

**Extract from minutes of meeting on
Panel on Administration of Justice and Legal Services on 31 March 2003**

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III. Operation of the Legal Aid Services Council

(LC Paper Nos. CB(2)401/02-03(01) - (03), 1603/02-03(01) and 1659/02-03(01))

Papers provided by the Legal Aid Services Council (LASC)

5. The Chairman of LASC (Chairman/LASC) briefed members on the following papers submitted by LASC -

- (a) a letter dated 14 November 2002, which provided an update on the legislative proposals put forward by LASC to the Administration (LC Paper No. CB(2)401/02-03(03)); and
- (b) a paper on "LASC's direction, strategy and action plan" (LC Paper No. CB(2)1603/02-03(01)).

6. Chairman/LASC advised member that subsequent to the meeting of the Panel on 26 June 2001 to discuss a number of legislative amendment proposals put forward by LASC, the Administration and LASC had held further discussions on the various proposals. In the light of information and comments provided by the Administration, LASC had revised its position and decided not to pursue some of the legislative proposals. The proposals which had been dropped were set out in the Appendix of LASC's letter dated 14 November 2002 (LC Paper No. CB(2)401/02-03(03)). Nevertheless, LASC considered that the following proposals should be implemented -

- (a) power for LASC to enter into contract on its own, including leases;
- (b) power for LASC to appoint its own staff; and
- (c) power for the Chief Executive to extend time for the submission of LASC's annual report.

LASC had also sought additional information from the Administration in respect of the rationale for determining the composition of LASC and quorum for LASC's meetings, as well as whether networking of LASC with other institutions would include joining an international body made up of legal aid

Action

bodies in different jurisdictions.

Submission of the Hong Kong Bar Association

7. Mr Andrew LI briefed members on a written submission provided by the Bar Association (tabled at the meeting and issued vide LC Paper No. CB(2)1659/02-03(01)). In gist, the Bar Association supported LASC's proposals. The Bar Association also expressed the view that the provision of an accessible, transparent, committed, effective, fair and just legal aid service was a cornerstone of the upholding of the rule of law in Hong Kong. The Bar Association was disappointed at the lack of progress over the years to make LASC an independent legal aid authority, and urged the Administration to take concrete and urgent steps towards making LASC a truly independent body.

Issues raised by members

Legislative amendments not pursued by LASC

8. Mr Albert HO enquired of the reasons for LASC's decision not to pursue legislative amendments for the following six proposals -

- (a) power for LASC to appoint committees;
- (b) power to produce and distribute publicity materials;
- (c) power for LASC to act as trustees;
- (d) provision that the expenses of LASC were to be paid out of monies appropriated by the Legislative Council (LegCo);
- (e) provision that LASC was able to do things incidental or conducive to the carrying out of the objects of LASC; and
- (f) provision on disclosure of information by the Legal Aid Department (LAD) to LASC.

9. Deputy Director of Administration (DDA) said that the Administration had explained to LASC that proposals (a), (b), (d), (e) and (f) above could be implemented under existing legislative framework. Therefore, the proposals did not necessitate amendments to the Legal Aid Services Council Ordinance (LASCO). As regards proposal (c) above, the Administration considered that it went beyond the role envisaged for LASC, which was not a financially independent body. Hence, implementation of the proposal was not appropriate.

Action

Power for LASC to enter into contract on its own

10. Mr Albert HO asked whether LASC had encountered any problems in its operation resulting from the absence of a statutory contract-making power. Ms Audrey EU asked whether legally speaking, LASC was prohibited from entering into contracts on its own.

11. Chairman/LASC replied that according to the Administration, there was doubt if LASC had the power to enter into contracts on its own as there were no statutory provisions providing for that power. At present, the LASC Secretary was authorised to enter into contracts in the name of the Government for the provision of various goods and services to LASC. LASC was of the view that its primary feature of independence might be perceived to have been compromised if LASC could only enter into contract in the name of the Government. He said that LASC had asked the Administration to review the proposal to provide LASC with a contract-making power as a body corporate.

12. DDA said that given the nature of goods and services covered by the existing contracts, the Administration considered that the present arrangement should not give rise to the perception that the independence of LASC was compromised. Nevertheless, the Administration had accepted LASC's proposal to revisit the issue. The Administration was considering proposing amendment to LASCO to provide a statutory contract-making power for LASC.

Power for LASC to appoint its own staff

13. In response to Mr Albert HO, Chairman/LASC said that LASC considered that there was a need for specific statutory provision for the Council to appoint its own staff. This would enhance perception of LASC's independence. He advised that LASC would review its workload situation before proposing concrete plans to the Administration to change the existing arrangement for staffing its secretariat with civil servants.

Legislative timetable for implementation of the proposals

14. DDA informed members that the Administration would identify an opportunity to introduce legislative amendments to give effect to the relevant proposals agreed upon between LASC and the Administration for the consideration of LegCo in the next legislative session.

Composition of LASC and quorum for LASC's meetings

15. Mr Albert HO enquired about the number of meetings of LASC which had been cancelled because of the absence of the required quorum for the

Action

meetings. In response, Chairman/LASC said that out of a total of 10 meetings scheduled for the period from 1 April 2002 to 31 March 2003, four meetings were cancelled due to the absence of a quorum. He advised that in the event of failure to achieve a quorum, a meeting of LASC would be converted to a "working session", at which the relevant issues could still be discussed. Decisions reached at the meeting would be recorded for endorsement or renewed discussion at the following meeting of the Council.

16. Mrs Miriam LAU considered that the threshold of 70% of total membership for the constitution of a quorum was too high. She and Mr Albert HO shared the view that the Administration should consider LASC's proposal to amend the quorum requirement from six members plus the Chairman (70% of total LASC membership) to five members plus the Chairman to enable LASC to operate more smoothly. Under the new proposal, the five members should include the Director of Legal Aid (DLA) or his representative, two lawyer members and two non-lawyer members.

17. DDA replied that the existing membership of LASC was composed of a non-official chairman who was independent of the Government and the legal profession, DLA, four members from the legal profession and four lay members. The Administration considered that such a composition ensured a balanced representation of, and cross-fertilization of views between, both members drawn from within and outside the legal profession. The existing quorum requirement also ensured a balanced representation of membership at LASC meetings, i.e. there would not be a complete absence of members drawn from the profession or lay members at the meeting. DDA further advised that the Administration had considered the proposal from LASC that the four members necessary to form a quorum, not including the Chairman of LASC and DLA, should comprise two lawyer members and two lay members so as to ensure a balanced representation of members from within and outside the legal profession. The Administration considered that such an added requirement would impose unnecessary rigidity in the forming of a quorum, which would not be conducive to the efficient operation of LASC.

18. Mr Albert HO and Ms Audrey EU suggested that the alternative of expanding the membership of LASC while maintaining the existing quorum requirement might be considered. Chairman/LASC said that the proposal would be considered.

19. DDA said that the Administration would be prepared to follow up with LASC on the issues of composition of LASC and quorum requirement with a view to finding an acceptable solution.

Networking of LASC with other institutions

20. Mr Albert HO asked whether LASC had any plan to become a member

Action

of another institution. Chairman/LASC replied that LASC, being a body with independent status, would not join an organisation of another jurisdiction of a similar nature, status or purpose. However, LASC considered that it would be beneficial for LASC to become a member of an international body on legal aid, for the purposes of, for example, exchanging information, research or enhancing good practices. He said that LASC would further consider the matter as and when such an international body on legal aid came into existence.

Establishment of an independent legal aid authority

21. Mr Albert HO, Mr Martin LEE and Mr James TO deplored the Administration's decision against the establishment of an independent legal aid authority to take up the role and functions of LAD in administering legal aid. They pointed out that the issue had attracted wide public concern and discussions over the years. The majority view of interested parties, including LASC, the legal profession as well as Members of LegCo, was that a body independent of the Government should be set up to provide legal aid services to the public. Mr Martin LEE and Mr James TO said that the Administration had failed to put forward convincing arguments to support its stance that it was not necessary to establish an independent legal aid authority. They asked whether the Administration could point out the disadvantages of setting up an independent legal aid authority.

22. Mr Albert HO added that he had recently come across two serious criminal trials where the defendants were not legally represented because they could not obtain legal aid. Both cases had appealed to the Court of Appeal. He said that a reform of the present legal aid regime was urgently needed, including the setting up of a truly independent legal aid authority.

23. DDA said that the stance of the Administration was that it did not see any absolute need for such a body. She said that according to a consultancy study commissioned by LASC in 1998, a majority of the respondents of a public opinion survey believed that legal aid was administered with a high degree of independence in Hong Kong. This was supported, among others, by the fact that legal aid was granted to parties involved in litigation with the Government in a number of sensitive cases attracting wide public attention. The Administration considered that there was no evidence showing that legal aid was not independently administered.

24. DDA further said that the Administration believed that the present legal aid system with an open-ended budget compared favourably with the systems in some other jurisdictions which capped the funds provided for legal aid, in serving the interests of legal aid recipients in Hong Kong. Moreover, there were statutory safeguards to protect the independence in legal aid administration under the existing legislative framework. These included, for

Action

example, the requirement that DLA must consider all applications fairly and independently.

25. The Chairman said that the Administration's response to members' queries at most explained how best the existing legal aid system could operate in the absence of an independent legal aid authority. The Administration, however, had failed to negate the need for an independent legal aid authority. Mr Martin LEE said that a major advantage of establishing an independent legal aid authority to replace LAD was to enhance the image of independence in the provision of legal aid, free from the influence of the Administration. He opined that the resistance of the Administration to establish an independent legal aid body showed that the Administration wanted to continue to exercise tight control over LAD in the provision of legal aid.

26. Chairman/LASC said that LASC had recommended to the Administration in 1999 the establishment of an independent legal aid authority in place of LAD. He said that although the recommendation was not accepted by the Administration, LASC would continue to review the issue taking into account new developments. LASC would not rule out the possibility of raising the issue again.

27. The Chairman remarked that she was disappointed at the Administration's stance on the matter. She pointed out that under LASCO, LASC was required to give independent advice to the Government on legal aid matters and monitor the provision of legal aid services. However, the ability of LASC to effectively fulfil its role was called into question after seven years of operation, as indicated by the problems which LASC had raised. As a result, public confidence in the independence in legal aid administration was undermined.

28. The Chairman suggested and members agreed that relevant issues concerning the operation of LASC should be followed up by the Panel in six months' time.

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