

立法會
Legislative Council

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LC Paper No. CB(2)157/06-07
(These minutes have been seen by
the Administration)

**Subcommittee on
Review of Existing Statutory Provisions
on Search and Seizure of Journalistic Material**

**Minutes of meeting
held on Friday, 7 July 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Dr Hon LUI Ming-wah, JP
Hon Margaret NG
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Albert HO Chun-yan
Hon Daniel LAM Wai-keung, BBS, JP

Public Officers attending : Mrs Apollonia LIU
Principal Assistant Secretary for Security

Miss Rosalind CHEUNG
Assistant Secretary for Security

Mr Kevin Paul ZERVOS, SC
Senior Assistant Director of Public Prosecutions
Department of Justice

Mr Alfred MA
Chief Superintendent of Police (Crime Headquarters) (Crime Wing)

Mr Gerald Roger OSBORN
Assistant Director/Operations 4
Independent Commission Against Corruption

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

Action

I. Meeting with the Administration
(LC Paper No. CB(2)2625/05-06(01))

Principal Assistant Secretary for Security (PAS(S)) briefed members on the Administration's response to issues raised at the meeting on 4 May 2006. Senior Assistant Director of Public Prosecutions (SADPP) said that it was arguable that a person who had initiated proceedings under section 87 of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO) was a party to the proceedings and therefore would have a right of appeal under section 31(b) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) (CFAO).

2. The Chairman said that while paragraphs 3 and 4 of the Administration's paper seemed to indicate that there was an appeal channel under section 31(b) of CFAO, SADPP had repeatedly said that it was arguable that such an appeal mechanism was available. He asked whether the Administration took the view that such an appeal channel was available.

3. SADPP responded that a person from whom material was seized and who had made an application for return of the seized material under section 87(1) of IGCO might be considered a party to the proceedings and, as there was no appeal to the Court of Appeal, the person might be able to appeal to the CFA under section 31(b) of CFAO.

4. Senior Assistant Legal Adviser 1 informed members that the Court of Appeal seemed to have taken the view in *So Wing-keung v. Sing Tao Limited and Hsu Hiu Yee* that the two types of persons referred to in section 87(1) of IGCO were parties to the proceedings and therefore would have a right of appeal under section 31(b) of CFAO.

5. Ms Margaret NG expressed concern that the Administration's proposed arrangements would only be provided in the internal guidelines of law enforcement agencies (LEAs). She considered that the proposed arrangements should be provided in the law.

Action

6. SADPP responded that the proposed arrangements were operational in nature and thus difficult to elucidate in the form of legislation. He said that LEAs would be governed by the internal guidelines which, in the current case, could be published. Given that it was not possible to set out all possible situations, the guidelines would provide LEAs with the necessary flexibility. It would be set out clearly in the guidelines that in each case where it was contemplated that an application to the Court of First Instance (CFI) should be made, the application should be cleared by a directorate officer of the LEA concerned and should only be made after consultation with a directorate officer in the Prosecutions Division of the Department of Justice.

7. PAS(S) said that, under the proposed arrangements, applications for search warrants under section 85 of IGCO would be made to the District Court as far as possible unless the matter was of such importance to warrant a decision from CFI upfront.

Adm

8. Referring to paragraph 1 of the Annex to the Administration's paper, the Chairman said that the test as to whether a production order (as opposed to search warrant) should be applied for should be whether an application for a production order might jeopardise the investigation concerned, rather than whether the case was less serious or sensitive. PAS(S) took note of the comments and advised that the Administration would adjust the wordings of the paragraph concerned accordingly.

9. The Chairman asked when and how the Administration's proposed arrangements would be promulgated.

Adm

10. PAS(S) advised the meeting that the new arrangements for dealing with applications under Part XII of IGCO would be promulgated by the Security Bureau in one or two months' time. In response to the suggestion of the Chairman, PAS(S) agreed to consider publishing the arrangements in the Gazette.

11. The Chairman said that the Subcommittee had concluded its work and a report would be submitted to the Panel on Security. He asked the Administration to advise the Subcommittee on the date of promulgation so that such information could be included in the Subcommittee's report.

12. The meeting ended at 11:40 am.