

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2494/05-06  
(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 Monday, 24 April 2006 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
- Members absent** : Hon James TO Kun-sun  
Hon MA Lik, GBS, JP
- Public Officers attending** : Item V  
Department of Justice  
  
Mr Gilbert MO  
Acting Law Draftsman  
  
Ms Fanny IP  
Senior Assistant Law Draftsman  
  
Ms Leonora IP  
Senior Government Counsel

Item VI

Department of Justice

Mr Stephen WONG  
Deputy Solicitor General

Mr Michael SCOTT  
Senior Assistant Solicitor Counsel

**Attendance by  
invitation** :

Item IV

Mr Robert ALLCOCK  
Chairman  
Standing Committee on Legal Education and Training

The Hong Kong Bar Association

Mr Edward CHAN, SC

The Law Society of Hong Kong

Mr Lester HUANG  
Vice President of the Law Society and Chairman of the Legal  
Education Committee

Ms Heidi CHU  
Director of Standards and Development

The Chinese University of Hong Kong

Dr Anthony NEOH, SC, JP  
Chairman, Planning Committee for Law

Professor Mike J. McCONVILLE  
Director, School of Law

Mrs Diana YING  
Planning Officer, School of Law

**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

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Action

**I. Confirmation of minutes of meeting**

(LC Paper No. CB(2)1764/05-06 – Minutes of the meeting on 27 February 2006)

The minutes of the meeting held on 27 February 2006 were confirmed.

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

(LC Paper No. CB(2)1560/05-06(01) – Administration's position regarding recovery agents and recent progress of the matter

LC Paper No. CB(2)1645/05-06(01) – Letter dated 31 March 2006 to the Financial Secretary on "Limited liability for professional practices"

LC Paper Nos. CB(2)1757/05-06(01) and (02) – Correspondence between the Hong Kong Bar Association and the Judiciary Administration on "Court procedure for repossession of premises"

LC Paper No. CB(2)1725/05-06(01) – Supplemental paper from the Legal Aid Department on "Legal aid for victims in family violence cases"

LC Paper No. CB(2)1728/05-06 on 13 April 2006) – Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform

LC Paper No. CB(2)1728/05-06(01) – Press release issued by the Judiciary on "Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform")

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

Action

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

(LC Paper No. CB(2)1755/05-06(01) – List of outstanding items for discussion

LC Paper No. CB(2)1755/05-06(02) – List of follow-up actions)

3. Members agreed that the following items on the list of outstanding items for discussion should be discussed at the next meeting on 22 May 2006 –

- (a) Resource implications for the Judiciary arising from the Administration's legislative framework concerning interception of communications and covert surveillance;
- (b) Maximum sentence for offence of perverting the course of justice; and
- (c) Pilot Scheme on mediation of legally aided matrimonial cases.

4. The Chairman referred members to the Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform issued by the Steering Committee on Civil Justice Reform on 12 April 2006. She said that some of the proposed legislative amendments for the implementation of Civil Justice Reform would bring about changes to the procedure in civil proceedings in the District Court, which had not been discussed by the Panel. As the consultation period of the consultation paper would end on 12 July 2006, she suggested that the Panel should discuss the consultation paper at its meeting on 26 June 2006. Members agreed.

5. Referring to item 22 on "Review of The Ombudsman Ordinance" on the list of outstanding items for discussion, Ms Emily LAU said that the Home Affairs Bureau (HAB) had provided a written response on 12 April 2006 to the Panel on Home Affairs on its discussion with The Ombudsman as to whether the powers and remit of The Ombudsman should be extended to cover complaints on Government's actions in implementing the Convention on the Rights of the Child. Ms LAU suggested that the Research and Library Services Division should take into account the Administration's response in conducting the research study.

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**IV. Establishment of a third law school**

(LC Paper No. CB(2)1759/05-06(01) – Background brief prepared by the LegCo Secretariat on "Establishment of a third law school"

LC Paper No. CB(2)1760/05-06(01) – Information paper prepared by The Chinese University of Hong Kong (CUHK)

Brochure on the School of Law of CUHK)

6. Dr Anthony NEOH, Chairman of the Planning Committee for Law of CUHK, highlighted the salient points of the paper provided by CUHK on the progress of the

Action

establishment of the School of Law of CUHK, with particular reference to the advisory and governance structure of the School, progress of appointment of academic staff and their academic profile, details of the law programmes, physical accommodation for the School's undergraduate and post-graduate programmes, the setting up of a new Law Library, development of a favourable learning environment for students, engagement of the School's staff in empirical research and production of publications, and internal and external assessment on students and the School's programmes.

7. Dr NEOH added that the undergraduate programme of Bachelor of Laws (LLB) would be delivered on campus in Shatin while the post-graduate programmes of Juris Doctor (JD) and Masters of Laws (LLM) would be delivered at the Graduate Law Centre (GLC) on the second floor of the Bank of America Tower building in Central. The programmes would commence in September 2006 while the Post-graduate Certificate in Laws (PCLL) programme would commence in 2008.

8. Professor Mike McCONVILLE, Director of the School of Law of CUHK briefed members on the progress of the recruitment of students for the different programmes of the School as follows –

- (a) for the LLB programme, the student intake for 2006-07 and 2007-08 would be 50 and 65 respectively. At present, 390 Band A students in the Joint University Programmes Admissions System (JUPAS) had selected the programme as one of their first three choices. There were also 34 Early Admission Scheme (EAS) first choice applicants and 156 non-JUPAS first choice direct applicants. So far, 17 non-JUPAS direct students had accepted an offer from the School. Decision on the admission of JUPAS students would be finalised by end of June 2006;
- (b) for the JD programme, a decision had not been made on the number of student intake. The level of intake would be determined with regard to the resources available and merits of applicants. The School was still processing applications from more than 460 applicants, of whom 32% had first class honours or distinctions in master and/or doctorate degrees. Another 14% had also attained brilliant academic achievements which were only one or two marks lower than those of the first band applicants;
- (c) for the LLM programmes, more than 70 applications had been received for the Common Law programme, while those for the Chinese Business Law and International Economic Law programmes were more than 90 and 140 respectively; and
- (d) the post-graduate programmes of JD and LLM were self-financing. They would be delivered at the GLC in Central. The Centre was scheduled to be ready for occupation by July 2006.

Action

9. In response to the enquiry from the Chairman, Professor Mike McCONVILLE added that the student intake for the postgraduate programmes had not been finalised. The anticipated intake for LLM was 30 for the Common Law programme and 60 each for the Chinese Business Law and International Economic Law programmes. The Chairman noted that there would be more students in the postgraduate programmes delivered in GLC than in the undergraduate programme on the main campus of CUHK.

Standards and quality of students

10. Ms Miriam LAU noted that applicants for LLB were only required to obtain Grade E or above in the English language in the Hong Kong Certificate of Education Examination (HKCEE) and in Advanced Supplementary Level Use of English in the Hong Kong Advanced Level Examination (HKALE) as the minimum university requirements. Applicants were required to obtain good grades in the English language in HKCEE and preferably Grade C or above in HKALE Use of English as additional requirements of the School of Law. Ms LAU pointed out that as Grade C in HKALE Use of English was only a preferred requirement, it was possible that students with lower grades might be admitted if there were difficulties in recruiting a sufficient number of students to the LLB programme. She expressed concern that given such low English language proficiency admission requirements, further training in language skills offered in the undergraduate programme could hardly improve the English standard of the students significantly. As these students would be able to graduate from the School ultimately, the English standard of legal practitioners in Hong Kong would be subjected to further criticisms.

11. Ms LAU was of the view that to safeguard the English standard of the legal profession, a higher English language proficiency admission requirement should be set for the LLB programme. The minimum admission requirement should be raised to Grade C or even Grade B in the HKALE Use of English. Such requirement should be clearly spelt out to the applicants.

12. Dr Anthony NEOH said that he had, in fact, asked a similar question about the School of Law's English language proficiency admission requirement. The University had explained that the admission requirements were similar to those of the other law schools. Dr NEOH added that while it might be appropriate for the School to adopt similar admission requirements as its counterparts at the beginning, the School could adjust the requirements afterwards, if necessary.

13. Professor Mike McCONVILLE explained that since it was a convention for all universities to set the admission requirements at the minimum level, the School of Law had followed such convention in setting its admission requirements. However, Professor McCONVILLE assured members that the School of Law placed great emphasis on its students' English standard. The language proficiency admission requirements for the School were higher than those set by the University. Among the Band A JUPAS students who had selected the LLB programme, around 110 students had obtained Grade A in the English language in HKCEE, and around 100 students

Action

had obtained Grade B. The School had also set the English language proficiency admission requirement for EAS students at Grade B or above.

14. Professor McCONVILLE further said that a quality assurance mechanism had been introduced to ensure that all students of the School had attained the required English standard. The School had interviewed all EAS applicants. It would also interview all JUPAS Band A applicants. Professor McCONVILLE added that the School would enhance its students' English language skills throughout the four-year LLB programme. Training in communication, presentation and legal writing skills would be emphasised in its courses.

15. Ms Emily LAU agreed with Ms Miriam LAU that the standard of law school students should be raised. She recalled that at an earlier Panel meeting, members noted from the City University (CityU) that it admitted a JUPAS student who had placed the CityU School of Law as his eighteenth choice. Ms LAU considered that while the language proficiency admission requirements should be raised, students should also be required to attain a certain standard before they would be allowed to graduate from the School of Law of CUHK.

16. Professor Mike McCONVILLE responded that the Law School had introduced a quality assurance mechanism to ensure that its students were properly assessed to have attained a certain standard for graduation. For the LLB programme, external examiners with international standing had been invited to assess students. A new system of visiting examiners would be introduced to assist with the assessment of curriculum, staffing and resources of the School. In addition, there was a plan to appoint special academic advisers to help review the assessment mechanism to ensure that students had attained the required standard before they were allowed to pass the examinations.

17. Mr Robert ALLCOCK informed members that in addition to the safeguards imposed by the CUHK School of Law internally, the Standing Committee on Legal Education and Training had recommended that all students must achieve a result of Band 7.0 or better in the International English Language Testing System (IELTS) for entry into the PCLL programme, so as to safeguard the English standard required for entry into PCLL.

18. Mr Edward CHAN said that the two legal professional bodies were concerned about the English standard of legal practitioners. While respecting the academic freedom of the universities and the admission requirements for the law schools set by the universities, the two legal professional bodies insisted that the entry standard of PCLL should be objectively set. After thorough discussion and deliberation, it was agreed that the achievement of a result of Band 7.0 or better in IELTS should be adopted for entry into PCLL. The law schools of the University of Hong Kong (HKU) and CityU had adopted such requirement. It was hoped that the CUHK School of Law would follow suit.

Action

19. Dr Anthony NEOH said that the standard of English of the legal practitioners in Hong Kong was in general higher than that of Chinese. They should therefore enhance their Chinese language proficiency as well.

Commencement of the PCLL programme

20. Mr LI Kwok-ying noted from paragraph 7(e) of the background brief prepared by the Legislative Council (LegCo) Secretariat (LC Paper No. CB(2)1759/05-06(01)) that it was the original plan that the PCLL programme would be offered with effect from 2007-08, and a total of 36 places of the programme would be funded by the University Grants Committee (UGC). Mr LI also noted from the progress reported by Dr Anthony NEOH earlier that the School of Law had decided that the PCLL programme would commence in 2008. He sought clarification on the disbursement of the UGC fund originally earmarked for the 36 PCLL places in 2007-08.

21. Professor Mike McCONVILLE replied that he and Mr Robert ALLCOCK, Chairman of the Standing Committee on Legal Education and Training, had visited UGC on 1 March 2006 and conveyed the wish of the Standing Committee to commence the PCLL programme in 2008.

22. As regards the disbursement of UGC funds originally designated for the PCLL places in 2007-08, Professor McCONVILLE said that UGC had advised that it was not its policy to re-distribute the places to other schools in 2007. The Standing Committee on Legal Education and Training had requested UGC not to impose any financial penalty upon CUHK for the delay in the commencement of the PCLL programme. UGC would discuss the issue with CUHK and announce its decision in due course.

23. The Chairman remarked that it was unlikely that UGC would allocate the provision earmarked for the 36 PCLL places to CUHK for other purposes.

24. As regards the timing of the establishment of a PCLL at CUHK, Ms Emily LAU noted from paragraph 4(b) of the background brief prepared by the LegCo Secretariat that differing views had been expressed by members of the Steering Committee on Legal Education and Training on whether it would be beneficial to professional legal education to establish a third PCLL course. When the item was last discussed at the Panel meeting on 23 May 2005, the Faculty of Law of HKU had expressed concern about the commencement date of the PCLL at CUHK. Noting that the Faculty was not represented at the meeting, Ms LAU asked whether all the concerns expressed by the Faculty at the meeting on 23 May 2005 had been addressed. She also sought clarification on whether the Steering Committee had been replaced by the Standing Committee on Legal Education and Training.

25. The Chairman explained that discussion of the item at the meeting on 23 May 2005 focused on, inter alia, the desirability of the establishment of a third law school in Hong Kong. Representatives from the law schools in other universities had therefore been invited to that meeting for discussion of that item. As the focus of



Action

discussion at the present meeting was to follow up on the issues raised at the meeting on 23 May 2005, such as the development of the curriculum and the commencement of the programmes offered by the School of Law, representatives from other universities had not been invited to the meeting. The Chairman added that the representatives from the two legal professional bodies attending the meeting could be invited to comment on the timing of the commencement of the PCLL programme.

26. Mr Robert ALLCOCK clarified that since the meeting on 23 May 2005, the Standing Committee, which was a statutory body, had been set up under the Legal Practitioners Ordinance (Cap. 159) in August 2005. The Steering Committee, which was an ad hoc committee, had then been dissolved. Membership of the Standing Committee was similar to that of the Steering Committee, including representatives from the Judiciary, Education and Manpower Bureau, Department of Justice (DOJ), the two legal professional bodies and some lay members.

27. Mr ALLCOCK said that since its establishment in August 2005, the Standing Committee had held four meetings. It agreed at its first meeting that the establishment of the third law school should be one of its priorities. The item had since been placed on the agenda of each of its subsequent meetings. Representatives from CUHK attended the last three meetings of the Standing Committee. Two representatives from CUHK were appointed to the Standing Committee in November 2005.

28. Mr ALLCOCK further said that the PCLL at CUHK was one of the most important issues for discussion by the Standing Committee, in particular the timing of its establishment. After thorough deliberation, members of the Standing Committee unanimously agreed that the Chinese University PCLL should commence in 2008. Mr ALLCOCK added that HKU should be supportive of the postponement of the commencement of the programme, as it had expressed concern whether it was opportune to offer the third PCLL course in 2007-08.

Separate teaching venues for the undergraduate and post-graduate programmes

29. The Chairman noted that the LLB programme would mainly be delivered on the main campus of CUHK in Shatin while the post-graduate programmes would be delivered in GLC in Central. The Chairman expressed concern that the separation of the teaching venues would hinder interaction between the undergraduates and the post-graduates, which was an integral part of a desirable learning environment.

30. The Chairman also noted from Appendix C to the paper provided by CUHK that while not many details of the facilities of the law school on the campus in Shatin had been given, those facilities in GLC in Central were very grand. The area of GLC was also larger than that of the law school in the Mong Man Wai Building on the main campus. She expressed concern that the School of Law had put emphasis on the development of the post-graduate programmes delivered in GLC and not the undergraduate LLB programme.

Action

31. Dr Anthony NEOH clarified that LLB and the post-graduate programmes would not be separated from one another, as many activities of the latter would be conducted on the campus in Shatin. Dr NEOH stressed that the facilities in Shatin would be similar to those in Central. As renovation had not yet been completed, the images of those activities had not been provided to members for reference. The School of Law would also utilise the teaching facilities in other buildings on the main campus, the details of which had not been included in Appendix C to CUHK's paper. Students of the post-graduate programmes would be encouraged to utilise the facilities on the main campus and attend the courses conducted there. Dr NEOH added that the GLC was established in Central with a view to maintaining close association with legal practitioners.

32. Professor Mike McCONVILLE supplemented that LLB students would not be disadvantaged by any lack of facilities. Moot Court, breakout rooms, students' common area, small group teaching rooms, the Law Library and personal computers would be provided in Shatin. All the facilities in the School and on the main campus would be available to the post-graduate students.

33. The Chairman remained of the view that there would be little interaction between the students and teachers of different programmes because it was unlikely that they would often commute between Shatin and Central which were so far apart. She also pointed out that if all the programmes were to be delivered on the same campus, duplication of resources in providing the same facilities, such as Moot Court, in both teaching venues could be avoided.

34. Dr Anthony NEOH responded that there would not be duplication of resources as the Moot Court on the main campus and in GLC would be fully utilised, because all law students were required to practise their skills there. The facilities in GLC would also be made available to the legal profession so as to maintain close contact with the profession.

35. Professor Mike McCONVILLE supplemented that while LLB was funded by UGC, the post-graduate programmes were all self-financing. It was important for the Moot Court and other facilities to be provided in GLC to enable students to acquire the relevant skills through practices. Shuttle services between Shatin and Central would be provided for students in different programmes, if necessary. Courses and activities might also be organised at the weekend so as to facilitate interaction between students and teachers of different programmes.

36. The Chairman said that the Sun Yat-sen University in the Mainland had undergone a similar experience during its relocation to a new campus. The delivery of its programmes spread over two separate campuses during the transitional period had caused inconvenience and difficulties to its students. The Chairman pointed out that it would be very difficult for CUHK to build up an identity for its law school if its programmes were to be delivered in two separate campuses. She added that the facilities in GLC in Central should be established to cater for the need of its students and not practising practitioners.

Special characteristics of the third law school

37. The Chairman pointed out that at the meeting on 23 May 2005, representatives of CUHK stressed that its School of Law would become a law school with special characteristics. However, she noted from the brochure of the School that the content of its programmes was quite similar to those offered by other law schools.

38. Professor Mike McCONVILLE explained that the CUHK School of Law emphasised the contextual teaching approach, interactive learning environment, skills acquisition, alignment of teaching objectives and teaching methods, and reinforcement of the teaching objectives by the assessment regime. There was also a unique college system which provided a generic education to the students, enabling them to develop an expanded view of the world. Students would be able to take guided elective courses which enhanced their learning environment in law. Students would also be provided with opportunities to undertake a study abroad programme to enable them to understand the situation in other legal jurisdictions.

39. The Chairman pointed out that while the CUHK School of Law emphasised its special teaching method, the qualifications of its teaching staff were quite similar to those in other law schools.

40. Dr Anthony NEOH said that there were similarities and differences between the law schools throughout the world. The courses offered by the schools were quite similar as legal education had to tie in with the needs and requirements of the trade.

41. On behalf of the Panel, the Chairman wished CUHK all the success in the establishment of its School of Law. Dr Anthony NEOH said that the University would invite the Panel to visit the School of Law at an opportune time in future.

**V. Work of the Law Drafting Division of the Department of Justice**

(LC Paper No. CB(2)1755/05-06(03) – Paper provided by the Administration on "Mentorship Scheme in the Law Drafting Division, Department of Justice"

LC Paper No. CB(2)1755/05-06(04) – Paper provided by the Administration on "Training attachments to overseas jurisdictions"

LC Paper No. CB(2)1755/05-06(05) – Extract from minutes of special meeting on 17 October 2005)

Mentorship Scheme

42. Acting Law Draftsman (LD) briefed members on the history and operation of the Mentorship Scheme in the Law Drafting Division of DOJ, in particular the advantages of the Scheme, as detailed in the paper provided by the Administration.

Action

43. The Chairman noted from paragraph 2 of the paper that as at 1 April 2006, there were six mentors and 21 mentees under the Scheme. She sought additional information on the mentors and mentees.

44. LD informed members that every non-directorate counsel in the Law Drafting Division was assigned a mentor in the Deputy Principal Government Counsel (DPGC) or Principal Government Counsel (PGC) rank. At present, two PGCs and four DPGCs in the Law Drafting Division were serving as mentors. The Law Draftsman and four other DPGCs in the Division were not mentors because of their heavy workload.

45. Ms Emily LAU asked whether a counsel would receive extra pay for serving as a mentor. She also sought clarification on whether the duties of a mentor were clearly set out in his job description. LD clarified that supervision of junior counsel and vetting of their work had been included in the job description of counsel at the directorate ranks. Therefore, a mentor would not receive extra pay.

46. The Chairman remarked that legislative draftsmen should be able to work independently and should not play the role of students. She expressed concern whether the mentees could only complete their work under the supervision of the mentors, and that the Mentorship Scheme had put more emphasis on the supervision of draftsmen by mentors and not on the development of their independent working ability.

47. Mr Martin LEE noted the master-pupil relationship of a mentor and his mentees under the Scheme. He said that while he supported the arrangement of a counsel in the directorate rank working with experienced draftsmen and inexperienced draftsmen in each team under the Scheme, he considered that counsel in the Senior Government Counsel (SGC) rank should be very experienced at work. SGCs should play the role of a mentor and not that of a mentee.

48. LD stressed that the Mentorship Scheme was put in place not because there were deficiencies in the performance of legislative draftsmen. He pointed out that while legislative draftsmen should work independently, legislative drafting was such a specialised profession that the learning process of draftsmen should continue incessantly. The Mentorship Scheme would enable them to develop skills and accumulate experience through learning from their mentors.

49. LD clarified that the Mentorship Scheme did not only entail the elements of teaching and learning. It was also a mechanism under which the work of a mentee was monitored by his mentor, and a mentor and his mentees worked as a team with division of labour among them. LD added that the work of counsel at the directorate rank was also vetted by another colleague so as to safeguard the quality and accuracy of their work.

Action

Language proficiency requirements for appointment as legislative draftsmen

50. Ms Emily LAU said that there were many concerns about the quality of legislative drafting recently. She asked whether there was a drop in the qualifications of legislative draftsmen which necessitated the implementation of the new Mentorship Scheme in 2001.

51. LD explained that before the introduction of the Mentorship Scheme, counsel at the Government Counsel (GC) and SGC ranks did not have designated supervisors. Their English drafting was cleared by different supervisors. The Mentorship Scheme was a more effective quality control and training mechanism. The stable and close working relationship afforded by the Scheme allowed the management of the Law Drafting Division to better identify the strengths, weaknesses and development needs of a mentee.

52. LD added that many new draftsmen were recruited with the commencement of bilingual drafting of legislation before 1997. In 2000, it was anticipated that a large number of expatriate draftsmen would retire in the coming years. The Mentorship Scheme had therefore been developed to facilitate efficient imparting of drafting experience and skills and to monitor the work of legislative draftsmen more effectively.

53. LD informed members that the experience of the legislative draftsmen in the Law Drafting Division was as follows –

<u>Years of legislative drafting experience</u>	<u>Number of drafters</u>
16 years and above	4
12 to 16 years	7
8 to 12 years	12
4 to 8 years	6
Less than 4 years	3

LD added that the majority of the draftsmen in the Division possessed eight to 12 years' experience in legislative drafting.

54. Ms Emily LAU asked whether DOJ would continue to recruit experienced expatriate Anglophone draftsmen. LD replied that while Hong Kong should draw experience in legislative drafting from other common law jurisdictions by employing expatriate draftsmen, DOJ had to comply with the language proficiency requirements for entry to the Civil Service. In line with those requirements, new appointees to the GC grade on civil service terms were required to obtain, inter alia, a Grade E or above in the Chinese Language in HKCEE or equivalent. As members of that grade, legislative draftsmen of the Law Drafting Division were subject to the same recruitment criterion. LD said that suitable Anglophone candidates could be appointed if they met all the entry requirements, including that on the Chinese language proficiency. Exception might however be allowed. Another division of the Department recruited an expatriate counsel a few years ago.

Action

55. Ms Emily LAU, however, pointed out that it might be difficult to recruit Anglophone drafting talents with such language proficiency entry requirements. She therefore objected to the application of such entry requirement to draftsmen of the GC grade in the Law Drafting Division. She considered that such entry requirement was not conducive to attracting the best available drafting talent and thus maintaining a high quality of legislative drafting as far as the English text was concerned, the English language being the *lingua franca* of the common law. Ms LAU was of the view that DOJ should be able and aim to recruit the most suitable candidates as legislative draftsmen, including Anglophone candidates who might not meet the Chinese language proficiency requirement.

56. The Chairman, Mr Martin LEE and Ms Audrey EU concurred with Ms Emily LAU. Mr Martin LEE added that a very high level of English language proficiency and expertise in legislative drafting in the English language were required of legislative draftsmen. He considered that the Chinese language proficiency requirement should not apply to the appointment of draftsmen of the GC grade in the Law Drafting Division.

57. Ms Audrey EU expressed concern that the quality of legislative drafting would be adversely affected by the existing recruitment policy. As legislative drafting was a very specialised profession, it was difficult to recruit drafting talents. It would be a great loss to Hong Kong if experienced Anglophone draftsmen could not be appointed to the Law Drafting Division just because they could not meet the Chinese language proficiency requirement. Ms EU said that similar to the recruitment of native-speaking English teachers, suitable drafting talents should be appointed to the GC grade as legislative draftsmen even though they could not meet the Chinese language proficiency requirement. Although legislation in Hong Kong was drafted bilingually, it was not necessary for all legislative draftsmen to be bilingual. Ms EU urged DOJ to review its recruitment policy of legislative draftsmen.

58. LD said that DOJ had the flexibility to employ suitable candidates who did not meet the Chinese language proficiency requirement under the Non-Civil Service Contract (NCSC) Scheme, which was a scheme to allow government departments to employ temporary and short-term contract staff to meet changing service and operational needs, if such exemptions were justified. In the past few years, DOJ had employed a few retired Anglophone GCs to continue to serve in the Law Drafting Division under NCSC terms. LD added that while such exemptions were not a standard arrangement, DOJ would continue to recruit Anglophone draftsmen under NCSC terms, if necessary.

59. In response to a further question from Ms Emily LAU, LD explained that since recruitment of GCs had been frozen in recent years, DOJ had not appointed any Anglophone draftsmen on civil service terms who had not met the Chinese language proficiency requirement to its Law Drafting Division.

Action

60. Ms Emily LAU also considered the NCSC Scheme not a satisfactory solution to address the problem. She pointed out that as the terms and conditions of service for NCSC staff were usually less favourable than those applicable to civil servants in comparable civil service ranks, they would not be as attractive to candidates of high calibre who might otherwise consider applying for work in the Law Drafting Division, other than retirees not looking for long term prospects. Ms LAU pointed out that the local universities had appointed academics with outstanding achievements in their specialties as teaching staff irrespective of their Chinese language proficiency. The Secretary for Justice (SJ) should therefore review the recruitment policy of legislative draftsmen with a view to attracting Anglophone candidates with high calibre and expertise in legislative drafting to the Law Drafting Division.

61. LD said that DOJ recognised Anglophone draftsmen's contribution towards legislative drafting. He assured members that DOJ would take into consideration the views expressed by members in reviewing the recruitment of legislative draftsmen in future.

62. The Chairman said that in scrutinising bills and other legislation, Members had expressed concern about the quality of legislative drafting. The Panel had a unanimous view on the need for improving the quality of legislative drafting. As it was unlikely that Anglophone candidates could attain the Chinese language proficiency requirement for entry to the GC grade, DOJ should review its whole recruitment policy of legislative draftsmen to the Law Drafting Division so as to facilitate and not to preclude the engagement or development of draftsmen with expertise in legislative drafting in the English language by relaxing the Chinese language proficiency requirement for appointment of legislative draftsmen.

63. The Chairman suggested that she conveyed the Panel's views and request to SJ in writing. The Panel would decide how to follow up the matter upon receipt of SJ's response. Members agreed. Ms Emily LAU suggested that the letter to SJ should be copied to the Secretary for Civil Service.

*(Post-meeting note : The Chairman's letter to SJ and SJ's reply were issued to members vide LC Paper No.1937/05-06(01) and (02) on 8 May 2006.)*

Adm 64. Ms Emily LAU requested DOJ to provide information on the years of experience of legislative draftsmen in the Law Drafting Division in the past 10 years.  
Adm The Chairman also requested DOJ to advise in writing when the Chinese language proficiency was imposed as an entry requirement on the GC grade.

Training attachments to overseas jurisdictions

65. The Chairman asked whether training attachments to overseas jurisdictions would continue to be arranged for GC grade staff in the Law Drafting Division. LD responded that two overseas training attachments to Canada and the United Kingdom respectively had been arranged for two SGCs in 2005. The continued arrangement of similar training in future would be subject to availability of host offices, funds and suitable candidates.

Action

66. The Chairman remarked that DOJ should attach priority to serving public interest, i.e. improving the drafting of legislation, ahead of other considerations. Similar overseas training attachments should be arranged for GC grade staff if such training programmes could enhance drafting quality.

**VI. Review of legislative provisions containing the drafting formula “to the satisfaction” of an enforcement agency**

(LC Paper No. CB(2)1750/05-06(01) – Background Brief prepared by the LegCo Secretariat on 'Review of legislative provisions containing the drafting formula “to the satisfaction” of an enforcement agency'

LC Paper No. CB(2)1750/05-06(02) – Paper provided by the Administration on 'Review of legislative provisions containing the phrase “to the satisfaction of” an enforcement agency')

67. Deputy Solicitor General (DSG) briefed members on the result of the review of legislative provisions containing the phrase “to the satisfaction of” an enforcement agency as detailed in the paper provided by the Administration. DSG said that of the 96 provisions which contained the “to the satisfaction of” requirement (Annex to the paper refers), the Administration considered that the requirement should be retained so as to ensure public safety, which was the legislative intent of those provisions. The Administration proposed to introduce a general statutory provision to the effect that no offence was committed unless –

- (a) the enforcement agency had specified to the person concerned the measures to be taken to the agency’s “satisfaction”; or
- (b) the person concerned had commenced the regulated activity without approaching the enforcement agency to ascertain the measures to be taken to the agency’s “satisfaction”.

68. DSG added that supplementary provisions would be drafted as appropriate to make it clear how the alternative offences would operate in the context of the individual pieces of legislation and one of the options was to amend each of the 96 provisions.

69. In response to the question from the Chairman, DSG explained that the general statutory provision in paragraph 67(a) and (b) above would be added to each of the 96 provisions. To remove legal uncertainty in prosecution, and to enable the affected persons to understand what conduct was prohibited, the drafting of section 306(3) of the Securities and Futures Ordinance (Cap. 571) on “Conduct not to constitute offences” would be adopted in the current exercise.

70. DSG added that the two legal professional bodies had not been consulted on the proposed amendments. As the 96 provisions involved a large number of policy



Action

bureaux, DOJ would consult the bureaux concerned first on the proposed amendments.

71. The Chairman said that the proposed amendments were mainly technical in nature, intending to prevent the subjective interpretation of the phrase “to the satisfaction of” by the enforcement agencies, or frequent changes in the safety measures specified administratively “to the satisfaction of” the enforcement agencies. The Chairman agreed that each of the 96 provisions should be examined to ensure that the proposed amendments would not change the legislative intent of the provisions.

72. The Chairman asked whether amendments to the 96 provisions concerned would be introduced as a package. She said that the legislative amendments could be introduced as an adaptation of law bill or an omnibus bill. DSG responded that DOJ would consult the relevant bureaux on the issue and revert to the Panel with details of the legislative process involved in due course.

73. Senior Assistant Legal Adviser 2 (SALA2) pointed out that the ruling of the Court of First Instance in *HKSAR v Lam Geotechnics Limited HCMA No. 379 of 2000* was that regulation 44(1)(c) of the Construction Sites (Safety) Regulations (Cap. 591) was ultra vires section 7(1)(h) of the Factories and Industrial Undertakings Ordinance (Cap. 59) on the ground that the phrase “to the satisfaction of” the Commissioner for Labour did not prescribe with sufficient particularity the elements of a criminal offence or the means of ensuring the safety of persons or securing the removal of any danger or defects. SALA2 also noted from paragraph 9 of the Administration’s paper that the Administration considered that a failure by the official to specify the matters that would satisfy him did not render a “to the satisfaction of” provision ultra vires. Any failure to specify safety measures would be a failure of the administrative implementation of the provision, and not a legislative defect as such. SALA2 sought clarification whether the Administration disagreed with the court ruling in *Lam Geotechnics*.

74. DSG clarified that as indicated from the *Hookings v Director of Civil Aviation [1957] NZLR 929, 935*, if there was no uncertainty in the provisions concerned, and with the general statutory requirements specified in paragraph 67(a) and (b) above, the Administration considered that the provisions concerned were in order.

75. SALA2 expressed concern whether prosecutions could be taken in respect of cases where an enforcement agency had not specified the safety measures to be taken to the agency’s “satisfaction”, pending amendments proposed to the provisions concerned.

76. DSG said that DOJ had not consulted the bureaux concerned on the detailed amendments to each of the 96 provisions. However, the bureaux supported in principle the introduction of the proposed general statutory provision in paragraph 67(a) and (b) above. The Prosecutions Division of DOJ had also been alerted of the proposed amendments. DOJ would issue a circular drawing the attention of all those concerned to the impending amendment exercise.

Action

77. At the request of Mr Martin LEE, DSG used the Boilers and Pressure Vessels Regulations (Cap. 56A) (item 1 in the Annex) to illustrate how the provision would be amended by adapting the general statutory provision in paragraph 67(a) and (b) above and section 306(3) of Cap. 571.

78. Mr Martin LEE, however, was of the view that as a better alternative, the safety measures to be taken by the affected persons “to the satisfaction of” the enforcement agency should be clearly stipulated in the principal ordinance to avoid uncertainty which might result in prosecution of the affected persons.

79. DSG explained that the option suggested by Mr Martin LEE had been thoroughly considered by the Administration. However, it might not be possible to list out the safety measures exhaustively in the principal legislation in all circumstances.

Adm

80. Mr Martin LEE maintained the view that the Administration should adopt the approach he suggested in amending the 96 provisions. The Administration undertook to consider Mr LEE’s suggestion and revert to the Panel in due course.

Adm

81. The Chairman pointed out that a person might have already commenced a regulated activity without approaching the enforcement agency to ascertain the safety measures to be taken ‘to the satisfaction of’ that agency. She expressed concern that such person would be subject to prosecution after the relevant provision was amended as proposed. She sought clarification whether the affected person should approach the relevant enforcement agency to ascertain the measures required after the provision concerned was amended. The Administration undertook to revert to the Panel on the issue.

Adm

82. To conclude, the Chairman requested the Administration to revert to the Panel after consulting the relevant bureaux on the amendments to each of the 96 provisions. The Administration should also revert to the Panel on the issues raised by members in paragraphs 78 to 81 above.

**VII. Any other business**

83. There being no other business, the meeting ended at 6:35 pm.