

立法會
Legislative Council

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(These minutes have been
seen by the Administration)

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Legislative Council
Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 28 January 2002 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 Miriam LAU Kin-yee, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Member Absent : Hon Albert HO Chun-yan

Public Officers Attending : Item V

Ms Emma LAU
Deputy Judiciary Administrator

Ms Rebecca PUN
Assistant Judiciary Administrator

Mr Yu-yuen WONG
Assistant Secretary, Administration Wing

By Invitation : Item IV

Steering Committee on the Review of Legal
Education and Training in Hong Kong

Mr Robert ALLCOCK, BBS, JP
Solicitor General / Chairman of Steering Committee

Mr Paul TSANG
Senior Government Counsel

Mr Edward CHAN, SC
Hong Kong Bar Association

Mr Lester G HUANG
The Law Society of Hong Kong

Mr Anthony CHOW
The Law Society of Hong Kong

The University of Hong Kong

Professor Albert H Y CHEN
Dean of Faculty of Law
University of Hong Kong

Ms Bronwyn DAVIES
Head of the Law Division, SPACE
University of Hong Kong

Professor Johannes CHAN
Head, Department of Law

Professor Christopher SHERRIN
Department of Professional Legal Education

The City University of Hong Kong

Professor Mike McConville
Dean of School of Law
City University of Hong Kong

Mr Bryan BACHNER

Mrs Myrette FOK

Dr Carol JONES

Ms Marlene Le Brun

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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I. Confirmation of minutes of meetings
(LC Paper Nos. CB(2)954 and 955/01-02)

The minutes of the meetings held on 26 November and 20 December 2001 respectively were confirmed.

II. Information paper issued since last meeting
(LC Paper No. CB(2)900/01-02)

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

III. Items for discussion at future meetings
(LC Paper Nos. CB(2)987/01-02(01) and 931/01-02(01))

Meeting on 25 February 2002

3. Members agreed that the following items should be discussed at the next meeting on 25 February 2002 -

- (a) Implications of the Court of Final Appeal's judgment in cases of Ng Siu Tung, Sin Hoi Chu and Li Shuk Fan on litigation involving a large number of parties;
- (b) Competence and compellability of spouses in criminal proceedings;
and

- (c) Report of Working Group on Legislation concerning the Provision of Legal Aid Services.

4. Members also agreed that interested organizations should be invited to attend the meeting to express their views on item (a).

Meeting on 25 March 2002

5. Members agreed that the consultation paper prepared by the Administration (circulated vide LC Paper No. CB(2)931/01-02(01) dated 18 January 2002) on amendments proposed by the Law Society to the Conveyancing and Property Ordinance (Cap. 219) to deal with problems of proof of title connected with the execution of conveyancing documents by corporations should be discussed at the meeting on 25 March 2002, if not earlier.

IV. Review of legal education and training in Hong Kong

(Full and Executive Summary of the Report of the Consultants on Legal Education and Training in Hong Kong : Preliminary Review (August 2001); LC Paper Nos. CB(2)987/01-02(02) and (03))

6. At the invitation of the Chairman, the Solicitor General (SG) briefed members on the paper (LC Paper No. CB(2)987/01-02(03)) setting out the progress of deliberations of the Steering Committee on the Review of Legal Education and Training in Hong Kong (Steering Committee) on some of the major recommendations in the Consultants' Report. The paper highlighted the up-to-date position relating to the following areas -

- (a) recommended changes to the LLB degree;
- (b) reforms to be made to the PCLL course;
- (c) conversion course for entry to the vocational stage of legal training;
- (d) Legal Qualifying Council;
- (e) overseeing of the implementation of reforms;
- (f) improvement of language standards;
- (g) resource considerations; and
- (i) second stage of the review.

7. SG informed the Panel that the Steering Committee proposed to continue meeting, for at least the following six months, to finalize its consideration of the Report. He also pointed out that in view of the progress that had been made to date, the Steering Committee had no current plans for a second stage of the review to be undertaken as originally envisaged. However, the Law Society had reserved its position in this respect, pending its review which would be conducted in 2003/04 of the effectiveness of the reformed PCLL.

8. The Chairman invited members of the Steering Committee to present their views.

The Hong Kong Bar Association

9. Mr Edward CHAN said that the Bar Association had some reservations about the Consultants' view that lectures and tutorials were inadequate to meet the goals and objectives for the LLB and that they should be replaced by a more interactive mode of teaching. He said that the Bar Association was of the view that provided that a tutorial class was of a size of about six to eight students, there was no reason why it could not be conducted in an interactive manner as envisaged by the Consultants. Where there was a large number of students taking certain particular subjects, lectures would appear to be an appropriate mode for the delivery of information, supplemented by tutorials. He said that there should be no hard and fast rule as to the most appropriate mode of teaching and that the question of what method of teaching should be adopted for particular subjects should better be left for the individual teaching institutions to decide.

10. Concerning the proposed extended four-year LLB which was endorsed by the Steering Committee, Mr Edward CHAN said that the Bar Association did not see the need for a broad-brush requirement that non-law subjects should make up 25% of the credit load for the LLB. The position of the Bar Association was that there should be a degree of flexibility as to the right proportion of the legal subject content of LLB to be determined by the universities, depending on certain factors such as whether the student had decided to pursue a career in the future as a practising lawyer, or whether the student intended to study LLB as a subject of general education.

The Law Society of Hong Kong

11. Mr Lester HUANG said that the Law Society took the stand that reforms to the PCLL should be undertaken as an interim measure pending a decision to implement the reforms as recommended by the Consultants. Efforts should be made to ensure that the necessary reform of the PCLL would be carried out in a proper and thorough manner. In this regard, the Law Society would participate in the academic boards to be established at the two universities to

implement the reform. The Society would review its position in relation to the reformed PCLL at the right time and in the light of the Consultants' recommendations.

12. Regarding the standing umbrella body which would be entrusted with the responsibility of overseeing the implementation of reforms of the LLB and PCLL, Mr Lester HUANG said that the two legal professional bodies should have a dominant representation in that body. As to its composition, the Law Society suggested that there should be four members each from the Law Society and the Bar Association, one member each from the University of Hong Kong, the City University of Hong Kong, the Judiciary, the Department of Justice and the Education and Manpower Bureau, together with a small number of lay members.

The University of Hong Kong (HKU)

13. Concerning the establishment of a PCLL academic board at the HKU, Professor Albert CHEN informed the Panel that it was expected that the academic board could conduct its first meeting in February 2002 to consider reform proposals relating to the PCLL curriculum and the admission system and standards etc. New course materials were being prepared for the introduction of a model which was intended to achieve the objectives as envisaged by the Consultants. It was hoped that the new PCLL curriculum endorsed by the academic board would be in place for the coming academic year beginning in September 2002.

14. Professor Albert CHEN added that with regard to the LLB which would be extended from the existing three-year curriculum to a four-year one, HKU would submit the relevant funding proposals to the University Grants Committee (UGC) for its consideration in the context of the resource allocation exercise for the next triennium 2004-2007 so that the four-year LLB programme could commence in the 2004-2005 academic year.

15. Ms Bronwyn DAVIES said that the School of Professional and Continuing Education welcomed efforts to introduce reforms to the existing courses. It also supported measures to achieve equity of access to education and enhance opportunities for life-long learning. She added that in the reform process, it was important not to lose sight of the needs of part-time students and those who wanted to study law after having had a career in other fields or studied in other disciplines.

The City University of Hong Kong (City U)

16. Professor Mike McConville said that the City U was close to finalizing the composition and terms of reference of the academic board to be established for the reform of the PCLL. Through the academic board, the School of Law

would proceed with the implementation of reform measures in respect of admission criteria, curriculum and examinations etc. Interim changes would take effect in the new academic year beginning in September 2002 while longer term changes would depend upon more detailed discussions within the board, in particular upon the benchmarking standards set by the legal profession and how the University was able to respond to those standards.

17. Professor McConville further said that the School of Law was in support of changing the LLB to a four-year programme. It would be undertaking internal discussions to examine, among other things, how that would affect the existing curriculum and the students taking the course.

Issues raised by the Panel

Teaching methods

18. In response to members' questions on teaching methods, SG said that the Consultants had recommended changes both to the LLB and PCLL relating to the mode of instruction. The proposal to adopt a more interactive mode of teaching, as he understood it, was targeted more to the LLB than to the PCLL.

19. Professor Johannes CHAN said that each teaching method had its own merits and that no particular teaching method was necessarily superior or inferior to the others. The HKU shared the view of the Bar Association that there was nothing inherently wrong with lectures and tutorials being the mode of teaching, provided that they were properly used.

20. Professor Christopher SHERRIN said that in the Faculty of Law, class sizes varied quite considerably depending on the exercises conducted. Some were so designed that they required small group teaching to enhance interactive individual responses from students. Other exercises, on the other hand, could be conducted reasonably effectively in a larger class setting. Other governing factors included resources constraints associated with small class teaching, although the Faculty was trying hard not to let resource limitations affect the quality of education provided. He pointed out that in particular, the emphasis placed on practical exercises and closer relationship between teachers/facilitators and individual students in the reformed PCLL might necessitate committing more resources to enhance learning in a small-class setting.

21. Professor SHERRIN added that to introduce an additional dimension for delivering instructions, the redesigned PCLL at HKU would take account of the use of web-based learning where students could gain access to computer based materials so that they would be less dependent upon formal presentation in lectures.

22. Professor Mike McConville said that different methods of teaching were appropriate for different modules of learning. As far as class size was concerned, the School of Law attached importance to student/teacher interaction so that for the PCLL, the tutorial groups were of the size of not more than 10 students.

23. Professor Albert CHEN opined that there was no uniform mode of teaching which was appropriate for all subjects taught in the study of law. For some subjects, the traditional lecture-and-tutorial format would be an effective way of teaching, from both the educational and practical point of view. For certain other subjects, the Faculty of Law had already abandoned the lecture/tutorial distinction and introduced the kind of group teaching as recommended by the Consultants. He added that for the HKU LLB, most tutorial groups had a class size of between 10 to 20 students. Some might have as few as eight to 10 students. For the PCLL, the size of tutorials ranged from 20 to 30 students. He said that tutorials were in fact the typical example of an interactive mode of instruction.

24. Professor Albert CHEN further said that the Faculty did not agree with the view that lecturing was always an inadequate way of teaching. He pointed out that some of his colleagues in the University specializing in educational theory held the view that lectures were effective for achieving certain specific teaching objectives. He said that this might be an area in which experts in educational psychology or education techniques could contribute their comments.

25. The Chairman said that she found the view that lectures were necessarily an inadequate mode of teaching a dogmatic kind of argument. She said that she was also astonished to hear the view that tutorials were non-interactive.

26. Mr Lester HUANG said that the position of the Law Society was that lectures should be discarded as the primary mode of instruction. The Society was in support of an interactive mode of teaching with teachers adopting the role of a stimulator or facilitator for developing good thinking on the part of the students, which could only be achieved in small group learning.

27. The Chairman asked whether the Administration's support for any funding requests to take on the reform of legal education and training would be conditional upon the law schools giving up the lecturing and tutoring methods. SG replied in the negative.

Course curriculum

28. Ms Audrey EU asked what measures would be made to modernize the curriculum and the course content so that law graduates could survive the

challenges in a changing world and compete adequately on a global basis. She asked whether more practical exercises and subjects relating to new fields of law, e.g. information technology law, E-Commerce and Internet etc, would be included in the reformed curriculum for both LLB and PCLL.

29. SG said that practical exercises were likely to be a key feature of the reformed PCLL curriculum, given the Consultants' recommendation to introduce a new legal practice course with heavy emphasis on the simulation of real practice to replace the PCLL. He added that the Steering Committee had taken on board the need for a radical look at curriculum reform in view of the changing world and he understood that the universities were following up on that in introducing their reform measures.

30. Professor Johannes CHAN said that the need for practical exercises was recognized. He pointed out that as far as the LLB was concerned, mooting had been used as an assessment method. For instance, for the subject of Administrative Law, 30% of the assessment was done by mooting. The PCLL would also have a great focus on practical exercises. He further advised that HKU had reviewed the curriculum of LLB a number of times in the past years in response to new changes. At present, the curriculum included, among others, E-banking, information technology, alternative disputes resolutions and WTO-related issues etc. One of the problems encountered was that with a three-year programme, the range of new subjects would be limited to some extent. It was hoped that with a four-year curriculum, there would be enhanced flexibility and room for the inclusion of new options. Furthermore, HKU had developed new Master of Laws programmes in the past few years providing specialized subjects in areas like corporate and financial law, intellectual property, information technology, human rights and Chinese laws etc.

31. Professor Mike McConville said that City U was giving increasing emphasis to the acquisition by students of generic skills to deal with problems in the changing global environment. The content of LLB and PCLL, therefore, must be so designed as to be able to meet the realities of globalization.

32. Mr Lester HUANG said that the Law Society held the view that legal education and training should equip students primarily with solid transferable intellectual skills to assist them in critical thinking, problem solving and analysis, development of good argument and effective communication etc. The development of these abilities and attributes would be more important than providing students with knowledge in certain areas which changed easily or could become outdated with the passage of time.

Conversion course

33. Ms Audrey EU expressed the view that better efforts should be made in facilitating people of different education background and work experience who had taken an interest in becoming lawyers to convert to the study of law.

34. SG and Ms Bronwyn DAVIES pointed out that the conversion course in the context of the Consultants' report was one which was intended to link students who had graduated from a foreign LLB course to the local PCLL, through taking an array of Hong Kong law-specific subjects which would equip those students with the appropriate knowledge base to undertake the local PCLL. The sort of course referred to by Ms Audrey EU, on the other hand, was of the nature of a "bridge-over" course akin to the previous Common Professional Examination which graduates from other disciplines could take in order to convert to a law study. They agreed that the desirability of providing for such a course might be looked into by the Steering Committee and the universities in due course.

Specialization

35. Ms Audrey EU suggested that the Steering Committee might wish to address the concern that the universities should run courses with different focuses and specialization so that optimal utilization of resources could be achieved.

36. SG said that according to the principles which the Consultants and the Steering Committee endorsed, the courses offered by the two universities were not intended to be identical, although they should meet the benchmark standards that the legal profession established. It was a matter for all parties in the reform exercise to decide how the standards could be met.

37. Professor Mike McConville said that the position of the City U was that it would be inappropriate for the courses offered by the two universities to be a replica of each other, and that there should be some variations between them as to their respective focuses. This was supported by the Consultants, who pointed out that healthy competition might be desirable for the benefit of raising standards.

38. Mr Edward CHAN said that the Bar Association had no objection to the two universities specializing in their own LLB and PCLL courses. However, when it came to qualifying students to be practising lawyers, it was in the interest of the public that the PCLL offered by the two universities should be of uniform standard, and both should meet the benchmarks set by the respective academic boards.

39. SG said that the issues of specialization of the two universities and their courses would be taken on board by the Steering Committee as the reforms were taken forward.

Resources

40. In response to Ms Emily LAU, SG said that it would be for the two universities to assess the resource implications of the reform measures and do the necessary bids for the required resources. The Department of Justice would do the best it could to support the funding and resources applications.

41. Professor Albert CHEN advised that the Faculty of Law had made a bid for additional resources for the purpose of the conversion of the LLB to a four-year degree course. He said that it was understood that the UGC was likely to use the marginal costing approach in assessing resources, i.e if \$30 million was required to run a three-year course, the UGC would not provide \$40 million for a four-year programme. However, the Faculty believed that additional resources were definitely required if the three-year programme was to become a four-year one.

42. Ms Emily LAU said that funding applications should be submitted in good time for the consideration of LegCo. She asked whether there were contingency plans if the requested additional resources were not forthcoming.

43. SG advised that the Steering Committee had not yet discussed any fall-back position in the event of failure to get the requested funding. He said that the most constructive way contemplated at this stage was for the Steering Committee to seek the widest support for the proposals which would be put forward eventually. Professor Albert CHEN supplemented that the additional funding which HKU was requesting from the UGC was related mainly to the new four-year LLB. As for the PCLL, the reforms would be taken forward even if there were no additional resources available. In that case, the funding would be absorbed from existing resources.

Language

44. On the issue of language standards, SG said that the Consultants had made a number of recommendations to improve the standard of English of those entering into and undertaking legal education in Hong Kong. However, the Steering Committee had yet to invite the views from the stakeholders as to whether they supported the recommendations or they had other suggestions. The matter would be followed up by the Steering Committee.

45. Professor Albert CHEN said that the Faculty of Law was considering the desirability of introducing additional English language test at some stage of

the legal education process, for instance at entry to the PCLL. He advised that the Faculty would be consulting the academic board on the matter.

46. Professor Mike McConville considered that given that language was an improvable skill, the English language test should be delayed as far as possible so that the University could provide as much support as it could to help law students improve their language skill throughout their time at the University.

47. Mr Anthony CHOW said that the problems with language proficiency of law students should be addressed at an early stage. As competence in language was an important pre-requisite for law study, an early message should be sent to the students that it was incumbent upon them to acquire the required level of language skill in order for them to pursue in law study. In his view, to introduce an English language test after LLB and before entry to the PCLL might be a bit too late for students whose language ability was not up to standard.

48. Mr Martin LEE said that effective measures must be taken to ensure that law students whose language ability did not meet the standard could improve their language skill in the course of their university study. He enquired about the requirement for the subject of English for entry to LLB.

49. Professor Johannes CHAN replied that at this stage, the Faculty of Law did not see an English test a necessary solution for improving the language skill of students. He agreed that the problem should be dealt with early in time, and the Faculty was doing the best it could to ensure that students could achieve at least the minimum standard of English required before they graduated. He further advised that the Advanced Level Examination results were classified into grades of A1, A2, B3, B4, C5 and C6. At present, the average standard of students admitted into LLB in terms of English language was B3. About 40% of the students fell within the category of either A1 or A2.

The way forward

50. In reply to the Chairman, SG said that he anticipated that the Steering Committee would need a few more months of deliberations before it could make a further progress report to the Panel. He agreed to revert to the Panel in about May 2002.

V. Civil Justice Reform : Interim Report and Consultative Paper (LC Paper No. CB(2)987/01-02(04))

51. The Chairman invited the Deputy Judiciary Administrator (DJA) to brief members on the progress of consultation since the Interim Report and Consultative Paper on Civil Justice Reform (the Report) was issued.

52. DJA informed members that the Report was prepared by a Working Party appointed by the Chief Justice to review the civil rules and procedures of the High Court and to recommend changes thereto with a view to ensuring and improving access to justice at reasonable cost and speed. The Report was released at a press conference held on 29 November 2001. Before the formal launching of the Report, an embargoed briefing on the Report for members of the Panel and other interested LegCo Members was held on 27 November 2001. LegCo Members were also invited to attend a Seminar on Civil Justice Reform at the Hong Kong Convention and Exhibition Centre on 5 January 2002 which was attended by about 500 participants.

53. DJA said that for the purpose of soliciting wide and considered responses and comments from interested parties on the proposals put forward in the consultation document, the consultation period would end on 30 April 2002. To date, over 4 700 copies of the full Report and more than 10 000 copies of its Executive Summary were distributed. Over 400 CD-ROMs on the Report were also distributed. The Report could be read, downloaded and responded to on the Internet, and so far over 7 600 visits had been made by members of the public to the homepage created for the purpose.

54. DJA said that the Working Party had taken note of the views expressed by the participants in the Seminar as well as comments published on the media and the press. She added that she understood that the Law Society and the Bar Association had set up working groups to study the consultation document in detail and they would be submitting their views at a later stage. So far the major issues of concern expressed included, among others, cost of litigation and challenges posed by the needs of unrepresented litigants etc. She further advised that the Working Party would continue to monitor comments on the Report through the mass media and the press. In addition, Working Party members would attend seminars and workshops organized by some interested parties and organizations.

55. The Chairman asked whether the Working Party had reviewed the necessity of the wide range of reform proposals as highlighted in the Report. She said that views had been expressed that some of the identified problems could in fact be addressed by improving and simplifying certain existing rules and procedures. Ms Emily LAU added that at the Seminar held on 5 January 2002, some participants had expressed the view that certain barriers with using the civil justice system such as procedural delays and complexity etc could be removed by improving case management and court rules and procedures.

56. Ms Miriam LAU said that some of the recommendations made in the Report were rather controversial in nature. She also pointed out that some people had expressed the concern that measures to simplify existing judicial rules and procedures should not result in limiting the fundamental rights of the litigants.

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57. DJA responded that the Working Party would deal with the views and comments received in detail upon the expiry of the consultation period.

58. Ms Emily LAU suggested that the Panel should meet with members of the Working Party to discuss the Report at some appropriate point in time. DJA said that Judiciary members of the Working Party considered it not appropriate for them to hold discussions in the setting of a LegCo Panel meeting.

59. After some discussion, members agreed that the Panel should first invite interested parties to submit and/or present views on the Report at a special Panel meeting to be held in March 2002.

(Post-meeting note - A special meeting was subsequently scheduled for 14 March 2002 at 4:30 pm)

VI. Any other business

Proposed research report on "Mechanism for handling complaints against judges in selected countries"

60. The Chairman drew members' attention to the Consultation Paper on Process of Appointment of Judges which was prepared by the Panel and issued in December 2001. One of the issues identified for public consultation was the desirability and feasibility of establishing a mechanism for handling complaints against judges. To facilitate discussion on the subject, she suggested that the Research and Library Services Division (RLSD) of the LegCo Secretariat should be requested to conduct a research on the systems adopted in other countries.

RLSD 61. The Panel endorsed the proposal. Members agreed that the research should cover the same countries as the earlier research report on "The Process of Appointment of Judges" prepared by RLSD, i.e the United Kingdom, the United States and Canada. The RLSD would be requested to produce a research outline for the consideration of the Panel.

Clerk 62. Members also agreed that the Administration should be requested to provide a paper to explain the mechanism, if any, in Hong Kong for handling complaints against judges.

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

Council Business Division 2
Legislative Council Secretariat
22 February 2002