

**立法會**  
**Legislative Council**

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

**Minutes of joint meeting  
held on Monday, 22 May 2006 at 4:30 pm  
in Conference Room A of the Legislative Council Building**

**Members present** : Members of Panel on Administration of Justice and Legal Services

- \* 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 of Panel on Security

- # Hon James TO Kun-sun (Chairman)
- Hon CHEUNG Man-kwong
- Dr Hon Philip WONG Yu-hong, GBS
- Hon WONG Yung-kan, JP
- Hon CHOY So-yuk, JP
- Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Hon CHIM Pui-chung

\* Also a member of Panel on Security

# Also a member of Panel on Administration of Justice and  
Legal Services

**Members absent** : Members of Panel on Administration of Justice and Legal Services

Hon MA Lik, GBS, JP

Members of Panel on Security

Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Dr Hon LUI Ming-wah, SBS, JP  
Hon Howard YOUNG, SBS, JP  
Hon LAU Kong-wah, JP  
Hon LEUNG Kwok-hung

**Public Officers** : Item II  
**attending**

Security Bureau

Mr Stanley YING  
Permanent Secretary for Security

Mrs Apollonia LIU  
Principal Assistant Secretary for Security

Judiciary Administration

Ms Sally WONG  
Deputy Judiciary Administrator (Development)

Ms Vega WONG  
Assistant Judiciary Administrator (Development)

**Attendance by** : The Hong Kong Bar Association  
**invitation**

Mr Philip DYKES, SC

Mr P Y LO

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

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

Miss Lolita SHEK  
Senior Council Secretary (2)7

Mrs Fanny TSANG  
Legislative Assistant (2)3

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Mr Andrew LEUNG expressed concern that members had been given very short notice of the joint Panel meeting and that the meeting had clashed with another joint meeting of the Panel on Economic Services and the Panel on Transport. Members who were also members of those two Panels would have difficulty in attending both meetings and participating in the discussions at the meetings.

2. Ms Margaret NG, Chairman of the Panel on Administration of Justice and Legal Services and Mr James TO, Chairman of the Panel on Security, explained that the item had originally been scheduled for discussion at the regular meeting of the Panel on Administration of Justice and Legal Services held at the same time slot. However, the Administration had requested that a joint meeting of the two Panels be held to discuss the item as the subject matter straddled the policy areas of the two Panels. The joint meeting had to be held urgently to discuss the financial proposal to be submitted to the Establishment Subcommittee (ESC) and the Finance Committee (FC) for approval shortly.

3. Mr TO added that if a quorum was not present for the joint Panel meeting, the Panel for which there was a quorum could hold a meeting to discuss the financial proposal.

**I. Election of Chairman**

4. Ms Margaret NG was elected Chairman of the joint meeting.

**II. Staffing implications of the implementation of the Administration's legislative framework concerning interception of communications and covert surveillance**

(LC Paper No. CB(2)2050/05-06(01) – Paper provided by the Judiciary Administration on "Resources Implications for the Judiciary arising from the Administration's Legislative Framework Concerning Interception of Communications and Covert Surveillance"

LC Paper No. CB(2)2050/05-06(02) – Paper provided by the Security Bureau on "Staffing Implications of the Implementation of the Interception of Communications and Surveillance Bill"

LC Paper No. CB(2)2050/05-06(03) – Extract of minutes of meeting of the Panel on Administration of Justice and Legal Services on 27 March 2006)

Briefing by the Administration and Judiciary Administration

5. Deputy Judiciary Administrator (Development) (DJA) briefed members on the resources implications for the Judiciary arising from the implementation of the

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Interception of Communications and Surveillance Bill (the Bill). Members noted that under the proposed regime, the authority for authorizing all interception of communications and the more intrusive covert surveillance operations would be vested in a member of a Panel of Judges, consisting of three to six Court of First Instance (CFI) judges. Moreover, a Commissioner on Interception of Communications and Surveillance (the Commissioner) would be appointed as an independent oversight authority to oversee the compliance by law enforcement agencies (LEAs) and their officers with the relevant requirements. The Commissioner was proposed to be a sitting or retired judge not below the level of a CFI judge.

6. Permanent Secretary for Security (PS for S) briefed members on the staffing implications arising from the implementation of the Bill. The following additional posts would be required –

- (a) two additional CFI judges (D8 level) given the impact on judicial resources arising from judicial authorization and the oversight authority;
- (b) two Executive Officers I and one Clerical Officer for providing support to the Panel Judges for the handling of judicial authorization;
- (c) one Principal Executive Officer (D1 level) to serve as the Secretary of the Secretariat for the Commissioner; and
- (d) two dedicated teams for the Secretariat for the Commissioner, each to be headed by one Senior Executive Officer and supported by two Executive Officers I, plus two Clerical Officers, four Assistant Clerical Officers, one Senior Personal Secretary, one Personal Secretary II, one Chauffeur and one Workman II for providing clerical and logistical support for the Secretariat as a whole.

*(Post-meeting note : Subsequent to the meeting, the Administration advised that it had finetuned its proposal and decided to create an Office Assistant post instead of a Workman II post for the Secretariat. This had been reflected in the submission for the ESC meeting on 14 June 2006.)*

7. PS for S added that the approval from ESC and FC would be sought for the creation of the three directorate posts within this legislative session. Subject to the approval of ESC and FC, the relevant posts would be created after the passage of the Bill. The non-directorate posts would be separately created under delegated authority from FC.

8. DJA informed members that two additional CFI judges would be required to cover the impact on judicial resources arising from the work of judicial authorization and that of the oversight authority if the Commissioner was to be a serving judge. There were four existing CFI judge vacancies. The Judiciary planned to launch the

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recruitment of CFI judges in late May 2006. It was expected that the recruitment exercise would be completed before the end of 2006.

9. DJA added that in the event that there was a short gap of a few months' time between the enactment and implementation of the legislation and the appointment of new CFI judges, the Judiciary would consider increasing the level of temporary judiciary resources. Under the existing operating expenditure envelope for the Judiciary in 2006-07, the Judiciary had adequate resources for the engagement of additional deputy judges to cope with the short gap.

Views of the Hong Kong Bar Association

10. Mr Philip DYKES referred to the small number of cases of interception of communications and covert surveillance in the last three months of 2005 (paragraph 6 of the Administration's paper). He said that the number of applications might further decline as authorization for carrying out the operations would be required from the Panel of Judges after the enactment of the Bill. Mr DYKES was also concerned about the measures to be taken to safeguard the confidentiality of the process of judicial authorization.

11. Mr P Y LO pointed out that judicial officers might need to work at home so as to process urgent applications for judicial authorization. The logistical arrangements for the provision of staffing support and the handling of confidential documents under such circumstances had to be worked out.

Manpower requirement

12. Mr James TO said that in proposing the number of additional CFI judges required, the Judiciary and the Administration had only taken account of the number of cases of interception of communications and covert surveillance in the last three months of 2005. Mr TO pointed out that since the legality of LEAs' interception of communications and covert surveillance operations was challenged in court at the end of 2005, LEAs had been very cautious about such operations. Therefore, the caseload in the last three months of 2005 might not have reflected the normal situation. Mr TO considered that the caseload for a period of one to two years before the last three months of 2005 should be an important reference for the Administration and the Judiciary to assess future workload and manpower requirement for the implementation of the proposed statutory regime.

13. PS for S responded that the issue raised by Mr TO had been discussed at previous meetings of the Panel on Security. When the Administration provided the number of cases in the last three months of 2005 to the Panel in February 2006, he had explained that the authorization mechanism of interception of communications and covert surveillance operations adopted in the past was different from the one proposed in the Bill. The number of cases for February to May 2006 counted on the basis of the new regime would be available in due course. DJA added that the exact staffing implications on the Judiciary could only be assessed after the new statutory regime had been implemented for some time.

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14. Mr James TO maintained the view that the Administration should provide the relevant statistics requested by him. Mr LI Kwok-ying also expressed concern whether two additional CFI judges would be sufficient to cope with the actual caseload arising from the regime proposed under the Bill. He urged the Administration to provide additional statistics on the past caseload of LEAs' operations for Members' reference.

15. Ms Miriam LAU said that the exact manpower requirement would only be known after the new statutory regime had been in operation for some time. It was unlikely that the Administration would choose not to take account of the past caseload, if it was of a large number, in drawing up the present staffing proposal. This would obviate the need for the Administration to seek additional resources at a later date if necessary.

Office accommodation

16. The Chairman asked whether a separate office would be provided for the Panel of Judges, the Commissioner, and their supporting staff in the Judiciary with special fitting out requirements and facilities to safeguard the confidentiality of their work relating to the operation of the authorization regime for interception of communications and covert surveillance, and whether sufficient resources would be provided for that purpose.

17. Ms Audrey EU expressed concern whether there was sufficient space in the Judiciary to accommodate the additional manpower proposed for the new statutory regime. Ms EU asked about the exact location of the offices for the Panel of Judges and the Commissioner, and stressed that they should operate independent of the Administration.

18. DJA replied that the Panel of Judges and their supporting staff would be accommodated in the Judiciary. The exact location of the office would be finalized after discussion with the relevant departments concerned on the alteration works involved, particularly in meeting the requirements for safeguarding the confidentiality of the cases handled by the office.

19. PS for S also stressed that the Commissioner was an independent authority functioning separately from other parts of the Administration. A suitable office was being identified for the Commissioner and his supporting team and would be ready by the time the Bill was implemented.

20. Ms Emily LAU said that the Administration should finalize its plan for the office accommodation for the staff concerned as soon as possible, given that the Bill was likely to be enacted and implemented in the summer. The Chairman requested the Administration and the Judiciary Administration to advise Members of the location of the offices once finalized.

### Recruitment of judges

21. In response to Ms Audrey EU, DJA clarified that the Judiciary had requested for two additional CFI judges to cover the impact of the work of judicial authorization as well as the Commissioner's work on judicial resources. In assessing the number of additional judges required, the Judiciary had taken account of the considerations set out in Enclosure 1 to the Administration's paper. Taking into account the four existing CFI judge vacancies which had arisen at different times in the past two years, the Judiciary had to recruit a total of six CFI judges in the upcoming recruitment exercise.

22. Ms Emily LAU expressed concern that four CFI judge posts had been left vacant for two years and whether there was practical difficulty in recruiting such a large number of CFI judges in a single recruitment exercise.

23. DJA explained that the annual budget of the Judiciary had been reduced by more than 10% since 2002. Although not requested by the Administration, the Judiciary had decided to freeze the recruitment of judges so as to reduce its annual expenditure. The decision had taken account of the fact that once appointed, the tenure of judges was protected by the provisions in the laws of Hong Kong and the Basic Law. The recruitment of CFI and District Court judges would commence in late May 2006 and was expected to be completed before the end of 2006. In the last recruitment exercise for judges in 2002, a total of seven judges had been recruited.

24. DJA added that since last year, the budgetary constraints of the Judiciary had resulted in an unacceptable lengthening of the waiting times at different levels of courts. After discussion with the Administration, a revised budgetary arrangement for the Judiciary was adopted in the preparation of the 2006-07 budget and would continue to be adopted for the next budget.

25. Ms Emily LAU expressed concern that while the Administration had assured Members on various occasions that the directorate posts in the Judiciary and the Independent Commission Against Corruption would not be affected by the budgetary constraints imposed by Government, the Judiciary had voluntarily frozen the recruitment of four CFI judges. Ms LAU said that the Judiciary should have drawn Members' attention to its difficulties.

26. Mr LI Kwok-ying noted the Judiciary Administration's advice that in the event that there was a short gap of a few months between the enactment and implementation of the Bill and the appointment of new CFI judges, deputy judges could be appointed to cope with the workload. Mr LI asked whether the recruitment of deputy judges could be completed within a short time. He also pointed out that there was public concern recently about the political affiliation of deputy judges. He expressed concern about the impartiality of deputy judges with political affiliation in handling cases concerning interception of communications and covert surveillance.

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27. DJA explained that it was not necessary to conduct open recruitment for deputy judges. Most of the deputy judges could be appointed quickly by the Chief Justice from serving judges in the lower courts. DJA further explained that as it was stipulated in the Bill that the Panel Judge was required to be a full time CFI judge, deputy judges could not perform functions relating to judicial authorization. The guidance in the Guide to Judicial Conduct that judges should refrain from membership in or association with political organizations applied to all full time judges.

28. In response to a further question from Mr LI Kwok-ying, DJA said that there were other limitations on the functions to be performed by deputy judges. Serious criminal cases such as manslaughter, and cases involving complicated commercial crime and judicial review would normally be handled by substantive judges. However, deputy judges could help perform other CFI duties.

29. The Chairman said that the Judiciary Administration should ensure that any deployment of temporary judicial resources during this short period would not undermine the quality of justice. She added that she did not support the proposal of judicial authorization by a Panel of Judges.

Staffing of the Secretariat for the Commissioner

30. Ms Emily LAU opined that the staff of the Secretariat for the Commissioner should be directly recruited and should not be filled by civil servants.

31. PS for S replied that the Secretariat for the Commissioner would be a very small organization with 17 staff only. In view of the sensitive nature of the Secretariat's work, it would be more appropriate for its posts to be filled by civil servants. Such an arrangement would not undermine the independence of the Secretariat as the same arrangement had been adopted for other public bodies.

32. Ms Emily LAU considered that such an arrangement was not acceptable to her, especially in the light of the recent case of the Independent Police Complaints Council. She stressed that the oversight authority should be completely independent of the Government. If the staff members in the Secretariat were civil servants, their loyalty would be split between the oversight authority and the Government. Ms LAU added that non-civil service staff would also be capable of observing any guidelines on protection of confidentiality of the work of the Secretariat.

33. Ms Miriam LAU said that she appreciated Ms Emily LAU's concern. She pointed out that the requirements for the post of Secretary of the Secretariat for the Commissioner, as set out in paragraphs 9 and 10 of the Administration's paper, were very demanding. She expressed concern whether a suitable candidate in the private sector could be recruited for the post.

34. PS for S explained that the work of the Secretary was expected to be complex and sensitive. The Secretary would be the head of the Secretariat responsible for



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overseeing the day-to-day operation of the Secretariat. He would also be the Controlling Officer of the new Head of Expenditure to be created. He would need to assist the Commissioner in carrying out complex reviews and examinations as set out in paragraph 5 of the Administration's paper. Much liaison with LEAs and other parties concerned would also be required. Only a sufficiently senior and experienced officer would meet the requirements. PS for S added that as the Secretariat would be a very small organization, the prospect of career development within the set-up would be limited. Hence, the Administration considered it more appropriate for the post to be filled by a civil servant at the D1 level.

Proposed creation of one D1 post

35. Ms Miriam LAU said that she had no objection to the proposed addition of two CFI judge posts. However, she expressed reservation about the proposed creation of a new D1 post as the Secretary of the Secretariat for the Commissioner. She pointed out that if the PEO was to be redeployed from within the Government, it would not be necessary to create an additional D1 post. Ms LAU was of the view that the creation of the new D1 post should be offset by the deletion of a D1 post.

36. PS for S explained that the regular reviews of directorate establishment in the Civil Service had been a separate exercise. Posts no longer required would be deleted. Since January 2002, the Administration had proposed to ESC/FC a net deletion of 71 permanent and 33 supernumerary directorate posts. As the Secretariat for the Commissioner was a new set up, it was necessary to create a new D1 post to cater for this new requirement. Hence, it would not be possible for the creation of this post to be offset by the deletion of another D1 post.

Way forward

37. PS for S informed members that the proposal (for three directorate posts and for changes to the 2006-07 Estimates) would be submitted to ESC on 14 June 2006 and then to FC on 7 July 2006.

38. The Chairman requested the Administration to take into consideration the views expressed by members at the meeting in preparing its submissions to ESC and FC.

**III. Any Other Business**

39. There being no other business, the meeting ended at 5:40 pm.