

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1198/05-06  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/AJLS

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Thursday, 15 December 2005 at 4:30 pm**  
**in Conference Room A 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 Miriam LAU Kin-ye, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon Audrey EU Yuet-mee, SC, JP
- Member attending** : Hon LI Fung-ying, BBS, JP
- Members absent** : Hon James TO Kun-sun  
Hon MA Lik, GBS, JP
- Public Officers attending** : Item IV  
  
Miss Emma LAU  
Judiciary Administrator  
  
Mr Augustine L S CHENG  
Deputy Judiciary Administrator (Operations)  
  
Mr Peter YUEN  
Project Director 1  
Architectural Services Department  
  
Mr Gary LAM  
Project Manager 153  
Architectural Services Department

Item V

Miss Emma LAU  
Judiciary Administrator

Mr Augustine L S CHENG  
Deputy Judiciary Administrator (Operations)

Item VI

Ms CHANG King-yiu  
Director of Administration

Mr Benjamin CHEUNG  
Director of Legal Aid

Miss Eliza LEE  
Deputy Director of Administration

Ms Alice CHUNG  
Assistant Director of Legal Aid

**Attendance by  
invitation** :

Item V

The Law Society of Hong Kong

Mr Stephen HUNG

Mr Duncan FUNG

Item VI

Legal Aid Services Council

Mr J P LEE, JP, OBE  
Chairman

Mr Victor LI  
Secretary

The Hong Kong Bar Association

Mr Philip DYKES, SC

The Law Society of Hong Kong

Mr Stephen HUNG

Mr Duncan FUNG

Mr Kevin STEEL

Mr Christopher KNIGHT

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

**Staff in attendance** : Mr Arthur CHEUNG  
Senior Assistant Legal Adviser 2

Miss Lolita SHEK  
Senior Council Secretary (2)7

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**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2)677/05-06 – Minutes of the special meeting on 17 October 2005)

The minutes of the special meeting held on 17 October 2005 were confirmed.

**II. Information papers issued since last meeting**

(LC Paper No. CB(2)544/05-06(01) – Speaking note of the Deputy Director of Public Prosecutions of the Department of Justice for the meeting on 28 November 2005 on "Issues relating to legal professional privilege arising from the Police attempts to execute search warrants in the Legal Aid Department Offices"

LC Paper No. CB(2)545/05-06(01) – Submission from Mr Francis CHAN on "Recovery agents"

LC Paper No. CB(2)568/05-06(01) – Administration's response to the Chairman's letter dated 24 October 2005 on "Reciprocal enforcement of judgments in commercial matters between the Hong Kong Special Administrative Region and the Mainland" which was issued vide LC Paper No. CB(2)194/05-06 on 26 October 2005

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LC Paper No. CB(2)663/05-06(01) – Administration's response to the issues raised by members at the Panel meeting on 12 July 2005 on "Budgetary arrangements for the Judiciary" and "Chambers hearings in civil proceedings"

LC Paper No. CB(2)683/05-06(01) – Speaking note of the Secretary for Justice on "Plans and Priorities of the Secretary for Justice" of the special meeting on 12 December 2005)

2. Members noted that the above papers had been issued to the Panel.

**III. Items for discussion at the next meeting**

(LC Paper No. CB(2)684/05-06(01) – List of outstanding items for discussion

LC Paper No. CB(2)684/05-06(02) – List of follow-up actions

LC Paper No. CB(2)574/05-06 – Consultation Paper on Hearsay in Criminal Proceedings published by the Law Reform Commission's Hearsay in Criminal Proceedings Sub-committee on 30 November 2005

LC Paper No. CB(2)574/05-06(01) – Executive Summary of Consultation Paper on Hearsay in Criminal Proceedings)

3. The Chairman said that when the item on recovery agents (RAs) was discussed in November 2005, the Administration agreed to revert to the Panel in two months' time. It had recently been brought to her attention that some RAs would ask their clients to apply for legal aid and to request for representation by lawyers designated by RAs in pursuing their claims. The Chairman expressed concern about the association of these lawyers with RAs and whether this would give rise to the question of conflict of interest, and suggested that the Director of Legal Aid (DLA) should also be invited to attend the meeting for discussion of this item.

4. Members noted that the Consultation Paper on Hearsay in Criminal Proceedings was published by the Law Reform Commission's Hearsay in Criminal Proceedings Sub-committee on 30 November 2005, and the consultation period ran until 28 February 2006. Members agreed that the Consultation Paper could be scheduled for discussion at the meeting on 23 January 2006 or 27 February 2006, depending on whether the Administration could revert to the Panel on the item of RAs at the next meeting on 23 January 2006.

5. Members agreed that the following items should be discussed at the next meeting on 23 January 2006 –

- (a) 2005 annual review of financial eligibility limits of legal aid applicants;
- (b) Professional Indemnity Scheme of the Law Society of Hong Kong; and

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- (c) Recovery agents (RAs)/Consultation Paper on Hearsay in Criminal Proceedings.

6. The Chairman said that she was aware that some victims in family violence cases had encountered difficulties in applying for legal aid for the purpose of making applications to the court for the grant of injunction orders. The Chairman expressed concern that such a situation was not conducive to combating the problem of family violence. She suggested that DLA be requested to provide information on the number of such legal aid applications, the number of applications approved, and the policy and position of LAD on the provision of legal aid to victims in such cases.

7. Ms Emily LAU supported the Chairman's suggestion. Ms LAU also considered that the provision of other assistance to victims in family violence cases should also be discussed by LegCo Members. She suggested that the relevant Panels should discuss all the relevant issues at a meeting. The Chairman said that upon receipt of the information, she would liaise with other relevant Panels to see whether a joint meeting should be held to discuss the relevant issues.

#### **IV. Relocation of the Labour Tribunal to South Kowloon Magistrates Court Building**

(LC Paper No. CB(2)666/05-06(01) – Background brief prepared by the LegCo Secretariat on "Relocation of the Labour Tribunal to South Kowloon Magistrates Court Building"

LC Paper No. CB(2)666/05-06(02) – Paper provided by the Judiciary Administration on "Relocation of the Labour Tribunal to South Kowloon Law Courts Building")

8. Judiciary Administrator (JA) briefed members on the details of the project to relocate the Labour Tribunal to the South Kowloon Law Courts Building (SKLCB), and the financial implications of the project as set out in the Judiciary Administration's paper. JA also informed members that the Judiciary Administration had planned to seek funding endorsement from the Public Works Sub-committee (PWSC) and approval from the Finance Committee (FC) in January and February 2006 respectively. The Labour Tribunal was expected to commence operation in SKLCB by end 2007.

9. The Chairman sought clarification whether the Labour Tribunal also had courtrooms operating at the Eastern Law Courts Building in Sai Wan Ho, in addition to the courtrooms in the Pioneer Centre in Mongkok. JA clarified that additional courtrooms were established at the Eastern Law Courts Building in early 2000 to cope with the increasing workload in the Tribunal, and these courtrooms had ceased operation since July 2005.

### Location of SKLCB

10. Ms LI Fung-ying said that representatives of major labour organisations were invited to give views on the Report of the Working Party on the Review of the Labour Tribunal at the joint meeting of the Panel on Administration of Justice and Legal Services (AJLS Panel) and Panel on Manpower on 13 December 2004. Many labour organisations had expressed concern that the location of SKLCB was not as convenient as that of the Pioneer Centre. Ms LI pointed out that SKLCB was more than 15 minutes' walk from either the Yaumatei MTR station or the Jordan MTR station. Relocation of the Labour Tribunal to SKLCB would cause inconvenience to court users, in particular the physically handicapped litigants.

11. JA responded that SKLCB might not be as close to the MTR stations as the Pioneer Centre. However, SKLCB was in a convenient location accessible to the public by different means of public transport, such as buses and public light buses. The Judiciary considered that SKLCB was acceptable and would provide better facilities to the court users.

### Improvement to the services provided by the Tribunal

12. Ms LI Fung-ying noted from paragraph 10 of the Administration's paper that the relocation project would result in a net saving of \$7.967 million per annum. Ms LI opined that the saving should be used to improve the operation of the Labour Tribunal as a quick, cheap and simple means of resolving disputes. She pointed out that the services provided by the Tribunal could be further improved, e.g. the listing of call-over hearings in two separate sessions per day should be further increased to reduce the waiting time of the litigants.

13. JA explained that the Labour Tribunal was at present located at two different floors in a commercial building. The small area of the premises and the design of the building had hindered the efficient and effective operation of the Tribunal. Relocation to purpose-built premises with a larger floor area would enable the Tribunal to operate more efficiently.

14. As regards the saving in rental achieved with the relocation of the Tribunal, JA clarified that the rental for the existing premises occupied by the Tribunal was paid by the Government Property Agency. Therefore, the rental saved would not be credited to the account of the Judiciary. JA added that the Judiciary had been reviewing the operation of the Labour Tribunal and introducing improvements, if necessary. Some of the recommendations in the Report of the Working Party on the Review of the Labour Tribunal had been implemented already. On enforcement of Tribunal awards, the Judiciary Administration had been asked to provide a paper to the Panel on Manpower in due course. The paper would also be provided to the AJLS Panel for reference.

15. Ms LI Fung-ying reiterated her view that the saving achieved as a result of the relocation of the Tribunal should be used to improve the services provided to the court

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users. Noting from paragraph 7(c) of the Administration's paper that there would only be 13 courtrooms in the new premises at SKLCB, Ms LI asked whether additional courtrooms could be provided so that cases could be dealt with more expeditiously.

16. Mr LI Kwok-ying said that he supported the relocation project as SKLCB would provide larger and purpose-built premises to enable the Tribunal to operate more efficiently. Mr LI asked whether extra courtrooms could be provided at SKLCB to accommodate future increase in caseload.

17. JA clarified that there were 10 courtrooms in the Labour Tribunal at the Pioneer Centre. The number of courtrooms would increase to 13 after the relocation of the Tribunal to SKLCB. JA explained that in addition to courtrooms, it was necessary to provide sufficient space for waiting areas, conference and discussion rooms for use by litigants in SKLCB. The Architectural Services Department had advised that a maximum of 13 courtrooms could be provided at SKLCB, taking into account the total usable floor area of the premises and other support facilities for court staff and court users.

18. JA added that the Judiciary Administration had reviewed the number of cases handled by the Labour Tribunal. During the past five years, the maximum number of cases handled by the Tribunal annually was 12 000, and 12 to 13 courtrooms were required to cope with the heavy workload. In 2004, the workload dropped to 8 000 cases. Because of the drop, the extra courtrooms at the Eastern Law Courts Building had ceased operation since July 2005. It was estimated that the caseload of the Tribunal would further drop to 7 000 in 2005. As such, the present design of 13 courtrooms at SKLCB would provide spare capacity to cope with an increase in caseload in future.

19. The Chairman said that the Judiciary Administration should explain clearly how the court users would benefit as a result of the relocation project, and requested the Judiciary Administration to provide a supplementary paper for members' reference. JA agreed.

Judiciary  
Admin

20. Ms Emily LAU said that she supported the relocation of the Labour Tribunal to SKLCB, which would enable more efficient utilisation of the vacant law courts building. Ms LAU further said that the Administration should respond to requests for better services from court users and provide a more spacious and user-friendly environment to them.

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21. At the request of Ms LAU, the Administration undertook to provide a more detailed breakdown of the capital expenditure on the relocation project in the papers to be submitted to PWSC and FC in January and February 2006 respectively. Project Director 1 of Architectural Services Department (PD/ASD) added that the standard for the proposed Labour Tribunal in SKLCB was similar to that adopted for the Kowloon City Magistrates' Courts Building and Fanling Magistrates' Courts.

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Alteration works at existing SKLCB

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22. Ms Emily LAU requested for additional information on the layout of the proposed Labour Tribunal in the new premises, and inclusion of such information in the papers to be provided for the consideration of PWSC and FC.

23. JA replied that the total floor area of the Tribunal at the existing premises was 3 458 m<sup>2</sup> which comprised 2 830 m<sup>2</sup> at the Pioneer Centre and 628 m<sup>2</sup> at the Eastern Law Courts Building. The total floor area in the new premises at SKLCB would be 5 781 m<sup>2</sup>. PD/ASD explained that the alternation works to be undertaken at the existing SKLCB included mainly renovation and re-partitioning works, and the total floor area would not be increased.

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24. The Chairman expressed concern whether the existing structural design of SKLCB had any restrictions on its present conversion into a purpose-built premises for use as the Labour Tribunal, and alteration works to cope with the necessary changes in a few years' time. At the request of the Chairman, the Administration undertook to provide layout plans to show the new facilities at the proposed Tribunal in SKLCB in its submissions to PWSC and FC.

**V. Transcript fees**

(LC Paper No. CB(2)684/05-06(03) – Background brief prepared by the LegCo Secretariat on "Transcript fees")

LC Paper No. CB(2)684/05-06(04) – Paper provided by the Judiciary Administration on "Fees for Transcript and Record of Proceedings")

25. The Chairman said that there was concern that the existing transcript fees were not affordable to some litigants and might affect their ability to lodge appeals. When the Panel discussed the issue in June 2004, members noted that different fees were charged for different types of transcripts/records of proceedings. The Panel had requested the Judiciary Administration to review the charging mechanisms and advise whether the fees could be reduced.

26. JA briefed members on the Judiciary's proposals on how the fees for transcript and record of proceedings at all levels of court should be set and administered as set out in the Judiciary Administration's paper. The major proposals were as follows –

- (a) a fee of \$0.14 per word was proposed for English transcript produced from the Digital Audio Recording and Transcript Services (DARTS);
- (b) a fee of \$0.10 per word was proposed for Chinese transcript produced from DARTS;
- (c) fees of \$80, \$315 and \$570 were proposed for audio tape (per 60 minutes), Compact Disc and Digital Versatile Disc (DVD) produced from DARTS respectively;

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- (d) a waiver mechanism be introduced for civil appeals under which the court could waive the fees for transcript and copy of record of proceedings; and
- (e) relevant existing subsidiary legislation be revised and new subsidiary legislation be enacted to implement the revised fees with effect from 3 January 2006.

27. Members noted that the proposed rates would translate into about \$46.20 per page of English transcript (an average of 330 words per page) and about \$86 per page of Chinese transcript (an average of 860 characters per page).

28. Mr Duncan FUNG of the Law Society of Hong Kong expressed concern that despite the Law Society's request for reduction in transcript fees, the Judiciary Administration had proposed a revised fee for Chinese transcript which would increase by 1% as compared with the existing fee of \$85 per page. Mr FUNG sought clarification on the following –

- (a) the total number of contractors which had been awarded the new DARTS contracts, and the duration of their contracts;
- (b) whether the DARTS contracts had been awarded through open tenders; and
- (c) whether the costs of the Judiciary staff in dealing with requests for transcripts had been included in the proposed transcript fees, and if so, whether the staff costs had increased as compared with the existing staff costs which amounted to 20% to 30% of the transcript fees.

29. Mr FUNG added that the Law Society had requested for reduction in the existing transcript fees because under the existing waiver mechanism, transcript fees would not be waived in criminal cases where the accused persons were not legally aided but were represented, and such persons might not be able to afford the expensive fees.

30. As regards paragraph 27(c) above, Mr FUNG pointed out that the inclusion of the Judiciary staff costs in the transcript fees was not consistent with the policy under which court services (including court facilities and services of Judiciary staff and judges) were provided free of charge to court users. He therefore considered that Judiciary staff costs should be excluded from the proposed transcript fees.

31. JA explained that the costs for Chinese transcripts (around \$104 per page) were much higher than those for English transcript (around \$65 per page) under the existing charging mechanism. The existing fee of \$85 per page was an average cost for both English and Chinese transcripts. As compared with the costs at the existing level, the costs of producing both the English and Chinese transcripts under the proposed revised rates at \$46.20 and \$86 per page respectively had been reduced.

32. JA further said that DARTS were now operated by two contractors each of whom had been awarded a contract of four years through open tender. JA added that Judiciary staff costs had been taken into consideration in calculating the proposed revised transcript fees in accordance with the cost recovery principle. However, the relevant work procedures had been reviewed and streamlined and staff costs had been reduced to less than 15% of the fees.

33. Mr Martin LEE opined that in order to comply with the relevant provisions of the Basic Law and the Hong Kong Bill of Rights Ordinance, the Judiciary Administration should review the fee charging policy and provide transcripts without charge to litigants. Mr LEE explained that the litigant's counsel had to study the court case carefully with the aid of transcripts of proceedings in order to determine whether there were sufficient grounds for appeal, especially if the litigant was unrepresented or represented by different counsel in the original court case. Mr LEE pointed out that under the existing waiver mechanism, the court would need to be satisfied that the transcript was necessary for the purpose of the appeal before it decided to waive the transcript fees. It might be difficult for the court to make such a determination in some cases. Mr LEE further suggested that the Judiciary Administration should seek legal advice on its policy on transcript fees, as the Government could be challenged at court for non-compliance with the Basic Law and the Hong Kong Bill of Rights Ordinance.

34. Mr LEE also considered that in determining the fees for English and Chinese transcripts, it was more appropriate to make reference to the number of pages of the English and Chinese transcripts of the same part of the court proceedings, instead of the average number of words/characters per page.

35. JA explained that in relation to criminal appeals, transcripts were provided to LAD free of charge where the appellants were legally aided. The Chairman, however, pointed out that represented appellants who were not legally aided were required to pay the transcript fees although they might not be very well off.

36. JA responded that under the existing waiver mechanism, transcripts were supplied free of charge in about 90% of all criminal appeals. In civil appeals, the court's power to waive transcript fees was very restricted, and the Judiciary Administration had therefore proposed to introduce a waiver mechanism.

37. Mr Martin LEE requested JA to consider as an alternative, whether all appellants should be provided with free DVDs produced from DARTS, since not all appellants would be granted waiver of transcript fees by the court and the cost of a DVD was comparatively cheaper.

38. Mr Stephen HUNG of the Law Society was of the view that to provide the reasons of verdict to a convicted person only after he had lodged a notice of appeal, especially in the District Court and Magistrates' Courts, was putting the cart before the horse. Mr HUNG stressed that it was the right of a convicted person to know the

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reasons for his verdict. The written reasons for verdict/judgment should therefore be provided free of charge to the convicted person upon request, even before an appeal was lodged.

39. JA clarified that written reasons for verdict/judgments were provided without charge to the parties concerned irrespective of whether an appeal had been lodged at all levels of court. This was explained to Members in a paper presented to the Panel in June 2004. A copy of the DARTS recording of the proceedings on audio tape was provided to the parties without charge for cases tried in the Magistrates' Courts.

40. The Chairman pointed out that according to Annex A to the Judiciary Administration's paper, the transcript of the summing up or the reasons for verdict and of sentencing, and other parts of the proceedings for criminal appeals from the District Court and the Court of First Instance to the Court of Appeal were not provided free of charge. A fee of \$17 per page was charged for these documents. This contradicted JA's earlier advice (paragraph 39 above).

41. Ms Miriam LAU agreed that written reasons for verdict/judgments should be provided without charge to the parties concerned irrespective of whether an appeal had been lodged. If this was the agreed policy as advised by JA (paragraph 38 above), she requested JA to ensure its full implementation within the Judiciary.

42. Ms LAU also pointed out that as the transcripts were usually prepared in a double-spacing format, the number of words contained in a page was very small, and the transcript fee of \$85 per page was very expensive. Ms LAU further commented that the DARTS contractors had charged for high transcript service costs simply because they were aware that the Government could afford to pay the high costs. Although transcript fees were waived in cases where the appellants were legally aided, one should not ignore the fact that the costs of producing such transcripts were in fact borne by tax payers.

43. Mr LI Kwok-ying sought clarification on the basis for setting the fee of \$17 per page for transcripts in respect of criminal appeals from the District Court and the Court of First Instance to the Court of Appeal. JA explained that the fee was prescribed in the Criminal Appeal Rules (Cap. 221 Sub. Leg. A), and had not been reviewed since 1994.

Way forward

44. The Chairman concluded that members had reservation about the revised fees proposed by the Judiciary Administration. She asked JA to reconsider whether the proposed fees, which were still considered to be on the high side, could be further reduced, as appellants not granted legal aid were required to pay the fees. To facilitate further discussion by the Panel at a future meeting, the Chairman requested JA to prepare a table to set out the fees proposed for different types of transcript, the types of transcript which were subject to the waiver mechanism and those which would be supplied to the parties without charge.

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45. The Chairman noted from paragraph 20 of the Judiciary Administration's paper that the Judiciary would implement the revised/new rates with effect from 3 January 2006. At the request of the Chairman, the Judiciary Administration agreed to defer the implementation date pending further discussion on the matter by the Panel.

**VI. Criminal legal aid fees system**

(LC Paper No. CB(2)658/05-06(01) – An extract from the Official Record of Proceedings of the Council meeting on 11 May 2005 on the oral question on "Amendments to Legal Aid in Criminal Cases Rules" raised by Hon Margaret NG

LC Paper No. CB(2)658/05-06(02) – Paper provided by the Administration on "Criminal legal aid fees system")

Presentation of views by various parties

46. Director of Administration (D of Adm) informed members that the Administration would soon work on a mechanism to engage the two legal professional bodies and a representative from the Judiciary to facilitate direct exchange of views on the review on the criminal legal aid fees system. The review would focus on the disparity of the fee system between lawyers engaged to prosecute on behalf of the Government and those assigned to defend by LAD, and that between counsel and solicitors in legal aid work.

47. Mr Philip DYKES of the Hong Kong Bar Association enquired about the Administration's position on the proposals put forth by the two legal professional bodies on the criminal legal aid fees system. He said that the situation had deteriorated, and quality and experienced lawyers were discouraged from engaging in criminal legal aid work because it was not remunerative.

48. The Chairman added that the Bar Association had provided a list of work "actually and reasonably done" but not remunerated under the existing criminal legal aid fees system in paragraph 16 of its submission to the Administration in April 2005.

49. Mr Christopher KNIGHT of the Law Society of Hong Kong said that the Administration should take forward the suggestion of the Chief Justice (CJ) for a review on criminal legal aid fees system as soon as possible. He pointed out that the two legal professional bodies had provided their submissions to the Administration in April and June 2005. However, little progress had been made in the past six months.

50. Mr KNIGHT stressed that issues relating to the criminal legal aid fees system were very important, as they were not only concerned with the fees payable to legal aid lawyers but also the inequality of arms. He pointed out that Article 35 of the Basic Law stipulated that Hong Kong residents should have the right for

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representation in the courts. However, the existing criminal legal aid fees system, which was devised in 1960s, was not conducive to the provision of quality legal service and assistance to the public. The absurdities in the existing fees system would result in injustice and should be addressed as soon as possible.

51. Mr KNIGHT further said that solicitors should be paid for work actually and reasonably done. The crux of the problem was that the fixed scale of fees prescribed in the Legal Aid in Criminal Cases Rules (Cap. 221 sub. leg. D) (the Rules) failed to take into account the amount of preparation work done by solicitors in criminal proceedings, although complicated preparation work was required in most of the cases nowadays. Mr KNIGHT added that although solicitors might apply to the court for a certificate of exceptional complexity or length in order to raise the fees, the court might not agree to grant the certificates in all cases. As the Rules had not been reviewed since the 1970s, they failed to reflect the reality in present-day criminal practice. Mr KNIGHT urged the Administration to take action immediately to establish a mechanism to conduct the review.

52. The Chairman added that the Law Society had provided examples of work which were not properly rewarded under the existing criminal legal aid fees system in paragraph 9 of its submission provided to the Administration in June 2005.

53. The Chairman of the Legal Aid Services Council (LASC) informed members that the Council agreed that there was a need to conduct a comprehensive review on the criminal legal aid fees systems and the Rules so as to improve the legal aid services for the public. LASC would be willing to participate and assist in the review.

Discussion

54. In response to the concerns and views raised by the various parties, D of Adm said that the Administration agreed that there was a need to review the criminal legal aid fees system. The Administration also noted that aside from the issue of preparation work, the two legal professional bodies had put forth some other proposals in their submissions. The Administration would study these proposals in detail before taking a decision on the matter.

55. DLA explained that under the existing system, legal aid fees were paid according to the provisions in the Rules. There was little flexibility for LAD to vary the fees. He supported D of Adm that a review on the criminal legal aid fees system should be conducted.

56. The Chairman pointed out that in reply to her oral question at the Council meeting on 11 May 2005, the former Chief Secretary for Administration had undertaken to commence the review on criminal legal aid fees system once the Administration had received the submissions from the two legal professional bodies. She expressed concern that the Administration had yet to commence the review after it had received the submissions for six months.

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57. D of Adm explained that the Administration had planned to listen to any further views from members and the parties concerned at this meeting. It would then invite the two legal professional bodies and Government departments concerned to discuss the establishment of a mechanism for the conduct of the review.

58. The Chairman, Ms Miriam LAU and Ms Emily LAU said that a comprehensive review on the criminal legal aid fees system should be conducted without further delay, and the Administration should provide a timetable for the review. Ms Miriam LAU stressed that a balance should be struck between relaxing the Rules to allow flexibility for varying the fees payable to lawyers and maintaining check and balance to prevent abuses. She suggested that the Administration should set up a working group with the two legal professional bodies to take forward the review. The Panel would then discuss and comment on the recommendations of the working group.

59. Mr Philip DYKES stressed that it was the Administration's responsibility to devise the policy on criminal legal aid fees. The Administration should put forth a proposal on the review of the fees system so that the Bar Association could consult its members on the proposal. Mr DYKES suggested that the Administration could propose to upgrade the existing system or adopt a fee structure system similar to the "marked briefs" system utilised for fiat counsel, or the "taxation" system operated for civil practitioners in legal aid cases.

60. Mr Christopher KNIGHT shared the view that the review should be initiated by the Administration and should commence as soon as possible. He urged the Administration to provide a timetable for the review.

61. D of Adm explained that the Administration would write to invite representatives from the two legal professional bodies, the Judiciary, the Department of Justice and LAD sometime before Christmas for joint discussion. The first meeting would be scheduled shortly, at which a timetable for the review would be discussed. In response to the request of the Chairman, D of Adm undertook to inform the Panel through the Secretariat representatives of various parties concerned and the timetable for the review in due course. The Chairman said that the Administration should report progress of the review to the Panel in six months' time.

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62. Mr Philip DYKES requested the Administration to include information on its general position on the review and provisional plans in its invitation letter to the legal professional bodies. He could then consult members of the Bar Association and identify a representative to assist with the work of the working group.

## **VII. Any other business**

### Review of The Ombudsman Ordinance

63. Ms Emily LAU said that at a Members' meeting with the Ombudsman on 7 December 2004, the Ombudsman had informed Members that she was conducting

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an internal review of The Ombudsman Ordinance (Cap. 397) (the Ordinance) on possible areas of improvement, including its execution and the Ombudsman's purview. Members had requested the Ombudsman to provide, upon completion of the internal review of the Ordinance, the outcome of the review to Members for discussion and then submit the proposed amendments to the Government for consideration. Ms LAU further said that Members raised the issue again at their recent meeting with the Ombudsman on 14 December 2005 and noted that little progress had been made since the last meeting.

64. Ms LAU considered that the review of the Ordinance should be expedited. She suggested that –

- (a) a subcommittee be set up under the Panel to follow up the review of the Ordinance;
- (b) meeting(s) be held to receive public views on the Ombudsman's purview; and
- (c) the Research and Library Services Division (RLSD) be requested to (i) conduct a research study on the purviews of ombudsmen in overseas jurisdictions, and (ii) gather information on the expectation of the community on the purview of the Ombudsman.

65. Regarding Ms LAU's suggestions in paragraph 64(a) and (b) above, members agreed that these should be considered at a later stage if necessary, after completion of the research study.

66. As regards the suggestion in paragraph 64(c), members agreed that the research study on overseas practices should take precedence, as Members could draw reference to the purviews of ombudsmen in overseas jurisdictions in considering the Ombudsman's recommendations in future. The Chairman concluded that RLSD should be requested to conduct a research study as suggested by Ms Emily LAU in paragraph 64(c)(i) above. The suggestion in paragraph 64(c)(ii) should be dealt with at a later stage if necessary.

67. There being no other business, the meeting ended at 6:30 pm.