

立法會
Legislative Council

LC Paper No. CB(2)119/02-03

(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 Monday, 22 July 2002 at 10:45 am
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 Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, JP

Public Officers Attending : Item III

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine CHENG
Deputy Judiciary Administrator

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

Staff in Attendance : Mr Authur CHEUNG
Senior Assistant Legal Adviser 2

Miss Mary SO
Senior Assistant Secretary (2)8

Action
Column

I. Confirmation of minutes of previous meetings
(LC Paper Nos. CB(2)2545 and 2615/01-02)

The minutes of meetings held on 22 and 25 April 2002 were confirmed.

II. Information papers issued since last meeting
(LC Paper Nos. CB(2)2502 and 2539/01-02(01))

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

Amendments to Domestic Violence Ordinance (Cap. 189) proposed by Harmony House

3. In response to the Chairman, the Clerk said that a circular had been issued to members seeking their comments on a proposal from the Harmony House to amend the Domestic Violence Ordinance (Cap. 189) (LC Paper No. CB(2) 2539/01-02(01)). No comments had been received from members on the proposal by the deadline on 19 July 2002. The Clerk further said that the Harmony House had also forwarded the same proposal to the Panel on Welfare Services for comments. To her knowledge, no members of the Panel on Welfare Services had to date responded to the proposal. The Chairman suggested that the item could be placed on the list of outstanding items for members to consider whether it should be followed up by this Panel in the next legislative session.

III. Research Report on "Mechanism for Handling Complaints Against Judges in Overseas Places"
(RP07/01-02 issued under LC Paper Nos. CB(2)2528 and 2547/01-02)

4. At the invitation of the Chairman, Head (Research & Library Services Division) (H(RL)) briefed members on the main findings of the research report which studied the mechanism for handling complaints against judges in Canada, the United Kingdom, the United States, and the State of New York. The relevant issues identified in Part 7 of the research report for consideration of the Panel were summarised below -

- (a) whether the Judiciary should increase the accessibility and visibility of the existing system of handling complaints against judges, and publicise relevant complaint statistics on a regular basis;
- (b) whether the Judiciary should develop relevant codes of conduct for judges; and
- (c) whether a formal complaint system against judges should be established, having regard to overseas practices and the small size of the Judiciary in Hong Kong.

5. Ms Audrey EU was in favour of establishing a mechanism for handling complaints against judicial conduct, not judicial decisions. Ms EU further said that to her understanding, the majority of complaints against the Judiciary were not directed at judges, but the behaviour of staff working in courts and tribunals etc. towards litigants and defendants. In this connection, Ms EU asked about the arrangements in handling complaints against judiciary staff overseas and in Hong Kong.

6. H(RL) said that complaints related to the merits of judicial decisions or procedural rulings were not handled by the complaints handling institutions of the overseas jurisdictions covered in the research report. He had no information on the procedure for handling complaints against judiciary staff in places which were outside the scope of the research.

7. Judiciary Administrator (JA) responded that to uphold judicial independence, the existing mechanism for handling complaints against judges (including judicial officers) did not deal with complaints against judicial decisions. If a complainant was dissatisfied with a judicial decision, the Court Leader would explain to him that the matter in question was within the judge's judicial authority and inform him of the relevant appeal procedures. As regards complaints against the staff of the Judiciary Administration, JA said that they were handled by a Senior Executive Officer reporting to him. JA added that he would personally handle complaints referred from Members of the Legislative Council (LegCo) or the Ombudsman.

8. In reply to Mr TSANG Yok-shing's enquiry, JA said that a total of 120 complaints about judges were received by the Judiciary in 2001. Of these complaints, 91 were about judicial decisions and 29 about judges' conduct. However, the actual number of complaints against judges' conduct was less than 29, as some complainants who were dissatisfied with judicial decisions would also lodge complaints against the conduct of the judges making the decisions. JA further said that the number of complaints was very small compared to the 750 000 cases disposed of by judges and judicial officers in 2001.

9. At the request of the Chairman, JA undertook to provide information on the number of complaints against the staff of the Judiciary Administration after the meeting.

(Post-meeting note - The information provided by the Judiciary Administration was circulated to the Panel vide LC Paper No. CB(2) 2645/01-02 on 26 July 2002. The number of complaints against the staff of the Judiciary Administration in 2000 and 2001 was 57 and 50 respectively.)

10. Mr Albert HO enquired how the Judiciary would follow up complaints against judges' conduct which were found to be substantiated. JA responded that an apology would be sent to the complainant, and CJ or the Court Leader would discuss the matter with and counsel the judge concerned to seek to avoid recurrence of similar conduct. Further, the matter would be brought to the attention of the Judicial Officers Recommendation Commission at the appropriate time.

11. Mr Albert HO considered that the Judiciary should improve the existing complaint mechanism to enhance its fairness and openness, in the light of overseas practices. On the complaint mechanism, he said that members of the public should be informed of how and where a complaint could be lodged, the complaint handling process and the outcome of the investigation of the complaint. Mr HO further said that the Judiciary should consider developing relevant codes of conduct for judges and judicial officers, so as to enhance judicial accountability. Mr HO also suggested that the Panel may consider paying a visit to CJ with a view to exchanging views with CJ and other judges on the matter.

12. Ms Emily LAU expressed support for a formal mechanism for handling complaints against judges which should be structured, open and accountable to the public. Ms LAU also expressed support for Mr Albert HO's suggestion about having a forum for informal exchange of views with CJ. She pointed out that the Judiciary had invited LegCo Members to meet with CJ to exchange views on matters of mutual concern on several occasions prior to 1997. Ms LAU suggested that the Chairman should write on behalf of the Panel to request for an informal meeting with CJ for the purpose of exchanging views on matters of common interest. The Chairman agreed.

(Post-meeting note - The Chairman wrote to the Chief Justice on 6 September 2002.)

13. Mr Martin LEE was of the view that many judges would not resist changes to improve the transparency of the mechanism for handling complaints against judges. However, the important principle was that judges should not be subject to any pressure for changes.

14. Members agreed that the Judiciary should be invited to consider the issues identified in Part 7 of the research report. In addition to the views expressed by members earlier at the meeting, the Chairman invited the Judiciary to consider ways to improve the transparency of the existing mechanism for handling complaints against judges and staff of the Judiciary Administration, for example, by posting on the Internet and publishing in annual reports of the Judiciary information relating to the judicial complaint handling procedures and related statistics. The Chairman requested the Judiciary to revert to the Panel on its views on the matter, before introducing any changes to the present complaint handling mechanism, so that the Panel could consult interested parties if considered necessary.

15. JA said that the Judiciary would consider the issues raised in the research report and the views of members expressed at the meeting. On the timing for reverting to the Panel, JA said that he would need to consult CJ and the Court Leaders. The Chairman said that the Panel would follow up the matter early in the next legislative session. JA noted the Chairman's view.

IV. Review of provision of legal aid services

(LC Paper Nos. CB(2)2615/01-02, 2100/01-02(01) and (02)), and 2543/01-02(02))

16. The Chairman took members through the paper prepared by the Secretariat (LC Paper No. CB(2) 2543/01-02(02)), which contained the preliminary list of issues for review (Appendix I), a summary of comments made by the deputations on issues contained in the preliminary list (Appendix II), and a summary of comments made by the deputations on issues not covered in the preliminary list (Appendix III).

17. Members agreed that the additional proposals made by the deputations in Appendices II and III should be incorporated in the final list of issues for review to be sent to the Administration for consideration. Members further agreed that the Administration should be requested to report progress of the review to the Panel in October 2002. The Chairman said that the final list of issues for review by the Administration would be circulated to members for comments before issue.

(Post-meeting note - The final list was issued to the Panel for comments vide LC Paper No. CB(2)2646/01-02 on 26 July 002. As no comments were received by the specified deadline, the list was sent to the Administration for consideration on 1 August 2002.)

V. Review of the process of appointment of judges
(*LC Paper Nos. CB(2)2544/01-02(01) and LS123/01-02*)

18. The Chairman referred members to LC Paper No. CB(2) 2544/01-02(01) prepared by the Secretariat (the paper), which set out the issues identified in the Consultation Paper on Process of Appointment of Judges (the Consultation Paper) and the responses received on the Consultation Paper. She sought members' views on the various issues identified for the purpose of compiling the relevant report.

19. At the invitation of the Chairman, Senior Assistant Legal Adviser 2 briefed members on LC Paper No. LS123/01-02, which examined whether changes were required to be made to the Rules of Procedure for LegCo to exercise its power to endorse judicial appointment under Article 73(7) of the Basic Law if Option 1 - "Normal Procedure" proposed in the Consultation Paper was adopted.

20. The Panel's deliberations were summarised as below -

(a) Options for endorsement procedure
(paragraph 15 of the paper)

The Panel agreed that Option 1 should be adopted as the endorsement procedure. The Panel also agreed that the Committee on Rules of Procedure should be invited to consider whether the LegCo Rules of Procedure were sufficient for implementation of Option 1, in particular, whether LegCo should be given sufficient time to consider the endorsement motion having regard to the notice requirement under Rule 29(1).

(b) Information provided to LegCo
(paragraph 22 of the paper)

The Panel recommended that the information to be provided by the Administration on candidates recommended by the Judicial Officers Recommendation Commission (JORC) for appointment as judges should include as many as possible of the items contained in the questionnaire set by the United States Senate Judiciary Committee and the application form for appointment as Justice of the High Court in the United Kingdom.

(c) Membership of JORC
(paragraph 36 of the paper)

The Panel recommended that the membership of the Secretary for Justice in JORC should be reviewed.

- (d) Other members of JORC/ LegCo Members
(paragraph 45 of the paper)

The Panel recommended that the proposals made by the legal profession should be referred to the Administration for consideration.

- (e) Accountability of JORC
(paragraph 49 of the paper)

The Panel recommended that JORC should publish an annual report similar to the annual reports previously published by the Judicial Service Commission.

- (f) Open recruitment of judicial vacancies
(paragraph 56 of the paper)

The Panel recommended that open recruitment should be extended to judicial vacancies at the High Court level and above.

- (g) Relaxation of restrictions on disclosure
(paragraph 62 of the paper)

The Panel recommended that section 11(1) of the JORC Ordinance should be reviewed.

- (h) Voting of JORC
(paragraph 67 of the paper)

The Panel recommended that the current rules on voting of JORC should be reviewed taking into account the Bar Association's views.

21. The Chairman said that a draft report on the process of appointment of judges would be prepared for the endorsement of the Panel before issue to the Judiciary and the Administration for consideration.

(Post-meeting note - The draft report was issued to the Panel for endorsement vide LC Paper No. CB(2)2752/01-02 on 6 September 2002. As no comments were received by the specified deadline, the report was issued on 20 September 2002.)

VI. Any other business

Court procedure for repossession of premises
(LC Paper No. CB(2)2604/01-02(01))

22. Members agreed to include the above item, which was referred by the Bills Committee on Landlord and Tenant (Consolidation) (Amendment) Bill 2001, in the list of outstanding items for discussion by the Panel.

Solicitors (Group Practice) Rules

23. The Chairman said that the Law Society was prepared to brief the Panel on the Solicitors (Group Practice) Rules, which were gazetted on 5 July 2002 and tabled in the Council on 8 July 2002, at a meeting in September. The Chairman informed members that the vetting period of the Rules would expire on 16 October 2002, or 6 November 2002 if extended. Members agreed that holding a Panel meeting at this stage was unnecessary as they could propose to form a subcommittee when the House Committee considered the Rules in October 2002.

24. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 2
Legislative Council Secretariat
18 October 2002