

立法會  
*Legislative Council*

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**Panel on Administration of Justice and Legal Services**

**Minutes of special meeting  
held on Monday, 15 January 2004 at 9:40 am  
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 James TO Kun-sun  
Hon CHAN Kam-lam, JP  
Hon Miriam LAU Kin-ye, JP  
Hon 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
- Member absent** : Hon Martin LEE Chu-ming, SC, JP
- Public officers attending** : Department of Justice  
Ms Elsie LEUNG, GBM, JP  
Secretary for Justice  
  
Mr Robert ALLCOCK, BBS, JP  
Solicitor General  
  
Miss Annie TAM, JP  
Director of Administration & Development  
  
Mr John READING, SC  
Deputy Director of Public Prosecutions

Administration Wing  
Chief Secretary for Administration's Office

Mr Andrew H Y WONG  
Director of Administration

Ms CHANG King-yu  
Deputy Director of Administration

Mr CHAN Yum-min, James  
Assistant Director of Administration

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

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

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**I. Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's Policy Address 2004**  
(2004 Policy Agenda; LC Paper Nos. CB(2)982/03-04(01) and (02))

The Chairman welcomed representatives of the Department of Justice (DoJ) and the Administration Wing, Chief Secretary for Administration's Office to attend the meeting to brief the Panel on the policy initiatives of DoJ and the Administration Wing. She drew members' attention to the two information papers provided by DoJ and the Administration Wing which had been issued to the Panel (LC Paper Nos. CB(2)982/03-04(01) and (02) respectively).

Policy initiatives of the Administration Wing

*Review of legal aid services*

2. Director of Administration (D of A) said that over the past year, the Administration had been discussing with the Panel on Administration of Justice and Legal Services (AJLS Panel), the Legal Aid Services Council and the two legal professional bodies on matters relating to review on the provision of legal aid services. Earlier, the Administration had completed the annual and biennial reviews of the financial eligibility limits of legal aid applicants and the five-yearly review of the criteria used to assess the financial resources of legal aid applicants. The findings had been reported to the Panel. In view of the significant and persistent decrease in consumer prices as reflected in the three

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annual reviews for 2001 to 2003, the Administration proposed to implement shortly, through legislative amendments, a downward adjustment of 8.2% to the financial eligibility limits of legal aid applicants in line with the reduction in consumer prices. D of A said that relevant issues would be discussed in detail by a subcommittee formed to study the proposed motion to adjust the financial eligibility limits of legal aid applicants.

3. D of A further said that arising from the five-yearly review of the criteria for assessing the financial capacity of legal aid applicants and taking into account the views and comments made earlier by the AJLS Panel on legal aid matters, the Administration had proposed a number of measures to improve in general the provision of legal aid services. He said that the Administration would be happy to continue to discuss with the Panel on the relevant issues in the coming year, and hoped that with the support of the Panel, the improvement measures could be implemented as soon as possible.

4. The Chairman pointed out that in addressing at the opening ceremony of the Legal Year 2004, the Chief Justice (CJ) had expressed the view that the Director of Legal Aid (DLA) should be provided with a statutory discretion to grant legal aid for mediation in order to facilitate the greater use of mediation as an alternative method for dispute resolution. She opined that the Administration should consider the proposal of expanding the scope of legal aid to cover mediation cases.

5. D of A responded that the Administration had taken note of CJ's views. He noted that in stating the proposal, CJ had supplemented that how the proposed discretion should be exercised by DLA in a particular case would depend on all the circumstances, including the suitability of mediation in the case in question and the likely saving as to time and costs. D of A added that certain other issues which might have impact on the provision of legal aid services should also have been examined by the Working Party on Civil Justice Reform appointed by CJ. The Working Party was in the final stage of its deliberations and its Final Report was expected to be published in March 2004. Moreover, the three-year Pilot Scheme on Family Mediation launched by the Judiciary had ended and an Evaluation Report on the scheme had recently been finalised. D of A said that the Administration would study the relevant deliberation and recommendations in the two Reports once endorsed by the Judiciary, in considering the proposed on provision of legal aid for mediation.

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Policy initiatives of DoJ

*Code of Conduct for expert witnesses*

6. Deputy Director of Public Prosecutions (DDPP) informed members that at present, there was no code of conduct for expert witnesses who were to testify in prosecution cases, although there was in existence a code of conduct for

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witnesses in civil cases. He said that DoJ intended to prepare such a code, the purpose of which was to ensure that information relating to an expert witness which might be relevant to his or her credibility should be disclosed to the defence. The Prosecutions Division (PD) of DoJ had now completed a draft code and consultation on it was taking place with relevant bodies including the two legal professional bodies, the Judiciary, the Academy of Experts, the Government Chemist and forensic pathologists.

*Procedures for avoiding miscarriages of justice*

7. DDPP said that an internal Working Group had been established in PD to review prosecution procedures and identify any shortcomings in the present system for ensuring the integrity of the criminal trial process to avoid miscarriages of justice. This review was part of a continuing process of improvement and it mirrored studies undertaken elsewhere. A report of the Working Group was being considered by the Director of Public Prosecutions (DPP). There would be consultation on the report in due course as to whether and how the recommendations might be taken forward.

*Improvement of service provided to victims of crimes and witnesses*

8. DDPP advised members that a victims Charter was published in 1996 and it had been updated several times since then. Another Working Group in PD had been set up to study the practices abroad with a view to introducing measures to improve the quality of service provided by prosecutors to victims of crimes and witnesses. Certain recommendations had been made by the Working Group for the DPP's consideration.

*Reforms in legal education and training*

9. Solicitor General (SG) informed members that reforms to legal education and training were ongoing and good progress had been made. New legislation was enacted in May 2003 for the establishment of a statutory Standing Committee on Legal Education and Training to take over the work of the Steering Committee on Legal Education and Training and the Advisory Committee on Legal Education. The current non-statutory Steering Committee on Legal Education and Training would continue its work until the middle of 2004, after then the statutory Steering Committee would come into existence. This arrangement would provide continuity in the planning of the new four-year local Bachelor of Laws course which would begin in September 2004, and overseeing incremental changes to the Postgraduate Certificate in Laws (PCLL) to make it a more skills-based course.

10. SG further said that the need for introducing conversion arrangements for those who obtained their future law degrees overseas and wished to come back to Hong Kong to study the PCLL was also being considered. He said that the

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consultancy study had recommended that these people should be required to take examinations to ensure that they were familiar with relevant areas of Hong Kong law. The Steering Committee was considering the necessary arrangements for such examinations.

11. As regards the standard of English of law graduates which had been a matter of wide concern, SG advised that as from the current intake of PCLL candidates, all of them were required to sit for an examination (the "IELTS") for the purpose of assessing their English language skills. At the moment, there was no required pass-mark for the examination but a benchmark standard would be set. The results of the current batch of students were found to be satisfactory. The standard would be monitored and eventually there would be a pass-mark for the English examination for entry to the PCLL.

*Promotion of the rule of law*

12. Referring to paragraph 6 of DoJ's paper, Mr TSANG Yok-sing enquired about efforts to promote understanding of the rule of law in and outside Hong Kong and improve the legal system. Secretary for Justice (SJ) responded that DoJ would continue to strengthen its role in providing professional legal advice to policy Bureaux and Government departments on legislative and legal policy matters as well as conducting prosecutions in a fair and just manner. The promotion of the rule of law would continue to be achieved in numerous ways such as through articles, conferences, seminars, briefings and visits by DoJ officials etc, both in Hong Kong and elsewhere. Socio-legal research into the supply of and demand for legal services in Hong Kong, which would commence shortly, would also assist DoJ in considering in what ways the legal system could be improved.

13. SG supplemented that DoJ provided secretariat support for the Law Reform Commission (LRC) which conducted studies on significant and the more long-term types of reform projects. At the moment, the LRC was considering a number of issues including the possibility of introducing a system of conditional fees for litigation, review of the rules for hearsay evidence in criminal proceedings as well as the criteria for service as jurors. DoJ also undertook projects when the need arose. For example, a consultation paper on review of the law on enduring power of attorney was recently issued to seek opinions on the subject from interested parties. The Department was also considering the need for introducing legislative provisions on wasted costs, in the light of the views and comments made by the Judiciary. Other legislative amendments to improve the legal system in general would also be introduced into LegCo for scrutiny in the form of a composite miscellaneous provisions bill.

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*Socio-legal research into the supply of and demand for legal services*

14. SG informed members that the planning of a survey into the supply of, and demand for, legal services in the community had reached an advanced stage. A consultative committee comprising representatives from the legal profession, LegCo Members and academics etc was overseeing the implementation of the research. Short-listed candidates for the consultancy had been interviewed by an assessment committee and the successful bidder would shortly be announced. The socio-legal research was expected to take about three years.

15. SG explained that the research was inspired by a similar study in UK to examine how people in practice handled their legal problems and disputes, with a view to exploring ways to help the people, particularly those without the assistance of legal services. The study in UK had led to various policy decisions including the use of mediation as an expeditious means to resolve disputes. He said that DoJ intended to follow a similar approach. The research would aim at finding out the types and substance of legal services currently available in Hong Kong, and comparing that with the demand for legal services so that efforts could be made to address any mismatch in supply and demand.

16. SG further advised that it was not intended that the consultant commissioned to conduct the study should make any proposals as to how to deal with the problems. Instead, the researchers would conduct interviews with members of the community to obtain factual information on the legal problems they faced and the means with which they tackled the problems. The Administration did not have any preconceived ideas as to the direction of any future reform which might arise from the research. Any policy decisions to be made by the Administration would take into consideration the empirical findings obtained from the research and subsequent consultation with concerned parties including the legal profession and other providers of legal services.

17. The Panel agreed that the socio-legal research should be further discussed at the meeting in March 2004. DoJ was requested to provide a paper on the details of the planning and conducting of the research for the consideration of the Panel. Ms Emily LAU opined that information on the tendering exercise for the research and the anticipated costs of the research should also be included in the paper.

*(Post-meeting note : The paper provided by the Administration was issued to the Panel vide LC Paper No. CB(2)1644/03-04(02) for discussion at the meeting on 22 March 2004.)*

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*Development of Hong Kong as a regional centre for legal services and dispute resolution*

18. Mr Albert HO enquired about the impact of The Closer Economic Partnership Arrangement between the Mainland and Hong Kong (CEPA) on the local legal profession and the role played by the Administration in helping local legal practitioners to take advantage of the implementation of CEPA.

19. SJ informed members that CEPA, which came into force on 1 January 2004, enabled Hong Kong lawyers to have access to the Mainland market in ways that were not available to foreign lawyers. Measures introduced under CEPA included -

- (a) permitting the representatives offices of Hong Kong law firms to operate in association with Mainland law firms;
- (b) allowing Hong Kong legal practitioners to be employed by Mainland law firms as Hong Kong legal consultants;
- (c) allowing Hong Kong permanent residents who were of Chinese nationality to sit the State Judicial Examination in the Mainland;
- (d) allowing Hong Kong residents who passed the State Judicial Examination to practise as Mainland lawyers in non-litigation matters; and
- (e) reducing the residence requirement for the representatives of Hong Kong law firms in the Mainland from six to two months a year, except for Guangzhou and Shenzhen where the requirement was completely lifted.

SJ said that, under the framework of CEPA and with the above measures introduced, Hong Kong practitioners were effectively given a competitive edge over their counterparts in other jurisdictions. The implementation of CEPA would help to attract Mainland and foreign investors and other parties to use the services provided by the Hong Kong legal profession, thus strengthening Hong Kong's position as a regional hub for legal services.

20. SJ further said that the concluding of CEPA was just the initial step to open up the legal services market in the Mainland. In this regard, the role of the Government was to assist, within the confines of CEPA, local practitioners to extend their services to the Mainland market. Ongoing efforts would also be made to develop Hong Kong as a regional legal services centre. SJ informed members that as part of the Administration's efforts in fostering systematic co-operation between the legal professions of the Mainland and Hong Kong, the Administration had entered into Legal Services Co-operation Agreements with

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the Justice Bureaux of six Mainland provinces and municipalities. They were, namely, Quingdao, Chongqing, Beijing, Nanjing, Shanghai and Zhejiang. Agreements with Guangdong and Shenzhen were expected to be signed in the near future. These agreements would strengthen the exchange of information on the law, the legal system and legal profession, and enhance understanding of such information by way of training of legal personnel at the practical level. The agreements also provided channels whereby technical and procedural problems arising from the implementation of CEPA in the relevant provinces and municipalities could be resolved.

21. Ms Miriam LAU asked whether the Administration had made major headway in achieving the objective of developing Hong Kong as a regional legal services centre and dispute resolution. She pointed out that at present, many parties in dispute still chose places like London, and in cases where a party to the dispute was a Mainland party, Beijing, as the venue for arbitration. Regarding arbitration cases conducted in Hong Kong, many of them were confined to local construction related dispute cases.

22. SJ replied that DoJ had been making every effort to promote the benefits of using Hong Kong as a centre for legal services and dispute resolution, e.g. through articles and speeches made by its officials and briefings given to visiting delegations etc. She pointed out that during her recent visits to New Zealand, Australia and Canada, she had taken the opportunity to promote the services offered by the Hong Kong legal profession. Also, the Administration was keeping a close watch on developments as to the demand for legal services, including arbitration and mediation services, available in Hong Kong. In this connection, Mainland and foreign investors and businessmen were encouraged to choose the Hong Kong courts or arbitration bodies as the venue for resolution of cross-boundary civil and commercial disputes and the law of Hong Kong as the applicable law for arbitration.

23. SJ further informed members that for a period of time after the Reunification, due to the absence of a mechanism for reciprocal enforcement of arbitral awards between the Mainland and Hong Kong, many dispute resolution seekers had chosen to have their disputes resolved elsewhere. Since 2002, with the arrangements for reciprocal enforcement of arbitral awards brought in place, there had been an increasing tendency for Mainland enterprises involved in contractual disputes to make use of the arbitration services in Hong Kong for resolving their disputes. SJ said that the Hong Kong International Arbitration Centre (HKIAC) was playing a remarkable role in providing an independent venue for dispute resolution in Hong Kong. There had been a significant growth in terms of its caseload, which went up to more than 300 cases in the past year or so. These figures compared favourably with other jurisdictions like Singapore which were Hong Kong's competitors in the provision of arbitration services.

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24. SJ further advised that the use of mediation as an alternative method for resolving disputes had also been on the increase. Along with this development was the growing number of accredited mediators in Hong Kong, many of whom were legal practitioners.

25. Ms Miriam LAU opined that there was no cause for complacency, taking into account the fact that there were now more than 300 qualified arbitrators/mediators in Hong Kong. She said that with the accession of China to the World Trade Organization and the implementation of CEPA, the Administration should step up efforts in order to take full advantage of the opening up of the legal services market in the Mainland. She said that the Administration should strengthen liaison with HKIAC in finding ways to further develop the services offered to foreign and Mainland service users. SJ responded that Ms LAU's view would be taken on board.

26. The Chairman requested the Administration to provide updated statistics on the caseload handled by HKIAC for the Panel's information.

*(Post-meeting note : The relevant statistics were included in a paper on "Development of Hong Kong as a Legal Services Centre" provided by the Administration for discussion at the meeting on 22 March 2004 (LC Paper No. CB(2)1644/04-04(01))*

27. The Panel agreed that the item on development of Hong Kong as a legal services centre should be followed up at the meeting on 22 March 2004.

28. The meeting ended at 10:45 am.