

立法會

Legislative Council

LC Paper No. CB(2)636/02-03

(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting held on Thursday, 28 October 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 CHAN Kam-lam, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Albert HO Chun-yan
Hon Miriam LAU Kin-ye, JP

Public officers attending : Item III

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

Ms Lorraine CHAN
Government Counsel
Legal Policy Division

Item IV

Mr Wilfred TSUI
Judiciary Administrator

Ms Emma LAU
Deputy Judiciary Administrator (Development)

Attendance by invitation : Law Society of Hong Kong

Item III

Mr Vincent LIANG
Ms Angela LEE

Item IV

Mr Andrew SHEPPARD

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

Staff in attendance : Mr Paul WOO
Senior Assistant Secretary (2)3

Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

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The Chairman informed members that she had to leave the meeting at about 5:45 pm for another urgent appointment. Hon TSANG Yok-sing, Deputy Chairman, would chair the meeting in her absence.

- I. **Confirmation of minutes of previous meetings**
(LC Paper No. CB(2)158/02-03)
2. The minutes of the meeting held on 10 October 2002 were confirmed.

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II. Items for discussion at future meetings

Items for discussion at the next meeting

(LC Paper No. CB(2)160/02-03(01))

3. Members agreed that the following items would be discussed at the meeting on 25 November 2002 -

(a) Briefing by the Secretary for Justice (SJ) and Judiciary Administrator (JA) on policy portfolios; and

(b) Court Prosecutor grade.

4. Regarding item (a), members agreed that SJ and JA should be requested to update the Panel on the portfolios and objectives of the Department of Justice (DoJ) and the Judiciary respectively, and explain how appropriate measures would be taken to achieve savings in operating expenditure pursuant to the Financial Secretary's pledge to control the growth of the Government's overall operating expenditure in the years up to 2006-2007.

5. The Chairman said that the opportunity should also be taken to discuss with SJ delegation of SJ's responsibility for criminal prosecutions to an independent prosecution authority. Mr CHAN Kam-lam said that he did not agree that the issue should be discussed as the responsibility of SJ should not be changed.

6. The Chairman said that the issue had aroused substantial public concern during previous discussions on the accountability system for principal officials. As a member had proposed to discuss the matter at the Panel meeting on 10 October 2002, it was appropriate for the matter to be followed up at the next meeting.

(Post-meeting note - On the advice of the Chairman, the item "The Statement of Prosecution Policy and Practice" was added to the agenda for the meeting on 25 November 2002)

Review of list of outstanding items for discussion by the Panel

(LC Paper No. CB(2)160/02-03(01))

Committee on Bilingual Legal System

7. Members noted that according to the Administration, the Committee chaired by SJ to advise the Government on measures to further develop Hong Kong's bilingual legal system had not held any meeting for more than two years and there was no outstanding item for discussion at present. The Chairman suggested and members agreed that the item could be removed from

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the list.

Refined immigration appeal mechanism in Hong Kong

- Clerk 8. Members agreed with the view of DoJ that this item should more appropriately be followed up by the Panel on Security. The Clerk was requested to refer the item to the Panel on Security for its consideration.

Administration of the Judiciary

9. The Chairman said that the major issue to be considered under this item was the target waiting time for the various levels of courts. Ms Emily LAU said that the issue would be regularly followed up by the Finance Committee when examining the draft Estimates of Expenditure.

10. Members agreed that the item should be removed from the list.

"Public interest" consideration in prosecution policy

11. The Chairman said that members could raise questions with SJ concerning this item at the meeting on 25 November 2002. She suggested and members agreed that this item should be removed from the list.

Operation of Legal Aid Services Council (LASC)

12. Members noted that LASC's proposals to make certain amendments to the Legal Aid Services Council Ordinance, the Legal Aid Ordinance and the Personal Data (Privacy) Ordinance with a view to enhancing its powers and operation were last discussed by the Panel at the meeting held 26 June 2001. According to the Administration, it had responded to LASC's proposals in February 2002.

13. Members agreed that that LASC and the Administration should be requested to advise the Panel in writing on the present position regarding the proposed legislative amendments. The Panel would then decide whether the subject matter should be followed up.

(Post-meeting note - The responses from the Administration and LASC were circulated vide LC Paper Nos. CB(2)401/02-03 (02) and (03) respectively)

Granting tax relief for divorced persons paying maintenance to ex-spouses

- Clerk 14. Members agreed that tax relief for divorced persons was a matter for the Financial Services and Treasury Bureau. The Clerk was requested to refer the issue to the Panel on Financial Services for its consideration.

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Review of sexual offences in Part XII of the Crimes Ordinance

15. The Chairman informed members that in the course of scrutinizing the Statute Law (Miscellaneous Bill) Bill 2001, the Administration had accepted the Bills Committee's proposal to conduct a full-scale review of sexual offences in the context of a law reform. She did not agree to DoJ's recent reply that it saw no need to propose a timing for discussion of the item. She said that the item should remain on the list and be followed up at an appropriate time.

Amendments to the Domestic Violence Ordinance

Clerk

16. Members agreed with DoJ that the item should more appropriately be considered by the Panel on Welfare Services. The Clerk was requested to refer the issue to the Panel on Welfare Services for follow-up.

Matters relating to the imposition of criminal liability on the Government or public officers

Clerk

17. The Chairman reminded members that this item was referred to the Panel by the House Committee on 4 October 2002, after considering a paper prepared by the Legislative Council (LegCo) Secretariat on the Land (Miscellaneous Provisions) (Amendment) Bill 2002. The Chairman suggested and members agreed that a Working Group should be formed under the Panel to undertake preparatory work. The Clerk was requested to issue a notice to call for membership for the Working Group.

18. Ms Audrey EU said that the scope of criminal liability of public officers for contravening legislative provisions should be examined, for example, whether the liability should include imprisonment or a fine, or both. Referring to the Land (Miscellaneous Provisions) (Amendment) Bill 2002, she pointed out that the issue raised was in relation to liability for contravention of the conditions specified in the relevant excavation permit to be observed by the permittee. However, as opposed to directors of private companies, public officers were not the permittees. She considered that there might be difficulties in imposing personal criminal liability on public officers.

19. The Chairman said that the objective of the referral from the House Committee was that the Panel should study the wider policy issues relating to the imposition of criminal liability on the Government or public officers under a fair criminal justice system. Members agreed that in view of the complexity of the issues involved, the Research and Library Services Division (RLSD), with the assistance of the Legal Service Division, should be requested to undertake background research on the existing problems, the state of the law and overseas systems etc for the consideration of the Working Group in due course.

Secretariat

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Items raised by members at the meeting on 10 October 2002

Maximum sentence for the offence of perverting the course of public justice

20. The Chairman informed members that the item was raised by Mr James TO at the meeting on 10 October 2002. Mr TO had pointed out that in a recent High Court case in which the defendant was convicted of an offence of perverting the course of public justice, the judge had expressed the view that the present maximum sentence prescribed in the Criminal Procedure Ordinance (Cap. 221), i.e. imprisonment for seven years, was too low and should be reviewed. A similar view was also expressed by the judge in another previous court case.

21. Mr James TO suggested and members agreed that the Administration should be requested to provide a paper on the subject for the consideration of the Panel before deciding how the matter should be taken forward.

(Post-meeting note - The paper provided by the Administration was circulated vide LC Paper No. CB(2)575/02-03 on 6 December 2002)

Award of wasted costs order

22. The Chairman informed members that the above item was raised by Mr Albert HO at the meeting on 10 October 2002. As Mr HO was not present at the meeting, members agreed to decide at a later stage whether the matter should be put on the list of outstanding items for discussion.

New items raised by members

Official languages for conducting court proceedings

23. Mr Martin LEE made reference to a press report concerning the use of Putonghua as an official language in court proceedings. He was concerned about whether Putonghua could be adopted as an official language in court having regard to the existing provisions of the Official Language Ordinance, as well as the implications on legal practitioners, judicial officers and other support staff and court facilities if trials were conducted in Putonghua.

24. Members agreed that the Judiciary should be requested to provide an information paper for the Panel's consideration. The Panel would decide at the next meeting as to how the issue should be taken forward.

(Post-meeting note - The paper provided by the Judiciary Administration was circulated vide LC Paper No. CB(2)415/02-03(01) on 19 November 2002)

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Work of bailiffs

25. The Chairman informed members that she had been approached by the Bailiff Grade Union which raised problems and difficulties faced by bailiffs in discharging their official duties. In particular, the Union pointed out that there were difficulties in verifying whether certain goods and properties belonged to the defendant debtor in question, or whether they belonged to a third party not involved in the writ of execution. According to the Union, in some previous cases, proceedings had been taken against the bailiffs personally for wrongful seizures or breach of duties. The Union suggested that safeguards should be introduced to better protect bailiffs from the risk of being personally liable to action for damages resulting from performance of official duties.

26. The Chairman suggested and members agreed that the Judiciary Administration should be requested to provide a paper on the subject matter for the Panel's consideration. The Panel would then decide how the issue should be followed up.

Clerk

Proposed meeting with the Chief Justice (CJ)
(LC Paper Nos. CB(2)160/02-03(03) and (04))

27. The Chairman informed members that JA, on behalf of CJ, had responded in writing to the Panel's request for meeting with CJ on an informal basis to exchange views on matters of common interests and concern. She said that CJ was of the view that having regard to the fundamental constitutional principles of the separation of powers and the independence of the Judiciary, it would not be appropriate for there to be an interface between him and the Panel, whether the basis was described as "informal" or otherwise. CJ had instead proposed that visits to the Judiciary by LegCo Members to observe the functioning of the courts could be arranged.

28. Members agreed to accept CJ's invitation and requested the Clerk to liaise with the Judiciary Administration on the date, programme and logistics for the visit.

(Post-meeting note - The visit to the Judiciary was scheduled for 20 January 2003 from 9:30 am to 2:00 pm)

III. Execution of conveyancing documents by corporations
(LC Paper Nos. CB(2)160/02-03(05) - (08))

29. Deputy Solicitor General (DSG) briefed members on the Administration's paper which set out the progress of the drafting of the

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legislative proposals relating to conveyancing documents executed by corporations and the proposed legislative timetable (LC Paper No. CB(2)160/02-03(08)).

30. DSG informed members that subsequent to the meeting of the Panel on 24 June 2002, when the matter was last discussed, the Administration had conducted consultations in July 2002 on a revised version of the proposed section 23A of the Conveyancing and Property Ordinance (Cap. 219), in particular, the Administration's proposal to add a new section 23A(3) for the protection of bona fide purchasers for value without notice of any defect in execution. He said that while discussion of this issue with consultees was still continuing, it would not delay the drafting of the relevant legislative amendments to incorporate the new section 23A in Cap. 219. The relevant amendments would be included in an omnibus bill, i.e. the Law Amendment and Reform (Miscellaneous Provisions) Bill to be introduced into LegCo in the second half of March 2003.

31. DSG added that the Administration would continue discussion with the Law Society and other interested parties on the responses to the consultation on the proposed new section 23A(3) at a meeting scheduled for 27 November 2002.

32. Members noted that in a letter dated 9 October 2002 from the Law Society to the Administration (LC Paper No. CB(2)160/02-03(06)), the Law Society had stated its view that it remained unconvinced of the need for a new section 23A(3) as proposed by the Administration.

33. In response to the Chairman, Mr Vincent LIANG said that the Law Society hoped that the drafting of the legislative proposal could be finalized as soon as possible. Ms Angela LEE added that many transactions were at present being held up pending rectification of the existing gap in the law which created difficulties in proving due execution of conveyancing documents by corporations in the past. For these cases, the vendors were unable to prove good title to their property.

34. Ms Emily LAU asked whether the Law Society could provide information on the number of transactions which had failed because of the existing pitfall in the law. Mr Vincent LIANG replied that such statistics were not available to the Law Society. He said that the Law Society would request its members to conduct a survey, if necessary.

35. The Chairman and Ms Audrey EU expressed disappointment at the slow progress of the law amendment exercise. They pointed out that the subject matter had been discussed by the Panel with the Administration and the legal profession at a number of meetings. The problem had been identified and the urgency of rectifying the problem by legislative means had been

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agreed by all concerned. They said that they had received a lot of complaints from members of the public about the delay in implementing the necessary legislative change to solve the problem, which had caused tremendous loss to the parties concerned. They considered that the Administration should make every effort to expedite the drafting of the legislative amendments and introduce them into LegCo for consideration well before mid-March 2003.

36. Members generally shared the view that the law amendment exercise should be expedited.

37. DSG said that there was no disagreement between the Administration and the legal profession regarding the need for legislative amendments. There were also no grave difficulties in finding an agreed solution and that the drafting of the legislative proposal was well in hand. He added that DoJ had explained the urgency for amendment in its bid for a legislative slot for the Law Amendment and Reform (Miscellaneous Provisions) Bill. However, due to overall consideration of the competing bids from other bureaux, the Bill was allocated a slot in the second half of March 2003.

38. The Chairman opined that in view of the urgency of the issue, the Administration should introduce the legislative proposal at the earliest possible opportunity, even though the Administration and the legal professional bodies might not have completely agreed on the final wording of the proposed new section 23A. She said that a bills committee would likely be formed to consider the proposed provisions in detail.

39. The Chairman expressed concern whether the scrutiny of the bill could be completed within the current legislative session even if the bill was introduced in March 2003, as the bills committee formed to study the bill might need to wait for its turn to be activated. The Chairman also doubted whether it was necessary to include the legislative proposal in a composite bill, which was likely to require more time for the bills committee to complete the study. She suggested that the proposed addition of the new section 23A to the Conveyancing and Property Ordinance (Cap. 219) should be dealt with separately from the Law Amendment and Reform (Miscellaneous Provisions) Bill.

40. In response to members' views, DSG said that he would explore whether an earlier legislative slot could be secured, and whether the proposed amendment to Cap. 219 could be separated from the Law Amendment and Reform (Miscellaneous Provisions) Bill.

Adm

41. DSG further informed members that the Administration would brief the Panel in December 2002 on the Law Amendment and Reform (Miscellaneous Provisions) Bill.

Adm

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IV. Mechanism for handling complaints against judges and Judiciary staff

(LC Paper Nos. CB(2)159/02-03(01) - (03), 1388/01-02(02) and RP07/01-02)

42. The Chairman left the meeting at this juncture and Hon TSANG Yok-sing, Deputy Chairman, took the chair.

43. Mr TSANG Yok-sing reminded members that the item was last discussed on 22 July 2002 when the Panel considered the Research Report on "Mechanism for Handling Complaints Against Judges in Overseas Places" prepared by RLSD (RP07/01-02)). At the meeting, the Judiciary was requested to consider the issues identified in the Research Report and the views expressed by members on ways to improve the transparency of the existing mechanism for handling complaints against judges and staff of the Judiciary.

44. At the invitation of Mr TSANG Yok-sing, JA introduced the paper prepared by the Judiciary Administration (LC Paper No. CB(2)159/02-03(01)). The paper highlighted the following major responses from the Judiciary Administration -

- (a) The Judiciary did not accept the suggestion that the investigation into the conduct of judges could be dealt with by a commission of inquiry appointed by the Chief Executive in Council under the Commissions of Inquiry Ordinance (Cap. 86). The position of the Judiciary was that investigation into the conduct of judges could only be dealt with in accordance with Article 89 of the Basic Law (BL);
- (b) CJ and the Court Leaders in the Judiciary, instead of the Judiciary Administration, were responsible for handling complaints against judges in Hong Kong;
- (c) The present system for handling complaints was a formal system although it had so far not been well publicized. To improve publicity, the Judiciary would prepare a user friendly brochure on the system for dealing with complaints against judges. The brochure would be made available at all courts and tribunals and on the website of the Judiciary. The Judiciary would also publish statistics on complaints against judges in its annual report; and
- (d) CJ would give consideration to developing a Guide or Code of Judicial Conduct for judges and judicial officers.

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45. Ms Emily LAU opined that the brochure on the complaints handling system should be provided for the Panel's information and comment before it was published. JA said that the brochure was expected to be completed within a few months for distribution to members of the public. Copies of the brochure would also be provided to the Panel. Mr TSANG Yok-sing and JA said that the brochure could be reviewed and amended where necessary.

46. Mr CHAN Kam-lam asked who were responsible for handling complaints against judges.

47. JA replied that complaints against judges were directed to the relevant Court Leaders for necessary action, namely -

- (a) complaints against judges of the Court of Final Appeal and the Court Leaders were handled by CJ;
- (b) complaints against judges of the High Court were handled by the Chief Judge of the High Court;
- (c) complaints against judges of the District Court, the Family Court and the Lands Tribunal were handled by the Chief District Judge; and
- (d) complaints against magistrates and judicial officers of the Labour Tribunal, Small Claims Tribunal, Coroner's Court and Obscene Articles Tribunal were handled by the Chief Magistrate.

48. JA added that most of the complaints received were complaints against the judge's decisions. For these cases, the Court Leaders would explain to the complainants the independence of the judges' decisions and inform them of the relevant appeal procedures. In the case of a complaint against the judge's conduct, if it appeared that the case was a sufficiently serious one, the Court Leader would refer the matter to CJ to consider whether a tribunal should be appointed under BL 89 or the Judicial Officers (Tenure of Office) Ordinance. Where a tribunal was considered not necessary but the Court Leader had expressed an adverse view on the judge's conduct after thorough investigation, CJ or the Court Leader would discuss the matter with the judge concerned with a view to avoiding recurrence of similar conduct. The Judicial Officers Recommendation Commission would also be informed of the matter at an appropriate time.

49. JA further informed members that in 2001, there were a total of 29 complaints against judges' conduct, some of which were made by the same complainants in respect of the same case. Most of the cases were subsequently found to be unsubstantiated. He said that as compared to some 751 533 cases tried at all levels of courts in 2001, the number of complaints

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against judges was by no means alarming.

50. Ms Emily LAU said that it was essential that every complainant should be provided with a detailed report of the investigation and given detailed explanations of its result.

JA

51. At members' request, JA agreed to provide the number of "duplicated" complaints and the number of substantiated complaints, out of the 29 cases, for the Panel's information.

52. Mr Martin LEE pointed out that the appointment, status and authority of Court Leaders had not been clearly publicised nor specified in the law. He questioned whether the existing procedure for investigation could be treated as a formal mechanism for handling complaints against judges. He cautioned that the absence of a formalized procedure would adversely affect public confidence in the fairness and independence of the complaint handling system.

53. JA said that the present mechanism was a formal and effective system which enabled complaints to be dealt with satisfactorily. The system achieved a right balance between proper handling of complaints against judges and respect for judicial independence. He reiterated that the Judiciary would strengthen publicity to enhance public understanding of the system. The information brochure to be issued, for instance, would set out the detailed operation of the complaints handling mechanism and the channels for seeking redress.

54. JA further said that investigation of complaints against judicial officers was part of the responsibilities of Court Leaders in managing the courts. He opined that it was not necessary to specify in statutory terms the administrative role of Court Leaders in relation to the management of the Judiciary. He added that the various Court Leaders and their duties and responsibilities were set out in the annual report of the Judiciary.

(Post-meeting note - The supplementary information on "Court Leaders" provided by the Judiciary Administration was circulated vide LC Paper No. CB(2)639/02-03 on 11 December 2002)

55. Mr TSANG Yok-sing and Ms Emily LAU referred to paragraph 1 of the Judiciary Administration's paper (LC Paper No. CB(2)159/02-03(01)), which stated the Judiciary's view that investigation into the conduct of judges could only be dealt with in accordance with BL 89, and that the Commission of Inquiry Ordinance (Cap. 86) and the power to appoint a commission of inquiry thereunder could not override the specific constitutional machinery provided for in BL 89 as the only machinery for investigating judges. Mr TSANG and Ms LAU pointed out that BL 89 specified the procedure which had to be followed for the removal of judges for reason of inability to discharge duties or

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misbehaviour. However, BL 89 did not appear to preclude the possibility of the appointment of a commission of inquiry under Cap. 86 for the purpose of investigating complaints against the conduct of judges which might not necessarily result in the invocation of the removal procedure under BL 89. Mr TSANG opined that BL 89 was not the only machinery for investigating judges as stated in paragraph 1 of the Judiciary Administration's paper.

56. JA said that the view of the Judiciary was that BL 89 was the only constitutional machinery for investigating the conduct of judges.

57. Mr TSANG Yok-sing sought the Law Society's comments on the matter. Mr Andrew SHEPPARD replied that the Law Society had yet to consider the issue raised. He pointed out, however, that the Law Society had suggested in its "Report on the Civil Justice Reform" that the option of a Judicial Ombudsman was worthy of consideration (the Law Society's Report was circulated vide LC Paper No. CB(2)1748/01-02 dated 30 April 2002). Mr Martin LEE agreed that the proposal of a Judicial Ombudsman deserved further study.

58. JA said that the Judiciary was not in favour of adopting the system of Judicial Ombudsman as it might compromise judicial independence.

59. The Panel agreed that the Law Society and the Bar Association should be requested to provide written views on the Judiciary Administration's paper and measures to improve the existing complaint handling mechanism. JA said that the Judiciary Administration would respond to the comments when they were received.

(Post-meeting note - The Law Society's written response was circulated vide LC Paper No. CB(2)598/02-03(01) on 9 December 2002)

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

Council Business Division 2
Legislative Council Secretariat
12 December 2002