

Definition of Marital Status

3. **DR MARGARET NG** (in Cantonese): *President, a member of the public has recently relayed to me that at the time when he filled in an application form relating to the services of the Immigration Department (ImmD), he and his wife were undergoing divorce proceedings but had not yet divorced. As such, he accurately put down "married" on the application form. Yet, the ImmD claimed that he had already "divorced" and charged him for providing false information.*

In another case, a married couple, despite living separately in two countries, had neither separated nor divorced, yet the husband was instructed by the ImmD that he must put down "separated" on the application form. He then sought assistance from a lawyer who suggested the ImmD to seek legal advice from the Department of Justice (DoJ) on the definition of "divorce" and "separation".

Subsequently, the ImmD accepted his application. In this connection, will the Government inform this Council:

- (a) of the respective numbers of cases in which the ImmD had instituted prosecution in the past three years against the applicants concerned who were suspected to have provided false information on marital status and cases in which the applicants were convicted;*
- (b) of the definition of different marital status (including "married", "divorced" and "separated") adopted by the ImmD, and whether DoJ's advice has been sought; and*
- (c) whether the ImmD has taken the initiative to assist the applicants concerned in understanding the definition of different marital status when they fill in application forms; if it has, of the details; if not, the reasons for that?*

SECRETARY FOR SECURITY (in Cantonese): *President, we will not comment on individual cases, nor is it appropriate for us to do so. In general, however, if immigration officers suspect that the information on marital status provided by the applicant is incorrect while processing an application under relevant legal provisions, they will allow the applicant to give an explanation. If the explanation furnished is both reasonable and satisfactory, the ImmD will proceed with the application according to procedures for processing the applications. However, if the immigration officers have reasonable grounds*

to suspect that the applicant has furnished false information, further investigations will then be made. The investigations made and possible prosecution action taken by the ImmD will certainly be based on facts and evidence.

My reply to the three parts of the question is as follows:

- (a) As regards marriage registration, in respect of cases in which prosecution was instituted against those who had made a false declaration for the purpose of procuring a marriage and in contravention of the Crimes Ordinance, there were 68 in total for the period between 2008 and 2010, 65 of which were convicted. During the same period, there were 678 prosecutions for conspiracy of defraud by means of false marriage (or commonly referred to as ("bogus marriage")), with 624 convicted. Among them, three cases involved visa applications or extensions of stay.
- (b) Under the laws of Hong Kong, "marriages" include those entered into in Hong Kong under the Marriage Ordinance (Cap. 181), which means the voluntary union for life of one man with one woman, and that a rite of marriage recognized by law has been performed in accordance with law. Furthermore, in accordance with the Matrimonial Causes Ordinance (Cap. 179) and the Married Persons Status Ordinance (Cap. 182), a monogamous marriage contracted outside Hong Kong in accordance with law will also be recognized as a legal marriage. Any person who is a party to the above "marriage" is considered "married".

Under the Matrimonial Causes Ordinance, "married" persons may file a petition or an application for divorce to the Court in Hong Kong. The "divorce" will become effective upon conclusion of proceedings and granting of a divorce certificate by the Court. Divorces obtained outside Hong Kong are also recognized under Hong Kong law.

In accordance with the Matrimonial Causes Ordinance, a husband and a wife may enter into a separation agreement or, in other cases, either party may apply to the Court for separation under the Ordinance. Under the common law, apart from considering whether the applicant is living with his/her spouse, factors such as whether the applicant is still maintaining husband-and-wife relationship with his/her spouse (for example, whether they have ceased to recognize the existence of their marriage and whether he/she intends to reconcile with his/her spouse, and so on) will be taken into account before judging whether they have been "separated".

- (c) Immigration officers will provide appropriate assistance to applicants in case they raise any doubt when filling in their marital status. Meanwhile,

they may also request applicants to provide supporting documents as appropriate in relation to their marital status, such as marriage certificates, divorce certificates, deeds of separation or other relevant legal documents.

DR MARGARET NG (in Cantonese): *President, the thrust of my main question is on the provision of false information on marital status. President, the Bureau's reply is really distant from reality. After a person was summoned and told that he would be prosecuted by the ImmD, he would be subject to great mental disturbance despite that he has yet to be convicted. In fact, the two cases cited in my question have already proven that the ImmD officers were wrong whereas the information put down by the two members of the public on the application forms was correct.*

President, please take a look at this application form. You can see that the part under discussion is "marital status", which is obviously the marital status in law as mentioned by the Secretary in his reply. Therefore, my supplementary question is: Has he consulted the DoJ? Since the definitions adopted by the ImmD must be legal definitions, so if a person has to choose between "married" and "divorced" before his divorce becomes effective, he cannot put down "divorced" as it has yet to come into effect. As regards separation, a husband and a wife who live in different places is not regarded as divorced in the legal sense. They will only be regarded as separated after obtaining a decree of judicial separation from the Court. Again, it is absolutely correct for the applicant to put down "married" instead of "separated".

However, the ImmD officers failed to understand that consideration should rather be given to the legal status than the actual place of residence of the couple concerned. Therefore, my supplementary question is: Can the Secretary explain whether the ImmD officers have sought legal advice such that they are aware of the need to follow legal procedures and to avoid wrongly instituting prosecutions, due to a lack of understanding of the relevant laws, against an applicant for providing false information as a result of a failure to correctly state in the form whether he is "married" or "divorced" when divorce proceedings were ongoing?

Will the Secretary incorporate the relevant definitions into the application forms to ensure that people will not provide incorrect information, whereas officers will not wrongly institute prosecutions against members of the public due to a lack of understanding?

SECRETARY FOR SECURITY (in Cantonese): *President, the ImmD has all along processed each application with great care. I believe the case*

mentioned by Dr NG is being handled by the ImmD, which concerns a dependant's application for a visa or an extension of stay in Hong Kong. For this kind of applications, an applicant is required not only to tick the column "marital status" but also to produce documents in support of the application. When processing such applications, one important consideration is whether the applicant and his/her spouse in Hong Kong are maintaining a marital relationship. Under the existing immigration policy, a dependant will be granted permission to stay in Hong Kong for family reunion. Therefore, any changes in the marital relationship between the applicant and his/her spouse will be considered by the ImmD when processing the application. In this connection, questions will be asked by the ImmD officers during an interview to facilitate their making of decisions. If the officers found that the furnished information is misleading during an interview or the handling process, they have a legal obligation to carry out an investigation.

In response to the Member's supplementary question, the ImmD will consider using a clearer and simpler form completion note in the application forms. Regarding the definition of marriage, ImmD officers will definitely seek legal advice from the DoJ when a legal issue arises. If the ImmD finds it necessary to provide all officers with a clearer understanding of definitions, guidelines will be issued and training will also be provided.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

DR MARGARET NG (in Cantonese): *The part which the Secretary has not answered is, as stated in the Secretary's reply, there is a column in the application form concerning the legal definition of marital status. It is not about whether the marriage is happy*

PRESIDENT (in Cantonese): Please repeat your supplementary question.

DR MARGARET NG (in Cantonese): *..... but about the legal status of a marriage. My supplementary question is: Will the Secretary provide a clear legal definition of the term in the application form to prevent misunderstanding by the public?*

SECRETARY FOR SECURITY (in Cantonese): I have already answered it. The ImmD will proactively consider using clearer and simpler expressions to enable all applicants to understand the definitions of the parts to be filled in or ticked in the application form.

MR JEFFREY LAM (in Cantonese): *President, I registered a marriage once in Hong Kong and have no intention of doing it a second time. People who made false statement about their marital status when registering a marriage had invariably claimed that they are single or divorced when they had actually got married in Hong Kong or abroad. May I ask the Secretary, in that case, whether those people will be charged with bigamy after claiming to be single or divorced? Can the ImmD advise this Council of the enforcement situation and the number of prosecutions instituted?*

SECRETARY FOR SECURITY (in Cantonese): *President, in principle, anyone who, being married, marries any other person during the life of the former husband or wife shall be guilty of bigamy under the Offences Against the Person Ordinance. Law-enforcement officers must prove that the suspect, who is attempting to get married again, has already entered into a valid marriage with a third party. In addition, law-enforcement officers must also have a clear understanding that the person who is attempting to get married again is well aware of the relevant fact. If he was registered married abroad, more evidence would have to be gathered. There were 68 prosecutions of such cases over the past few years. While eight of them were charged with bigamy, the rest were charged with making false declaration in the course of registering marriages. Of the eight cases of bigamy, seven people were convicted.*

On the whole, just as I have pointed out in the main reply, we have instituted a total of 68 prosecutions during the period between 2008 and 2010, and there were 65 convictions.

Bigamy is indeed a very serious offence, and it would bring significant problems to the family concerned. Therefore, when such cases are detected, the ImmD will conduct serious investigations and institute prosecutions when there is sufficient evidence.

MR WONG YUNG-KAN (in Cantonese): *President, my office has also received a number of these so-called bogus marriage cases in recent years. May I ask the Administration the number of applications filed for registration of changes in marital status during the past few years? What information would have to be supplied and whether declarations are necessary? How can the supplied information be verified? Will the Government conduct any investigation? If not, what problem will arise?*

Furthermore, there is another problem involving foreigners, that is, marriage with people from Southeast Asia. For instance, a Hong Kong resident married a foreigner who disappeared not long afterwards. May I ask the Administration, in case If I detect any irregularities with the person who came to my office, I

would certainly advise him to report to the police. Is it possible for the Administration to contact the relevant consulates or consider what can be done to help combat this kind of problem?

PRESIDENT (in Cantonese): Mr WONG, you have raised a number of supplementary questions.

MR WONG YUNG-KAN (in Cantonese): *I will keep the last question. Is it possible for the Administration to help those foreigners, that is, the Southeast Asian people who have marriage problems, to resolve their problems?*

SECRETARY FOR SECURITY (in Cantonese): Let me first answer the last part of Mr WONG Yung-kan's supplementary question. As I have pointed out earlier on, marriages may not only be entered into in Hong Kong under the laws of Hong Kong. If a marriage is entered into outside Hong Kong under the prevailing local laws, it may also be recognized in Hong Kong. That is why we sometimes come across cases where a man and a woman, who claimed to have entered into a legal marriage abroad, filed an application with the ImmD by producing a marriage certificate of other countries. In case we have queries about the furnished documents when processing the applications, generally speaking, enquiries will be made with the relevant consulates in Hong Kong and see if they can help to prove the authenticity and validity of the marriage certificate concerned. If irregularities are detected and substantiated, there will be *prima facie* evidence of the production of inaccurate or false documents to support an application, which is a criminal offence. With such evidence in hand, ImmD officers will certainly proceed with an investigation.

Regarding bogus marriages, perhaps I can provide some figures here. Over the past three years, there were 678 prosecutions for conspiracy to defraud ImmD officers by means of bogus marriage, with 624 convicted. Given the severity of the problem, a task force has been set up by the ImmD to combat illegal marriages. It is tasked to collect intelligence through various channels and exchange information with overseas law-enforcement authorities. If we have reasonable grounds to suspect that a Hong Kong person and a foreigner have entered into a bogus marriage for the purpose of obtaining residence qualification, the ImmD will definitely handle and look into the case in a serious manner. If any person is found to have obtained the resident status by illegal means, we will act in accordance with the law if the case is substantiated, and such actions include revoking the relevant identity card and residence qualification and repatriate the person concerned to his place of origin.

MR RONNY TONG (in Cantonese): *President, I think that the Secretary has not answered Dr Margaret NG's supplementary question at all. The crux of the question is whether ImmD officers have been instructed to request travellers*

to state their legal status or legal marital status. If legal status is the point in question, I would like to know whether the front-line staff concerned would be prosecuted for abetting or threatening other people to make a false statement. If not, why was the staff not prosecuted? If legal status is not the point in question, then shall we add two more boxes to the application forms, namely "happy marriage" and "bedfellow"?

SECRETARY FOR SECURITY (in Cantonese): There is one point I need to clarify. As far as I understand it, such cases usually involve foreigners requesting to come to reside in Hong Kong as dependants. Under the immigration policy, the two parties concerned are required to prove their legal relationship, am I right? That is why there is a column called "marital status" in the application form. Furthermore, the policy also requires the applicants to prove that they are maintaining a marital relationship. Why? Because the applicant is a dependant, and the purpose of the policy is to facilitate family reunion. For reunion, it means that the husband and wife will live together in Hong Kong. Therefore, generally speaking, apart from ticking the appropriate box, more information will be required to prove that the applicant is willing to live with his/her spouse in Hong Kong.

Apart from the application form mentioned by Dr Margaret NG, an applicant may also be required to declare, upon approval of his application for an extension of stay, any changes in his/her marital status since the submission of the application. In case there is any change in the status, the applicant will be invited to give an account on it. When handling this kind of applications, Immigration officers would by all means clearly explain to applicants who have any difficulties or problems the necessary information to be produced. There is no question of abetting at all. However, if we discover that the information supplied by the applicant is misleading when handling the application, investigations will be conducted in accordance with the law. Certainly, if sufficient evidence is collected after the investigation, advice from the DoJ will be sought where necessary and a decision on prosecution will be made.

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR RONNY TONG (in Cantonese): *President, you are also aware that he has not answered it at all.*

PRESIDENT (in Cantonese): Please clearly state your supplementary question.

MR RONNY TONG (in Cantonese): *My supplementary question is: Is herequesting information on the applicant's legal status? President, honestyspeaking, an application of divorce does not necessarily lead to a divorce. Infact, our law encourages parties who have filed an application for divorce towithdraw their application after mediation.*

PRESIDENT (in Cantonese): Mr TONG, can you repeat your supplementaryquestion in a simpler way?

MR RONNY TONG (in Cantonese): *To put it simply, President, he has notanswered my supplementary question on whether information on legal statusshould be provided. If legal status is the point in question, the fact that theapplicant had put down "married" without specifying that he has "divorced" doesnot constitute any mistake in law. Rather, it is the ImmD officer who had madea mistake by abetting other people to provide false information. Originally, theapplicant*

PRESIDENT (in Cantonese): Mr TONG, your question is clear enough.

MR RONNY TONG (in Cantonese): *..... was "married", but the officerconcerned had made him put down "divorced". Should we prosecute this ImmDofficer instead?*

PRESIDENT (in Cantonese): Secretary, Mr TONG's supplementary question isabout whether an applicant is required to put down in the column "marital status"his marriage status as defined in law.

SECRETARY FOR SECURITY (in Cantonese): *Firstly, although theapplication form only asks about the marital status, we do not only look at theapplicant's marital status when processing the relevant application, but also thepolicy under which a permission to stay in Hong Kong will be granted, which isthe policy of family reunion. Therefore, it is necessary for the applicant tomaintain a marital relationship. Legally speaking, if a person's marital status isnot held by the Court to be divorced, his marital status remains unchanged.*

However, in respect of his marital relationship, is the couple willing to livetogther thereafter? This is a matter of policy. The vetting of his applicationwill not continue until this condition is met. Also, we have stated clearly in theform completion note that an application filed by a dependant for entry forresidence in Hong Kong will only be considered provided that the applicant stillmeets the dependant requirement.

MR RONNY TONG (in Cantonese): *I suggest him to add one more box called"bedfellow".*

PRESIDENT (in Cantonese): We have spent more than 25 minutes on this question. Fourth question. Mr Albert HO will ask this oral question for Mr James TO.