

立法會
Legislative Council

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by the Administration)

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Panel on Administration of Justice and Legal Services

**Minutes of Special meeting
held on Monday, 17 October 2005 at 4:40 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member attending** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Member absent** : Hon MA Lik, GBS, JP
- Public Officers attending** : Department of Justice
Ms Elsie LEUNG, GBM, JP
Secretary for Justice
Mr Robert Allcock, BBS, JP
Solicitor General
Miss Annie TAM, JP
Director of Administration & Development
Mr John Reading, SC
Deputy Director of Public Prosecutions

Administration Wing, Chief Secretary for Administration's
Office

Ms CHANG King-yiu
Director of Administration

Miss Eliza LEE
Deputy Director of Administration

Mrs Alice CHEUNG
Assistant Director of Administration

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Miss Lolita SHEK
Senior Council Secretary (2)7

Ms Fonny LO
Legislative Assistant (2)3

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I. Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's 2005-06 Policy Address

(Address by the Chief Executive at the Legislative Council meeting on 12 October 2005 – "Strong Governance For the People")

The 2005-06 Policy Address – "Policy Agenda"

LC Paper Nos. CB(2)29/05-06(01) and (02))

The Chairman welcomed representatives of the Administration to the meeting to brief the Panel on the initiatives in the 2006 Policy Agenda relating to the Department of Justice (DOJ) and the Administration Wing, Chief Secretary for Administration's Office.

Policy initiatives of the Department of Justice

2. Secretary for Justice (SJ) briefed members on the paper provided by the Administration on the policy initiatives of DOJ listed in the 2006 Policy Agenda (LC Paper No. CB(2)29/05-06(02)). A copy of SJ's speaking note was tabled at the meeting and issued to members vide LC Paper No. CB(2) 94/05-06 after the meeting.

Constitutional development after 2007

3. Referring to paragraphs 7 and 8 of the Administration's paper, Mr Martin LEE opined that it was not appropriate to include constitutional development after 2007 as one of DOJ's policy initiatives. Mr LEE pointed out that although SJ was a member of the Constitutional Development Task Force, the subject was within the policy area of the Constitutional Affairs Bureau (CAB) and not that of DOJ.

4. SJ explained that the Administration had only stated the fact in the Administration's paper that she was involved in the work of the Task Force. This subject was one of the on-going initiatives of DOJ, and she had briefed the Panel on this initiative at the policy briefing in the last session. SJ further explained that DOJ was involved in providing advice on legal issues and drafting legislation on the subject of constitutional development.

5. Mr Martin LEE maintained the view that "taking forward constitutional development" should not be included as DOJ's initiative. DOJ should only be involved when local legislative work commenced at a later stage.

6. The Chairman said that while she agreed with Mr Martin LEE that the subject of constitutional development should not be included as one of DOJ's initiatives to avoid misunderstanding, SJ should continue to discuss with the relevant Panels the legal issues relating to constitutional development.

7. Ms Audrey EU noted from paragraphs 7 and 8 of the Administration's paper that the Administration hoped to obtain a consensus on the methods for selecting the Chief Executive (CE) and for forming the Legislative Council (LegCo) after 2007 by end of December 2005, and that work on local legislation would commence by early 2006. She said that there were reports in some local newspapers that the Administration would propose to increase the number of LegCo seats by 10. Ms EU sought clarification on the legislative procedure in implementing the Administration's proposal on constitutional development, whether a bill would be introduced into LegCo, and whether the bill would be regarded as an "important bill" referred to in Article 50 of the Basic Law. She expressed concern about the time constraint for the discussion on the Administration's proposal, given the controversial nature of the subject. She urged the Administration to clarify the newspaper reports on the Administration's proposal on constitutional development and provide details of the proposed electoral methods as soon as possible, such as how the additional LegCo seats would be returned, so that discussion could commence immediately.

8. SJ explained that it would be difficult to discuss the legislative procedure without referring to the Administration's proposal on constitutional development. However, it would be inappropriate for her to disclose the details of the proposal, or to clarify the policy on "important bill", both of which fell under the policy portfolio of CAB. SJ assured members that the Task Force would publish its Fifth Report shortly.

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Fiat counsel system

9. Ms Audrey EU expressed concern about the recent comments from different quarters of society on the performance of fiat counsel. She requested for information on the selection criteria for fiat counsel and measures to monitor their performance.

10. Deputy Director of Public Prosecutions (DDPP) explained that there were panels of private barristers and solicitors assigned to prosecute cases in the Magistrates Court, District Court and Court of First Instance on behalf of the Administration. These lawyers were selected based on their experience. Cases were briefed out to them according to a rotation system which was fair to all fiat counsel, taking into account their experience. Lawyers on the list of the lower courts might be promoted to that of the higher courts as they gained experience in public prosecution. DDPP added that the performance of fiat counsel was reviewed in April each year, taking into account comments from judges and others.

Work of the Law Drafting Division of DOJ

11. Ms Emily LAU noted from paragraph 8 of SJ's speaking note that DOJ had made every effort in establishing a good working relationship with the Legislature by facilitating scrutiny of bills by LegCo. Ms LAU also noted that SJ had quoted the Statute Law (Miscellaneous Provision) Bill 2005 to demonstrate the cooperation between DOJ and LegCo in expediting scrutiny of bills. Ms LAU pointed out that scrutiny of bills was not always conducted as smoothly as that of the Statute Law (Miscellaneous Provision) Bill 2005. She urged the Administration as a whole to improve its relationship with the Legislature by undertaking better preparation work and public consultation on the policies involved before introducing bills into LegCo so as to minimise dissenting views and facilitate the legislative process.

12. Ms LAU also noted from paragraph 9 of SJ's speaking note that measures were put in place to enhance the law drafting skills of law draftsmen through an in-house mentorship programme, and to broaden the exposure of draftsmen through short-term attachments. Ms LAU asked whether the law draftsmen had encountered problems in law drafting, and whether the measures were sufficient and effective in enhancing the drafting skills of law draftsmen.

13. SJ responded that the issue of improvement in relationship between the Executive and the Legislature should be addressed by CE. She would continue to cooperate with Members in the work of DOJ. SJ added that the Administration appreciated the onerous burden placed on LegCo Members in scrutinising bills and that Members had scrutinised bills with scrupulous care. To facilitate scrutiny of bills, government bureaux and departments would consult LegCo on the legislative proposals first before introducing bills to LegCo. SJ assured members that DOJ staff would continue their efforts in facilitating the legislative process and in improving DOJ's relationship with the Legislature by getting themselves prepared when attending LegCo committee meetings, and be receptive and responsive to Members' suggestions.

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14. As regards the measures to enhance the drafting skills of law draftsmen, SJ informed members that the drafting work of law draftsmen had all along been overseen by their supervisors. Recently, an in-house mentorship programme had been introduced to assign one directorate counsel to oversee the work of two or three non-directorate counsel. Two short-term attachments to Canada and the United Kingdom had been organised for law draftsmen. The attachment programmes would continue or even extended to Australia, if their effectiveness was proven after review. SJ explained that the above-mentioned measures had been implemented because DOJ should always strive to improve the drafting work of its staff, and not because of any specific problem identified.

15. SJ added that recruitment of law draftsmen and other grades in the civil service had been frozen for several years. The drafting of several complicated and voluminous bills in the past few years, such as the Securities and Futures Bill, had added pressure on the work of the Law Drafting Division. SJ informed members that additional law draftsman posts had been approved and new law draftsmen would be recruited this year. It was hoped that the work of the Division would be facilitated with the additional manpower.

16. The Chairman opined that DOJ could help relieve some of the pressure of members in scrutinising bills as well as help improve the standard of law drafting. She explained that problems usually arose during scrutiny of bills if there was not sufficient discussion on the relevant policies beforehand. The Chairman suggested that if it had come to the attention of law draftsmen during the drafting stage that the bureaux concerned had not consulted the relevant LegCo Panels on the policies involved, they should remind the bureaux concerned to do so.

17. The Chairman also suggested that law draftsmen should exchange their drafting experience with their counterparts in other jurisdictions so as to update their knowledge in legislative drafting. Arrangements could also be made for law draftsmen and local court users, such as the two legal professional bodies and legal practitioners, to discuss relevant issues such as law drafting styles.

18. In response, Solicitor General (SG) explained that different divisions in DOJ contributed to the law drafting process. Both the Civil Division and Legal Policy Division were involved before the drafting stage. The Civil Division advised on the preparation of drafting instructions in respect of new legislation or amendment to existing legislation so as to achieve policy intent of the policy bureaux. The Legal Policy Division ensured that the draft legislation was consistent with the provisions in the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 29).

19. The Chairman suggested that the subject of the work of the Law Drafting Division should be included in the Panel's list of outstanding items for discussion at a future meeting. Members agreed.

Disclosure of unused materials obtained by law enforcement agencies

20. Mr James TO noted from paragraph 12 of SJ's speaking note that according to the Administration, the law in relation to disclosure was constantly evolving, and had posed challenges to law enforcers throughout the common law world. The Prosecutions Division of DOJ would be liaising with the law enforcement agencies in Hong Kong with a view to ensuring that their internal guidelines conformed to the requirements of the law and adequately reflected the latest legal developments. Mr TO asked DOJ to elaborate on the new challenges encountered in Hong Kong. He also expressed concern that in the past few months, some law enforcement agencies' internal guidelines had been challenged at court. He suggested that the Administration should review the internal guidelines of the law enforcement agencies proactively, so as to cope with the new challenges identified, if any.

21. Mr TO further informed members that at the meeting of the Panel on Security on 22 July 2005, the Independent Commission Against Corruption (ICAC) indicated that it would review its Standing Orders, in consultation with DOJ, to ensure that the procedures being followed in investigation work were in compliance with the law. However, the review would take one year to complete. Mr TO said that members of the Security Panel had expressed concern about the long time to be taken to complete the review and urged ICAC to expedite the review. He suggested that DOJ should provide sufficient manpower to assist in the review.

22. Regarding Mr TO's question on the review of internal guidelines, DDPP informed members that he was the chairman of a working group of the Prosecutions Division on the review of the internal guidelines of law enforcement agencies in Hong Kong. The internal guidelines of the Police Force had been reviewed and amended. Review of the guidelines of ICAC and Customs and Excise Department would also be conducted.

23. As regards Mr TO's question on the new challenges to law enforcers, DDPP explained that in many jurisdictions, in particular those in the common law world such as Hong Kong, there were new challenges to the law and guidelines in relation to disclosure. However, it was difficult to predict what particular issues would arise in a particular case, although issues relating to disclosure had been raised in a number of recent court cases in Hong Kong. DDPP said that DOJ would liaise closely with the law enforcement agencies as well as its Prosecutions Division on the review of the guidelines so that they would know what materials they should disclose to the defence.

24. Mr James TO said that at the request of the Panel on Security, the Administration had provided the Panel with the Police Force's internal guidelines on covert surveillance under the Law Enforcement (Covert Surveillance Procedures) Order which was made by CE on 30 July 2005. Mr TO expressed concern that the internal guidelines did not contain as many details as the Order. He was of the view that DOJ had the responsibility to remind the departments concerned to ensure that their internal guidelines, which affected human rights and freedom, were properly drawn up.

Policy initiatives of the Administration Wing, Chief Secretary for Administration's Office

25. Director of Administration (D of Adm) briefed members on the paper provided by the Administration on the policy initiatives of the Administration Wing, Chief Secretary for Administration's Office listed in the 2006 Policy Agenda (LC Paper No. CB(2)29/05-06(01)).

Pilot Scheme on mediation of legally aided matrimonial cases

26. Ms Miriam LAU noted from paragraph 12 of the Administration's paper on the policy initiatives of the Administration Wing that since the Pilot Scheme on mediation of legally aided matrimonial cases (Pilot Scheme) was launched on 15 March 2005, only 89 cases had been referred to the Mediation Co-ordinator's Office of the Judiciary to attend information sessions, and that only 21 of these cases had agreed to proceed to mediation. Ms LAU expressed concern about not only the small number of cases proceeded to mediation but also the few cases referred to attend information sessions. She sought for information on the fees involved and the cost effectiveness of the Pilot Scheme. She also suggested that the Administration should review the effectiveness of the publicity on the Pilot Scheme and step up publicity to encourage more people to utilise the service.

27. D of Adm explained that mediation would only be arranged when both parties involved in matrimonial cases were interested. The Legal Aid Department (LAD) would pay for both sides involved in the mediation service, and the fees were not substantial.

28. D of Adm said that as part of the monitoring of the operation of the Pilot Scheme, she would discuss with LAD whether and how publicity should be stepped up. Nevertheless, she pointed out that the present Pilot Scheme was different from that launched by the Judiciary in 2000. The parties involved in the Judiciary's pilot scheme were not necessarily granted legal aid and it was possible that both parties were willing to proceed to mediation in order to reduce legal costs. Under the present Pilot Scheme, at least one of the parties was granted legal aid for the matrimonial proceedings. In some, cases, there was the possibility that there were less complex monetary issues involved for mediation.

29. D of Adm added that the objective of Pilot Scheme was for the Administration to assess the cost-effectiveness and implication of extending funding to mediation of legally aided matrimonial cases. The Pilot Scheme would last for one year after which an evaluation of the Scheme would be conducted.

30. The Chairman said that some legal aid lawyers had pointed out that some matrimonial cases were not suitable for mediation, e.g. cases where the issue involved was enforcement of previous orders, or the whereabouts of one party could not be traced. The Chairman requested that the Administration should compare the nature

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of cases and profiles of the users of the Pilot Scheme with those of the Judiciary's pilot scheme, and provide a progress report on the Pilot Scheme to the Panel for discussion by mid 2006.

II. Any other business

31. There being no other business, the meeting ended at 5:45 pm.

Council Business Division 2
Legislative Council Secretariat
13 December 2005