

Extract from minutes of meeting on

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  
held on 23 June 2003**

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**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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Action

**I. Confirmation of minutes of meeting**  
(LC Paper No. CB(2)2577/02-03)

1. 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

Action

- (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

Action

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 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

Action

not be treated as an administrative fee calculated mechanically on the basis of 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.

Admin

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.

Action

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.

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.

Admin

*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.

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.

Admin

*Requests for court judgments*



Action

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.

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