

立法會

Legislative Council

LC Paper No. CB(2)3051/02-03

(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, 23 June 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 Miriam LAU Kin-yee, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP

Public officers attending : Item IV

Judiciary

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

Hong Kong Police Force

Mr LO Yik-kee, Victor
Assistant Commissioner of Police, Crime

Mr WONG Fook-chuen, Vincent

Chief Superintendent
Commercial Crime Bureau

Item V

Mr Wilfred TSUI
Judiciary Administrator

Mr Augustine L S CHENG
Deputy Judiciary Administrator (Operations)

The Law Society of Hong Kong

Mr Duncan FUNG

Mr Stephen HUNG

Item VI

Mr Andrew H Y WONG
Director of Administration

Mr S Y CHAN
Director of Legal Aid

Miss Eliza LEE
Deputy Director of Administration

Mr Benjamin CHEUNG
Deputy Director of Legal Aid

Mrs Fanny YU
Deputy Director of Legal Aid

Mr William CHAN
Assistant Director of Legal Aid

Mr CHAN Yum-min, James
Assistant Director of Administration

The Hong Kong Bar Association

Mr Andrew LI

Mr Donald LEO

The Law Society of Hong Kong

Mr Patrick MOSS

Mr Christopher KNIGHT

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

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I. Confirmation of minutes of meeting

(LC Paper No. CB(2)2577/02-03)

The minutes of the meeting held on 28 April 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)2399/02-03(01) - Letter dated 3 June 2003 from the Law Society of Hong Kong on "The Law Society Professional Indemnity Scheme";
- (b) LC Paper No. CB(2)2512/02-03(01) - Judiciary Administration's reply dated 10 June 2003 on the meaning of "absolute prohibition of any reduction" in Recommendation 1 of the "Consultancy Report on System for the Determination of Judicial Remuneration";
- (c) LC Paper No. CB(2)2536/02-03(01) - Letter dated 17 June 2003 from the Director of Administration on "Review of the Jury System"; and
- (d) LC Paper No. CB(2)2566/02-03(01) - Paper provided by the Administration on the practices adopted in Canada and Macau Special Administrative Region relating to translation of court judgments.

III. Items for discussion at the next meeting

(LC Paper Nos. CB(2)2584/02-03(01) - (02))

3. Members agreed to discuss the following items at the regular meeting of the Panel on 28 July 2003 -

- (a) Review of provision of legal aid services; and
- (b) Privileges and immunities conferred on consular posts and specified international organizations.

(Post-meeting note : The meeting of the Panel in July was subsequently re-scheduled for 29 July 2003.)

IV. Issues arising from the incident of the police arresting a witness in a civil trial

(LC Paper Nos. CB(2)2579/02-03(01); 2606/02-03(01) and 2649/02-03)

4. The Chairman said that the item was last discussed at the meeting on 28 April 2003. Arising from the discussion, the Panel requested the Police to revert on the findings of its disciplinary investigation into the arrest on 11 March 2003 and prepare internal guidelines on arrest action conducted in court buildings by police officers. The Judiciary Administrator was also requested to consider whether it should draw up general guidelines on the relevant arrangements and procedures to ensure that the proper conduct of court proceedings would not be interfered with by arrest action.

5. Assistant Commissioner of Police (Crime) (ACP(C)) briefed members on the paper on the follow-up action taken by the Police as follows -

- (a) the disciplinary investigation had concluded that the arrest of the witness in the High Court building on 11 March 2003 was improper. The apology which had been tendered to the learned judge by the Commercial Crime Bureau in relation to the incident was indeed necessary;
- (b) formal disciplinary proceedings against the four police officers involved in the arrest process had been instituted under the Police (Discipline) Regulations (Cap. 232) and section 9 of the Public Service (Administration) Order;
- (c) the "Police Guidelines on Arrest of Wanted Persons in Court Buildings" (the Guidelines) had been issued within the Police

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Force in May 2003. The Guidelines advised that arrest action within the precincts of a court, which interfered with proper administration of justice, might amount to criminal contempt of court. New procedures were introduced to ensure effective communication between the Police and the Judiciary on the arrest action. As the Police had received additional comments from interested parties, in particular the Judiciary, the Police would further revise the Guidelines to improve the notification procedures specified in the guidelines.

Issues raised by members

6. Ms Audrey EU noted that the paper provided by the Police for discussion of the Panel under this agenda item was classified "Circulation Restricted to Members" only. She asked whether the content of the entire paper was restricted to Members. ACP(C) said that paragraphs 4(a), (b) and (c) of the paper concerning the four police officers involved in the arrest process should be treated as restricted information because disciplinary proceedings against the officers concerned had not been completed.

7. Mr Martin LEE asked whether the most senior police officer of the four officers involved in the arrest action had sought instructions from his superior on the arrest in question. ACP(C) replied in the negative.

8. In response to the Chairman, Judiciary Administrator (JA) advised that the Judiciary considered the Guidelines drawn up by the Police acceptable. The Judiciary, however, had suggested that it should be specified in the Guidelines that arresting officers must obtain the court's permission before executing the arrest within the precincts of a court. He added that pending the revision of the Guidelines, the Judiciary Administration would promulgate corresponding internal guidelines for staff of the Judiciary.

9. Referring to the Guidelines, the Chairman suggested the Police to consider revising the phrase "it is lawful to arrest a wanted person within the precincts of a court" in the first paragraph to "it is not unlawful to arrest a wanted person within the precincts of a court".

10. The Chairman further said that it might not be totally fair to institute disciplinary action against individual police officers who had acted on instructions in the arrest. The importance of good communication and training of police officers must not be overlooked. ACP(C) noted the views.

V. Transcription charges for notes of proceedings
(LC Paper Nos. CB(2)1383/00-01(01) and 2584/02-03(03))

11. To recap, the Chairman informed members that the issue was previously raised by the Law Society in 2001 in a letter addressed to the Panel (LC Paper No. CB(2)1383/00-01(01)). At the request of the Panel, the Judiciary Administration had provided a paper to explain the charging mechanism for production of transcripts of court proceedings (LC Paper No. CB(2)2584/02-03(03)).

12. At the invitation of the Chairman, JA briefed members on the paper provided by the Judiciary Administration on the costs of producing transcripts by the Digital Audio Recording and Transcript Production Services (DARTS) of the Judiciary and the setting of transcript charges.

Issues raised by members

Impact of transcript fees on appeals

13. The Chairman and Ms Audrey EU said that a practical effect of the existing fee level for production of transcripts of court proceedings, i.e. \$85 per page of transcript, was that it had severely limited a litigant's ability to institute appeals. They pointed out that the transcript fee for a trial lasting a few weeks would amount to tens of thousands of dollars. Even if the applicant chose the alternative of getting an audio tape of the proceedings, at a fee of \$105 for every 60 minutes (equivalent to 16 pages of transcripts), the fee would still be unaffordable for most ordinary litigants, particularly those without legal aid. This would be contrary to the principle that court users should not be deprived of the right of access to court due to insufficient financial means.

14. JA explained that transcript fee was set on the basis of an estimation of unit cost using the "absorption costing" method, i.e. the total production costs were spread evenly among an estimated utilization covering all requesting parties. Although the fee was charged on a "user-pay" principle for the purpose of achieving cost recovery, the full costs of equipping, managing, operating and maintaining the DARTS system would not be passed on to court users.

15. The Chairman said that not all government services were charged on a cost recovery basis. She opined that the Judiciary should review the application of the cost recovery policy in respect of charges for the production of transcripts of court proceedings. Mr Martin LEE and Ms Audrey EU considered that the production of transcripts should be treated as part of the services provided by the Judiciary for court users. The transcript fees should not be treated as an administrative fee calculated mechanically on the basis of

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the length of the trial. In their view, regardless of the length of trial, the transcript fees should be affordable to court users. Mr Albert HO agreed that the matter of how an appropriate fee should be set was a legal policy issue which should be considered from the perspective of the right of access to the court, not on the basis of achieving cost recovery.

16. JA said that under the existing fee charging mechanism, the Secretary for Financial Services and the Treasury (SFST) had the authority to waive or vary the transcript fees payable on a case by case basis. If the judge was satisfied that there were grounds for a reduction or waiver of the fees in a particular case, the Judiciary might refer the case for the consideration of SFST.

17. JA further pointed out that the Registrars of Courts had a discretionary power to reduce or waive certain statutory fees incurred for the proceedings, depending on the merits of individual cases. He said that if legislative amendments were introduced to bring transcript fees within the scope of statutory fees, it might be possible for a party to apply to the Registrar for a reduction or waiver of the transcript fees. As regards the view that the production of transcripts should be regarded as a court service to which the principle of cost recovery should not apply, JA said that the matter would have to be considered internally with the Administration.

18. Mr CHAN Kam-lam opined that it was necessary to ensure that any measures introduced to reduce or waive the transcript fees should not result in abuse of the use of the transcript production service.

19. The Chairman said that the judge would carefully consider whether certain transcripts of court proceedings were relevant and necessary for the purpose of an appeal and this would serve as an effective safeguard against abuse. She stressed that the paramount concern which should be addressed was that in the interest of justice, no appellant should be deprived of the right to appeal because of inability to pay for its costs.

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20. The Chairman requested JA to revert in writing on the Judiciary's stance on the views expressed by members.

Fee setting method

21. Mr CHAN Kam-lam noted that as stated in paragraph 9 of the Judiciary Administration's paper, for the financial year 2002/03, DARTS contractors were paid \$13,079,181.28 for producing transcripts and the Judiciary only collected \$4,439,585 from fees. He enquired of the reasons for the shortfall.

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22. JA explained that the Judiciary had previously estimated that about 40% of the requests for transcripts by a party to the proceedings would result in subsequent requests by other parties for copies of the same transcripts. However, this had proved to be an over-estimation. In 2002, for example, the figure of such "second-round requests" turned out to be only 4%. JA further said that requests for transcripts also came from the Legal Aid Department (LAD) or other government departments routed through the Department of Justice. However, the departments, because of the no cross-charging policy, did not actually pay to the General Revenue. The costs were charged against the Judiciary's recurrent expenditure and there was no question of transferring the costs to non-government court users.

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23. Mr TSANG Yok-sing said that as the major proportion of the requests for transcripts came from government departments, the Judiciary should take into account the actual quantity of such transcripts produced for the departments in considering the charging mechanism for production of transcripts. JA said that Mr TSANG's view would be taken into consideration in future reviews.

Review of contracts of transcript service providers

24. Mr CHAN Kam-lam asked whether the Judiciary had reviewed the transcript service costs charged by the two contractors engaged by DARTS. JA replied that the services of the contractors were secured through open tenders. The production of transcripts of court proceedings was a professional service not commonly available in Hong Kong. The Judiciary had been successful in negotiating for a lower charge with the DARTS contractors in the last contract renewal exercise in 1997. The average production cost per page charged by the contractors was about \$74. On top of that, \$13, being staff cost and overhead, was added, bringing the total cost of production to \$87 per page. He added that the existing contracts would expire at the end of 2004. The Judiciary would invite SFST to review the level of fee in the light of the new DARTS contracts in early 2005.

25. Mr Duncan FUNG informed the Panel that he had received quotation from a private contractor who offered to provide transcript production service at a rate of \$59 per page in English and \$64 per page in Chinese.

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26. Mr Stephen HUNG suggested that the Judiciary should review the duration of its contracts with the contractors when it next invited open tenders in 2005 for the transcription service. JA responded that the matter would be reviewed in the next contract renewal exercise.

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Requests for court judgments

27. Mr Stephen HUNG said that in considering whether there were sufficient grounds for an appeal, it was essential for the intended appellant to get a written judgment on the case. A fee would be charged on the requesting party for the judgment. As the right to appeal was a fundamental right of litigants, he was of the view that a party requesting a written verdict of the court for the purpose of an appeal should not be required to pay for the written verdict. He pointed out that requests of the Director of Legal Aid (DLA) for court judgments were not subject to the charging of a fee.

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28. The Chairman agreed with the view of Mr HUNG. She requested JA to provide a written response to Mr HUNG's suggestion.

VI. Review of provision of legal aid services

(LC Paper Nos. CB(2)2646/01-02(01); 2784/01-02(01); 1542/02-03(01); 2581/02-03(01) - (03) and 2639/02-03(01))

29. The Chairman and Mr Albert HO declared interest on the item in view of their status as legal practitioners, pointing out that discussions on review of litigation costs, legal aid fees and the scope of legal aid etc would have an impact on fees payable to legal practitioners.

30. The Chairman drew members' attention to the following papers provided by the Administration -

- (a) LC Paper No. CB(2)2581/02-03(01) - Annual and Biennial Review of Financial Eligibility Limits of Legal Aid Applicants;
- (b) LC Paper No. CB(2)2581/02-03(02) - Five-yearly Review of the Criteria for Assessing Financial Eligibility of Legal Aid Applicants; and
- (c) LC Paper No. CB(2)2581/02-03(03) - Provision of Legal Aid Services - Administration's Response on the List of Issues for Review.

31. The Chairman also informed members that the Hong Kong Bar Association had prepared a paper on "Provision of Legal Aid Services" for the consideration of the Panel (tabled at the meeting and subsequently circulated vide LC Paper No. CB(2)2639/02-03(01)).

(Post-meeting note : The Administration's written response to the Bar Association's submission was circulated vide LC Paper No. CB(2)2888/02-03(01) dated 23 July 2003.)

Annual and biennial review of financial eligibility limits of legal aid applicants

32. At the invitation of the Chairman, Director of Administration (D of A) briefed members on the Administration's paper (LC Paper No. CB(2)2581/02-03(01), which reported on the findings of the annual review of financial eligibility limits of legal aid applicants to take account of inflation during the period July 2001 to July 2002, and the biennial review to take account also of changes in litigation costs during the period July 2000 to July 2002. Arising from the reviews, the Administration proposed that -

- (a) the financial eligibility limits for the Ordinary Legal Aid Scheme (OLAS) and the Supplementary Legal Aid Scheme (SLAS) should be revised from \$169,700 to \$163,080, and from \$471,600 to \$453,200 respectively, to take into account consumer price changes so as to preserve the real value of the limits; and
- (b) no change to the financial eligibility limits should be made on account of changes in the litigation costs during July 2000 to July 2002.

33. The Chairman asked whether the proposed downward adjustment of the financial eligibility limits of legal aid applicants would reduce the number of eligible legal aid applicants. Mr Andrew LI and Mr Patrick MOSS expressed concern that it would be an undesirable situation from the perspective of fair administration of legal aid if the adjustment resulted in exclusion of persons who were genuinely in need of legal aid.

34. D of A said that as explained in the Administration's paper, the reviews in question were conducted in accordance with the recommendations made in the legal aid policy review conducted in 1997 to revamp the financial limits review cycle. The purpose of the recent reviews and the proposed adjustments to the eligibility limits was to maintain the real value of the limits, taking into account changes in Consumer Price Index (C) and any changes in litigation costs which occurred during the relevant periods covered in the reviews. He added that it was not the Administration's intention to increase or reduce the number of households financially eligible for legal aid through adjustments of the financial eligibility limits. Whether or not the actual number of households financially eligible for application for legal aid after the adjustments depended, among other factors, on changes in the disposable income and capital of legal aid applicants.

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35. The Chairman said that the Administration should clarify its policy intention and give an undertaking to the effect that the purpose of conducting the reviews was not to reduce the number of eligible applicants.

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36. Mr Albert HO asked whether a downward adjustment of the financial eligibility limits for OLAS and SLAS would affect legal aid recipients who had been granted legal aid prior to the adjustment. DLA replied that by virtue of Regulation 8 of the Legal Aid Regulations, DLA had a discretionary power of not discharging a legal aid certificate even if the legally aided person's financial resources exceeded the statutory financial eligibility limit after legal aid had been granted.

37. Mr CHAN Kam-lam noted that the Administration had deferred the downward adjustment to the financial limits until the annual review in 2002 because of the small change in consumer prices for the period from July 2000 to 2001 (-1.2%). He opined that the existing mechanism for adjustment of financial limits in accordance with the findings of the regular reviews should be adhered to as far as possible so as to avoid drastic adjustments resulting from the cumulative changes in consumer prices over a long period of time. The Chairman, however, cautioned that frequent adjustments to reflect small changes would cause confusion and instability to the system which might not be beneficial to the administration of legal aid. She said that ultimately, a balance should be struck between prudent use of public funds and access to legal aid which was an important factor for safeguarding access to justice.

38. Mr Albert HO said that litigation costs was a very important factor affecting a person's ability to engage in litigation. He considered that the Administration should, instead of relying solely on movements in consumer prices, also take account of changes in litigation costs, in deciding whether the financial eligibility limits of legal aid applicants should be adjusted and the extent of the adjustment.

39. D of A responded that in reviewing the financial eligibility limits, the Administration had attempted to ascertain changes in litigation costs from the two legal professional bodies, the Judiciary and LAD. It was found that neither the legal professional bodies nor the Judiciary had statistics compiled on equal basis and of sufficient details to enable the Administration to establish a definite trend on changes in litigation costs. The information derived from the small number of cases sampled by the Judiciary could hardly be regarded as representative of the private litigation costs. Furthermore, the change in the median litigation costs compiled by LAD might not be indicative or conclusive of the increase or reduction in litigation costs, as the costs of individual cases might be affected by the amount of work done, length of the hearing or the complexity of the case. He said that the

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Administration had concluded that it did not see a case of adjusting the financial eligibility limits to reflect changes in litigation costs over the past two years as there was no conclusive evidence to show that there had been significant changes in litigation costs.

40. D of A further advised that in determining the amount of fees payable to counsel/solicitors acting on behalf of legally aided persons in civil cases, DLA was obliged to have regard to the rates or range of fees as generally allowed by the Taxing Masters, having regard to the indicative rates as set out in the letter from the Registrar of the High Court to the Law Society in July 1997. He pointed out that such indicative rates or range of fees had remained applicable as of today, despite the cumulative deflation recorded at 10.1% during the period.

41. The Chairman opined that the counsel/solicitors fees apart, the increasing complexity of cases and the resulting lengthening of the hearings would increase litigation costs.

System of remunerating counsel/solicitors in criminal legal aid cases

42. Mr Andrew LI referred to the recent reduction of 4.3% in criminal legal aid fees, prosecution fees and duty lawyer fees. He said that many practitioners in the legal profession were concerned that the reduction was unrealistic and unreasonable, and would add pressure for further downward adjustment of the financial eligibility limits for legal aid applicants. He further said that both the Bar Association and the Law Society shared the view that the present system of remunerating counsel/solicitors in criminal legal aid cases should be reviewed by the Rules Committee set up under the Criminal Procedure Ordinance.

43. Echoing Mr Andrew LI's views, Mr Christopher KNIGHT said that the problem with the existing system of legal aid in criminal cases was that fees were paid for attendance at court and the number of days a trial lasted. As a result, solicitors were not paid for the preparation of a case for trial and advising their clients on matters such as evidence etc. Such preparation work could result in the case running smoothly at court and substantially shorten the length of trial. In his view, the present system did not encourage the provision of efficient and effective legal services.

44. D of A informed members that the Administration had consulted the Legal Aid Services Council (LASC) in January 2003 on the proposal to reduce the criminal legal aid fees, prosecution fees and duty lawyer fees. LASC, whose membership included representatives from the legal profession, had raised no objection to the proposal. He added that the Administration had also invited the two legal professional bodies to give views on the proposed fees reduction in May 2003. The proposal was approved by the

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LegCo Finance Committee at its meeting on 13 June 2003.

45. D of A said that the Administration would carefully consider the views and suggestions made by interested parties on issues relating to remuneration of counsel/solicitors in criminal legal aid cases, including the financial implications of any proposals.

46. The Chairman said that she understood that the Bar Association and the Law Society had formed a joint working party to review the criminal legal aid fees system. She requested the legal professional bodies to provide a paper on their views for the consideration of the Panel in due course.

(Post-meeting note : A submission provided by the Law Society on review of the Legal Aid in Criminal Case Rules was circulated vide LC Paper No. CB(2)2908/02-03(01) dated 25 July 2003.)

47. Members agreed that the Panel should continue discussion on the item at the next meeting in July 2003.

48. The meeting ended at 6:45 pm.

Council Business Division 2
Legislative Council Secretariat
11 September 2003