

立法會
Legislative Council

Ref : CB2/BC/2/05

LC Paper No. CB(2)1790/05-06
(These minutes have been seen by
the Administration)

**Bills Committee on
Interception of Communications and Surveillance Bill**

**Minutes of meeting
held on Monday, 3 April 2006 at 9:00 am
in the Chamber of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon LAU Kong-wah, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon CHEUNG Hok-ming, SBS, JP

Public Officers attending : Mr Stanley YING
Permanent Secretary for Security

Miss S H CHEUNG
Deputy Secretary for Security

Mrs Apollonia LIU
Principal Assistant Secretary for Security

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

Ms Sherman CHAN
Senior Assistant Law Draftsman

Ms Frances HUI
Senior Government Counsel

Attendance by invitation : Democratic Alliance for Betterment and Progress of Hong Kong

Mr Christopher WONG Kwok-yan
Deputy Spokesman, Administration of Justice & Legal Services

Mr TSANG Kin-shing, Eastern District Council Member

Youth Action 21

Mr SZE Lun-hung
Chairman

Mr HSU Hoi-shan

Member

Mr LAM Chi-wai

Hong Kong Bar Association

Mr Philip DYKES, SC
Chairman

Mr P Y LO
Council Member

Mr CHAN Chi-hing

Society for Community Organization

Mr TSOI Yiu-cheong
Community Organiser

Mrs Amy Y K LIU

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2)5

Ms Sandy HAU
Legislative Assistant (2)6

I. Meeting with deputations and the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. The Bills Committee received the views of the following organisations/individuals on the Bill –

- (a) Democratic Alliance for Betterment and Progress of Hong Kong;
- (b) Mr TSANG Kin-shing;
- (c) Youth Action 21;
- (d) Mr LAM Chi-wai;
- (e) Hong Kong Bar Association;
- (f) Mr CHAN Chi-hing;
- (g) Society for Community Organization;
- (h) Mrs Amy Y K LIU; and
- (i) Hong Kong Human Rights Monitor.

3. The Bills Committee requested the Administration to –

- (a) consider providing in the Bill that if law enforcement agencies were provided with material gathered from interception of communications or surveillance which had not been properly authorised, the material should not be admissible as evidence;
- (b) provide information on the requirements on the post-retirement and post-service employment of judges;
- (c) consider including express provisions in the Bill to ensure that a judge who had issued authorisation for interception of communications or surveillance would not be involved in the subsequent trial of the case concerned;
- (d) advise on the acts which endangered public security but did not amount to crime in Hong Kong;

- (e) explain whether interception of communications and surveillance could be conducted on all acts relating to public security and, if not, whether acts which endangered public security should be subject to the threshold of serious crime; and
- (f) advise whether interception could be performed on roaming calls of Hong Kong registered mobile phone lines.

II. Date of next meeting

- 4. The Bills Committee noted that the next meeting had been scheduled for Thursday, 6 April 2006 at 8:30 am.
- 5. The meeting ended at 12:55 pm.

Council Business Division 2
Legislative Council Secretariat
21 April 2006

**Proceedings of meeting of the
Bills Committee on
Interception of Communications and Surveillance Bill
on Monday, 3 April 2006 at 9:00 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 – 000435	Chairman	Opening remarks	
000436 – 001107	Representative of Democratic Alliance for Betterment and Progress of Hong Kong	Presentation of views (LC Paper No. CB(2)1596/05-06(01))	
001108 – 001355	Mr TSANG Kin-shing	Presentation of views	
001356 – 001752	Representatives of Youth Action 21	Presentation of views (LC Paper No. CB(2)1596/05-06(04))	
001753 – 002238	Mr LAM Chi-wai	Presentation of views (LC Paper No. CB(2)1596/05-06(05))	
002239 – 003319	Representatives of Hong Kong Bar Association	Presentation of views (LC Paper No. CB(2)1538/05-06(01))	
003320 – 003658	Mr CHAN Chi-hing	Presentation of views (LC Paper No. CB(2)1581/05-06(01))	
003659 – 004759	Representative of Society for Community Organization	Presentation of views (LC Paper No. CB(2)1596/05-06(06))	
004800 – 010323	Hon Ronny TONG Chairman Representative of Society for Community Organization Representatives of Hong Kong Bar Association Representatives of Youth Action 21 Representative of Hong Kong Human Rights Monitor	Whether a definition should be provided for the term “national security” in the Bill; whether the phrase “protecting public security” in the Bill should be amended along the lines of “prevention and detection of crime relating to public security”; setting out a list of offences covered by the Bill	

Time marker	Speaker	Subject(s)	Action Required
010324 – 010809	Mrs Amy Y K LIU	Presentation of views (LC Paper No. CB(2)1596/05-06(07))	
010810 – 011504	Representative of Hong Kong Human Rights Monitor	Presentation of views (LC Paper No. CB(2)1596/05-06(08))	
011505 – 012641	Hon Martin LEE Chairman Mr TSANG Kin-shing Representative of Society for Community Organization Representative of Hong Kong Human Rights Monitor	Personal experience of possibly being the subject of interception of communications; how intelligence gathered by non-law enforcement agencies could be dealt with; whether the scope of the Bill could be broadened to cover the actions of law enforcement officers from other jurisdictions in Hong Kong	Admin to consider providing in the Bill that if law enforcement agencies were provided with material gathered from interception of communications or surveillance which had not been properly authorised, the material should not be admissible as evidence
012642 – 013324	Hon LAU Kong-wah Representatives of Youth Action 21 Admin Chairman	Mechanism for the appointment of panel judges; mechanism for excluding a judge from trying a case where he had authorised interception of communications or surveillance when serving as a panel judge; requirements on the post retirement and post-service employment of the Commissioner and judges	Admin to provide information on the requirements on the post-retirement and post-service employment of judges; to consider including express provisions in the Bill to ensure that a judge who had issued authorisation for interception of communications or surveillance would not be involved in the subsequent trial of the case concerned

Time marker	Speaker	Subject(s)	Action Required
013225 – 015157	Hon James TO Representatives of Hong Kong Bar Association Representative of Society for Community Organization Representatives of Youth Action 21 Mr TSANG Kin-shing	Whether there were purposes falling within the scope of protecting public security but not the prevention or detection of crime; scope of public security	
015158 – 020344	Hon Margaret NG Chairman Representatives of Hong Kong Bar Association	Whether there was a need for integrity checking of judges; whether a definition should be provided for the term “public security”; whether the concept of “public security” was found in Part II of the Crimes Ordinance	
020345 – 022249	Hon Audrey EU Representatives of Hong Kong Bar Association Representative of Society for Community Organization Representative of Hong Kong Human Rights Monitor Mr TSANG Kin-shing Mr CHAN Chi-hing Representatives of Youth Action 21	Whether the Hong Kong Bar Association had information about persons whose communication was intercepted; views of the Hong Kong Bar Association on legal professional privilege; whether criminal sanction should be imposed on law enforcement officers in breach of provisions in the Bill	
022250 – 023518	Break		
023519 – 025839	Hon Emily LAU Representatives of Youth Action 21 Representative of Hong Kong Human Rights Monitor Representative of Society for Community Organization Representatives of Hong Kong Bar Association Mr TSANG Kin-shing Admin	Whether integrity checking on judges would affect the independence of the Judiciary; whether a definition should be provided for the term “public security”; whether a sunset clause should be incorporated in the Bill; whether panel judges should be appointed by the Chief Executive on the recommendation of the Chief Justice	

Time marker	Speaker	Subject(s)	Action Required
025840 – 031559	Hon Mrs Selina CHOW Admin Representatives of Hong Kong Bar Association	How the effectiveness of law enforcement could be maintained while safeguarding one’s right to a reasonable expectation of privacy	
031600 – 033039	Hon LEUNG Kwok-hung Mr TSANG Kin-shing Admin Representatives of Youth Action 21	Whether interception of communications and surveillance should be authorised by judges; whether there was a need to conduct integrity checking on judges; whether the Bill regulated the use of anti-interception devices by members of the public;	
033040 – 033151	Hon Ronny TONG Chairman	What were the acts which endangered public security but did not amount to crime in Hong Kong; whether interception of communications and surveillance could be conducted on all acts relating to public security and, if not, whether acts which endangered public security should be subject to the threshold of serious crime	Admin to provide a response
033152 – 034613	Hon Margaret NG Representatives of Hong Kong Bar Association Representatives of Youth Action 21	Whether the appointment of panel judges by the Chief Executive was acceptable and whether it would affect the independence of the Judiciary; whether the interception of communications and surveillance should be authorised under the existing mechanism for the issuance of search warrants	

Time marker	Speaker	Subject(s)	Action Required
034614 – 035309	Hon James TO Representatives of Hong Kong Bar Association Mr TSANG Kin-shing Chairman	Whether the scope of the Bill could be expanded to cover the actions of law enforcement officers from other jurisdictions in Hong Kong; whether criminal sanction should be imposed on law enforcement officers in breach of provisions in the Bill; requesting the Hong Kong Bar Association to provide further views, if any, having regard to the report entitled “Privacy: The Regulation of Covert Surveillance” published by the Law Reform Commission of Hong Kong in March 2006	
035310 – 035414	Mr TSANG Kin-shing Admin	Whether interception of communication and surveillance should be authorised by any judge instead of panel judges; whether interception could be performed on roaming calls of Hong Kong registered mobile phone lines	Admin to advise whether interception could be performed on roaming calls of Hong Kong registered mobile phone lines
035415 – 035458	Chairman	Date of next meeting	