

立法會
Legislative Council

LC Paper No. CB(2)862/00-01
(These minutes have been
seen by the Administration)

Ref : CB2/PL/AJLS

Legislative Council
Panel on Administration of Justice and Legal Services
Minutes of meeting
held on Tuesday, 19 December 2000 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 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 Absent : Hon Albert HO Chun-yan

Public Officers Attending : Item IV
Mr Allen LEUNG
Principal Assistant Secretary for the Treasury
Mrs B CHU
Assistant Judiciary Administrator (Corporate Services)
Mr K K CHAN
Chief Judiciary Executive (Finance)
Mr W Y CHU
Senior Judiciary Executive (Court Registries)

Item V
Mr Stephen WONG
Solicitor General (Acting)

Ms Kitty FUNG
Senior Government Counsel
Legal Policy Division

- By Invitation** : Item V
The Law Society of Hong Kong
Mr Anthony CHOW
Mr Paul TAN
Mr Patrick MOSS
- Clerk in Attendance** : Mrs Percy MA
Chief Assistant Secretary (2)3
- Staff in Attendance** : Mr Jimmy MA, JP
Legal Adviser
Mr Paul WOO
Senior Assistant Secretary (2)3
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Action
Column

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(2)518/00-01 - Minutes of meeting on 17 October 2000)
- The above minutes of meeting were confirmed.
- II. Information papers issued since last meeting**
(LC Paper Nos. CB(2)441/00-01(01) and (02) - Replies from the Director of Administration and the Judiciary Administrator concerning a number of issues raised at the Panel meeting on 28 November 2000 relating to appointment of the Chief Judge of the High Court; and LC Paper No. CB(2)486/00-01(01) - Information note provided by the Department of Justice on advice given to the Security Bureau concerning enactment of legislation for Article 23 of the Basic Law)
2. Members noted that the above papers had been issued.

III. Items for discussion at the next meeting

(LC Paper No. CB(2)522/00-01(01) - List of issues to be considered;
LC Paper No. CB(2)522/00-01(02) - List of follow-up actions;
LC Paper No. CB(2)522/00-01(03) - Paper prepared by the Secretariat on prosecution policy and guidelines on the "public interest test" in some common law jurisdictions; and
LC Paper No. CB(2)522/00-01(04) - Paper prepared by the Law Society of Hong Kong on "The Structure of the Professional Indemnity Scheme")

3. Members went through the above papers and agreed that the following items should be discussed at the next regular meeting to be held on 16 January 2001 -

- (a) "Public interest" consideration in prosecution policy; and
- (b) Marital rape under section 118 of the Crimes Ordinance.

4. On item (a), members noted that there had been wide public concern about whether justice and the rule of law had been upheld in the Department of Justice's decision to drop prosecution against the accused person in two recent cases. After some discussion, members agreed that the Secretary for Justice and/or the Director of Public Prosecutions should be invited to brief the Panel on -

- (a) general prosecution policy including consideration of the public interest factors in a decision as to whether or not to prosecute;
- (b) prosecution policy in respect of offering no evidence against an accused person on condition of his agreement to be bound over on account of his age, background and circumstances of the case, whether there had been a change of policy recently in this respect, and if so, in what ways; and
- (c) a breakdown by age and offence of the number of offenders who were given the above treatment as an alternative to prosecution in the past three years.

To facilitate the Panel in the discussion of the subject, members also agreed that the Secretariat should make available relevant records of previous occasions on which the then Attorney General or the Secretary for Justice appeared before the Council or its Committees to explain prosecution decisions on widely publicized cases, such as the Hong Kong Standard case, the Wilkinson case and the case of Alan Bond.

5. Members also agreed that representatives of the two legal professional

bodies and the two law schools at the University of Hong Kong and the City University of Hong Kong as well as all other Members of the Legislative Council should be invited to attend the next meeting on 16 January 2001 for discussion of the item.

Paper prepared by the Law Society of Hong Kong on "The Structure of the Professional Indemnity Scheme"
(LC Paper No. CB(2)522/00-01(04))

6. Members noted that the above position paper had been submitted by the Law Society of Hong Kong in response to the Panel's request. The Chairman suggested and members agreed that in view of the information provided by the Law Society, the Panel needed not follow-up on the issue at this stage.

IV. Revision of Judiciary fees and charges under section 9 of the Criminal Procedure Ordinance, section 134(1) of the Magistrates Ordinance and section 54 of the Matrimonial Causes Ordinance

(LC Paper Nos. LS22, 24 and 25/00-01;

LC Paper No. CB(2)522/00-01(05) - Extract from minutes of the House Committee meeting on 17 November 2000;

LC Paper No. CB(2)522/00-01(06) - Paper prepared by the Administration; and

LC Paper No. CB(2)522/00-01(07) - Administration's reply to a question raised by the Subcommittee set up by the House Committee to study, inter alia, subsidiary legislation relating to revision of Judiciary fees and charges gazetted on 24 November 2000)

7. Members noted that the House Committee considered at its meeting on 17 November 2000 the three Government motions which sought to increase the fees payable for various services provided by the courts in relation to legal proceedings. In response to the request of the House Committee, the Administration had withdrawn the notices for the proposed resolutions, pending discussion of the Panel on Administration of Justice and Legal Services on the matter.

8. At the invitation of the Chairman, Principal Assistant Secretary for the Treasury (PAS/T) introduced the Administration's paper (LC Paper No. CB(2)522/00-01(06)) on proposals relating to the revision of Judiciary fees and charges specified in Criminal Appeal Rules (Cap. 221, sub. Leg.), Magistrates (Fees) Regulations (Cap. 227, sub. Leg.) and Matrimonial Causes (Fees) Rules (Cap. 179, sub. Leg.).

Points raised by members

9. Some members considered that from the point of view of court users, many of the fees and charges under the subsidiary legislation as set out in

Annex B of the Administration's paper (LC Paper No. CB(2)522/00-01(06)) were disproportionately high as compared to the manpower and other costs of providing the services which an ordinary member of the public would expect. Mrs Miriam LAU pointed out that the existing Judiciary fees and charges already succeeded in recovering 92% of the costs, based on the latest costing. She queried whether there was an urgent need to increase the various fees and charges to achieve full-cost recovery at this point in time.

10. PAS/T explained that it was Government policy that certain fees should in general be set at levels sufficient to recover the full costs of providing the services. Most Government fees and charges had been frozen since February 1998 as an exceptional measure to ease the burden on the community at a time of economic setback. In view of the current state of economic recovery and the fact that the fees were last revised in 1994, the Administration proposed to increase the fee levels by 8% in general with a view to achieving full-cost recovery in 2000-01 prices. He added that the proposed fee increases were fairly modest, i.e. ranging only from \$0.5 to \$90 in dollar terms, and would generate additional revenue of about \$1.8 million per annum.

11. Mrs Miriam LAU asked whether the Administration had taken any effective measures to ensure provision of quality service to the public and to contain the costs for providing the services.

12. The Administration responded that the Judiciary was committed to containing the costs incurred in providing the services by continuing to implement the Enhanced Productivity Programme and other efficiency improvement measures as appropriate. In calculating the operating costs for providing the various court services, costs attributed to court hearing and other free service (e.g. in relation to criminal cases and Coroner's Court) were excluded. Moreover, court fines and fixed penalty fines were excluded from the revenue of the Judiciary in assessing the rate of cost recovery.

13. Assistant Judiciary Administrator (Corporate Services) (AJA) further advised that in fixing the fees and charges for the various services, the Judiciary had adopted a global (i.e. departmental), instead of an individual item, costing method, because of the diversity of services provided by the courts. This costing arrangement had been agreed with the Finance Bureau.

14. The Administration referred members to Annex A-1 of the paper which showed the cost computation at 2000-01 prices, and Annex B which set out the relevant fee items and the existing and proposed fee levels.

15. Mr TSANG Yok-sing asked whether all the costs listed in Annex A-1 were incurred solely for the provision of the services specified in Annex B. The Administration replied in the affirmative.

16. In response to a further question from Mr TSANG Yok-sing, Senior Judiciary Executive (Court Registries) said that members of the public who wished to request for photostatic copy of a document which was kept with the court registries had to pay the relevant fee as specified at Annex B. They could then make additional copies on their own if they so wished.

17. The Chairman queried the justification for calculating costs on a global basis, aggregating both direct and indirect staff costs as well as departmental administrative expenses. She said that this had resulted in unreasonably high fees for certain service items, e.g. provision of photostatic copies of documents or transcript or copies of the shorthand notes of the trial etc. She opined that as such documents were often very bulky, the fees charged would constitute a heavy financial burden on the persons who sought to obtain the documents for the purposes of legal proceedings.

18. PAS/T said that on the basis of the principle of full-cost recovery of Government services, the cost computation in the Administration's paper showed a break-down of the total costs into different cost components. A major component was staff costs, which accounted for more than half of the total operating costs. He added that much of the work involved in providing the various court services, such as transcription/translation and certification of documents etc, was required to be undertaken by professionally trained staff rather than general clerical officers, hence entailing significant staff costs. He said that for a Judicial Clerk, for example, the total salary and fringe benefits were about \$200, as compared to about \$170 per hour for a general clerical staff.

19. Some members expressed the view that it was difficult for one to accept that court users had to pay for the proposed high fees for certain simple tasks, such as \$4.5 for one page of a photostatic copy of a document. Mrs Miriam LAU opined that the Administration must not waste expensive manpower resources in carrying out simple and mundane work. Concerning the provision of court services, she said that she was not satisfied that the Administration had taken adequate and effective measures to contain costs. She therefore objected to the proposed fee increases as specified under the subsidiary legislation.

20. Ms Emily LAU suggested that the Judiciary should consider the feasibility of providing more self-service photocopying machines in the courts for use by the public. AJA responded that the suggestion would be considered.

Adm

21. The Chairman said that many court documents which were the subject of the fee items in the subsidiary legislation were essential documents for members of the public who wished to pursue in legal proceedings, such as people seeking legal advice on their appeal cases. She said that she had

occasionally received complaints that people who could not afford to pay the high Judiciary fees and charges were deterred from pursuing justice through the courts. She opined that the Administration should review the policy as to whether or not the global costing approach in determining the appropriate levels of fees and charges should continue. She also enquired about whether exemption from payment of certain judicial fees and charges could be granted on special considerations and under justifiable circumstances, and if not, whether the Administration would consider introducing such an exemption mechanism.

Adm 22. The Administration agreed to give a written response to the points raised by the Chairman.

Conclusion

23. Members agreed that the Panel should further discuss the issue after receiving the Administration's reply. The Panel would then make a report to the House Committee on its deliberations.

V. Incorporation of solicitors' practices

(LC Paper No.CB(2)522/00-01(08) - Information paper provided by the Law Society of Hong Kong)

24. At the invitation of the Chairman, Mr Anthony CHOW introduced the information paper prepared by the Law Society on the present position of the issue of incorporation of solicitors' practices.

25. Mr CHOW informed members that the background to the matter was that in 1995, the Government published a Consultation Paper on Legal Services which contained arguments in favour of allowing solicitors to incorporate their practices. The Consultation Paper suggested that the shareholders of such a practice would only be liable to the extent of the unpaid nominal capital of the shares which they owned. To give effect to the proposal, legislative amendments were made to the Legal Practitioners Ordinance through the enactment of the Legal Services (Miscellaneous Amendments) Bill in June 1997. The amended legislation provided, among other things, that the Council of the Law Society should make the relevant Rules under which incorporation was to take place. Mr CHOW advised that the present position was that the Law Society, having undertaken some research on the issues relating to incorporation practices in some overseas common law jurisdictions, had appointed solicitors for drafting of the Rules. A third draft of the Rules was being considered by a working party of the Law Society. Subject to some minor amendments, the draft would be submitted to the Chief Justice for his approval and thereafter to the Law Draftsman.

26. The Chairman pointed out that the Rules, upon promulgation, was to

put in place an effective regulatory framework to ensure that solicitors incorporations would provide professional legal services in compliance with existing rules of conduct and in a manner that best protected the benefits of the public. She asked whether the Law Society had sought the Administration's views in preparing the draft Rules.

27. Mr Anthony CHOW acknowledged the points made by the Chairman. He replied that since the enabling legislation was passed in 1997, the Law Society had undertaken research on incorporation practices in overseas jurisdictions including England and Wales, Australia, Canada, South Africa, Northern Ireland, New Zealand and Singapore. Many such jurisdictions had marked differences from the practice in Hong Kong, and had different reasons for incorporation. He said that consideration of the issues had involved detailed discussion on the way in which solicitor incorporations should conform to existing practice rules, including those relating to the Hong Kong Solicitors Professional Indemnity Scheme as well as other regulatory matters. The ultimate objective was to ensure that proper safeguards would be provided to users of legal service, yet allowing solicitors greater flexibility in the manner in which they ran their practices. He added that as matters stood at present, the Law Society would consult the Administration in detail on law drafting matters, pending the Chief Justice's approval of the draft Rules due to be submitted by the Council of the Law Society.

28. Acting Solicitor General assured that the Administration would continue to assume the responsibility of safeguarding the interests of the public, monitoring progress and work closely with the Law Society on the matter. He pointed out that the Rules, when they were to be introduced into the Legislative Council (LegCo), would be subject to positive vetting procedure by the Council.

29. The Chairman said that it was a normal practice that before a Bill or a proposed subsidiary legislation was gazetted and introduced into LegCo, the content of the proposed legislation would be brought to the attention of the relevant committees of LegCo so that Members could have an early opportunity to appraise the legislative proposals and offer their views on the relevant issues. She requested the Law Society to provide the draft Rules to the Panel for discussion in due course, and also a paper to explain in detail what practical differences would incorporation make to solicitors conducting a practice in Hong Kong. Echoing the Chairman's views, Ms Emily LAU said that the Law Society should elaborate on how incorporation could better protect the interests of the public using legal services.

30. Referring to the last paragraph of the Law Society's paper which explained the position in England and Wales concerning Limited Liability Partnerships (LLPs) for legal practices, the Chairman sought the Law Society's views on whether LLPs might be a better alternative than incorporation of solicitors' practices in Hong Kong.

31. In response, Mr Anthony CHOW said that the concept of making partnership of solicitors a legal entity of limited liability under certain circumstances was a new development. In England and Wales, the Limited Liability Partnerships Bill received the Royal Assent in July 2000 and regulations were in the course of preparation. This would lead to the first such bodies being incorporated in early 2001. The Law Society believed that there were some benefits with LLPs as an additional means of conducting a legal practice and the Society was keeping a close watch on the progress in UK. He said that the Society would take up the matter with the Administration at an appropriate stage.

32. Mr Patrick MOSS said that as he saw it, one of the advantages with LLPs was the simplicity of administration afforded to solicitors, as opposed to incorporation where there would be the requirements of submitting reports on meetings and disclosure of accounts and so on. Hence, the savings in administrative costs could possibly be passed on to the clients.

33. In further response to the Chairman, Mr Anthony CHOW and Mr Patrick MOSS advised that in the case of a solicitor corporation, the solicitor who handled the case for a client of the corporation would still have unlimited liability towards that client. Given the present state of legislation in Hong Kong, a solicitor might be able to limit his contractual liability to a client of the corporation in the absence of any contractual personal duty to or fiduciary relationship with the client of the corporation. However, unless he genuinely had no knowledge or involvement in the negligence of his partner/co-director he would remain jointly and severally liable with his co-director solicitors to the client. In the end, each case had to be judged on its factual circumstances. Moreover, the existing legislation did not permit solicitors to avoid liability to their clients in tort.

34. In response to members' request, Mr Anthony CHOW said that the Law Society would revert in due course to enlighten the Panel on the latest developments relating to LLPs in other jurisdictions, and offer its views on whether and how LLPs might work out in Hong Kong.

VI. Any other business

Overseas duty visits

35. The Chairman said that members who wished to make proposals for the Panel to conduct overseas duty visits in the current session could channel their suggestions to the Clerk.

36. There being no other business, the meeting ended at 6:20 pm.