

立法會
Legislative Council

LC Paper No. CB(2)2138/00-01
(These minutes have been seen
by the Administration)

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Legislative Council
Panel on Administration of Justice and Legal Services

Minutes of the meeting
held on Tuesday, 24 April 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 Mr Ambrose LAU Hon-chuen, JP
Hon Emily LAU Wai-hing, JP

Members Absent : Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Mrs Miriam LAU Kin-ye, JP

Public Officers Attending : Item IV

Mr Robert C ALLCOCK, BBS
Solicitor General

Mr TSANG Keung
Government Counsel

Item VI

Mrs Fanny YU
Deputy Director of Legal Aid
(Policy and Administration)

Mr Thomas KWONG
Assistant Principal Legal Aid Counsel
Application and Processing (General)

Miss Ella HO
Senior Executive Officer (Systems)
Legal Aid Department

Mr Alex MA
Assistant Director (Departmental Services)
Information Technology Services Department

Mr James CHAN
Assistant Director of Administration (2)
Administration Wing

By Invitation : Item IV

Hong Kong Bar Association

Mr Edward CHAN, SC

Law Society of Hong Kong

Mr Lester HUANG
Mrs Margaret Hill

The University of Hong Kong

Professor Albert CHEN
Dean of Faculty of Law

Professor Johannes CHAN
Head, Department of Law

Professor Michael WILKINSON
Head of Department of Professional Legal Education

The City University of Hong Kong

Mr David SMITH
Acting Dean, School of Law

Mrs Myrette FOK
Associate Professor

Mr Bryan BACHNER
Associate Professor

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

Mr Paul WOO
Senior Assistant Secretary (2)3

Action
Column

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1310/00-01)

The minutes of the meeting on 20 February 2001 were confirmed.

II. Information papers issued since last meeting
(LC Paper Nos. CB(2)1157/00-01(01) and 1260/00-01(01) to (04))

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

III. Items for discussion at the next meeting
(LC Paper No. CB(2)1307/00-01(01))

3. Members agreed that the following items should be discussed at the next regular meeting to be held on 15 May 2001 -

- (a) Research Reports on "The Process of Appointment of Judges in Some Foreign Countries"; and
- (b) Review of applicability of Ordinances to offices set up by the Central People's Government in the Hong Kong Special Administrative Region.

(*Post-meeting note* - At the request of the Administration and with the agreement of the Chairman, another item on "Proposed rates of allowances for a Government Counsel to be posted to the Hague" was included for the meeting on 15 May 2001)

Transcription charges for notes for proceedings

4. The Chairman informed members that in a recent letter to her from the Law Society of Hong Kong, the Society raised query on the method used by the Judiciary of charging for transcribed notes of proceedings. She suggested and members agreed that the issue should be considered at a future meeting.

IV. Progress on Review of Legal Education and Training in Hong Kong
(LC Paper Nos. CB(2)1307/00-01(02) and (03); 1321/00-01(01))

5. At the invitation of the Chairman, Solicitor General (SG) briefed members on the up to date position of the Review of Legal Education and Training in Hong Kong. The latest developments since the release of the "*Consultation Paper on Legal Education and Training in Hong Kong : Preliminary Review*" by the two overseas consultants in September 2000 were summarized as follows -

- (a) By the conclusion of the consultation exercise, the Steering Committee on Review of Legal Education and Training in Hong Kong (SC) had received 51 submissions, which had been passed to the two consultants for consideration;
- (b) The consultants visited Hong Kong in January 2001 to meet some of those who had made submissions on the Consultation Paper and other interested parties. They also had further meetings with the SC, and presented to it a preliminary outline of the final report which would be completed at a later stage (a summary of the outline was annexed at the Administration's paper LC Paper No. CB(2)1307/00-01(02)). The outline provided a brief description of a proposed model for the future legal education and training in Hong Kong;
- (c) The consultants would submit a draft report to SC in May 2001, and then the final report by the end of June 2001. It was contemplated that there would be a second stage of the review so that further submissions on the proposals could be made and considered;

- (d) The preliminary model proposed in the outline mentioned above included an academic stage of an extended four-year LLB programme with a foundation year aiming at broadening law students' horizons beyond strictly legal subjects. At the vocational stage, there would continue to be a trainee solicitor contract and pupillage. It was envisaged that as part of the vocational training, there would be a new practical legal training (PLT) course of around 15-week duration focusing on "how to do it" skills training. This would be taught by a new PLT institute jointly run by the Law Society and the Bar Association; and
- (e) Finally, it was envisaged that for those law students from overseas, there would be a conversion course which would allow the students to be tested on Hong Kong law before going on to the vocational stage.

Views of the Faculty of Law of the University of Hong Kong

6. Professor Albert CHEN informed members that the Faculty Board of the Faculty of Law had made a further submission to the consultants in response to the tentative proposals outlined above (the submission which detailed the views of the Faculty of Law was circulated vide LC Paper No. CB(2)1307/00-01(03)). He said that the Faculty was not yet ready to take a firm position on the proposed model, but it had some concern about any proposal to abolish the PCLL programme. The Faculty would respond fully to the draft report to be submitted by the consultants in May 2001.

Views of the School of Law of the City University of Hong Kong

7. Mr David SMITH presented the views of the School of Law as follows -
- (a) It was premature at this stage to form any concluded views on a preliminary recommendation to restructure the LLB and PCLL programmes. The issue had to be evaluated in the context of the overall findings and proposals of the review;
 - (b) The ultimate goals of the review was to create a system of legal education and training in Hong Kong that would produce world class lawyers who could compete with lawyers trained in other jurisdictions. All parties concerned should keep an open mind to the idea of significant and dramatic changes, and should be prepared to accept such changes if they could bring about world class standards of education for lawyers in Hong Kong; and
 - (c) A concern about law students in Hong Kong was that they lacked maturity and a solid foundation of general knowledge on which to

base their legal education and training. One proposal was to add a foundation year by extending the LLB from three to four years. In his personal view, a five-year LLB was the minimum that could provide the type of legal education to enable local students to compete effectively with lawyers from other parts of the world.

Views of the Hong Kong Bar Association

8. Mr Edward CHAN said that the Bar Association had yet to make any firm views on the proposals of a four-year LLB programme and a new PLT course because at this stage it was not clear as to how the new programmes were going to be funded. Also, as regards the PLT, whether there would be two separate streams, one for barristers and the other for solicitors with different course contents, would need to be further considered. Generally speaking, the Bar Association was in favour of providing for two separate streams, but then the issue of funding would be of crucial importance because of the relatively fewer number of students intending to become barristers, hence leading to much higher per capita cost of providing for the training of barristers.

Views of the Law Society of Hong Kong

9. Mr Lester HUANG informed members that the Law Society was of the view that it was premature at this stage for the Society to offer any concluded opinion on how to reform legal education and training in Hong Kong, pending the submission of concrete recommendations by the consultants. He said that in meeting with the consultants, the Law Society had stressed the view that the review exercise should not be conducted with any pre-conceived ideas as to what the final model would be, and that the consultants should carefully look at various options before putting forward what they considered to be a system that could best serve the unique needs of Hong Kong.

10. The Chairman asked how did the preliminary proposals of the consultants come about and in what way were the proposals related to the systems in other jurisdictions. In response, SG said that in the course of their study, the consultants had set out what they perceived to be the goals at the different stages of legal education and training. The Consultation Paper released in last September had set out a wide range of options which aimed at stimulating the views of all interested parties. Arising from the consultation, more than 50 written submissions had been received, and it was in the light of those submissions and the many discussions with the interested parties that the consultants had come up with the tentative proposals which they thought could best achieve those goals. He added that the Consultation Paper contained a section that summarized the current position in a number of other jurisdictions. Concerning the proposal regarding PLT, SG said that the consultants were familiar with the models in Australia and Canada where PLT was run outside

the universities.

11. Professor Johannes CHAN said that a four or five-year LLB plus a professional legal training of a duration of around 15 weeks was largely the model in Australia and to some extent also existed in Canada. He advised that from what he understood from his colleagues in Australia, the system had experienced a number of practical setbacks. He opined that the SC should invite the consultants to look into the problems that had arisen in other overseas jurisdictions to facilitate more informed discussions on the proposals. As regards the proposed four-year LLB programme and PLT institute, he said that it was of great importance that the issue of the extent of Government funding should be clarified at an early stage, because that would have a major bearing on whether the proposals would be supported by the law schools and the legal professional bodies. He suggested that the SC should consider and discuss with the consultants whether there were any constraints which could affect the implementation of the proposals. Professor Johannes CHAN stressed that a desirable system should guarantee equal access by everyone to the legal profession, and that no students would be denied the opportunity to receive legal education just because they could not afford the high fees involved.

12. Professor Johannes CHAN added that pending availability of the consultants' final recommendations, there was also the uncertainty as to what exactly would be the content of a new four-year LLB programme. He considered that if it was basically an integration of the PCLL into the LLB, there had to be sufficient justifications for changing the existing system. On the other hand, if the new LLB programme was to do without the procedural law content so that it would purely focus on the academic side, one might question whether a student completing the programme would be competent enough to enter the legal profession without adequate knowledge of the procedural law.

13. Mr Edward CHAN said that the Bar Association was of the view that the part of legal education relating to the fundamental legal knowledge ought to be taught in the universities. However, practical skills training for lawyers should be provided under the close supervision of the legal professional bodies.

14. On the question of funding, SG agreed that it was a natural concern of the universities and the two legal professional bodies. However, in his opinion, it would be difficult to commit the Government or the University Grants Committee (UGC) at this stage to the issue of funding when the proposals were only at the tentative stage and had yet to be supported by full justifications. He said that the best way forward was to await the final report from the consultants when the review would enter into its second stage and the question of funding arrangements would then be looked into in detail.

15. Ms Emily LAU expressed the view that the preliminary proposals put forward by the consultants had led to the concern that the consultants were imposing some pre-set ideas on the law schools and the legal profession. She opined that the SC must ensure that there would be ample opportunities for all parties to discuss in detail any proposals introducing fundamental changes. She added that controversies had been raging in the community recently about the cuts in funding for the programmes run by the universities. Hence, any further move in the direction of reducing funding would surely receive a bad response from the relevant quarters including the Legislative Council.

16. SG said that any suggestion that the consultants conducted their review with a view to imposing some pre-set ideas on the community would do grave injustice and unfairness to the consultants. He said that at the very beginning when the SC briefed the consultants on the objective of the review, it had been made clear to the consultants that they should design an appropriate scheme of legal education free from any pre-conceived ideas, and that they should offer proposals to meet the unique needs of Hong Kong in the light of all the problems which had been identified in the existing system. He further pointed out that all members of the SC agreed that after the consultants produced their draft report in May, interested parties including the SC itself should have the opportunity to make further submissions on the relevant proposals. Furthermore, when the final report was available, a second stage of review by a Review Panel would commence.

17. As regards the funding issue, SG said that the suggestion that the Administration was not keen in supporting funding for legal education was not justified. He pointed out that both the SC and the Department of Justice as well as this Panel had made representations to UGC that there should be continued funding for the PCLL course.

18. The Chairman said that consideration of the proposals made by the consultants could not be divorced from the funding question. She pointed out that if the universities were to run an extended four-year LLB programme based on three-year funding, the proposal was likely to face a lot of objections. Hence, the concern about funding should be addressed at the earliest possible opportunity. She further said that whatever recommendations to be made by the consultants, they should explain and justify how their proposals could bring about a world class standard of lawyers to satisfy the particular needs of Hong Kong.

19. Ms Emily LAU asked whether the preliminary proposals made by the consultants were echoed in any of the submissions made to the consultants. SG responded that there had been in fact a wide divergence of views expressed. Hence, it was not as if the consultants had adopted a particular view of anyone or class who had made submissions.

20. Mr TSANG Yok-sing said that there should be adequate discussions by all parties concerned before the consultants made their final recommendations. He also enquired about how the Review Panel would take account of public opinion on the subject.

21. SG reiterated that at the second stage of the review, there would be adequate opportunity for all concerned to make further submissions. He said that it was expected that interested parties would not necessarily all agree with the consultants' final recommendations. Therefore, the second stage would focus primarily on the areas of disagreements. He further advised that to avoid ending on a continuing disagreement, the SC had agreed that the Review Panel should contain no representatives from the legal profession or the universities but some independent local and overseas experts who would act by and large in the capacity as referees. The Review Panel would undertake a wider review and make its final recommendations.

22. Ms Emily LAU asked whether the Government had already got a list of local and overseas experts who would serve on the Review Panel, and enquired about the capacity and background of such persons. She also queried the need for the Review Panel to assume the role of a referee.

23. SG replied that the SC had not given any thought at this stage as to who should be serving on the Review Panel. He said that the proposal of establishing a high-powered Review Panel to conduct the second stage of the review was a unanimous decision of members of the SC, not a decision of the Government. He said that the SC would in due course brief this Panel on the appropriate persons to be enlisted to serve on the Review Panel.

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24. The Chairman cautioned that to get people from outside the legal community and to entrust them with the responsibility for making the final recommendations might give rise to the impression that the Government or the SC intended to impose a new system arbitrarily on the universities and the legal profession. SG responded that if fundamental changes were considered necessary, they might need to be implemented with new legislation. In the end, the support of the community and the legislature would be required.

25. Professor Albert CHEN said that the underlying concern of the Faculty of Law was about the radical nature of the proposed changes. The Faculty would prefer a less radical reform if less radical measures could provide the same effective remedies to the problems identified in the existing system. He said that the Faculty was prepared to continue discussion and work co-operatively with the consultants and the two legal professional bodies on this important issue.

26. The Chairman opined that it would be a very undesirable situation if the final decisions of a high-powered authority had to be imposed on the

universities and the legal profession because of failure to reach consensus. SG said that the SC also shared this sentiment.

The way forward

27. Members agreed that the Panel should further discuss the progress of the review after the draft report of the consultants was submitted to the SC in May and before the final report was issued at the end of June.

(Post-meeting note : The item has been scheduled for discussion at the Panel meeting on 26 June 2001)

V. Research reports on "The Process of Appointment of Judges in Some Foreign Countries"
(LC Paper Nos. CB(2)1287/00-01 and 1299/00-01)

28. Head, Research and Library Services Division (H/RL) took members through the supplementary Information Note to the research report on the system in the United States (issued vide LC Paper No. CB(2)1287/00-01) and the two reports on the system of appointment of judges in Canada and Hong Kong (issued vide LC Paper No. CB(2)1299/00-01).

29. The Chairman informed members that the reports had been circulated to the Administration and the legal professional bodies for reference.

30. Members discussed how the issue should be taken forward. The Chairman suggested and members agreed that a working group should be formed to follow up on the issues identified in previous discussions with a view to making some recommendations on the process of appointment of judges in Hong Kong for the consideration of the Panel.

31. Mr TSANG Yok-sing suggested and members agreed that the Research and Library Services Division should prepare an overall comparison on the systems in UK, USA, Canada and Hong Kong for the consideration of the Panel at the next meeting in May. The Panel would then decide whether a working group should be formed to study the relevant issues.

(Post-meeting note - An overall comparison on the systems in UK, USA, Canada and Hong Kong was subsequently circulated vide LC Paper No. CB(2)1530/00-01)

VI. Proposed retention of a supernumerary post of Assistant Principal Legal Aid Counsel for the implementation of the Information Systems Strategy in the Legal Aid Department
(LC Paper No. CB(2)1307/00-01(04))

32. Deputy Director of Legal Aid (Policy and Administration) briefed members on the Administration's paper (LC Paper No. CB(2)1307/00-01(04)) which sought members' support to the proposed retention of the supernumerary post of Assistant Principal Legal Aid Counsel (APLAC).

33. Members noted that on 18 February 2001, the Finance Committee approved the creation of a supernumerary post of APLAC for a period of 15 months from 1 April 2000 to 30 June 2001 to oversee the implementation of the Information Systems Strategy (ISS) in the Legal Aid Department. The post was not filled subsequently as a result of cancellation of a tender and revision of the schedule of implementation of the ISS project. The Administration expected that a new tender for part of the project would be awarded in June 2001. Hence, the Administration sought the Panel's support of the proposal to retain the supernumerary post of APLAC for 15 months from 1 July 2001 to 30 September 2002 so that the post holder could act as the Project Director to oversee the implementation of the ISS.

34. Members generally raised no objection to the proposal. However, some members were concerned about whether additional costs had been incurred because of the delay in the full operation of the ISS system, particularly in the development of the case management and case accounting part of the system. At members' request, the Administration undertook to provide supplementary information on the breakdown of the costs incurred so far in the implementation of the ISS project.

(Post-meeting note - The supplementary information was circulated to all Members of the Council vide LC Paper No. CB(2)1409/00-01(01) on 27 April 2001)

35. Members noted that the proposal would be considered by the Establishment Subcommittee on 2 May 2001.

36. The meeting ended at 6:20 pm.