8, 2017