

立法會
Legislative Council

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LC Paper No. CB(2)286/06-07
(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Saturday, 10 June 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 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 CHAN Kam-lam, SBS, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon LI Kwok-ying, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Hon Patrick LAU Sau-shing, SBS, JP

- Members absent** : Hon LEE Cheuk-yan
Hon Bernard CHAN, JP

Hon Timothy FOK Tsun-ting, GBS, JP
Hon Vincent FANG Kang, JP
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung

Public Officers : Mr Stanley YING_
attending 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

Mr Ian MCWALTERS
Senior Assistant Director of Public Prosecutions

Attendance by : The Law Society of Hong Kong
invitation

Mr Lester HUANG
Vice President

Mr Joseph LI
Council Member

Mr Eric CHEUNG
Constitutional Affairs Committee

Mr Anthony UPHAM
Criminal Law and Procedure Committee

Ms Joyce WONG
Director of Practitioners Affairs

Hong Kong Bar Association

Mr Philip DYKES, SC
Chairman

Mr P Y LO
Council Member

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

Miss Helen DIN
Legislative Assistant (2) 1

I. Meeting with representatives of the Law Society of Hong Kong, Hong Kong Bar Association and the Administration

The Bills Committee deliberated and received the views of The Law Society of Hong Kong and Hong Kong Bar Association (index of proceedings attached at **Annex**).

2. The Bills Committee requested the Administration -

- (a) to consider providing expressly that the officer who gave approval for making an application for judge's authorisation and the officer who conducted a review under clause 54 should not be the same person;
- (b) to provide information on the number of officers at the rank of chief superintendent of police or equivalent in law enforcement agencies, and to consider raising the rank of officers eligible for approving the making

of applications for judge's authorisation under clause 8(3);

- (c) to consider requiring an applicant to provide information, if known, on previous applications to and refusals by panel judges in the affidavit;
- (d) to explain whether there was a duty to make full disclosure to panel judges in an application';
- (e) to consider stating in an affidavit the name of the directorate officer who approved the making of the application;
- (f) to consider stating the grounds for reasonable suspicion in an affidavit;
- (g) to consider requiring an assessment of the likelihood of any journalistic material being obtained in an affidavit;
- (h) to provide a sample of application for judge's authorisation under the Bill;
- (i) to consider adopting the suggestions of the Law Reform Commission on the types of information to be included in an affidavit;
- (j) to consider amending "if known" in paragraph (b)(ii) and (iii) of Part 1 of Schedule 3 along the lines of "to the best of his knowledge"; to consider amending "any person other than that referred to in subparagraph (ii)" in paragraph (b)(vii) of Part 1 of Schedule 3 along the lines of "the person or persons other than those referred to in subparagraph (ii)"; to consider adding the position of the officer in paragraph (c) of Part 1 of Schedule 3;
- (k) to consider stipulating in the Bill that panel judges had to give reasons for a variation under clause 9(1)(a);
- (l) to consider amending "ordinarily used by the lawyer and by other lawyers" in clause 30A along the lines of "known or reasonably believed/expected by the law enforcement agency to be ordinarily used by the lawyer and by other lawyers";
- (m) to consider extending the proposed protection for lawyers under clause 30A to paralegals working in law firms;
- (n) to consider amending the definition of "other relevant premises" under clause 30A to include some non-exhaustive examples such as interview rooms of prisons and courts;

- (o) to consider adding a clause in the Bill to the effect that "any authorisation given shall cease to have effect, if there is any significant or material change including, in particular, the likelihood of legal professional privilege information being obtained or of the target's right to silence being infringed"; and
- (p) to consider providing the draft Code of Practice to the Bills Committee before resumption of the Second Reading debate on the Bill.

3. The Bills Committee agreed that the Judiciary should be requested to provide a paper explaining the system to be put in place by the Judiciary to deal with documents and records relating to applications made to panel judges for the issuance and renewal of authorisations for interception of communications or Type 1 surveillance under the Bill.

II. Date of next meeting

4. The Bills Committee noted that the next meeting had been scheduled for Tuesday, 13 June 2006 at 4:30 pm to continue discussion with the Administration.

5. The meeting ended at 1:00 pm.

Council Business Division 2
Legislative Council Secretariat
7 November 2006

**Proceedings of meeting of the
Bills Committee on
Interception of Communications and Surveillance Bill
on Saturday, 10 June 2006, at 9:00 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000424 - 000501	Chairman	Opening remarks	
000502 - 000549	Admin Chairman	Briefing on clause 9 of the Bill	
000550 - 001324	Hon Margaret NG Admin	Whether panel judges had to give reasons for variations under clause 9(1)(a); whether an application rejected by a panel judge could be submitted again to another panel judge	Admin to consider stipulating in the Bill that panel judges had to give reasons for a variation under clause 9(1)(a)
001325 - 001957	Hon LAU Kong-wah Chairman Admin	Whether information on the reasons for refusal to issue judge's authorisation would be shared among panel judges; duty to make full disclosure to panel judges	
001958 - 002612	Hon Emily LAU Chairman Admin	How the Judiciary would deal with documents and records relating to applications made to panel judges	
002613 - 003128	Hon James TO Chairman	Number of directorate officers in law enforcement agencies eligible for approving the making of an application for judge's authorisation; providing expressly that the officer who gave approval for making an application for judge's authorisation and the officer who conducted a review under clause 54 should not be the same person; whether there was a duty to make full disclosure in an application for judge's authorisation; stating in an affidavit the name of the directorate officer who approved the making of the application	Admin to consider providing expressly that the officer who gave approval for making an application for judge's authorisation and the officer who conducted a review under clause 54 should not be the same person ; to explain whether there was a duty to make full disclosure in an application for judge's

Time marker	Speaker	Subject(s)	Action Required
			authorisation; to consider stating in an affidavit the name of the directorate officer who approved the making of the application
003129 - 003919	Hon Audrey EU Admin Chairman	Duty to make full disclosure	Admin to consider requiring an applicant to provide information, if known, on previous applications to and refusals by panel judges in the affidavit
003920 - 004341	Dr Hon LUI Ming-wah Chairman Admin	Criteria adopted by panel judges when considering applications for judge's authorisations	
004342 - 005035	Hon Margaret NG Admin Chairman	Stating the grounds for reasonable suspicion in an affidavit	Admin to consider stating the grounds for reasonable suspicion in an affidavit
005036 - 005425	Hon LAU Kong-wah Admin Chairman	How applications from different law enforcement agencies in respect of the same subject would be dealt with by panel judges; record keeping by the Judiciary	
005426 - 010144	Hon Emily LAU Chairman Admin	Information provided in affidavits; rank of directorate officers	
010145 - 010612	Hon Howard YOUNG Chairman Admin	Whether a judge's authorisation could be amended by a panel judge after issue	

Time marker	Speaker	Subject(s)	Action Required
010613 - 011447	Hon James TO Chairman Admin	Requiring an assessment of the likelihood of any journalistic material being obtained in the affidavit	Admin to consider requiring an assessment of the likelihood of any journalistic material being obtained in an affidavit
011448 - 012150	Hon Margaret Ng Chairman Admin	Whether the code of practice for law enforcement agencies would be made public; requesting the Judiciary to provide information on how it would deal with documents and records relating to applications made to panel judges; number of case of interception of communications and covert surveillance for the three-month period up to 19 May 2006	Admin to consider providing the draft Code of Practice to the Bills Committee before the resumption of the Second Reading debate on the Bill
012151 - 013021	Hon James TO Chairman Admin	Scope of paragraph (b)(iii) of Part 1 of Schedule 3	
013022 - 013441	Hon Emily LAU Chairman Admin	Number of officers at the rank of chief superintendent of police or equivalent in law enforcement agencies, whether to raise the rank of officers eligible for approving the making of applications for judge's authorisation under clause 8(3); providing a sample of an application for judge's authorisation under the Bill	Admin to provide information on the number of officers at the rank of chief superintendent of police or equivalent in law enforcement agencies, and to consider raising the rank of officers eligible for approving the making of applications for judge's authorisation under clause 8(3), to provide a sample of an application for judge's

Time marker	Speaker	Subject(s)	Action Required
			authorisation under the Bill
013442 - 014334	Hon Margaret NG Hon Mrs Selina CHOW Chairman Admin	Scope of Part 2 of Schedule 3	Admin to consider adopting the suggestions of the Law Reform Commission on the types of information to be included in an affidavit
014335 - 015314	Hon James TO Hon Mrs Selina CHOW Chairman Admin	Requiring an assessment of the likelihood of any journalistic material being obtained in the affidavit; duty to make full disclosure in application to panel judges	Admin to consider amending "if known" in paragraph (b)(ii) and (iii) of Part 1 of Schedule 3 along the lines of "to the best of his knowledge"; to consider amending "any person other than that referred to in subparagraph (ii)" in paragraph (b)(vii) of Part 1 of Schedule 3 along the lines of "the person or persons other than those referred to in subparagraph (ii)"; to consider adding the position of the officer in paragraph (c) of Part 1 of Schedule 3

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015315 - 015452	Hon Margaret NG Hon James TO Chairman	Whether the Judiciary would be requested to provide information on how it would deal with documents and records relating to applications made to panel judges; discussion of the issues raised after the Administration's response was received	
Break			
020357 - 020534	Chairman	Paper tabled	
020535 - 021603	Admin Chairman	Briefing on the Administration's paper entitled "Response to issues raised by Bills Committee - Protection of Legal Professional Privilege" (LC Paper No. CB(2)2342/05-06(01))	
021604 - 024108	Representatives of The Law Society of Hong Kong	Presentation of views (LC Paper Nos. CB(2)1996/05-06(01) and CB(2)2043/05-06(01))	
024109 - 024828	Representatives of Hong Kong Bar Association	Presentation of views (LC Paper No. CB(2)2322/05-06(01))	
024829 - 025313	Admin	Administration's response to the issues raised by The Law Society of Hong Kong and Hong Kong Bar Association	
025314 - 030246	Hon James TO Admin Representatives of Hong Kong Bar Association	Exception to legal professional privilege	
030247 - 031214	Hon Audrey EU Chairman Admin	Extending the proposed protection for lawyers under clause 30A to paralegals working in law firms	Admin to consider extending the proposed protection for lawyers under clause 30A to paralegals working in law firms

Time marker	Speaker	Subject(s)	Action Required
031215 - 032402	Hon Emily LAU Hon Howard YOUNG Chairman Representatives of The Law Society of Hong Kong Admin	Scope of the term "other relevant premises" in new clause 30A	
032403 - 033107	Hon Albert HO Chairman Admin Representatives of The Law Society of Hong Kong	Amending the definition of "other relevant premises" under clause 30A to include some non-exhaustive examples such as interview rooms of prisons and courts	Admin to consider amending the definition of "other relevant premises" under clause 30A to include some non-exhaustive examples such as interview rooms of prisons and courts
033108 - 033935	Hon Margaret NG Chairman Representatives of The Law Society of Hong Kong Admin	How covert surveillance would be dealt with under new clause 30A; whether new clause 30A could provide adequate protection for legal professional privilege	
033936 - 034745	Hon James TO Chairman Admin	Amending "ordinarily used by lawyers" in clause 30A along the lines of "known or reasonably believed/expected by the law enforcement agency to be ordinarily used by lawyers"	Admin to consider amending "ordinarily used by the lawyer and by other lawyers" in clause 30A along the lines of "known or reasonably believed/expected by the law enforcement agency to be ordinarily used by the lawyer and by other lawyers"
034746 - 035453	Hon Emily LAU Chairman Representatives of Hong Kong Bar Association Representatives of The Law Society of Hong Kong Admin	Practices of other common law jurisdictions in respect of the protection of legal professional privilege	

Time marker	Speaker	Subject(s)	Action Required
035454 - 040227	Hon James TO Chairman Admin Representatives of The Law Society of Hong Kong	Adding a clause in the Bill to the effect that "any authorisation given shall cease to have effect, if there is any significant or material change including, in particular, the changes to the likelihood of legal professional privilege information being obtained or of the target's right to silence being infringed"	Admin to consider adding a clause in the Bill to the effect that "any authorisation given shall cease to have effect, if there is any significant or material change including, in particular, the likelihood of legal professional privilege information being obtained or of the target's right to silence being infringed"
040228 - 040317	Chairman Hon Emily LAU	Date of next meeting; Administration's briefing on surveillance devices	