

立法會
Legislative Council

LC Paper No. CB(2)2577/02-03
(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 Monday, 28 April 2003 at 4:30 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
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 Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Miriam LAU Kin-yee, JP
Hon TAM Yiu-chung, GBS, JP
- Public officers attending** : Item IV

Mr Wilfred TSUI
Judiciary Administrator

Mr Victor LO Yik-kee
Assistant Commissioner of Police (Crime)

Mr Vincent WONG Fook-chuen
Chief Superintendent of Police
Commercial Crime Bureau

Action

Ms Alison CABRELLI
Deputy Law Officer (Civil Law) (Ag)

Item V

Mr Stephen WONG
Deputy Solicitor General

Mr Michael SCOTT
Senior Assistant Solicitor General

Attendance by invitation : Item IV

The University of Hong Kong

Ms Amanda WHITFORT

Item V

The Law Society of Hong Kong

Mr Herman HUI
Mr Duncan FUNG

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Paul WOO
Senior Assistant Secretary (2)3

Action

I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1367/02-03)

The minutes of the special meeting held on 15 January 2003 were confirmed.

II. Information papers issued since the last meeting

2. Members noted the following papers which had been issued -
- (a) LC Paper No. CB(2)1856/02-03(01) - Paper provided by the Administration on "Translation of Judgments"; and
 - (b) LC Paper No. CB(2)1871/02-03 - Judiciary's press release and Consultancy Report on "System for the Determination of Judicial Remuneration".

3. The Chairman said that the paper referred to in (a) above was in response to issues raised at the meeting on 24 February 2003 relating to cost saving proposals of the Judiciary. The Judiciary Administration informed the Panel that it had engaged a publisher experienced in legal publications to translate and publish certain court judgments. At the meeting, the Panel requested the Administration to provide a paper to explain the reasons for the Judiciary to brief out translation of court judgments and the legal status of translated court judgments.

4. Members agreed that the issue should be further considered by the Panel at a future meeting. Ms Audrey EU suggested that the views of the legal professional bodies and the law schools of the two universities might be sought. She also noted that according to the paper provided by the Administration, it was intended that three Case Books containing Chinese translation of excerpts from commonly cited judgments would be published on Criminal Law, Land Law and Employment Law respectively. The Criminal Law Case Book was expected to be published in July 2003. She asked whether a draft of the Case Book could be provided for the Panel's reference before publication. Mr Martin LEE said that the Administration should also be asked to provide information on the practice on translation of court judgments adopted in overseas jurisdictions which practised bilingualism, such as Canada. The Chairman said that the Department of Justice might have information readily available in this regard. She asked the Clerk to request such information from the Department.

(Post-meeting note : The information provided by the Department of Justice was circulated vide LC Paper No. CB(2)2566/02-03(01) on 20 June 2003.)

5. Judiciary Administrator (JA) said that a draft prepared by the publisher was being considered by the Judiciary. The purpose of submitting the draft publication to the Panel must be carefully formulated.

Action

Clerk

6. The Chairman said that the Secretariat could obtain information from the publisher direct, e.g. qualifications of their translators, and the publisher might also be invited to attend a future meeting of the Panel to discuss the issue.

III. Items for discussion at the next meeting on 26 May 2003
(LC Paper Nos. CB(2)1861/02-03(01) and (02))

7. Members agreed to discuss the following items at the next regular meeting on 26 May 2003 -

- (a) Consultancy Report on "System for the Determination of Judicial Remuneration";
- (b) Research Report on "Operation of Youth Courts in Selected Places"; and
- (c) Review on the process of appointment of judges.

IV. Issues arising from the incident of the police arresting a witness in a civil trial
(LC Paper No. CB(2)1620/02-03(03); 1861/02-03(03) and (04))

8. The Chairman referred members to the papers prepared by the Police (LC Paper No. CB(2)1861/02-03(03)) and the Judiciary Administration (LC Paper No. CB(2)1861/02-03(04)) on an incident on 11 March 2003 in which a witness giving evidence in a civil trial in the High Court was arrested outside the courtroom during the lunch break by Police officers. As a result of the arrest, the witness was unable to continue his testimony in the afternoon on the same day. The Chairman invited Assistant Commissioner of Police (Crime) (ACP(C)) and JA to brief members on the papers.

9. ACP(C) briefed members on the salient points in the Police's paper as follows -

- (a) The Police had no specific guidelines governing arrests made within a court building, or the arrest of persons participating in legal proceedings. The arrest of suspects in the above circumstances would normally be carried out after the court had been informed;
- (b) The Police had reviewed the particular incident on 11 March 2003 and was of the view that the process of apprehending the person, who was a suspect in a deception case wanted by the

Action

Police, could have been executed differently to minimise disruption to the court's proceedings. The Police accepted that should it be necessary to take arrest action in similar situations in the future, prior consultation with the court would be conducted; and

- (c) The incident in question was an isolated case. While the Police officers' conduct in the incident had caused inconvenience to the court, no disrespect to the court was intended. The Police had tendered an apology to the court, and was conducting an internal enquiry into the arrest process. Separately, the Police would prepare internal guidelines on relevant arrangements and procedures to be followed to avoid similar recurrences.

10. JA summarised the views of the Judiciary as follows -

- (a) It could be a contempt of court for Police officers to arrest in the court building a witness who was in the course of giving evidence and thereby preventing him from continuing with his evidence. Whether or not a conduct amounted to a contempt would be a matter for the trial judge to decide, depending on the facts and circumstances of the case;
- (b) There was no established procedure involving the Judiciary relating to arrest inside a court building or of any person, including a witness, in an on-going trial;
- (c) In considering the question of arrest inside a court building or of any person, including a witness, in an on-going trial, it would obviously be prudent for the Police to take all reasonable steps to ensure that they would not be at risk of committing a contempt of court. The Police could make appropriate factual inquiries of the Judiciary, e.g. as to whether the person was a witness or whether the witness had finished giving evidence. Where appropriate, the Police should obtain legal advice.

Views of Ms Amanda WHITFORD from the University of Hong Kong

11. The Chairman invited comments from Ms Amanda WHITFORD on the issue. Ms WHITFORD pointed out that the Police was not prohibited by law from arresting a criminal suspect within a court's precinct. In her view, the problem arising from the incident in question was related to the fact that the arrested person was attending court to give evidence under a subpoena, which was still in force at the time of the arrest. Under such circumstances, the judge might commit the Police for contempt of court or frustrating the due process of administration of justice. She opined that the appropriate course

Action

which the Police should have taken before making the arrest was to find out whether the person had finished his testimony in court, and if not, to refrain from arresting until the person had been released from the order to give evidence.

12. ACP(C) said that the Police would take into account the views expressed by Ms WHITFORD in preparing the relevant guidelines.

Issues raised by members

13. The Chairman said that according to the paper provided to the Panel, the Police received information on 11 March 2003 that the suspect might appear in civil proceedings in the High Court on the same day. Hence, the Police should have been aware that there was a reasonable chance that the suspect would be under a subpoena to give evidence in the court. Mr Martin LEE said that he did not believe that the Police officers did not know that the person had not finished giving evidence, as they were in the court building for a period of time before making the arrest. Moreover, the arrest was made in the presence of the suspect's legal representative.

14. Ms Audrey EU pointed out that not all witnesses testifying in court were under a subpoena to give evidence. Yet, an arrest of a witness who was not under a subpoena, in the course of testifying in court, could equally amount to a contempt of court. She added that according to media reports on the case, the Police officers were clearly aware that the person had not then finished giving evidence. However, they acted under instruction and carried out the arrest. She expressed concern that the incident could be viewed as an affront to justice and interference with the rule of law on the part of the Police. She further said that the explanation given by the Police that the arrest was an isolated case and that it had caused "inconvenience" to the court proceedings represented an understatement of the seriousness of the incident.

15. Ms Emily LAU, Mr Ambrose LAU and Mr CHAN Kam-lam expressed the view that judicial independence and the administration of justice must not be interfered with. They opined that the Police should complete its internal enquiry and promulgate clear guidelines as soon as possible, and revert to the Panel on the result of its investigation.

16. ACP(C) responded that the Police was aware of the consequence of the case, and that some Police officers might have to account for the way in which the arrest action was executed. He advised that it was expected that the investigation of the incident would be completed within four weeks, and legal advice would be sought on the matters identified. The result of the enquiry would be reported to the Panel in due course. He added that the Police would also proceed with the drawing up of the relevant guidelines, taking into consideration the findings of the enquiry. The guidelines would

Action

include, among others, measures to ensure proper communication and prior consultation with the Judiciary on Police actions which might affect the court's proceedings.

17. ACP(C) further said that while the Police admitted there should have been a better way of carrying out the arrest action, the arrest itself in the particular case was necessary because the Police was duty bound by law to apprehend the suspect. He said that on the day following the arrest, the suspect was escorted back to the court to continue with his testimony, and the learned Judge had been explained of the circumstances of the arrest.

18. The Chairman said that the need to arrest the suspect was not sufficient justification for the Police officers acting in a way which amounted to contempt of court and obstruction of justice. She said that the Police had the better option of not making the arrest until after the suspect had finished giving evidence. Ms Emily LAU said that in her view, the arrest in question clearly amounted to a contempt of court.

19. The Chairman asked Deputy Law Officer (Civil Law) (Ag) (DLO(CL)(Ag)) what was the correct procedure for the arrest of a witness giving evidence in a trial. DLO(CL)(Ag) said that she shared the views expressed by members that any action taken by the Police in securing an arrest should not interfere with the due process of administration of justice. She also agreed with the course of action as suggested by Ms Amanda WHITFORD.

20. In reply to the Chairman and Ms Emily LAU, JA and ACP(C) said that they were not aware of similar incidents in the past where the Police made an arrest inside a court building without informing the court beforehand.

21. Mr Martin LEE said that he was surprised that the investigation had not yet been completed as the incident was simple and there was no dispute of facts. Ms Audrey EU opined that the Police should have started preparing the guidelines immediately after the incident. She added that the guidelines should set out clearly the proper procedures for making arrests, if necessary, within the court's precinct, and the exceptional circumstances, if any, under which such procedures might not be followed. The scope of the court's precinct should also be defined. Ms Emily LAU opined that the guidelines prepared by the Police should also be provided to members of other disciplinary forces for reference.

The way forward

22. The Chairman requested the Police to provide the report of its internal enquiry and the guidelines for the Panel's consideration. She opined that the report and the guidelines should give due regard to the views expressed by

Action

members at the meeting and explain the following matters -

- (a) the Government's legal advice on the incident, including whether the arrest in question constituted a contempt of court;
- (b) accountability for any misconduct or mistake committed by Police officers, and whether and what disciplinary actions would be taken;
- (c) how, in future instances, arrest actions would be taken against a witness who was required to testify in court for more than one day; and
- (d) measures to ensure that law enforcement officers would be fully aware of the guidelines.

(Post-meeting note : The report and guidelines provided by the Police were circulated vide LC Paper No. CB(2)2579/02-03(01) for the Panel's discussion at the meeting on 23 June 2003.)

23. The Chairman and Ms Emily LAU asked whether the Judiciary Administration would also draw up general guidelines for staff members of the Judiciary on the relevant arrangements and procedures to ensure that the proper conduct of court proceedings would not be interfered with. The Chairman said that it was the duty of the Judiciary Administration to ensure that all its staff members were familiar with such procedures. JA responded that the Judiciary Administration would consider the need to set out the relevant arrangements in writing. He added that staff members of the Judiciary were well aware of the standing practices and measures. In the particular incident concerned, staff of the Judiciary would have duly informed and consulted the trial judge had they known of the Police's arrest action beforehand.

Adm

V. Payment of compensation to persons wrongfully imprisoned
(LC Paper No. CB(2)1090/01-02(01); 1861/02-03(05); 1886/02-03(01) and 1995/02-03(01))

24. At the invitation of the Chairman, Deputy Solicitor General (DSG) briefed members on a paper provided by the Administration in January 2002 (LC Paper No. CB(2)1090/01-02(01)). The paper was in response to enquiries raised by the Panel relating to the issue of whether persons who had served terms of imprisonment as a result of a criminal conviction, which was quashed on appeal or found to have been secured wrongfully, should be paid compensation from public funds. The Administration's reply was summarised as follows -

Action

- (a) There were two compensation schemes, one of which was administrative and ex gratia and covered miscarriages of justice generally. The other was statutory (provided under Article 11(5) of the Bill of Rights Ordinance (BORO) and covered wrongful conviction and punishment only;
- (b) Under the administrative ex gratia scheme, compensation was payable for damages done by the Government where it was not legally liable. The Secretary for Financial Services and the Treasury determined the amount of compensation after considering the circumstances of individual cases and the views of the Secretary for Justice and other departments or bureaux concerned;
- (c) Under the statutory compensation scheme, compensation was payable to a person who had suffered punishment as a result of a conviction of a criminal offence and when subsequently his conviction had been reversed or he had been pardoned on the ground that a new or newly discovered fact showed conclusively that there had been a miscarriage of justice. A claim for compensation was to be determined by the court; and
- (d) According to the Administration's record, only one application for compensation from a person wrongfully imprisoned had been received.

Views of the Law Society of Hong Kong

25. At the invitation of the Chairman, Mr Duncan FUNG briefed members on the written submission of the Law Society (LC Paper No. CB(2)1886/02-03(01)) as follow -

- (a) Compensation should be payable to persons who had spent time in custody after having been charged and refused bail but subsequently the prosecution dropped the charge against them before or at the trial;
- (b) Compensation should be payable to persons whose bail was refused because of objections by the prosecution but who was found subsequently by court to have no case to answer; and
- (c) The amount of ex gratia compensation payable to persons wrongfully imprisoned should be assessed by an independent assessor whose recommendation should be binding upon the Secretary for Financial Services and the Treasury.

Action

Administration's response to the views of the Law Society

26. DSG brief members on the Administration's written response to the submission of the Law Society (LC Paper No. CB(2)1995/02-03(01)) which was tabled at the meeting. The gist of the Administration's response was as follows -

- (a) The items raised by the Law Society in paragraph 26 (a) and (b) above could be covered by the administrative ex gratia compensation scheme depending on the merits of the case;
- (b) It should be noted that compensation would not be paid simply because the prosecution was unable to prove its case beyond reasonable doubt in relation to a particular charge. Compensation might be refused where there was serious doubt about the claimant's innocence and the conviction was quashed, for example, on a mere technicality. Also, compensation might be refused or reduced proportionately where the claimant was wholly or partly to blame for his misfortune; and
- (c) It was considered unnecessary to have an independent assessment in every case of ex gratia payment. However, such assessment might be appropriate in the circumstances where some blame should be borne by the public authorities, or in particularly large or complicated cases. In other cases, the assessment could adequately (and more cheaply and quickly) be made by a member of the Department of Justice (DoJ) who was experienced in these matters.

Issues raised by members

27. Referring to the Administration's response that on record there was only one application made in 2001 for compensation for wrongful imprisonment, Ms Audrey EU said that this might be indicative of the inadequate publicity given to the compensation schemes. She enquired about the present position of that application. In response, Senior Assistant Solicitor General (SASG) said that the case had yet to be resolved as there were queries as to whether the application met the criteria for compensation. Negotiation was still on-going between DoJ and the applicant's legal advisers.

28. DSG said that cases of wrongful imprisonment or serious miscarriage of justice were extremely few. Where such cases arose, the Government would actively consider the need to make compensation to the victims. He added that in other types of cases, claims against the Government for compensation by exonerated persons were also rare, particularly with regard

Action

to cases where the charge was dropped, or the conviction was quashed, for technical reasons as they did not involve miscarriage or justice.

29. Regarding to the paper discussed by the Finance Committee on 14 October 1987 (Annex I to LC Paper No. CB(2)1091(01)), the Chairman pointed out that paragraphs 3 and 4 of the paper had cited some examples where the Government was not legally liable and yet had a strong moral obligation to pay compensation. She did not consider that cases of such nature were so rare. In response, SASG said that the Prosecutions Division would refer cases of miscarriage of justice to the Legal Policy Division and the Civil Division, which would examine whether there was any basis for compensation.

30. Ms Audrey EU expressed the view that persons who had suffered losses which were attributable to the action of the Government should have a rightful claim against the Government, regardless of whether the claim was legally enforceable. She opined that the Administration should strengthen publicity particularly on the administrative compensation scheme, whose scope was broader than the statutory compensation scheme. She also suggested that the scope of the ex gratia payment under the administrative compensation scheme, which was not limited to cases of serious miscarriage of justice or default of the Government, should be clearly defined. She cited the example of persons or parties suffering losses because their assets had been wrongly frozen by the Government because of the provisions of the anti-terrorism legislation. In her view, the Government might be under a moral obligation to compensate for the resulting losses in such cases under the administrative compensation scheme.

31. Mr Albert HO agreed that publicity efforts should be stepped up to promote public awareness of the existing compensation schemes and the procedure of application for compensation. Appropriate measures included, for example, publication of information leaflets and annual reports on the objective and operation of the schemes, the criteria for applying for compensation, the method of assessment of compensation and the procedures of application etc. The Chairman and Mr James To suggested that information on the compensation schemes should be widely disseminated to relevant parties such as members of the Judiciary, the legal professional bodies, organisations involved in the provision of legal aid, front-line social workers, Members of the Legislative Council and District Councils and their assistants etc. Ms Emily LAU opined that measures should be introduced to ensure that acquitted persons should be properly informed of their right to claim for compensation under the compensation schemes and the procedures for lodging claims.

32. Mr Duncan FUNG opined that matters relating to compensation payable under the administrative and statutory schemes could be incorporated

Action

into the academic syllabus of law courses and professional training of legal practitioners.

Follow-up actions required of the Administration

Adm 33. Referring to the statutory compensation scheme under Article 11(5) of BORO, the Chairman pointed out that as advised by the Administration, compensation was payable to a person who had suffered punishment as a result of conviction of a criminal offence and when subsequently the conviction had been reversed or he had been pardoned on the ground that a new or newly discovered fact showed conclusively that there had been a miscarriage of justice. She requested the Administration to explain the grounds for the requirement of "new or newly discovered fact" to prove a miscarriage of justice, which appeared to be very stringent.

Adm 34. Regarding the administrative compensation scheme under Head 106, the Chairman requested the Administration to provide information on the provisions available under the scheme as well as the actual amount of compensation payable from the scheme since 1987.

VI. Any other business

Foreign Lawyers Practice (Amendment) Rules 2003
(LC Paper No. CB(2)1861/02-03(06))

35. Members noted that the Law Society had forwarded an advance copy of the Rules for the Panel's information. The Council of the Law Society proposed that the Foreign Lawyers Practice Rules be amended so that if the name and description of the foreign firm appeared in more than one language on the firm's letterhead, each version of the name and description must correspond with the other version(s). The Rules were intended to be gazetted on 2 May 2003.

36. The Chairman opined that the proposed amendments were straightforward. Members agreed that it was unnecessary for the Panel to discuss the Rules at a meeting.

37. The Chairman said that in line with the normal procedure, the House Committee would consider the Rules after gazettal and it was a matter for the House Committee to decide whether a subcommittee should be formed to study the Rules.

(Post-meeting note: The Rules were considered by the House Committee at its meeting on 9 May 2003. Members did not consider it necessary to form a subcommittee to study the Rules.)

Action

38. There being no other business, the meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
20 June 2003