

**Extract from minutes of meeting of  
Panel on Administration of Justice and Legal Services  
held on 20 December 2001**

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

**Minutes of meeting  
held on Thursday, 20 December 2001 at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members Present** : Hon Margaret NG (Chairman)  
Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon James TO Kun-sun  
Hon Miriam LAU Kin-yee, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP

**Members Absent** : Hon Albert HO Chun-yan  
Hon Mr Ambrose LAU Hon-chuen, GBS, JP

**Public Officers Attending** : Item III  
  
Mr Michael SCOTT  
Senior Assistant Solicitor General  
  
Ms Kitty FUNG  
Senior Government Counsel  
Legal Policy Division

Item IV  
  
Mr Andrew H Y WONG, JP  
Director of Administration

Miss Eliza LEE  
Deputy Director of Administration  
Mr Robert ALLCOCK, BBS  
Solicitor General

Mr Stephen Kai-yi WONG  
Deputy Solicitor General

Mr Frank POON  
Deputy Principal Government Counsel

Mr Paul TSANG  
Senior Government Counsel

**By Invitation** : Item III

The Hong Kong Society of Notaries

Mr Lester G HUANG  
Vice President

Mr Robin BRIDGE

Mr CHAN Bing-woon

Mr Timothy HANCOCK

Mr KWOK Hong-yee, Jesse

Ms Christine W S CHU

Item IV

The Hong Kong Bar Association

Mr P Y LO

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

**Staff in Attendance** : Mr Jimmy MA, JP  
Legal Adviser

Mr Paul WOO

Senior Assistant Secretary (2)3

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**I. Confirmation of minutes of meetings**

(LC Paper Nos. CB(2)716, 717 and 723/01-02)

1. The minutes of the meetings held on 18, 29 September and 29 October 2001 were confirmed.

**II. Items for discussion at future meetings**

(LC Paper Nos. CB(2)722/01-02(01) and 629/01-02(01) to (03))

2. Members agreed that the following items should be discussed at the next meeting on 28 January 2002 -

(a) Review of legal education and training in Hong Kong; and

(b) Civil Justice Reform : Interim Report and Consultative Paper.

3. On item (b), the Panel agreed that the two legal professional bodies and academics should be invited to give preliminary views on the matter at the next meeting, pending further discussions by the Panel on specific proposals for reform at a later stage.

Items on the list of issues to be considered by the Panel

(LC Paper No. CB(2)722/01-02(01))

*Item 16 - Wasted costs*

4. Members noted that the judgment of the Court of Appeal in Criminal Appeal No. 269 of 2000 and extracts from the reports of the Bills Committee on Costs in Criminal Cases Bill had been circulated to the Panel for reference (LC Paper Nos. CB(2)629/01-02(01) to (03) dated 7 December 2001). Members agreed that preliminary discussion on the item, in the context of the Civil Justice Reform, could be held at the meeting on 28 January 2002. If necessary, the item could be discussed in further detail at another meeting.

*Item 17 - Ex-gratia payment to victims of wrongful imprisonment*

5. Members agreed that the Administration should be requested to prepare a paper to explain its policy on the above issue, and provide relevant background information on previous public discussions on related policy issues, complaints and applications for compensation from victims as well as the practices adopted in other jurisdictions so as to facilitate the Panel's consideration of the matter.

### Bilingual proceedings

6. Mr Martin LEE proposed that the issue of bilingual proceedings should be discussed by the Panel. The Chairman suggested and members agreed that the matter could also be discussed in the context of the Civil Justice Reform.

### Policy on legislation and making of executive orders under Article 48(4) of the Basic Law

7. The Chairman informed members that as the Chief Secretary for Administration (CS) was unable to attend this meeting for discussion of the item due to some prior engagements, the item had been postponed and arrangements were being made for CS to attend another meeting.

### **III. Admission of notaries public in Hong Kong**

(LC Paper Nos. CB(2)722/01-02(02) and (03); 755/01-02(01))

8. The Senior Assistant Solicitor General drew members' attention to the Administration's letter to the Panel dated 13 December 2001 (LC Paper No. CB(2)722/01-02(03)), which listed the eight sets of draft rules on notarial practice to be made under the Legal Practitioners (Amendment) Ordinance 1998. He advised that the draft rules had been prepared and finalized. Subject to further fine-tuning of the drafting, the draft rules would be submitted to the Chief Justice for approval.

9. At the invitation of the Chairman, Mr Lester HUANG briefed members on the paper prepared by the Society of Notaries (the Society) (tabled at the meeting and circulated after the meeting vide LC Paper No. CB(2)755/01-02(01)). In particular, he explained the present position concerning two outstanding issues which had yet to be resolved, namely, notarial examination and professional indemnity for notarial practice.

### Examination for admission as notaries public

10. Mr Lester HUANG said that instead of drawing on the assistance from the universities, the Society had secured the consent in principle of The Scriveners Company in England, which had unique experience of running notarial examinations in Hong Kong and some other commonwealth jurisdictions, to assist with drawing up the examination syllabus and providing examiners to set and mark the papers. As for the development of literature for potential candidates to prepare for the examination, the Society had approached Mr Nigel Ready, the author of the authoritative textbook "Brooke's Notary", who had agreed to compile a Hong Kong supplement to his work. It was expected that the new text would be ready by February 2002, and the Society could conduct the new examination within one year.

11. Ms Emily LAU asked whether it was the Society's plan to only rely on The Scriveners Company to continue to run the examination in the future. Mr Lester HUANG responded that in view of its present resources position and the relatively small membership of about 400, the Society was of the view that it would in practice be more desirable to seek the services of the said institution in running the examination at this particular stage. Meanwhile, the Society would start developing local literature for the examination and assess the impact of the implementation of the first set of the examination rules. It was the intention of the Society to run the examination itself in time.

Professional indemnity

12. Mr Lester HUANG advised that another issue that remained outstanding was whether it was necessary to make professional indemnity rules for notaries public in Hong Kong. He said that at present, most of the notaries public in Hong Kong were also practising as solicitors and hence they were covered by the Solicitors' Indemnity Scheme (SIF). There was however a practical difficulty in making appropriate insurance indemnity arrangements for six members of the Society who were not covered under the SIF. The Society's contacts with insurers had revealed that viable indemnity cover could not be made available to this minority of notaries public. This was particularly the situation after the September 11 incident.

13. Mr Lester HUANG further advised that the Society had assessed the potential risks to the public of not being able to provide for indemnity coverage for the minority of its members. It had come to the conclusion that there was no real urgency for introducing any indemnity rule, having considered the following factors -

- (a) it would not lead to any worse-off situation because there was no statutory requirement for notaries public to maintain professional insurance, and indeed no notaries public had taken out such indemnity coverage at present;
- (b) the majority of members were already covered under the SIF. Many of those not covered did not reside in Hong Kong and were not entitled to practise as notaries public in Hong Kong. Many had retired from the practice and just wished to retain their status as notaries public. Also, those engaged in active practice would not normally engage in high-risk work and were sufficiently senior to practise competently; and
- (c) notaries public would not handle clients' monies in the course of their practice, and the local notarial practice so far had a no-claim record.

14. Mr Lester HUANG said that in the views of the Society, it would not be necessary to introduce a statutory requirement of professional indemnity cover for the purpose of notarial practice. The Society would like to seek the Panel's views on the matter.

15. Mr Martin LEE asked whether there were precedent cases of notaries public in the United Kingdom or other commonwealth jurisdictions being sued for professional negligence. Mr Lester HUANG responded that he had not heard of any such cases.

16. In reply to Ms Emily LAU's questions, Mr Lester HUANG said that there was an enabling provision in the principal Ordinance for the Society to introduce rules regarding mandatory indemnity. However, the situation was that to date the Society had yet to make any such rules to actually implement the requirement. He further advised that it had been the original intention of the Society to put in place rules on mandatory indemnity in the present exercise. However, the Society now had second thoughts about the necessity to do so because of the reasons explained earlier.

17. In further response to Ms Emily LAU, Mr Lester HUANG advised that there were currently about 28 notaries public who were not covered under the SIF, of whom many were not residing in Hong Kong or had retired from practice but wished to retain their status as a notary public. As to the remainder, there were only about six who were currently in Hong Kong and able to practise.

18. Ms Audrey EU asked what were the major differences between the work of notaries public in the traditional sense and that of the China appointed attesting officers. She opined that measures should be taken to promote public awareness of the differences.

19. Mr Lester HUANG replied that members of the Society could only practise within Hong Kong. The documents attested by members of the Society who were not concurrently China appointed attesting officers were not recognized in the People's Republic of China. However, there was a significant number of members of the Society who were concurrently China appointed attesting officers. He added that China appointed attesting officers were generally expected to take on duties that went beyond the mere attestation of documents in that they should also verify the accuracy of the contents of the documents. Notaries public in Hong Kong, however, verified the accuracy of the identity and the signature of the persons appearing before them, but not the accuracy of the contents of the documents. He said that in time, the issue of achieving some form of harmonization of the work performed by the two might be looked into.

20. In response to a further question from Ms Audrey EU on admission of notaries public, Mr Lester HUANG said that admission was restricted to practising solicitors. The Legal Practitioners Ordinance required that the person

had to be on the roll of solicitors continuously for a period of seven years immediately preceding application for admission. The person must also have passed the notarial examination within one year of applying for admission.

21. Ms Audrey EU pointed out that as notaries public engaged in active practice were normally solicitors of sufficient seniority, from the consumer protection point of view, the question of whether the fees charged were reasonable or good value for money should be looked into. This issue was particularly pertinent to ordinary members of the public who did not have a standing relationship with a solicitors' firm willing to charge the services at a cheaper rate.

22. In reply, Mr Lester HUANG said that the Council of the Society in fact maintained a Scale of Fees ranging from \$400 to \$750 per transaction. The existing scale fees were in place since the 1980s. The actual fees charged, however, were sometimes less than that prescribed under the scale. Moreover, notaries public very often provided additional services for free to their clients. He added that no complaints had been received in the past about high fees charged by notaries public in Hong Kong. The Chairman requested the Society to provide a copy of the scale fees for members' information.

*(Post-meeting note - The Society's Circular on "Notarial Fees" dated 17 October 1994 was circulated to the Panel vide LC Paper No. CB(2)806/01-02(01) on 4 January 2002. The Society clarified that the scale of notarial fees attached to the Circular came into force since 1 November 1994.)*

23. Mr Lester HUANG supplemented that the work of notaries public involved not just the mere attestation of documents. It also included research on the different attestation requirements for the documents and the preparation of a notarial certificate to go with the documents to meet the specific requirements of the particular jurisdictions in which the documents were to be used etc.

24. The Chairman sought members' views on the Society's intention to leave the issue of mandatory professional indemnity aside at the moment and to proceed with the implementation of the other necessary rules so that the Society could start to admit new notaries public as soon as possible.

25. Members raised no opposing views. Mr Martin LEE and Ms Audrey EU considered that there was unlikely to be a serious risk arising from lack of indemnity cover for notarial practice. Ms Miriam LAU said that it did not seem to be necessary to introduce any mandatory indemnity scheme in view of the no claim situation in Hong Kong. She opined that the issue of compensation for professional negligence should better be left to the individual notaries public concerned.

26. In response to Ms Emily LAU, Mr Lester HUANG said that the Society

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would consult its members on the draft rules. At the Chairman's request, he agreed to revert to the Panel on the contents of the rules and the result of consultation in due course.

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