

立法會
Legislative Council

LC Paper No. CB(2)1367/02-03

(These minutes have been
seen by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of special meeting
held on Wednesday, 15 January 2003 at 10:30 am
in the Chamber 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 Miriam LAU Kin-ye, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member attending** : Hon Albert CHAN Wai-yip
- Public officers attending** : Ms Elsie LEUNG, GBM, JP
Secretary for Justice
- Mr Robert ALLCOCK, BBS, JP
Solicitor General
- Ms Annie TAM, JP
Director of Administration & Development
Department of Justice

Mr Andrew WONG, JP
Director of Administration

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

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

Action

I. Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's Policy Address 2003

(Address made by the Chief Executive (CE) at the Council meeting on 8 January 2003; Policy Agenda for the 2003 Policy Address; Progress Report on Policy Objectives (2001); LC Paper Nos. CB(2)470/02-03(01), 903/02-03(01) & (02) and 919/02-03(01))

At the invitation of the Chairman, Secretary for Justice (SJ) made an opening statement outlining the role of the Department of Justice (DoJ) in implementing the initiatives associated with CE's Policy Address 2003, and the progress on DoJ's initiatives in 2001. Copies of SJ's speech were tabled at the meeting for members' reference (LC Paper No. CB(2)919/02-03(01)).

2. Regarding the commissioning of a socio-legal research into the unmet needs for legal services highlighted by SJ, Solicitor General (SG) informed the Panel that the project was being planned under the guidance of an advisory committee which included members of the two legal professional bodies, the two law faculties, the Hong Kong Council of Social Services and other relevant non-government organisations, as well as two Members of the Legislative Council (LegCo). The advisory committee had recommended that two surveys be carried out to focus on the existing supply of and demand for legal services, with a view to identifying any mismatch which hindered the provision of legal services to those in need. Within a few weeks, the advisory committee would invite expressions of interest in conducting the surveys in accordance with Government's tendering procedure. The project would likely take two to three years to complete. SG said that the Panel would be kept informed of progress of the surveys.

3. At the invitation of the Chairman, D of A took members through the paper prepared by the Administration's Wing on "Provision of Efficient Legal Aid Services" (LC Paper No. CB(2)903/02-03(02)). The paper set out the action on the initiatives which had been completed in the past year in relation

Action

to provision of legal aid services as well as the major tasks in the next 18 months.

Issues raised by members

Rule of law

4. Ms Emily LAU referred to the speech made by Mr Alan LEONG, the outgoing Chairman of the Hong Kong Bar Association, at the Ceremonial Opening of the Legal Year 2003 on 13 January 2003. She said that in his speech, Mr LEONG had stated the view, among others, that "the law had been relegated to a means to achieving political ends". Mr LEONG commented that the arrests and prosecutions of Mr LEUNG Kwok-hung and others under the Public Order Ordinance for participating in a peaceful public procession in February 2002 were selective in nature. He also criticised the way the Administration had dealt with the consultation exercise on Article 23 of the Basic Law (BL). Ms Emily LAU said that the remarks made by Mr LEONG had given rise to concerns of both the local and international communities that judicial autonomy and the rule of law, which were fundamental attributes of Hong Kong, had been compromised because the law had been used to serve political objectives.

5. Ms Emily LAU and Mr Albert HO further pointed out that in his judgment on Mr LEUNG Kwok-hung's case, the Chief Magistrate had queried whether issues of a political nature should be resolved in Courts.

6. SJ responded that the Administration was surprised that Mr Alan LEONG, when speaking at the ceremony as Chairman of the Bar Association representing practitioners in the profession, had made such criticisms against the Government, instead of speaking on other important issues affecting the legal profession. The Administration was concerned that some of Mr LEONG's comments were sweeping and unfounded, and would create the impression that the rule of law in Hong Kong had been undermined. The Administration had therefore issued a statement to respond to Mr LEONG's speech on the same day. SJ added that the Government was committed to preserving the rule of law in Hong Kong. She pointed out that the Chief Justice, who also addressed the Opening Ceremony on 13 January 2003, had said that the rule of law and an independent Judiciary continued to thrive since the reunification. SJ further said that international bodies such as the European Council and the UK Parliament had also made favourable comments about the rule of law of Hong Kong in their regular reports on Hong Kong.

7. Regarding prosecutions brought under the Public Order Ordinance, SJ informed members that the Government had moved a motion on the Ordinance for debate in LegCo in December 2000 during which the Government had

Action

made clear its stance that the Ordinance would be enforced. The case referred to by Mr Alan LEONG was the first prosecution brought under the Ordinance since the passage of the motion debate. SJ further advised that, in responding to the Chief Magistrate's comments on former occasions, she had explained that when someone was suspected to have violated the law, it was appropriate for the Government to refer the case to the court for the purpose of determining whether an offence had been committed by the person concerned. She said that she could not agree to the view that the case should not be prosecuted under the Public Order Ordinance and that it was a selective prosecution prompted by political considerations.

Implementation of BL 23

8. Regarding the consultation exercise on proposals to implement BL 23, SJ advised that although the consultation period had ended on 24 December 2002, the Administration was still receiving views from the community. She informed members that so far the Administration had attended more than 250 meetings/seminars with interested parties, and received more than 90 000 written submissions from some 900 organisations and 7 000 individuals. Detailed discussions on this important issue were continuing, including discussions at meetings with the LegCo Panel on Security and Panel on Administration of Justice and Legal Services. She said that the views received would be adequately taken into account by the Administration before finalising the proposals and in drafting the relevant bill for introduction into LegCo. SJ further said that DoJ, in advising the Government on the relevant issues, would ensure that the proposed legislation was in conformity with international standards of human rights and the rights and freedoms guaranteed under the BL, and in accordance with legal policy.

9. Ms Emily LAU said that the Secretary for Security (S for S) had stated that many of the views against the proposals in the Consultation Document on implementation of BL 23 were exaggerated in nature and meant to deceive the public. In view of S for S's remark, Ms LAU expressed concern whether S for S was the appropriate officer to handle the consultation exercise.

10. Mr Martin LEE said that the Attorney General (AG) before the reunification had assumed a proactive role in upholding justice and the rule of law. As SJ was not only the legal adviser to the Government but also the guardian of public interest, Mr LEE was of the view that SJ, instead of S for S, should be responsible for the legislative exercise on BL 23. He further said that SJ, being a member of the Law Reform Commission (LRC), could have referred the matter to LRC for a detailed study. The LRC report together with the white Bill should then be released for public consultation.

11. SJ responded that it was appropriate for the Security Bureau (SB) to take charge of the implementation of BL 23 as issues concerning national security

Action

were within the policy portfolio of SB. In the past, SB had also taken the lead in dealing with legislative exercises which fell within its purview, such as the enactment of anti-terrorism legislation and other amendments to the Crimes Ordinance. She said that DoJ would continue to provide legal policy advice on the way forward and ensure that the proposed legislative provisions would be consistent with international human right guarantees and the requirements of BL. She added that the bill, after its introduction into LegCo, was subject to detailed scrutiny by the Council.

12. Regarding the public consultation on proposals to implement BL 23, SJ said that SB would analyse the views received and publish a compendium of submissions. DoJ would also study the submissions in detail. She added that officials from both SB and DoJ had attended seminars and discussion forums together and the views expressed by the public and concerned parties had been carefully taken into account.

13. The Chairman questioned whether there was sufficient time for the relevant bill to be properly drafted as the Administration had indicated that it would introduce the bill in a months' time.

14. SJ confirmed that DoJ had yet to receive drafting instructions from SB regarding the bill. However, DoJ had already proceeded with suitable preparations having regard to the major views and proposals received in the consultation exercise, e.g. conducting research studies into relevant legislative provisions in overseas jurisdictions.

Compliance with human rights conventions applicable to Hong Kong

15. Mr Albert HO said that the United Nations Committee considered that the HKSAR Government's failure to enact legislation to prohibit racial discrimination in the private sector constituted a breach of its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee had reminded the HKSAR Government that the provisions of ICESCR constituted a legal obligation on the State parties and urged it not to argue in court proceedings that ICESCR was only "promotional" or "aspirational" in nature.

16. SJ responded that the Home Affairs Bureau would soon take a decision on legislating against racial discrimination or otherwise. She also pointed out that there were references to the terms "promotional" and "aspirational" in ICESCR. The Administration had responded to a LegCo question at the Council meeting on 20 June 2001 that different authoritative legal experts held different views as to the nature of ICESCR. Hence, even if the Government took a different view from that of the United Nations Committee as to the binding effect of ICESCR, that did not mean that the Government had contravened ICESCR.

Action

Judicial autonomy

17. SJ advised the Panel that an important role of DoJ was to participate in judicial review proceedings on behalf of the Government and to ensure through such process high standards of public administration in accordance with the rule of law. She added that in performing this role, DoJ would give full regard to decisions made by the courts.

18. Ms Emily LAU said that there were past instances in which the Administration did not follow the court's decision, quoting the example of the decision of the HKSAR Government to seek an interpretation of certain provisions of BL by the Standing Committee of the National People's Congress (NPC), following the judgment delivered by the Court of Final Appeal (CFA) in 1999 on the right of abode cases. Mr Albert HO said that the reinterpretation of BL by the Standing Committee of NPC had given rise to serious concern about whether the Government was firmly committed to protecting the rule of law in Hong Kong. Mr HO further pointed out that in an appeal case heard in the Court of Appeal, the representation made by the counsel acting for the Government had given the impression that the Government was trying to exert pressure on the Court with the threat of a reinterpretation of BL by NPC. He said that the case had aggravated public concern about damage done to judicial autonomy.

19. SJ said that the courts of Hong Kong had not expressed the view that the Government should never ask the NPC to make an interpretation of BL. Referring to the case (Lau Fong's case) mentioned by Mr Albert HO, SJ said that the Administration had regretted that misunderstanding had been caused by the counsel, who was a private practitioner retained by the Government in the case. She said that the counsel had no intention to challenge the authority of the Court, but merely wanted to preserve the Government's position by stating the possibility that the Government might argue the legal issues again should the case be eventually brought to CFA. She added that in the particular case concerned, she had tendered her apology to the Chief Justice for the misunderstanding caused. Moreover, she had issued an internal instruction requiring that any statement made by counsel representing the Government which touched on the Government's position on constitutional issues or legal policy matters had to be first cleared with the relevant Law Officers or the Solicitor General, where appropriate.

Cost saving measures

20. Mr TSANG Yok-shing asked whether the pledge to reduce operating expenditure of Government departments would have any adverse impact on the legal services provided by DoJ. Mr Martin LEE also expressed concern that reduction of operating expenditure of DoJ and the Judiciary would result in

Action

delay in the litigation process and adversely affect the system of administration of justice.

21. SJ said that CE had announced in his 2003 Policy Address the Government's target to reduce, through various means, Government's projected spending in the operating accounts in 2006-07 by \$20 billion. Along with other departments, DoJ would need to introduce cost saving measures with a view to achieving the target. She said that in implementing any measures, DoJ would ensure that the professional services it provided would not be adversely affected.

22. Director of Administration and Development of DoJ supplemented that individual Divisions in DoJ had formulated cost savings proposals which were under consultation within the Government. In pursuing cost saving measures, DoJ was actively considering delayering its departmental structure, restructuring of various administrative units, streamlining work processes and reducing some supporting services etc.

23. D of A said that he understood that the Judiciary Administration was in the course of formulating proposals for achieving savings in operational spending, along with a comprehensive review of the operation of the Judiciary to ensure that the cost saving target could be met without affecting efficiency and quality of judicial services. He said that the Judicial Administrator would be prepared to brief the Panel on the approaches adopted, where necessary.

24. Mr TSANG Yok-shing said that the overall goal of reducing Government expenditure might involve cutting civil service establishment and pay. He pointed out that there was concern about possible conflict of interest in DoJ providing legal advice to the Government on such matters as Government Counsel in DoJ would themselves be affected by any salary reduction.

25. SJ replied that it would not be appropriate for her to comment on the matter at this stage since litigation concerning reduction of civil service salary was now pending. She said that to facilitate the fulfilment of the impartial role of advising the Government, DoJ often took into account advice of legal practitioners in the private sector on the relevant issues.

Co-location of immigration and customs facilities

26. Ms Miriam LAU enquired about the progress of resolving legal issues relating to the co-location of immigration and customs facilities.

27. SJ advised that satisfactory progress was taking place on measures to implement the planned facilities. She anticipated that there would be no major problems with regard to resolving the relevant legal issues. In further

Action

reply to Ms Miriam LAU, SJ said that LegCo would be consulted once the detailed arrangements had been worked out, and new legislation might be introduced to implement the arrangements.

II. Any other business

28. There being no other business, the meeting ended at 11:35 am.

Council Business Division 2
Legislative Council Secretariat
4 March 2003