



**2nd Round Consultation Forum
Enactment of Apology Legislation
in Hong Kong**

**Introduction of
the draft Apology Bill**

Department of Justice

21 March 2016



Introduction of the draft Apology Bill

- Features of the draft Apology Bill
- Definition of “Apology”
- Scope of application
- Effect on limitation period
- Effect on contracts of insurance or indemnity
- Effect on discovery
- Explanatory Memorandum



Features of the draft Apology Bill

- **Relatively short**
 - 11 clauses and 1 schedule
- **Based on Canadian apology legislation**
- **Triple-barrelled manner**
 - Declarative aspect
 - Relevance aspect
 - Procedural aspect



Features of the draft Apology Bill

● Declarative aspect

6. *Effect of apology for purposes of applicable proceedings*

For the purposes of applicable proceedings, an apology made by a person in connection with a matter –

- (a) *does not constitute an express or implied admission of the person's fault or liability in connection with the matter; and*
- (b) *must not be taken into account in determining fault, liability or any other issue in connection with the matter to the prejudice of the person.*



Features of the draft Apology Bill

● Relevance aspect

6. *Effect of apology for purposes of applicable proceedings*

For the purposes of applicable proceedings, an apology made by a person in connection with a matter –

- (a) *does not constitute an express or implied admission of the person's fault or liability in connection with the matter; and*
- (b) *must not be taken into account in determining fault, liability or any other issue in connection with the matter to the prejudice of the person.*



Features of the draft Apology Bill

● Procedural aspect

7. *Effect of apology not admissible*

- (1) *Evidence of an apology made by a person in connection with a matter is not admissible in applicable proceedings as evidence for determining fault, liability or any other issue in connection with the matter to the prejudice of the person.*
- (2) *Subsection (1) applies despite anything to the contrary in any rule of law or other rule concerning procedural matters.*



Features of the draft Apology Bill

- **Procedural aspect**
 - not admissible in applicable proceedings as evidence for determining fault, liability or any other issue in connection with the matter to the prejudice of the person
 - “any other issue” such as relief (compensation), sanction, credibility of witness
 - Applicable to evidence “to the prejudice of the person” only



Features of the draft Apology Bill

- **Procedural aspect**
 - Subsection (1) applies despite anything to the contrary in any rule of law or other rule concerning procedural matters
 - Overrides other procedural law regarding evidence, e.g. “The rules of evidence do not apply to the proceedings of an inquiry” (See: s.31(1) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E))



Definition of Apology

4. *Meaning of apology*

- (1) *In this Ordinance, an apology made by a person in connection with a matter means an expression of the person's regret, sympathy or benevolence in connection with the matter, and includes, for example, an expression that the person is sorry about the matter.*
- (2) *The expression may be oral, written or by conduct.*



Definition of Apology

4. *Meaning of apology*

(3) *The apology includes any part of the expression that is—*

[(a)] an express or implied admission of the person's fault or liability in connection with the matter[; or]

[(b)] a statement of fact in connection with the matter]. ◦



Definition of Apology

4. *Meaning of apology*

(4) *For the purposes of this Ordinance, an apology does not include one that is made by a person in —*

(a) *a document filed or submitted in applicable proceedings; or*

(b) *a testimony, submission, or similar oral statement, given at a hearing of applicable proceedings.*

(5) *In this Ordinance, a reference to an apology made by a person includes an apology made on behalf of the person.*



Definition of Apology

- Includes “a statement of fact in connection with the matter” which is subject to further consultation
- Excludes apologies made in documents filed or submitted (e.g. pleadings, written submission) and testimony or oral submissions



Scope of Application

5. ***Applicable proceedings***
 - (1) *This Ordinance applies in relation to —*
 - (a) *judicial, arbitral, administrative, disciplinary and regulatory proceedings (whether or not conducted under an enactment); and*
 - (b) *other proceedings conducted under an enactment.*
 - (2) *However, this Ordinance does not apply in relation to —*
 - (a) *criminal proceedings; or*
 - (b) *proceedings specified in the Schedule.*



Scope of Application

Schedule

Proceedings in Relation to Which this Ordinance Does Not Apply

[For examples:

- 1. Proceedings provided in rules 57 to 65 of the Prison Rules (Cap. 234 sub. leg. A) in relation to an offence alleged to be committed by a prisoner against prison discipline.*
- 2. Proceedings conducted under the Commissions of Inquiry Ordinance (Cap. 86)*
- 3. Proceedings conducted under the Coroners Ordinance (Cap. 504).]*



Scope of Application

11. Application to the Government

This Ordinance applies to the Government.



Effect on limitation period

8. *Not a Limitation Ordinance acknowledgment*
For the purposes of section 23 of the
Limitation Ordinance (Cap. 347), an apology
made by a person in connection with a matter
does not constitute an acknowledgment within
the meaning of that Ordinance in connection
with the matter.



Effect on contracts of insurance or indemnity

9. *Contract of insurance or indemnity not affected*
 - (1) *An apology made by a person in connection with a matter does not void or otherwise affect any insurance cover, compensation or other form of benefit that is available, or would but for the apology be available, to the person in connection with the matter under a contract of insurance or indemnity.*
 - (2) *Subsection (1) applies despite anything to the contrary in any rule of law or agreement.*



Effect on discovery

10. *Other matters not affected*

This Ordinance does not affect —

- (a) discovery, or a similar procedure in which parties are required to disclose or produce documents in their possession, custody or power, in applicable proceedings; or*
- (b) the operation of section 3, 4 or 25 of the Defamation Ordinance (Cap. 21).*



Explanatory Memorandum

- Serves to explain the provisions in the draft bill



Thank you!