

立法會
Legislative Council

LC Paper No. CB(2)152/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/PL/AJLS

Legislative Council
Panel on Administration of Justice and Legal Services

Minutes of the meeting
held on Tuesday, 15 May 2001 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Mrs Miriam LAU Kin-yee, JP
Hon Mr Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP

Member Attending : Hon Audrey EU Yuet-mee, SC, JP

Public Officers Attending : Item V

Mr Clement MAK
Deputy Secretary for Constitutional Affairs

Ms Mable CHAN
Principal Assistant Secretary for Constitutional Affairs

Mr Benedict LAI
Deputy Law Officer (Civil Law) (Adviser)

Ms Miranda CHIU
Deputy Director of Administration

Mr NG Hon-wah
Principal Assistant Secretary for Home Affairs

Item VI

Mr David LITTLE, JP
Law Officer (International Law)

Mr Peter H K CHEUNG, JP
Director of Administration and Development (Acting)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr Jimmy MA, JP
Legal Adviser

Ms Eva LIU
Head, Research and Library Services Division

Mr CHEUNG Wai-lam
Research Officer 2

Mr Paul WOO
Senior Assistant Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1516/00-01)

The minutes of the meeting held on 20 March 2001 were confirmed.

II. Information papers issued since last meeting
(LC Paper Nos. CB(2)1361/00-01(01); 1409/00-01 and 1500/00-01)

2. Members noted that the above papers had been issued.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)1495/00-01(01) and 1502/00-01(01))

3. The Chairman suggested to postpone the meeting in June from 19 June 2001 to 26 June 2001, due to personal engagements on her part. Members agreed.

4. Members agreed that the following items should be discussed at the next meeting on 26 June 2001 -

- (a) Review of legal education and training in Hong Kong;
- (b) Operation of the Legal Aid Services Council;
- (c) Law Reform Commission's Report on The Age of Criminal Responsibility in Hong Kong; and
- (d) Applicability of Ordinances to the offices set up by the Central People's Government in the HKSAR.

(Post-meeting note - At the Administration's request, an item on "Compellability and competence of spouses in criminal proceedings" was added to the agenda for the meeting on 26 June 2001. Items (a) and (c) above were deferred to a future meeting.)

5. Members noted the paper submitted by the Administration (LC Paper No. CB(2)1502/00-01(01)) which set out the proposed amendments to the Hong Kong Court of Final Appeal Ordinance for the purpose of introducing a "leapfrog" arrangement for certain civil appeals to go direct from the Court of First Instance to the Court of Final Appeal, bypassing the Court of Appeal. Subject to the views of the Panel, the Administration intended to introduce the Hong Kong Court of Final Appeal (Amendment) Bill 2001 into the Legislative Council (LegCo) within the current legislative session.

6. The Chairman pointed out that the Administration had briefed the Panel on the proposed "leapfrog" arrangement at a meeting on 18 April 2000. The Panel had endorsed the proposal in principle. Members supported the introduction of the Bill into LegCo for the scrutiny by a Bills Committee.

IV. Research Reports on "The Process of Appointment of Judges in Some Foreign Countries"

(Research Reports on the judicial appointment systems in the United Kingdom (UK), the United States (US), Canada and the Hong Kong Special Administrative Region (HKSAR); and LC Paper No. CB(2)1530/00-01)

7. At the invitation of the Chairman, Head, Research and Library Services Division (H/RL) briefed members on the Report which provided an overall comparison of the systems of appointment of judges in UK, US, Canada, and HKSAR (RP12/00-01 circulated vide LC Paper No. CB(2)1530/00-01). The comparison was set out in six tables, focusing on the following aspects of the judicial appointment systems -

- (a) Judges and appointment authority;
- (b) Role of the Legislature;
- (c) Selection authority;
- (d) Who are consulted;
- (e) Nominations and recommendations; and
- (f) Confirmation and endorsement.

The Report also set out the various comments for and against the respective appointment systems in the jurisdictions under study, as well as some useful references for the analysis of the local system.

8. H/RL further informed members that after the Research Reports (RP 07/00-01) on judicial appointment systems were published, the Judiciary Administrator had provided some updated statistics on judicial appointments in Hong Kong. Also, the Hong Kong Bar Association had lately given a submission on the subject. She undertook to provide the documents for members' information.

(Post-meeting note - The papers were circulated vide LC Paper Nos. CB(2)2159/00-01 and 1546/00-01 respectively)

9. Mr Miriam LAU enquired about the progress of implementation of the recommendations on reform of the appointment systems in the overseas jurisdictions. The Chairman requested the Research and Library Services Division to follow up on the latest position.

10. At the suggestion of the Chairman, members agreed to form a Working Group to follow up the relevant issues relating to the process of appointment of judges in Hong Kong with a view to formulating some consolidated views and recommendations for further consideration by the Panel and interested parties. The Chairman invited all Panel members and Ms Audrey EU to join the Working Group. The first meeting of the Working Group was scheduled for 9 June 2001 at 1:30 pm.

V. Review of applicability of Ordinances to the offices set up by the Central People's Government in the HKSAR
(LC Paper Nos. CB(2)1495/00-01(02) and 1531/00-01)

11. Members noted that following a series of meetings to discuss the subject, the Administration had been requested to advise the Panel on the following matters outstanding from the previous discussions -

- (a) In relation to the review of the 17 Ordinances which expressly bound the Government but were silent as to the applicability to the offices set up by the Central People's Government in the HKSAR (CPG offices), the progress of amending the 15 Ordinances which had been identified as in need of amendment, as well as the result of the review of the applicability of the Personal Data (Privacy) Ordinance to the CPG offices;
- (b) Present position of the adaptation of the 53 Ordinances that were expressed to bind, or apply to, the "Crown";
- (c) Whether a review had been conducted in respect of the 36 Ordinances that were applicable to the Government in whole or in part but were silent on the applicability to the CPG offices;
- (d) Whether the Administration had identified any need to review the Ordinances which might be applicable to the Government or the CPG offices by necessary implication;
- (e) Present position of the matters outstanding from the Adaptation of Laws (No. 9) Bill 1999 (to adapt provisions relating to tunnels) and the Adaptation of Laws (No. 16) Bill 1999 and nine other Adaptation Bills (to adapt provisions to make it clear that certain statutory corporations were not servants or agents of the "Crown"); and
- (f) Progress of the amendment to section 47 of the Arbitration Ordinance to extend the application of the Ordinance to both the Government and CPG offices.

12. Deputy Secretary for Constitutional Affairs (DSCA) and Deputy Law Officer (Civil Law) (Adviser) (DLO/CL) briefed members on the Administration's paper (LC Paper No. CB(2)1495/00-01(02)) which set out the Administration's responses to the above issues.

Review of the 17 Ordinances which expressly applied to the Government

13. Some members said that they felt extremely disappointed at the slow progress made by the Administration in proposing the necessary legislative amendments to the 15 Ordinances (apart from the Social Workers Registration Ordinance and the Personal Data (Privacy) Ordinance) to extend their application to the CPG offices. Ms Emily LAU said that the matter had been dragged on since October 1998, when the Administration confirmed at a meeting of the Panel that the 15 Ordinances should apply to CPG offices. She said that the long delay in introducing the legislative amendments was not acceptable. She pointed out that the delay had given the public the message that the CPG offices and their personnel were above the law.

14. In response, DSCA said that there was no doubt that the CPG offices and their personnel had to comply with the laws of the HKSAR. The principle was enshrined in Articles 14 and 22 of the Basic Law. He said that the Panel was informed previously that the Administration had reviewed 17 Ordinances which expressly applied to the Government and come to a view that, as a matter of policy, 15 of these 17 Ordinances should apply to the CPG offices. The CPG had expressed no differing views to the conclusion reached by the Administration. The other two Ordinances were, namely, the Social Workers Registration Ordinance, which was found to be of no relevance to either the Government or CPG offices in the HKSAR, and the Personal Data (Privacy) Ordinance (PDPO), which involved complicated issues and needed to be carefully examined before the Administration could make any recommendation. He further advised that the Arbitration Ordinance was one of the 15 Ordinances which should be amended, and the Administration was in the course of working out an appropriate application provision to extend the application of the Arbitration Ordinance to the CPG offices. It was intended that once an appropriate application provision was worked out and endorsed by LegCo, it could be used as a reference for the other 14 Ordinances.

15. Deputy Director of Administration said that the Arbitration (Amendment) Bill 1999 introduced into LegCo in 1999 originally contained a proposed application provision to replace section 47 of the Arbitration Ordinance, so that the Ordinance would be applicable to any individual or organ as and when it entered into or became in any way involved in an arbitration agreement that was subject to Hong Kong law. However, the Bills Committee then considering the Bill was of the view that the formulation might not be perfect, and the Administration undertook to continue to work on an

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appropriate formula to better reflect the policy intention to extend the applicability of the Ordinance.

16. The Chairman said that she was dissatisfied that after two years since the Arbitration (Amendment) Bill 1999 was deliberated, a new proposal concerning the application formula was still nowhere in sight.

Adm

17. Members considered that the relevant policy Bureaux should accord priority to the legislative amendments in their legislative programme.

18. Members enquired about the progress of the consultation with CPG regarding the applicability of PDPO. Principal Assistant Secretary for Home Affairs replied that the Administration was of the view that more time was required for the review of PDPO because of its complexities. It was necessary for the Administration to discuss with CPG in detail to assess how PDPO would affect the operation of CPG offices. The Administration was still awaiting information from the Hong Kong and Macau Affairs Office on the result of its consultation with the relevant authorities.

Adm

19. Ms Emily LAU said that the situation of protracted consultation with CPG holding up the progress of review of PDPO indefinitely should not be tolerated any longer. She urged the Administration to do the best it could to speed up the matter.

Adm

20. Mr James TO opined that the matter should be brought to the attention of the Chief Executive so that it could be resolved early with the involvement of both sides at a higher level.

53 Ordinances that were expressed to bind, or apply to, the "Crown"

21. DLO(CL) informed members that of the 53 Ordinances that were expressed to bind, or apply to, the "Crown", the relevant provisions in 18 of these Ordinances had been either wholly or partly adapted. A list of the 18 Ordinances was set out in the Administration's paper.

Adm

22. Members urged the Administration to expedite the adaptation of the rest of the Ordinances.

The way forward

Adm

23. Members agreed that the Secretariat should request the Secretary for Constitutional Affairs to respond in writing to the various issues raised by the Panel, and to provide an analysis of the effect in law of each of the 15 Ordinances not being applicable to the CPG offices.

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24. Members also agreed that the Secretary for Justice should be asked to provide the following information for further consideration of the Panel -

- (a) matters relating to the drafting of the appropriate application formula for the Arbitration Ordinance (when the drafting instructions were received, the progress of and the difficulties encountered in drafting the formula);
- (b) the progress of drafting of the remaining 14 Ordinances;
- (c) the progress of adaptations of the references to "Her Majesty's forces" and of the other military references; and
- (d) the progress of adaptation of the Crown Proceedings Ordinance.

(Post-meeting note - The Administration's written responses were circulated vide LC Paper Nos. CB(2)1907/00-01(08) to (10))

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25. Ms Emily LAU suggested and members agreed that the Panel should report to the House Committee on the unsatisfactory state of affairs and ask the Chairman of the House Committee to urge the Administration to expedite the legislative amendment exercise.

(Post-meeting note - The Panel made a report to the House Committee on 18 May 2001. The matter was subsequently raised with the Acting Chief Secretary for Administration and the Chief Secretary for Administration on 21 May, 28 May, 4 June and 11 June 2001)

26. Members decided that upon receipt of the Administration's written replies, the subject should be further discussed at the next meeting on 26 June 2001.

VI. Proposed rates of allowances for a Government Counsel to be posted to the Hague

(LC Paper No. CB(2)1495/00-01(03))

27. Law Officer (International Law) (LO(IL)) introduced the Administration's paper (LC Paper No. CB(2)1495/00-01(03)) which explained the proposal of the Department of Justice (D of J) to have a Government Counsel (GC) posted to the Permanent Bureau of the Hague Conference on Private International Law (the Hague Conference) in the Hague, the Netherlands. The paper also set out the proposed rate of Special Posting Allowance and Rent Allowance for the posting in question.

28. LO(IL) advised that the Hague Conference was an inter-governmental international organization, the membership of which was limited to States. At present, the Hague Conference had 49 member States in its membership. It worked for the progressive unification of the rules of private international law through negotiation and drafting of multilateral treaties and conventions in the different fields of private international law. So far, the Hague Conference had adopted 34 such treaties or conventions, to which not only the member countries, but also many other jurisdictions, acceded. There were currently about 60 additional countries acceding to one or more of the Hague Conference treaties or conventions. This demonstrated that the Hague Conference was a significant international organization and an important medium for international legal co-operation.

29. LO(IL) further informed members that in the last few years, the HKSAR Government, in particular D of J, had been playing an active role in the activities of the Hague Conference. He said that in 1999, the Secretary General of the Hague Conference visited the Mainland of China and Hong Kong. Arising from that, the proposal for a Counsel from D of J to be attached to the Permanent Bureau, the Secretariat of the Hague Conference, emerged. From Hong Kong's perspective, the advantage was that it would do much to enhance the international legal profile of Hong Kong, and confirm Hong Kong's increased commitment in the work of the Hague Conference. Since the HKSAR Government had not previously sent any Government official to the Netherlands for official purposes of this kind, and hence the allowances to be paid to the officer on such post had to be determined for the first time, a submission would need to be presented to the LegCo Finance Committee for formal approval.

30. LO(IL) said that the proposal, if approved, would result in a rather modest additional expenditure estimated at HK\$96,000 in 2001-02 for a six-month secondment from August 2001 to January 2002, or HK\$128,000 in 2001-02 and HK\$16,000 in 2002-03 if the secondment was extended to nine months up to April 2002. He sought the Panel's support for the proposal.

31. Members supported the proposal. The Chairman said that she was pleased to learn that there was a new important development in this area of international legal co-operation participated by the HKSAR Government. She said that the Panel would be interested to know of the actual work undertaken by the GC selected for the posting, and to be briefed on the experience and exposure the GC gained from the posting. She suggested that D of J should provide a report in due course for the information of the Panel. LO(IL) noted the Chairman's suggestion.

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32. There being no other business, the meeting ended at 6:40 pm.

Legislative Council Secretariat

24 October 2001