

**Extract from minutes of meeting of Administration of Justice
and Legal Services Panel held on 13 December 2002**

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**V. Use of official languages for conducting court proceedings
(LC Paper No. CB(2)415/02-03(01))**

28. Judiciary Administrator (JA) introduced the paper prepared by the Judiciary Administration which set out the policy and practices regarding the use of Putonghua as an official language in conducting court proceedings (LC Paper No. CB(2)415/02-03(01)).

Issues raised by members

Guidelines issued to judges on use of official language in court proceedings

29. Ms Miriam LAU referred to paragraph 8 of the Judiciary Administration's paper on the nine factors included in the guidelines issued by the Chief Judge of the High Court which might be taken into account by judges in the exercise of their discretion as to which official language (i.e. Chinese or English) should be used in conducting particular court proceedings. One of the factors was "the language ability of the judge or judicial officer himself". Ms LAU pointed out there were cases where a party to the proceedings had requested that the proceedings be conducted in Chinese but the request was rejected because the Judiciary could not provide a judge who was able to conduct proceedings in Chinese. She said that in such cases, the language ability of the judge alone became the predominant factor which undesirably outweighed the other factors in the guidelines. Ms LAU opined that the Judiciary should consider ways to deal with the situation as the number of requests for trials to be conducted in Chinese was increasing.

30. Ms Miriam LAU further suggested that to be fair to the parties concerned, the guidelines should accord different weighting to the nine factors to facilitate judges in deciding which official language should be used for the proceedings. On the other hand, the Judiciary should take steps to ensure that there would be adequate supply of judges who could conduct proceedings in Chinese.

31. Mr Martin LEE echoed Ms Miriam LAU's views. He said that as the majority of the people in Hong Kong were Chinese speaking, it would be undesirable to have situations where applications to conduct court proceedings in Chinese were turned down. He added that for criminal prosecution cases, the court should give more weight to the factor "the wishes of the accused or

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litigants" in deciding which official language should be used in conducting the proceedings. Mr TAM Yiu-chung was in support of Mr LEE's view.

32. The Chairman said that availability of more judges who could conduct proceedings in Chinese could help address the problem. However, she had reservations about the proposal of giving weighting to the various factors to be considered by judges. She pointed out that the guidelines issued by the Chief Judge of the High Court were not binding on the judges. The decision on the choice of official language to be used remained ultimately with the judges. She was concerned that introducing additional practice directions or guidelines for judges could give rise to queries about interference with the independence of judges in exercising their judicial discretion. She further pointed out that the decision of the judge could be subject to appeal.

33. Ms Miriam LAU said that many litigants did not have legal aid and they might not afford the time and costs for an appeal.

34. JA said that the guidelines sought to assist judges in the exercise of their discretion on the use of official language in a particular trial. In deciding on the choice of official language to be used, the paramount consideration for the judge was the just and expeditious disposal of the cause or matter before him, having regard to the circumstances of the case. The decision of the judge was final. He said that it might not be appropriate to add further guidelines for judges from the Judiciary's point of view. Nevertheless, he would convey members' views on the guidelines for the Judiciary's consideration. The Chairman requested JA to provide information on the purpose and status of the guidelines and whether the nine factors included in the guidelines were accorded any weighting.

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35. Mr TAM Yiu-chung asked whether a party could make a request for the proceedings to be conducted in Chinese before appointment of the judge hearing the case. Mr TAM Yiu-chung and Ms Miriam LAU requested JA to provide information on the number of requests to conduct criminal proceedings in Chinese which had been acceded to or rejected.

36. JA advised that usually, for cases tried in the District Court, an application for the trial to be conducted in Chinese had to be made to the criminal listing judge sitting in the plea Court before the case was set down for trial and the matter was then considered. He undertook to find out if data sought by Mr TAM Yiu-chung and Ms Miriam LAU were available.

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37. JA further advised that whichever official language was chosen by the judge, a party to or a witness in any proceedings could use another official language or address the court or testify in any language. Where necessary, the assistance of a court interpreter would be made available. A legal representative could also use either or both of the official languages in any proceedings or part of any proceedings.

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38. Mr TSANG Yok-shing asked if counsel could cross-examine a witness in a language or dialect which was not the official language used in the proceedings. JA replied that in such case the counsel would have to make an application to the court and satisfy the judge of the need for doing so.

39. In response to Mr CHAN Kam-lam, JA informed members that about 80% of the cases tried in the lower courts were conducted in Chinese. The problem of using Chinese as an official language in court proceedings concerned more with the higher courts as there were less judges who were proficient in conducting proceedings in Chinese. Moreover, trials conducted in the higher courts were more complex cases and the parties concerned usually preferred the proceedings to be conducted in English. About 20% of the trials at the High Court were conducted in Chinese. JA agreed to provide more updated figures for members' information.

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40. Mr Martin LEE pointed out that there were grave difficulties in translating case laws into Chinese. He considered that for cases involving complicated legal issues, it was preferable to use English in conducting the trial.

Transcript of proceedings

41. Mr TSANG Yok-shing referred to paragraph 6(b) of the Judiciary Administration's paper which stated that when a judge decided that the proceedings were to be conducted in one particular official language, then the transcript of the proceedings would usually be kept in that language. Mr TSANG sought clarification on whether the transcript would be translated into the official language decided by the judge in conducting the proceedings if the parties, witnesses or legal representatives chose not to use that official language in addressing the court.

42. JA remarked that paragraph 6(b) of the paper might not have presented a full picture of the subject matter. He said that transcripts of all court proceedings were produced in accordance with the digital recording of proceedings kept by the Judiciary, and that the original languages used by all concerned parties in addressing the court would be recorded.

(Post-meeting note - JA has further advised in writing after the meeting that it should be noted that everything said by all concerned parties in the court proceeding, in both the original languages used by the parties in the proceeding, and the interpretation of such languages into the official language decided by the judge in conducting the proceeding if such interpretation takes place, is recorded and kept by the Judiciary. If there are any doubts or queries about the accuracy of the interpretation, it is usually raised there and then and would be resolved at the hearing. When a transcript is called for, say, for the purpose of

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appeal, a transcript will usually be produced for the parts of the proceeding which are necessary for the purpose of the appeal. The transcript will usually be produced in the official language used by the court in the proceeding. For example, if English was chosen as the official language of that proceeding and a witness gave a statement in Cantonese with interpretation into English, the witness statement would usually appear in English in the transcript. However, if a request is made for a particular part of the transcript to be produced in both the official language chosen by the judge and in the original language used by the person concerned in that part of the proceeding, this can be done. In the case of the earlier example cited above, if a witness gave a statement in Cantonese with interpretation into English, i.e. the official language used for the proceeding, that part of the transcript can be produced in both Chinese (as direct transcription of oral Cantonese) and English.)

Use of Putonghua in court proceedings

43. Mr Martin LEE said that the implications of using Chinese, especially Putonghua, as an official language in court proceedings should be carefully considered, having regard, for example, to whether there was adequate supply of judges, judiciary staff and legal professionals with proficiency in Putonghua as well as the necessary court facilities which had to be made available.

44. In response, JA advised that Putonghua had been used in a limited number of instances in short proceedings or parts of proceedings by a number of bilingual judges who were proficient in Putonghua at various levels of courts. The Judiciary believed that the present demand for legal proceedings to be conducted in Putonghua was not substantial. The demand, however, might increase, especially from litigants in person. He further informed members that of the 182 judges in the Judiciary, 118 were bilingual judges. 56 had gone through some training in Putonghua. The Judiciary would monitor the demand for the use of Putonghua and if necessary, consider providing additional training for judges. As to the legal profession, it was also foreseen that proficiency of legal practitioners in Putonghua would improve.

45. The Chairman referred to Appendix III of the Judiciary Administration's paper on the Judiciary's replies to press enquiries on the use of Putonghua in a recent District Court case (*HKSAR V Pan Shenfang and others* (Case No. 823 of 2002)), and made the following comments -

- (a) She shared the Judiciary's view that it would be a better approach to issue the replies to press enquiries until the case was concluded;
- (b) In the case in question, she questioned whether it was appropriate

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for the counsel, instead of through the use of an expert witness, to test the first prosecution witness' ability in Putonghua by cross-examining him in Putonghua; and

- (c) On the Judiciary's reply to the press enquiries on 25 October 2002 stating that "since both Chinese and English are official languages for conducting court proceedings, and in the Hong Kong context, spoken Chinese usually refers to Cantonese and also includes Putonghua, court proceedings may be conducted in Putonghua", she pointed out that as spoken Chinese included Putonghua and did not exclude other Chinese dialects (according to the Judiciary's reply to the press on 24 October 2002), it could be argued that court proceedings might also be conducted in other Chinese dialects. She requested the Judiciary to consider reviewing the implications of conducting court proceedings in Putonghua.

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46. Mr Martin LEE considered that a review of the use of official languages in Court proceedings should be conducted by the Judiciary. The Chairman advised that the Panel would decide whether the matter should be discussed as an agenda item upon receipt of the supplementary information to be provided by the Judiciary Administration.

47. There being no other business, the meeting ended at 10:40 am.

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