

立法會
Legislative Council

LC Paper No. CB(2)316/03-04

(These minutes have been
seen by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

**Minutes of meeting
held on Monday, 20 October 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon LAU Wong-fat, GBS, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
Hon IP Kwok-him, JP

Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

Members absent : Hon James TIEN Pei-chun, GBS, JP
Hon Martin LEE Chu-ming, SC, JP
Hon Bernard CHAN, JP
Hon LAU Ping-cheung

Public officers attending : Items III & IV

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Acting Permanent Secretary for Constitutional Affairs

Mr LI Wing
Chief Electoral Officer
(Item III only)

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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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)86/03-04)

The minutes of the meeting held on 9 October 2003 were confirmed.

II. Items for discussion at the next meeting
(LC Paper Nos. CB(2)104/03-04(01) and (02); 124/03-04(01))

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2. Members agreed that the following items should be discussed at the next meeting on 17 November 2003 -

- (a) Review of constitutional development after 2007 (paragraph 42 below refers);
- (b) Proposed agenda items for discussion by the Panel in 2003-04 session (paragraph 42 below refers); and
- (c) Subsidiary legislation on financial assistance scheme (item proposed by the Administration).

(Post-meeting note : At the request of Dr YEUNG Sum, the item "Code of Practice for public consultation conducted by the Government" was added to the agenda for the meeting in November 2003. Another item on "Transfer of statutory powers and functions of the Chief Secretary for Administration and Financial Secretary" was also added to the agenda.)

III. Subsidiary legislation on printing of names, emblems and photographs on ballot papers

(LC Paper Nos. CB(2)104/03-04(03) and 119/03-04(01))

3. Chief Electoral Officer (CEO) briefed the Panel on the paper prepared by the Registration and Electoral Office on the major features of the draft Printing of Name, Emblem and Photograph on Ballot Paper (Legislative Council) Regulation (the Regulation) to be made by the Electoral Affairs Commission (EAC) under the Electoral Affairs Commission Ordinance (Cap. 541) (LC Paper No. CB(2)119/03-04(01)). He informed the Panel that the Regulation was being drafted, and would contain provisions for -

- (a) application for registration of name and emblem of a prescribed body (a political party or organization or a non-political organization) or the emblem of a natural person;
- (b) processing of application;
- (c) request for printing of registered name and emblem, and photograph on ballot paper; and
- (d) de-registration of name and emblem.

Copies of the proposed sample of the ballot paper were tabled at the meeting for the Panel's reference (Appendix B to LC Paper No. CB(2)119/03-04(01)).

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Issues raised by members

Reference to "independent candidate" (獨立候選人) on ballot paper

4. Mr Howard YOUNG said that he preferred to use the reference "non-affiliated candidate" (無黨派候選人) in place of "independent candidate" (獨立候選人) to describe a candidate without political party background. The Chairman asked the Administration whether the term "independent candidate" was defined in existing law.

5. Acting Permanent Secretary for Constitutional Affairs (PS/CA (Acting)) said that "independent candidate" was meant to describe a candidate who wished to specify his status as a candidate with no political party background. As the Regulation was being drafted, Mr YOUNG's proposal to substitute the term with "non-affiliated candidate" would be conveyed to EAC for its consideration.

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Registration of name and emblem

6. Mr Albert HO and Dr YEUNG Sum expressed support in principle for the Regulation which sought to provide more information on the background of the candidates and facilitate easy identification of the candidates by electors.

7. Ms Cyd HO asked whether there would be "political vetting" in processing applications of organizations and groups to EAC for registration of their names and/or emblems. In her view, there were hurdles in the registration mechanism under the Societies Ordinance, as shown by the fact that the application of registration of some activist groups and anti-government bodies (e.g. the Anti-Tung Solidarity) had so far not been granted under the Ordinance. She said that in the absence of a certificate of registration issued under the Societies Ordinance, it was unlikely that the application of the organization or group concerned for registration of its name and emblem could be approved by EAC.

8. Secretary for Constitutional Affairs (SCA) said that EAC was an independent body which exercised its statutory authority as provided under the law. The laws in Hong Kong, complied with the relevant international covenants on human rights and the Hong Kong Bill of Rights Ordinance. Under the proposed registration regime, EAC would process an application for registration according to the applicant's name as shown on the relevant certificate issued under the Societies Ordinance or the Companies Ordinance. He assured members that there would be no question of political vetting in processing applications.

9. Ms Cyd HO said that as explained in the Administration's paper, EAC might refuse to grant an application made by a prescribed body or a natural person for the registration of the abbreviation of a name or an emblem, if it included anything the use of which was likely to amount to the commission of an offence. In her view, that power of EAC could not provide an adequate safeguard against abuse. In

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illustrating her point, she said that at present, there was no legislation in Hong Kong making discrimination against race, age and sexual inclination etc an offence. Hence, an emblem, or the abbreviation of a name, which manifested a discrimination of the kind, might be allowed to be registered and printed on ballot paper, as there was no legal basis for EAC to refuse the application.

10. Mr TAM Yiu-chung said that the name of an organization might reflect its political platform. He expressed concern whether printing of the registered name of an organization on a ballot paper would have the effect of promoting the political platform of the organization. SCA replied that it was not uncommon for the names of political parties or groups to reflect their political platform or political stance. Many of these political parties or groups were long established and well known to electors. He noted Mr TAM's concern and reiterated that EAC would act in accordance with the relevant statutory provisions in processing applications for registration of abbreviations and emblems of prescribed bodies.

11. Ms Emily LAU enquired about how EAC would exercise its power to refuse an application for the registration of the abbreviation of a name or an emblem, on the ground that the abbreviation or emblem was obscene, indecent or offensive. SCA said that EAC would have regard to the relevant criteria laid down in existing legislation in deciding whether an abbreviation or an emblem was obscene or indecent. He added that there were also case laws and principles under the common law which EAC could rely upon for determining whether an abbreviation or an emblem was "offensive". Ms Emily LAU requested the Administration to provide the relevant common law definition/interpretation for members' reference.

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12. Ms Audrey EU pointed out that a precondition for the registration of the name and emblem of a prescribed body was that the body must have been registered under the Societies Ordinance or the Companies Ordinance. She expressed the view that, in considering an application, EAC should not assume a role in judging whether a name of a prescribed body was obscene, indecent or offensive. In response, PS/CA (Acting) clarified that the criteria for refusal of registration on grounds of "obscene, indecent or offensive" elements applied only to the registration of the abbreviation of a name of a prescribed body, or the registration of an emblem of a prescribed body or of a natural person. He said that EAC had no role to play in deciding whether the name of a body was appropriate for registration for the purpose of election. EAC would only verify the name of a prescribed body against that appearing on the relevant certificate, including a certificate of registration issued under the Societies Ordinance or the Companies Ordinance, and EAC would approve the application of a prescribed body for registration of the name as shown on the relevant certificate.

13. Mr WONG Sing-chi pointed out that an organization was required to apply for registration under the Societies Ordinance within one month after the organization had been established. During the one-month period, the organization was allowed to conduct its normal business, notwithstanding without a certificate of registration.

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However, under the proposed Regulation, EAC could not approve an application of a prescribed body for registration of its name and emblem, in the absence of a certificate of registration issued under the Societies Ordinance in respect of the body. Mr WONG opined that the requirement under the Regulation was unfair to newly established organizations which failed to get a certificate of registration under the Societies Ordinance in time for them to apply to EAC for registration of their names and emblems. This would defeat the objective of encouraging political parties or groups or other organizations to take an active part in elections.

14. SCA said that the Regulation was intended to prescribe a legal process to facilitate EAC in exercising its statutory function in relation to processing applications for registration and printing of relevant particulars of prescribed bodies and candidates on ballot papers. He added that clear provisions would be set out in the Regulation relating to annual registration cycles and the relevant cut-off dates in relation to the registration cycles to enable prescribed bodies and candidates to plan their election activities appropriately. The provisions would also serve to minimize the possibility of misuse of names and emblems of prescribed bodies or candidates by other parties.

15. Mr Albert HO enquired whether several candidates forming a list to stand in an election could use a common emblem. Mr James TO opined that he saw no reasons why in such cases the candidates should be prohibited from using the same emblem. PS/CA (Acting) said that if the candidates wished to specify themselves as independent candidates, they should not use a common emblem in order not to create confusion to the electors. Nevertheless, the Administration agreed to convey members' views to EAC for consideration.

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16. Miss CHOY So-yuk asked whether EAC would consider imposing a condition requiring that a prescribed body must have been registered under the Societies Ordinance or the Companies Ordinance for a minimum period of time before it could apply to EAC for registration of its name and emblem. SCA responded that he understood that EAC did not intend to impose such a requirement.

Printing of registered name and emblem and photograph on ballot paper

17. Ms Audrey EU enquired about the rationale for the requirement that an emblem of a prescribed body or a natural person should not be a photograph or contain a photograph. Mr TO said that a candidate might wish to register an emblem which contained a photograph of a supporter of his. The Chairman said that for himself, his photograph represented his emblem.

18. CEO said that an emblem in essence referred to a design, not a photograph. Moreover, the printing of a photograph of a person who was not a candidate on the ballot paper would create confusion to the electors. SCA agreed to reflect members' views to EAC for further consideration.

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19. Mr SIN Chung-kai asked whether a candidate who did not request EAC to print the registered name of the political party or political organization to which he belonged on a ballot paper would be accused of committing false representation.

20. Mr NG Leung-sing said that there had been an increasing number of "alliance" groups formed with certain avowed objectives. He enquired whether a candidate who was a member of such organizations would be permitted to stand in the election as an independent candidate.

21. PS/CA (Acting) replied that it was entirely up to a candidate to decide whether to make a request to EAC to print the registered name and emblem of a prescribed body on the ballot paper. If the candidate wished to do so, his request must be accompanied by a consent given by the prescribed body concerned.

22. The Chairman asked whether it was the Administration's position to allow individual candidates on the same list to print different names and emblems of prescribed bodies on the ballot paper. The Chairman expressed concern about the problem of having too many different names and emblems in respect of the same list printed on the ballot paper. The Chairman was of the view that since the candidates decided to run in the election as a list in respect of a constituency, they should have the same political platform and be regarded as candidates of the same affiliation. The Chairman considered that the Administration's position on the matter reflected its view on the development of political parties.

23. SCA said that the position of the Administration was that a candidate could request for printing of the registered name and emblem of a political or non-political organization, and his photograph on a ballot paper. SCA further said that in the light of the experience of previous Legislative Council (LegCo) elections, the number of political parties or organizations sponsoring candidates to form a single list had not exceeded two. In view of the Chairman's concern, SCA said that EAC would be requested to consider how to deal with the situation in the event that a list was formed by more than three candidates from different organizations.

24. In response to Ms Audrey EU, PS/CA (Acting) said that where a single candidate was supported by more than one prescribed body, the candidate should request to print the name of only one of the bodies on the ballot paper.

25. Mr TAM Yiu-chung said that the design of the sample ballot paper was quite complicated. He expressed concern that the candidates' names were not conspicuously displayed, and considered that the size of the names should be enlarged for the convenience of electors, in particular the elderly electors. Miss CHOY So-yuk suggested that bold-type characters could be used for the names of the candidates. The Administration explained that in designing the ballot paper, the primary consideration was that the ballot paper should contain the essential information about the candidates. The arabic numerals assigned to the different lists on the ballot paper would also assist electors in voting. CEO

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Admin undertook to convey members' views on the design of the ballot paper to EAC for consideration.

26. Miss CHOY So-yuk enquired whether EAC would allow a group photograph containing all, or some, of the candidates on the list to be printed on a ballot paper, and allow photographs of different sizes to be printed. Mr James TO opined that candidates on the same list should be allowed to decide on the size or the format of the photograph(s) to be printed, as long as the photograph(s) was within the space permitted on the ballot paper. The Administration responded that EAC took the view that standard-sized photographs of individual candidates should be printed, having regard to the limited space on the ballot paper. It would also minimize unnecessary disputes and allegations of unfair treatment.

Public consultation

27. In response to Ms Emily LAU, CEO said that EAC had not planned to conduct public consultation on the Regulation. SCA added that the Administration had previously briefed the Panel on the proposals at a meeting on 24 April 2003. He said that potential candidates should be aware of the proposals through discussions of LegCo.

Legislative timetable

28. SCA advised members that the Regulation would be gazetted in early December 2003 and subject to negative vetting of LegCo. Applications for registration would commence in February 2004 and the cut-off date for registration was 1 March 2004.

29. The Chairman and Dr YEUNG Sum opined that it would be appropriate for a subcommittee to be set up under the House Committee to scrutinize the Regulation in detail.

Other issues

List voting system for Geographical Constituency (GC) elections

30. In response to Mr Albert HO, SCA said that the Administration had decided against the proposal to allow electors to vote for individual candidates within a list for the GC elections. He said that the issue had been considered by the Bills Committee on Legislative Council (Amendment) Bill 2003.

Compilation of database on e-mail addresses of electors

31. Mr SIN Chung-kai suggested that in conducting the voter registration campaign in early 2004, the Registration and Electoral Office might consider requesting eligible electors to provide, on a voluntary basis, their e-mail addresses for the purpose of facilitating candidates in communicating with the electors. He

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said that transmission of information through e-mail would be a more convenient and environment-friendly means of enhancing contacts with electors. SCA agreed to refer Mr SIN's proposal to EAC for its consideration.

IV. Way forward for review on constitutional development after 2007 and proposed items for discussion by the Panel in the 2003-04 session
(LC Paper Nos. CB(2)104/03-04(04); 119/03-04(02) and 124/03-04(01))

32. SCA introduced the Administration's paper which outlined the overall timeframe and the basic attitude of the Government for handling the work relating to constitutional development after 2007 (LC Paper No. CB(2)119/03-04(02)). SCA said that the Chief Executive (CE) had indicated that public consultation on constitutional development would commence in 2004. The Government would, as necessary, deal with the procedures stipulated in the relevant Annex of the Basic Law in 2005 and enact any local legislation in 2006. The Government would make a decision before the end of 2003 on the timetable for the review and public consultation on constitutional development, and report to LegCo and the public once the decision was taken.

33. The Chairman informed members that Ms Emily LAU had submitted a letter to the Panel which contained a list of nine items proposed by her and some Members of the pro-democracy camp for discussion by the Panel in the 2003-04 session (LC Paper No. CB(2)124/03-04(01)). The Chairman also referred members to the following documents tabled at the meeting -

- (a) a set of pamphlets published by Civic Exchange for its "Enhancing Democratic Participation Project 2003" which were provided by Ms Emily LAU. The pamphlets were written by scholars and experts on some key issues relating to democratic development of Hong Kong; and
- (b) a list of previous research studies undertaken by the Research and Library Services Division relating to the portfolio of the Panel prepared by the Secretariat.

34. Referring to the list of proposed items for discussion by the Panel, Ms LAU said that it was hoped that the Panel could reach a consensus on the following -

- (a) a timetable for discussion of the proposed items in this session;
- (b) conducting research studies on some of the proposed items. Ms LAU noted that research papers might have been prepared for some of the items raised; and
- (c) holding meetings to receive public views on the proposed items.

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Ms Emily LAU added that the Government should decide on its timetable for conducting the review on constitutional development as soon as possible. This would enable the Panel to plan its work so that discussions on this important issue could proceed in an orderly and systematic manner.

35. The Chairman asked whether the Administration could revert to the Panel on details of the review on constitutional development including the timetable, method of public consultation, and method of analysis of views received (item 1 in Ms LAU's letter) at the next meeting in November 2003. SCA replied that the Administration could provide information on the method of public consultation and the timetable of the review in December 2003. He further advised that the Administration intended to commence the gathering of public views in early 2004.

36. Ms Emily LAU asked whether the Administration had come to any conclusion on whether the selection of CE in 2007 by universal suffrage could be included in the review on constitutional development. SCA responded that the Administration had made progress in its research and analysis in this regard. Basically, he did not think this would be a major problem. However, there were some legal technicalities and aspects which needed to be dealt with before he could give a final answer. He hoped that this would not take too long.

37. Referring to items 2 - 8 proposed in Ms Emily LAU's letter, SCA said that some of the items involved amendments to the Basic Law, while others involved enactment of local legislation. He made the following initial comments -

- (a) Review and amendment of the Basic Law relating to the election of CE and LegCo Members by universal suffrage and the related electoral systems (items 2 - 4)

SCA said that these items involved constitutional issues which would be examined in the context of the review on constitutional development. He assured members that the Administration would allow time for enactment of local legislation in 2006 to deal with technical and/or fundamental changes to the Chief Executive Election Ordinance and the Legislative Council Ordinance;

- (b) Executive/LegCo relationship and ruling party for LegCo (item 5)

SCA said that, at present, the Administration had no plan to amend the provisions of the Basic Law on the relationship between the Executive and LegCo. However, any changes introduced to the electoral systems could have an impact on the Executive/LegCo relationship, and the Administration would of course consider such implications carefully. Meanwhile, the Administration was prepared to listen to views and suggestions on ways to strengthen the Executive/LegCo relationship within the confine of the existing Basic Law provisions;

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- (c) Enactment of political party legislation (item 6)
Composition, role and functions of the Electoral Affairs Commission (item 8)
-

SCA said that these two items should more appropriately be considered outside the scope of the present review on constitutional development; and

- (d) Composition of the District Councils (DCs) and the electoral system for DCs in 2007 (item 7)
-

SCA said that the Administration had undertaken to conduct a review on DCs after the election held in November 2003.

38. Dr YEUNG Sum said that he was very disappointed at the progress of the review. In his opinion, in view of the complicated and controversial issues involved in the review, the process of consultation with different sectors of the community on the options on constitutional reform, as well as amendments to the Basic Law and local legislation would take much time. It was unacceptable that the Administration had yet to come up with a timetable for the review and a public consultation document. He expressed serious concern that the Administration might not be able to complete the review in good time to deal with, for example, the selection of CE by universal suffrage in 2007. He criticized the Administration for adopting a delaying tactic in conducting the review.

39. SCA said that the Administration was well aware of the need to set aside sufficient time for conducting the review, including time for extensive public consultation. He assured members that the Administration would make full use of the years leading up to 2007 to consult the public widely and to deal with the necessary legal procedures. He said that the Administration was continuing with preparatory work in relation to the review. Through various channels, the Administration had been taking the initiative to meet organizations with different backgrounds to listen to their views on constitutional development. These parties included, among others, Members belonging to the Democratic Party, some pro-democracy organizations, and the Democratic Development Network. The Administration was also undertaking internal research on relevant issues to prepare for the public consultation to commence in 2004.

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40. At the request of Miss Margaret NG, SCA agreed to provide information on the following for consideration of the Panel at the next meeting -

- (a) the organizations which the Administration had met in relation to the review on constitutional development;
- (b) the issues on which the views of the organizations had been sought;

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- (c) the Administration's preliminary observations on views obtained from organizations which the Administration had met; and
- (d) the issues covered in the internal research being conducted by the Administration.

41. Miss Margaret NG further asked whether the Administration could provide the findings of its internal research for the Panel's information. SCA said that the research findings would be covered in the public consultation documents to be published. He assured the Panel that the Administration would work in close collaboration with LegCo on the important issue of review of constitutional development, and Members would be thoroughly consulted on the relevant issues.

42. As time was running out, the Chairman said that the Panel should continue discussion on the following items at the next meeting on 17 November 2003 -

- (a) Review of constitutional development after 2007; and
- (b) Proposed agenda items for discussion by the Panel in 2003-04 session.

43. The meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
14 November 2003