

立法會
Legislative Council

LC Paper No. CB(2)2004/03-04

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by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of meeting
held on Monday, 23 February 2004 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 Albert HO Chun-yan
Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Martin LEE Chu-ming, SC, JP
Hon Emily LAU Wai-hing, JP

Public officers attending : Item IV

Department of Justice

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Mr Thomas LEUNG
Senior Government Counsel
Legal Policy Division

Item V

Judiciary

Mr Augustine CHENG
Deputy Judiciary Administrator (Operations)

Mr TSUI Siu-wan
Chief Court Interpreter

Attendance by invitation : Items IV & V
The Hong Kong Bar Association
Mr Andrew BRUCE, SC
Mr Joseph TSE (Item V only)
The Law Society of Hong Kong
Mr Melville BOASE
Mr Stephen HUNG

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

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2
Mr Paul WOO
Senior Council Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1391/03-04)

The minutes of the special meeting held on 16 December 2003 were confirmed.

II. Information papers issued since last meeting

2. Members noted that the following papers had been issued -

- (a) LC Paper No. CB(2)1212/03-04(01) - Letter dated 29 January 2004 from Hon Margaret NG, Chairman of the Panel, to Chairman of the Hong Kong Bar Association in response to the comments made by Dr J Boost on The Evidence (Amendment) Bill 1999;

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- (b) LC Paper No. CB(2)1288/03-04(01) - Paper dated February 2004 from the Administration on "Budgetary arrangements for the Judiciary";
- (c) LC Paper No. CB(2)1342/03-04(01) - Letter dated 9 February 2004 from the Judiciary Administrator on the performance of the Bailiff Service and staffing of the Judiciary and modernisation programmes of the Judiciary; and
- (d) LC Paper No. CB(2)1381/03-04(01) - Final Report on Evaluation Study on The Pilot Scheme on Family Mediation provided by the Judiciary Administration.

III. Items for discussion at the next meeting

(LC Paper Nos. CB(2)1416/03-04(01) and (02))

Meeting in March 2004

3. Members agreed that the following items should be discussed at the next meeting on 22 March 2004 -

- (a) Development of Hong Kong as a legal services centre;
- (b) Performance of Court Interpreters; and
- (c) Evaluation Study on the Pilot Scheme on Family Mediation.

Meeting in April/May 2004

Professional Indemnity Scheme of The Law Society of Hong Kong

4. The Chairman said that at the meeting on 18 December 2003, the Panel discussed the Consultancy Report commissioned by the Law Society on the insurance arrangements of its Solicitors Indemnity Scheme. At the meeting, the Law Society informed the Panel that it had yet to form a view on the Report. The Law Society expected that it would be in a position to agree on the options to be adopted by April 2004. The Chairman suggested and members agreed that the Secretariat should write to the Law Society to enquire whether it would be able to revert to the Panel in April or May on its recommendations.

(*Post-meeting note* : The Law Society advised in writing on 8 March 2004 that it could revert to the Panel on the item in April.)

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IV. Review of sexual offences in Part XII of the Crimes Ordinance
(LC Paper Nos. CB(2)1363/03-04(01) to (03))

5. The Chairman said that the item was referred to this Panel for follow-up by the Bills Committee formed to study the Statute Law (Miscellaneous Provisions) Bill 2001 (the Bill). She informed members that the Bill contained, inter alia, legislative amendments relating to the offence of rape, which aimed at clarifying that the offence did not exclude sexual intercourse that a man had with his wife, and that certain other sexual offences in Part XII of the Crimes Ordinance could also apply in respect of marital intercourse. In the process of scrutinising the proposed amendments, both the Bills Committee and the Administration came to an agreement that the scope of the amendments should be confined to the offence of marital rape as a matter of priority. The other sexual offences in Part XII of the Crimes Ordinance should then be further reviewed in the context of a law reform exercise as soon as possible. The Administration was requested to report to this Panel on the progress of the review at an appropriate time.

Position of the Administration

6. Deputy Solicitor General (DSG) briefed members on the Administration's paper (LC Paper No. CB(2)1363/03-04(01)). He advised that the Secretary for Justice (SJ) had made it clear, in her speech on the resumption of the Second Reading of the Bill, that the Administration appreciated that there was a need to revise and update the law relating to sexual offences when there was an identified inadequacy in a particular area or offence. This had guided the Administration's approach in ensuring that women and vulnerable persons were protected from sexual abuse. Examples of the measures taken by the Administration included amendments to the rules relating to the competence and compellability of spouses in criminal proceedings, the proposed introduction of an offence of persistent sexual abuse of a child, and the recent enactment of the Prevention of Child Pornography Ordinance which aimed at protecting children from sexual exploitation and sexual abuse by prohibiting child pornography, pornographic performance by children and child sex tourism. In addition, the Working Group on Combating Violence, comprising representatives from non-Government organisations and various Government bureaux and departments, was set up to examine the problem of sexual violence and spouse battering, map out strategies and strengthen multi-disciplinary collaboration to tackle the problem.

7. DSG added that in the opinion of the Administration, a law reform to review sexual offences would be a very large-scale exercise which might have the inadvertent effect of delaying the review and passage of legislation in respect of particular offences that required attention. Therefore, instead of conducting a full-scale review, the Administration would continue to adopt the approach of examining and updating the law relating to specific sexual offences when certain inadequacy in a particular area was identified.

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Issues raised by members

Review on sexual offences

8. The Chairman said that she was surprised to find that the present position of the Administration had deviated from that agreed between the Bills Committee and the Administration. She referred members to paragraph 9 of the report of the Bills Committee (LC Paper No. CB(2)1363/03-04(02)), which stated that the Administration had supported that a comprehensive review of the other non-rape sexual offences in the Crimes Ordinance should be conducted.

9. Mr Albert HO noted that as reflected in the report of the Bills Committee, the Bills Committee had requested the Administration to give an undertaking at the resumption of the Second Reading debate on the Bill that it would conduct a full-scale review of the sexual offence provisions in Part XII of the Crimes Ordinance. However, in the last paragraph of SJ's speech delivered at the Legislative Council (LegCo) meeting on 10 July 2002, SJ had stated that the Administration would review aspects of the law relating to sexual offences only where the need arose. Mr HO opined that SJ had not in fact given the undertaking as requested by the Bills Committee. He further said that the projects which were being undertaken by the Administration fell short of a comprehensive review as originally expected.

10. The Clerk informed members that both the minutes of meetings and the report of the Bills Committee were provided to the Administration for its comments before they were issued.

11. Ms Audrey EU said that it was not uncommon that in the course of deliberation of a bills committee or subcommittee, the Administration was requested to give an undertaking in its address to the Council on the bill or subsidiary legislation that it would take certain follow up actions. Ms EU recalled the experience of a previous bills committee of which she was the chairman that the Administration had provided the wording of the undertaking to the committee for reference. In the light of that practice, Ms EU suggested that where appropriate, the Administration should be requested to provide an advance copy of the speech to be made by the relevant Government official at the Council meeting in order to ensure that the undertaking made by the Administration accurately reflected what had been agreed between the committee and the Administration.

12. DSG said that the Administration had reviewed specific sexual offences after the enactment of the Bill. As set out in the Administration's paper, active steps were being undertaken by the Administration to ensure that individuals were adequately protected from sexual abuses, and that sexual offences were revised where necessary. For the reasons explained in the paper, the Administration was of the view that a full-scale review on sexual offences was not called for at this stage.

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13. Ms Miriam LAU pointed out that the various concerns which had been raised in the community about protection of women were in a wider context than the sexual offences covered under Part XII of the Crimes Ordinance. Spouse battering, for example, fell within the ambit of the Domestic Violence Ordinance. She said that the comprehensive review might need to cover such relevant offences.

14. In response to the Chairman, Mr Andrew BRUCE said that he appreciated that considerable time and resources would have to be spent in carrying out a law reform exercise on review of sexual offences. He said that all things being considered, the Bar Association was of the view that major structural changes to the existing statutory sexual offence provisions might not be necessary. Nevertheless, consideration could be given to undertaking reviews which could be completed relatively quickly for the purpose of identifying anomalies in the law and taking remedial actions. He suggested that, for instance, a review to improve the legislation to clarify that sexual offences covered persons of both sexes might be considered.

15. Mr James TO said that he had previously been interviewed by Ms Rosanna WONG, a prominent public figure, on a thesis which was then being prepared by Ms WONG for her doctorate degree. He said that Ms WONG's thesis provided detailed analysis on the systems in Hong Kong and overseas jurisdictions for dealing with sexual offences and sexual abuse conduct as well as reform measures for providing stronger protection for the victims. He suggested that the Administration might make reference to such information for the purpose of the review.

Working Group on Combating Violence

16. Mr Albert HO and Ms Audrey EU requested the Administration to provide a paper to explain the work of the Working Group in improving protection of victims from sexual abuse.

17. Senior Government Counsel informed members that the Working Group was convened by the Social Welfare Department. The Working Group had developed procedural guidelines on good practices for reference by all parties involved for handling battered spouse cases. It had also commissioned the University of Hong Kong in conducting a research study on means to better deal with child abuse and spouse battering, including examination of the need for introducing legislative amendments. He agreed to provide a written reply on the work of the Working Group for the information of the Panel.

(Post-meeting note : The written response from the Administration on the work of the Working Group was issued to the Panel vide LC Paper No. CB(2)1590/03-04(01) on 4 March 2004.)

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Way forward

Admin

18. The Chairman said that during the deliberation of the Bills Committee, the Administration had explained that certain other offence provisions in Part XII of the Crimes Ordinance might need to be reviewed and updated consequential to the amendment to clarify the meaning of "unlawful sexual intercourse" in relation to marital rape. She said that the Administration should follow up the issues and revert to the Panel.

Clerk

19. The Chairman further pointed out that issues relating to protection of women against abuses, including marital rape, spouse battering and others, had previously been discussed by the Panel on Home Affairs with the Administration and deputations from interested parties and concerned groups. The issue of marital rape was subsequently followed up by this Panel, and dealt with by way of the Statute Law (Miscellaneous Provisions) Bill 2001. To enable members to have a fuller picture of the concerns which had previously been raised and discussed, the Chairman requested the Secretariat to prepare a background brief for the consideration of the Panel. The Panel would then further consider how the issue of review of sexual offences should be taken forward.

V. Use of official languages for conducting court proceedings
(LC Paper Nos. CB(2)1416/03-04(03) and (04))

20. Deputy Judiciary Administrator (Operations) (DJA(O)) briefed members on the Judiciary Administration's paper which provided the following information -

- (a) statistics on trials conducted in Chinese and English at different levels of courts in 2003 as compared with those in 1999;
- (b) number of bilingual judges at different levels of courts;
- (c) training for judges on Chinese language ability;
- (d) progress of use of Chinese in court proceedings; and
- (e) impact of increasing use of Chinese in court proceedings on litigation costs in the High Court and the Court of Final Appeal.

Issues raised

Language used in court proceedings

21. Mr Stephen HUNG noted that the Magistrates' Courts used Chinese much more extensively in conducting proceedings as compared with other levels

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of courts. The Judiciary had therefore introduced a scheme since February 2002 under which one court in each Magistrates' Court was designated as "Chinese Trial Court". In the trials, the Magistrates and all the parties used Cantonese in the proceedings and the documents for use in the proceedings were in Chinese as far as practicable. No interpretation service would be provided for the trials. Mr HUNG said that in his experience, the trial Magistrates in the Chinese Trial Courts were on occasions quite insistent in using Chinese as the medium of trial. This had imposed difficulties when lawyers not being conversant with Chinese were briefed to appear before a Chinese Trial Court. In his view, to assist the parties in particular the defendants, the Magistrates should exercise greater flexibility in allowing either or both of Chinese and English to be used in the proceedings.

22. DJA(O) responded that under the existing system, a party to the proceedings could apply in advance of the trial for it to be transferred from a Chinese Trial Court to another court which used English as the medium of trial. The trial Magistrate would consider the grounds for the request, and where it was considered appropriate to do so in the circumstances of the case, reschedule the trial to another court. DJA(O) added that where necessary, interpretation services would be provided for the trial. A defendant could also ask for certain documents used in the proceedings to be translated into English.

23. Mr Stephen HUNG further said that the system of listing cases in the District Court was different from that in the Magistrates' Court and the Court of First Instance, in that the parties to the case and their legal representatives usually did not know, until the day before the first hearing, which particular court in the District Court would hear the case. This had created problems in cases where a party had made a prior request for the trial to be heard in Chinese, but eventually the proceedings had to be conducted in English because of the non-availability of a bilingual judge. Mr Joseph TSE pointed out that as there was no prior assurance from the Court that the trial would be conducted in Chinese, counsel to the parties had to prepare the case documents in both languages, resulting in wastage of time and resources and increased costs.

24. At the request of the Chairman, DJA(O) agreed to convey the comments on the existing listing arrangements in the District Court for the Judiciary's consideration of how the system might be improved, taking into account the increasing demand for the use of Chinese in conducting court proceedings.

25. Mr Albert HO enquired whether the judge could use another official language in the course of the hearing. DJA(O) replied in the positive. He said that the trial judge was in the best position to decide which official language should be used. Moreover, the judge had the discretion to use one official language for part of the proceedings and another official language for another part of the proceedings as he saw fit.

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26. The Chairman and Mr Albert HO agreed that judges should exercise greater flexibility in dealing with requests made by the parties, in particular the defendants, regarding the language to be used by the court in the proceedings.

27. Ms Miriam LAU said that she was aware that there was a considerable number of cases where a party had requested for the trial to be conducted in Chinese but the request was not acceded to because a bilingual judge was not available. She enquired whether the situation had improved.

28. DJA(O) replied that experience had shown that the capacity of the courts to conduct Chinese trials had not been affected by the increase in Chinese trials. The Judiciary was taking necessary steps to ensure that there was an adequate supply of bilingual judges proficient in conducting court proceedings in Chinese. He further advised that in 1998, the Chief Judge of the High Court had issued guidelines for the judges on the use of Chinese in court proceedings. The guidelines set out a range of factors which a judge might take into account in the exercise of his discretion as to which official language should be used in conducting proceedings.

29. DJA(O) further advised that the Official Languages Ordinance (OLO) stipulated that in deciding the choice of the language to be used, the paramount consideration for the judge was the just and expeditious disposal of the case, having regard to all the circumstances of the case.

30. In reply to the Chairman, DJA(O) said that the guidelines issued by the Chief Judge of the High Court were advisory in nature and had no statutory binding power. At the Chairman's request, DJA(O) agreed to provide the guidelines for the Panel's information.

(Post-meeting note : The guidelines provided by the Judiciary Administration was issued to the Panel vide LC Paper No. CB(2)1837/03-04(01) on 24 March 2004.)

31. In response to the Chairman, Senior Assistant Legal Adviser 2 (SALA2) informed members that section 5(5) of OLO provided that the Chief Justice might make rules and issue practice directions to regulate the use of the official languages in the courts. The Chairman requested SALA2 to provide the relevant statutory provisions and subsidiary legislation for the Panel's information.

SALA2

32. Ms Miriam LAU asked whether a party could appeal against the trial judge's decision against using Chinese in conducting the proceedings. DJA(O) replied that according to OLO, the decision on which of the official languages should be used in conducting the proceedings vested in the trial judge, and the decision was final.

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33. Ms Miriam LAU and Ms Audrey EU said that in criminal cases, the wish of the defendant to have the trial conducted in the official language of his choice should be a factor of overriding importance to be considered by the judge in deciding on the language to be used. Ms Audrey EU further opined that OLO should be amended to the effect that where the defendant in a criminal case asked for the proceedings to be conducted in either one of the official languages, the proceedings should be conducted in that language.

JA

34. DJA(O) agreed to convey the views to the Administration and the Chief Justice for their consideration.

JA

35. Mr CHAN Kam-lam and Ms Audrey EU requested the Judiciary Administration to provide the following information for the consideration of the Panel -

- (a) statistics on applications made by defendants for the proceedings to be conducted in Chinese, the number of the applications rejected and the reasons for refusal; and
- (b) whether there were delays in hearings due to the need to provide a bilingual judge to conduct the trial in Chinese, and the extent of such delays, if any.

36. Mr Abert HO asked whether in appeal cases, the trial in the higher court could be conducted in a different official language from that used in the lower court. DJA(O) said that an appeal trial was not bound by any requirement as to which of the official languages should be used, save that proceedings in the Court of Final Appeal were conducted in English.

37. The Chairman pointed out that there were precedent cases tried in the Court of Final Appeal, e.g. the National Flag case, where the defendant testified in Chinese. DJA(O) clarified that notwithstanding the decision of the judge to conduct proceedings in one particular official language, by virtue of section 5 of OLO, a party to or a witness in any proceedings or a part of any proceedings might use either or both of the official languages and address the court or testify in any language. Where necessary, the assistance of a court interpreter would be made available.

Unrepresented litigants

38. Mr Albert HO asked whether the increasing use of Chinese in conducting trials was attributable to the increasing number of unrepresented litigants. DJA(O) replied that the Judiciary had not conducted detailed analysis in this regard, but empirical experience seemed to indicate that there could be some correlation between the two.

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- JA 39. The Chairman requested the Judiciary Administration to provide statistics on trials involving unrepresented parties and a breakdown of such trials conducted in Chinese and English respectively.

Court judgments

40. Mr Joseph TSE pointed out that a large part of court judgments were written in Chinese. He asked whether the Judiciary would consider providing an English version of the judgments to facilitate reference by English speaking judges and counsel and other parties who had difficulties in reading Chinese judgments.

41. DJA(O) replied that judgments were usually written in the official language in which the trial was conducted. Yet, there were guidelines for the judges that where it was considered that a judgment was of great reference value, the trial judge could ask the Judiciary Administration to make arrangements for the judgement to be translated into the other official language. He added that all the judgments of the Court of Final Appeal were available in both Chinese and English.

- JA 42. Mr Joseph TSE further pointed out that most of the court judgments did not have a translated version. DJA(O) agreed to provide statistics on court judgments with translated version for the Panel's information.

Training for judges and judicial officers

43. In response to Mr CHAN Kam-lam, DJA(O) said that as shown in Annex C of the Judiciary Administration's paper, the Judiciary had organised a total of 42 Chinese Language training courses for judges and judicial officers between 1 July 1997 and 31 December 2003, involving 233 attendees. These included Putonghua and Cantonese courses as well as Chinese writing courses. Chinese writing courses were organised locally, and some by the Tsinghua University. In addition, the Judiciary was discussing with the University of Hong Kong and the City University of Hong Kong on running courses on writing of judgments in Chinese. The courses were expected to start in the latter part of 2004.

44. Mr CHAN Kam-lam pointed out that from July 1997 to end December 2003, only five Putonghua courses with 23 attendees had been organised. He opined that the training courses should be intensified.

45. DJA(O) advised that all bilingual judges were encouraged to take part in Chinese writing courses and Putonghua courses. Putonghua courses for foreign judges were also organised. He said that the Judiciary would continue to provide language training courses for judges and judicial officers to ensure that there was sufficient number of bilingual judges to meet actual needs.

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46. Referring to the statistics in Annex B of the paper on the number of bilingual judges, Mr Ambrose LAU asked whether the figures included judges who knew Chinese but were not willing to conduct Chinese trials. He opined that the Judiciary should take concrete steps to encourage them to try to conduct proceedings in Chinese.

47. DJA(O) noted Mr LAU's views. He said that bilingual judges and judicial officers referred to those who were able to speak, read and write Chinese, including conducting trials and preparing summing-ups and judgments in Chinese. The objective of the training courses was to improve their ability, in particular writing skills, and confidence in using Chinese to conduct proceedings.

Way forward

48. The Chairman invited the Judiciary Administration to take into consideration the views expressed and take steps to introduce improvement measures. She said that the Panel could follow up the progress in due course.

49. The meeting ended at 6:30 pm