

立法會
Legislative Council

Ref : CB2/PL/SE/1

LC Paper No. CB(2)236/06-07
(These minutes have been seen
by the Administration)

Panel on Security

**Minutes of special meeting held on Thursday, 2 March 2006,
at 2:30 pm in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon Daniel LAM Wai-keung, BBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon CHOY So-yuk, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon CHIM Pui-chung

Members attending : Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Dr Hon KWOK Ka-ki
Hon Ronny TONG Ka-wah, SC

Members absent : Dr Hon LUI Ming-wah, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Audrey EU Yuet-mee, SC, JP

Public Officers attending : Item I
Mr Ambrose LEE
Secretary for Security

Mr Stanley YING
Permanent Secretary for Security

Miss S H CHEUNG
Deputy Secretary for Security

Mr Ian WINGFIELD
Law Officer (International Law)
Department of Justice

Clerk in attendance : Mrs Sharon TONG
Chief Council Secretary (2)1

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser 1

Mr Raymond LAM
Senior Council Secretary (2) 5

Ms Alice CHEUNG
Legislative Assistant (2) 1

Action

I. Interception of communications and covert surveillance
(LC Paper Nos. CB(2)1162/05-06(01) and (02), CB(2)1184/05-06(01),
CB(2)1189/05-06(01), CB(2)1258/05-06(01) and CB(2)1260/05-06(01))

Secretary for Security (S for S) informed Members that the Executive Council (ExCo) had advised and the Chief Executive (CE) had ordered on 28 February 2006 that the Interception of Communications and Surveillance Bill be introduced into the Legislative Council (LegCo). He said that the Bill would be published in the gazette on 3 March 2006 and introduced into LegCo on 8 March 2006. He highlighted the major proposals in the Bill and said that the Administration hoped that the scrutiny of the Bill could be completed as soon as possible. Permanent Secretary for Security (PS for S) then briefed Members on the Administration's response to issues raised by members at the meeting on 21 February 2006.

2. Mr Ronny TONG said that the target of interception of communications or covert surveillance should be notified afterwards, without affecting law enforcement in the case concerned, of the activities conducted. His view was shared by Mr LEUNG Kwok-hung, Mr Albert HO and Ms Emily LAU. Mr LAU Kong-wah added that notification should be given in mistaken cases of interception of communication or covert surveillance.

Action

3. S for S responded that law enforcement agencies (LEAs) had expressed concern that the introduction of a notification mechanism would undermine their law enforcement capabilities. Nevertheless, the Security Bureau would discuss with LEAs how the issue could be dealt with.

4. Dr KWOK Ka-ki considered that the Bill as presently drafted, where there was no notification mechanism and panel judges were appointed by CE, was not acceptable. Referring to paragraph 11 of the Administration's paper, he expressed disagreement with the view that a notification requirement was contrary to the principle of destruction of materials as early as possible to protect privacy.

5. S for S said that the Bill had incorporated various provisions that would minimise errors and prevent abuse. Interception of communications and the more intrusive covert surveillance would require judicial authorisation. LEAs were required to submit a report on any non-compliance with the provisions in the Bill to the Commissioner on Interception of Communications and Surveillance (the Commissioner). PS for S said that the practical problems of notification were set out in paragraphs 7.75 to 7.79 of the report on interception of communications published by the Law Reform Commission in 1996.

6. Mr Ronny TONG said that the appointment of panel judges should be automatically renewed upon expiry. Mr Albert HO added that panel judges should not be appointed by CE. He considered that the appointment of panel judges should be a matter of internal deployment within the Judiciary. His view was shared by Ms Margaret NG and the Chairman. The Chairman said that the proposed mechanism for appointment of panel judges might cause one to suspect whether the Administration wished to exclude some judges from being appointed as panel judges.

7. S for S responded that the appointment of panel judges by CE was in line with CE's powers under the Basic Law (BL) to appoint and remove judges of the courts at all levels. He stressed that CE would only appoint panel judges on the recommendation of the Chief Justice.

8. Mr LEUNG Kwok-hung said that the Administration was deploying its resources to carry out what was performed by the Special Branch before reunification. He considered that the proposed legislation lagged much behind those of many developed countries such as Australia.

9. S for S responded that interception of communications would not be conducted for political reasons. Law enforcement officers would have to act in accordance with the law. He added that the proposals in the Bill had been drawn up after making reference to the relevant legislation in many developed countries, and were comparable to, if not better than, that in many common law jurisdictions.

Action

10. Mr Albert HO asked why the term "shall" was used for the appointment of panel judges by CE, whereas the term "may" was used for the revocation of the appointment of panel judges by CE.

11. LO(IL) responded that such a way of drafting was generally adopted for provisions relating to appointment. Using the term "shall" for the revocation of the appointment of panel judges by CE would give rise to the question of when such an appointment must be revoked.

12. The Chairman asked whether a judge would have to undergo any checking, besides the usual checking prior to the appointment of a judge, before being appointed as a panel judge.

13. S for S responded that panel judges would have to undergo the usual integrity checking for civil servants to be appointed to posts with access to sensitive information.

14. Ms Emily LAU queried why it was necessary to conduct integrity checking on panel judges before their appointment. She asked whether integrity checking was required before a judge was allowed to perform such a politically sensitive function. Her view was shared by Mr CHEUNG Man-kwong. Mr CHEUNG expressed concern that the checking of a person's association with others would include the checking of the person's political association.

15. S for S stressed that integrity checking did not involve any political vetting. Such checking only covered areas such as the personal particulars of the subject and the association of his family members. He added that senior officials such as PS for S, the Commissioner of Police and he himself had also undergone integrity checking before appointment to their existing posts. Integrity checking for a person before appointment to a post which had access to sensitive information was a mechanism which had been in place for many years, including before reunification. Mr CHEUNG MAN-kwong considered that integrity checking should not cover the association of the family members of a candidate.

16. Ms Emily LAU questioned whether integrity checking on judges was found in other jurisdictions. She queried whether judges were willing to undergo such integrity checking.

17. PS for S responded that the Administration had consulted the Judiciary and the Judiciary had no objection to such checking.

Adm

18. The Chairman requested the Administration to provide a paper explaining in greater detail the checking to be conducted on panel judges prior to their appointment under the Bill.

Action
Clerk

19. Ms Emily LAU asked the Clerk to seek the views of the Judiciary on the proposal to conduct integrity checking on panel judges authorising interception of communications and the more intrusive covert surveillance.

20. Ms Emily LAU said that the proposed mechanism for authorisation by panel judges would affect the independence of the Judiciary.

21. S for S responded that the independence of the Judiciary would not be affected by the proposals in the Bill. He said that the panel judges would serve as an independent third party in authorising interception of communications and the more intrusive covert surveillance operations.

22. Mr Ronny TONG said that the proposed legislation should seek to protect human rights. He considered that security of tenure was an important element in maintaining the independence and fair image of judges. However, the fact that the appointment of panel judges could be discontinued after a period of three years was inconsistent with such security of tenure. He said that he would provide the Administration with information on relevant precedents which supported his view.

23. PS for S responded that the appointment of a person as a panel judge would not affect his tenure as a judge of the Court of First Instance.

24. Mr LEUNG Kwok-hung asked whether it was unlawful for a person to intercept communications for the purpose of identifying whether his communications were intercepted by LEAs, when the proposed legislation was extended to cover non-government parties. He said that if the Administration was concerned about possible association of judges with criminals, the panel judges could be recruited from overseas countries.

25. S for S responded that the proposed legislation only sought to regulate public officers. He said that the provisions in the Bill were a big step forward in comparison with the Law Enforcement (Covert Surveillance Procedures) Order. The proposals in the Bill would regulate the work of LEAs in interception of communications and covert surveillance, with due protection for privacy of communication.

26. Mr Albert HO considered that what the Administration had been doing in the past in the interception of communications and covert surveillance had been unlawful. He said that the Democratic Party considered that court authorisation should be required for interception of communications and covert surveillance. He was of the view that the existing mechanism for handling applications for search warrants should be adopted for handling application for interception of communications and covert surveillance. He added that the proposed appointment of panel judges by CE and integrity checking on judges had caused one to suspect whether there were political considerations in the appointment of panel judges.

Action

27. S for S responded that integrity checking was a standard procedure conducted on persons to be appointed to posts which had access to sensitive information. He reiterated that the Bill had struck a balance between law enforcement and the protection of privacy of communications and human rights.

28. Ms Margaret NG said that judges were dealing with much sensitive information in their daily work. She queried why integrity checking was needed for panel judges. She pointed out that the appointment of panel judges was not comparable to the appointment of judges under BL48. She considered that interception of communications and covert surveillance should be authorised by judges under the ordinary judicial process.

29. LO(IL) responded that the proposed authorisation was not comparable to ordinary court cases, where hearings were held in public except on rare occasions and the parties concerned had the right to lodge an appeal.

30. The Chairman said that judges were handling sensitive information from time to time in the course of hearing cases, such as those relating to drug trafficking, terrorism or organised and serious crime. Unless integrity checking was conducted for the political vetting or national security purposes, one could not understand why there was a need for integrity checking on panel judges.

31. S for S reiterated that integrity checking was a standard procedure for public officers handling sensitive information before appointment. Such checking did not involve any political vetting.

32. PS for S said that cases heard by the court were those where the operations concerned were overt, whereas the authorisations under the Bill would deal with covert operations.

33. Members agreed that the regular Panel meeting to be held on 7 March 2006 at 2:30 pm would be extended to end at 5:30 pm to allow more time for discussion of the subject.

34. The meeting ended at 4:45 pm.